

2008

Hfx. No. 297827

**SUPREME COURT OF NOVA SCOTIA**

**BETWEEN:**

**RONALD MARTIN** on behalf of himself and other proposed class  
members

**PLAINTIFF**

**- AND -**

**RAYMOND LAHEY** in his capacity as Bishop of the  
**ROMAN CATHOLIC DIOCESE OF ANTIGONISH** and  
**THE CATHOLIC EPISCOPAL CORPORATION OF ANTIGONISH**  
formerly **THE ROMAN CATHOLIC & EPISCOPAL**  
**CORPORATION OF ANTIGONISH** commonly known as  
the **ROMAN CATHOLIC DIOCESE OF ANTIGONISH**

**DEFENDANTS**

**SETTLEMENT AGREEMENT**

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## **SETTLEMENT AGREEMENT**

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## **DEFINITIONS**

1. Terms in this Agreement are defined as follows:

“Action” means Supreme Court of Nova Scotia action S.H. No. 297827

“Award” means the “Damage Award” and the “Counselling Award”.

“Approved Class Counsel Costs” means the fees, disbursements and applicable taxes as may be approved by the Court, payable to Class Counsel.

“Claim Form” means a form to be agreed upon by the parties or, failing agreement, as determined by the Court having regard to the level of detail provided in other Canadian certified sexual abuse class action proceedings.

“Claim Period” is 180 days from Final Approval.

“Claimant” means a participating Class Member who does not opt out.

“Class Counsel” means Arnold Pizzo McKiggan and Cohen Highley LLP.

“Class Members” means all persons who were sexually assaulted by any priest of the Catholic Episcopal Corporation of Antigonish between January 1, 1950 and Final Approval, and includes the Estates of all such persons now deceased.

“Costs Fund” means the trust fund established by the Defendant through MacIntosh, MacDonnell & MacDonald pursuant to paragraph 49.

“Counselling Award” means any individual amount awarded for licensed psychological or psychiatric counselling pursuant to paragraph 41.

“Court” means the assigned case management judge, Mr. Justice David MacAdam, or his designate for this class action in the Supreme Court of Nova Scotia.

“Damage Award” means any amount awarded for damages pursuant to paragraph 40.

“Decision” means the decisions of the Judge pursuant to paragraphs 39-47, 51, 54, 66.

“Defence Counsel” means MacIntosh, MacDonnell & MacDonald.

“Economist” means the persons appointed pursuant to paragraph 15.

“Expenses” means the cost of: providing notice, obtaining Claimant’s records; the Medical Expert; travel costs for Claimant to attend assessments pursuant to paragraph 14, the Economist; the Judge; the Fee Review; the Examinations; the Hearings including the facility cost; the Counselling Awards; and the Transcripts.

“Expense Fund” means the trust fund established by the Defendant through MacIntosh, MacDonnell & MacDonald, to pay the Expenses described herein.

“Fee Review” means the review provided for at paragraph 66.

“Final Approval” means the day after the expiry of any appeals from an order approving the Settlement Agreement.

“Final Order” means the final order approving the Settlement Agreement;

“Hearing” means the hearing held by the judge pursuant to paragraph 25.

“Judge” means the Judge appointed pursuant to paragraph 24;

“Medical Expert” means the persons appointed pursuant to paragraph 13.

“Opt Out Form” means a form to be agreed by the parties pursuant to paragraph 4.

“Parties” means the Representative Plaintiff and the Defendant.

“Reports” means reports prepared by the Economist, Medical Expert and any Additional Expert.

“Settlement Fund” means the funds supplied by the Defendant to pay Damage Awards and Interest (the Total Award Amount) in the manner more fully described in this Agreement, which funding shall not exceed \$12 million.

## **APPROVAL PROCESS**

2. As soon as practicable, the Parties shall seek approval from the Court for a notice program and a date for the hearing of certification and settlement approval.
3. At the hearing date established under paragraph 2, the Parties shall jointly seek a conditional certification of the Action for settlement purposes, and conditional approval of the settlement.
4. Any conditional certification order shall provide, inter alia, that:
  - a. Notice will issue that requests that Class Members identify themselves to Class Counsel within 60 business days after the conditional certification order;
  - b. The opt out period will expire 60 business days after the conditional certification order.
  - c. An Opt Out Form agreed by the parties is approved for use by Class Members who chose to opt out. Failing agreement of the parties, the content of the Opt Out Form shall be set by the Court.
5. If there are any opt outs, the Defendant shall have the right within 70 business days of the conditional certification order to elect not to proceed with the settlement, at which point the conditional certification shall be vacated, and the Parties will return to the position they would have been in, had the parties not signed this Settlement Agreement and had the conditional certification order not issued
6. If more than 70 Class Members identify themselves to Class Counsel, whom Class Counsel in good faith believes are bona fide Class Members, then Class Counsel shall have the right within 70 business days of the conditional certification order to elect not to proceed with the settlement, at which point the conditional certification shall be vacated, and the Parties will return to the position they would have been in, had the parties not signed this Settlement Agreement and had the conditional certification order not issued.

## **CLAIMS PROCESS**

7. Subject to paragraph 8, Claimants may make a claim (the "Claim") by delivering to Defence Counsel a Claim Form within the Claim Period. If a Claimant does not deliver a Claim Form to Defence Counsel in

the manner specified and within the required timelines, the Claimant shall not be entitled to any compensation.

8. Notwithstanding the mandatory timelines of the Claim Period, a Claimant may apply to Court no later than 150 calendar days after expiry of the Claim Period for an extension of the Claim Period. Any request for extension shall be filed by the Claimant at the earliest reasonable opportunity. Defence Counsel shall provide Class Counsel with notice and the particulars of any such intended late Claim at the earliest reasonable opportunity. The Claimant shall satisfy the Court that there were exceptional circumstances that warrant the granting of such extension, sufficient to equitably outweigh the prejudice to the Defendant. In no event shall any Court approved extension be granted that is more than 180 calendar days from the end of the Claims Period.
9. Defence Counsel will advise Class Counsel that a new Claim Form has been received within 5 business days of Defence Counsel's receipt of the Claim Form. Defence counsel will provide Class Counsel with a copy of the claim form, with personal identifying information redacted, within 30 days of receipt of the Claim Form.
10. Within 15 business days of receipt of the Claim Form, the Defendant shall have the right to requisition from the Claimant and/or Claimant's Counsel full production of all relevant documents that are not subject to solicitor-client privilege (including digitally stored information) in the Claimant's possession or under the Claimant's control, or otherwise obtainable through or by way of written consent and authority from the Claimant, which relates to the Claim, including relevant: personal records and diaries, medical records, including all records of MSI, family doctors, clinical notes, counselling notes, psychological or psychiatric or therapy notes and/or records, school records, income records from Canada Pension Plan where available, tax returns, employment records, criminal records of the claimant including files and history of incarceration, any and all relevant child welfare agency or child protection files, any and all relevant files resulting from the institutionalization of the Class Member, to the extent reasonably accessible, all at the cost of the Defendant (the "Claimant's Records"). The Claimant and Claimant's Counsel shall exercise due diligence and timely effort in the gathering and production of all such Claimant's Records. The Claimant shall make best efforts to provide all requisitioned materials within 120 calendar days of requisition. In the event Claimant's Counsel asserts that certain requisitioned records are not relevant or are privileged or otherwise not subject to disclosure, Claimant's Counsel shall provide to Defence Counsel sufficient particulars as to the grounds of such withholding, as to permit the Defendant to make an informed decision whether such

matter should be referred to the Judge for final determination. In the event Claimant's Counsel and Defendant's Counsel disagree as to whether full disclosure has occurred, and/or the date thereof, the matter shall be referred to the Judge for determination.

11. Within 60 days of receiving a Claim Form, the Defendant shall produce all relevant documents in the Defendant's possession or control relating to the alleged perpetrator and the Claimant, including the Claim for damages.
12. Within 30 days of receiving the last of the Claimant's Records, the Defendant and Claimant's Counsel shall schedule an examination of the Claimant (the "Examination"). The Examination shall be limited to two hours or less, unless otherwise ordered by the Judge. Claimant's counsel shall have a right of re-examination to a maximum of one hour. A transcript shall be taken of the Examination (the "Transcript"). The Defendant will provide Claimant's Counsel with a copy of the Transcript. The questioning shall be relevant to the Class Member's claim and will be conducted in a respectful and sensitive fashion. In acknowledgment of this expedited process, the Claimant shall be co-operative, candid and timely in responses. If the Claimant reveals material information to an Expert that was not disclosed to the Defendant, the Defendant shall have the right to apply to the Judge for a second Examination on such terms as the Judge determines. Defence Counsel shall be responsible for coordinating any examinations, assessments, hearings and facilities.
13. The Parties shall agree to appoint one or more medical experts (the "Medical Expert"). The Medical Expert shall be responsible for conducting an assessment pursuant to a joint instruction letter that shall be agreed by the parties or approved by the Court. The Medical instruction letter will at a minimum include issues of causation, harm suffered, if any, and recommendations for treatment, if any. The names of the Medical Expert will be agreed by the Parties prior to settlement approval.
14. Not later than 30 days after the examination of the Claimant, the parties shall advise one another if they will require a report from a Medical Expert. The assessment report will be obtained from the Medical Expert who is most cost effectively accessible to the Claimant. The Claim Form, and any Records required by the Defendant shall be sent to the Medical Expert. The Medical Expert shall conduct an in-person assessment of the Claimant, unless both parties agree otherwise. The Claimant shall cooperate reasonably as requested by the Medical Expert, including attendance at the time and place specified by the Medical Expert. The Medical Expert shall produce a written report (the "Medical Report"). If the Class Member



is required to travel more than 200 kilometres (one way) for the assessment by the Medical Expert, the Defendant shall provide either advance reasonable payment or subsequent reasonable reimbursement of the Claimant's travel costs within Canada and continental U.S. Airfare shall be economy. Kilometrage shall be at the Province of Nova Scotia kilometrage rate.

15. The Parties shall agree to appoint one or more economists or actuaries (the "Economist"). If the parties are unable to agree on the Economist, then the Court shall decide on this expert. The Economist shall be responsible for providing a report pursuant to a joint instruction letter that shall be agreed by the parties or approved by the Court. The names of the Economists will be agreed by the Parties prior to settlement approval.
16. Not later than 30 days after the examination of the Claimant, the parties shall advise one another if they will require a report from the Economist. If requested by either the Claimant or the Defendant, a report on economic loss shall be prepared by the Economist. If such a request is made, the Economist shall be sent the Claim Form, Records, Transcript, and any relevant Medical Report, unless otherwise agreed by the parties. Both the Claimant and the Defendant shall be at liberty to forward proposed assumptions to the Economist. The Economist shall produce a written Report based on each party's assumptions (the "Economic Report"), to the extent the Economist is able to do so.
17. Not later than 30 days after the examination of the Claimant, the parties shall advise one another if they will require a report from an Additional Expert. If either the Claimant or the Defendant wish to call another type of expert (the "Additional Expert") at the Hearing, they shall be required to make an application to the Judge. The Judge shall grant the order unless the Judge determines that such report would be unhelpful to the Judge. The Additional Expert shall be mutually agreed, and retained pursuant to a mutually agreed retainer letter that sets forth the positions or requests of both parties. If the parties are unable to agree on the expert or the form of retainer letter, then the Judge shall decide on the expert and form of retainer letter.
18. No adverse inference shall be drawn from the failure of either party to requisition an Expert report

#### **LIMITATION ON DEFENCES**

19. Where there has been a criminal conviction in relation to the specific acts of sexual abuse complained of by the Claimant, with the Claimant acting as the Informant for such criminal charges, liability shall be admitted for those acts of sexual abuse that resulted in criminal conviction. In relation to a Claimant who was an Informant in sexual abuse criminal charges pending at the time of death of Hugh V. MacDonald, liability for the acts that resulted in the sexual abuse criminal charges shall be admitted, but proof of the extent of the sexual abuse shall be required in the normal course.
20. In this Action, the Defendant waives any defences with respect to limitations periods or laches, and admits vicarious liability for any proven acts of sexual abuse by a Priest of the Defendant, except that limitation periods or laches shall not be waived for claims by an Estate of a deceased Class Member.

### **EXIGENT CIRCUMSTANCES**

21. The Defendant will in good faith endeavor to accommodate the processing of any claim that requires an expedited Hearing because of exigent circumstances. The Defendant in such circumstances may elect to waive the Claimant's obligation of attendance before the Medical Expert. Barring such agreement, the Judge may determine whether such medical examination should be waived, and the timetable for the Hearing. The Judge shall exercise equitable discretion under such circumstances to fairly balance any competing interests of the parties.

### **SETTLEMENT DISCUSSIONS**

22. Following the Examination and production of any requested Reports, Defence Counsel and counsel for the Class Member shall have discussions on settlement. Nothing shall preclude such counsel from discussing settlement at any other time.
23. Any Defendant's offer to settle ("Defendant's Offer to Settle") or Claimant's offer to settle ("Claimant's Offer to Settle") shall be delivered within 30 days following the receipt by counsel for the Claimant and counsel for the Defendant of the (1) Transcript, (2) Medical Expert Report, (3) Economist Report, (4) any Additional Expert Report, whichever is last received (the "Materials").

## **THE HEARING**

24. The Parties will agree upon the appointment of a Judge prior to settlement approval.
25. Subject to paragraph 21, the Judge shall make best efforts to schedule the Hearings on any Claims that have not been settled following notice from either the Claimant or the Defendant that they wish to schedule a Hearing. In deciding to schedule a Hearing the Judge will decide whether the parties have received the Materials, or when the Materials will be received. In no event shall a Hearing proceed prior to 60 days following receipt of all Materials.
26. The Judge may make such orders as are necessary for the proper conduct of the Claims process and the Hearing, in the manner authorized by this Agreement. Any unresolved disputes regarding the meaning and scope of this Agreement, or the authority of the Judge, shall be dealt with by way of a motion for directions to the Court.
27. The Claimant and the Defendant shall exchange briefs and provide copies of same to the Judge in advance of the Hearings (the "Briefs"). The Claimant's Brief shall be delivered 6 weeks prior to the Hearing. The Defendant's Brief shall be delivered 4 weeks prior to the Hearing.
28. Unless otherwise ordered by the Judge, the Claimant's Brief shall include, inter alia:
  - a. A summary of issues, facts, and positions;
  - b. The Claim Form;
  - c. Any Claimant's Records or Defendant's Records the Claimant wishes to rely upon;
  - d. The Materials;
  - e. "Will say" statements from any witnesses the Claimant may call at the Hearing;
  - f. Any case authorities to be relied upon.
29. Unless otherwise ordered by the Judge, the Defendant's Brief shall include, inter alia:
  - a. A summary of issues, facts, and positions;

- b. Any Claimant's Records or Defendant's Records the Defendant wishes to rely upon;
  - c. "Will say" statements from any witnesses the Defendant may call at the Hearing;
  - d. Any case authorities to be relied upon.
- 30. Both the Claimant and the Defendant shall be limited to two witnesses other than the Claimant, a representative of the Defendant, Economist, Medical Expert, and any Additional Expert(s), unless otherwise ordered by the Judge.
- 31. If the Defendant's representative, or one of the two witnesses proposed by the Defendant, is the alleged perpetrator, the Claimant shall have the right to conduct an Examination of the alleged perpetrator for a maximum of two hours prior to the Hearing, unless otherwise ordered by the Judge. The Defendant shall have a right of re-examination to a maximum of one hour. The Defendant will provide the Claimant with a copy of the Transcript from such Examination.
- 32. Only the Judge may ask questions of the Claimant. Prior to or during the Hearing, either party may request questions or areas for examination by the Judge. The Judge will assume an inquisitorial role in relation to the Claimant, in place of the traditional adversarial model that involves direct and cross-examination by both counsel.
- 33. At least 15 calendar days prior to the Hearing, the Claimant and the Defendant will disclose to each other whether they require any of the other party's witnesses to attend for cross-examination, failing which the "will say" statement may be entered as evidence. Unless otherwise ordered by the Judge, the party requiring the attendance of a witness at the Hearing is responsible for the costs associated with securing such attendance.
- 34. At least 30 calendar days prior to the Hearing, the Claimant and the Defendant will disclose to each other whether they require the Economist, Medical Expert, or Additional Expert to attend for cross-examination. If not, the Reports shall form part of the evidence in the Hearing. The cost of attendance of any Additional Expert shall be the cost of the party requesting such Expert. If only Claimant's counsel requests attendance of the Medical Expert or the Economist, the costs of such attendance, paid initially by the Defendant, shall be taxable and reimbursable to the Defendant by the Claimant, if the Judge determines that such attendance did not materially assist the Judge's assessment of the Claim.

35. In relation to all other witnesses, the “will say” statement shall serve as the examination-in-chief, and both Claimant and the Defendant shall have their traditional right of cross-examination and re-examination. Any expert Report shall be filed without direct examination, unless the Judge otherwise directs. Both the Claimant and the Defendant may cross-examine the Medical Expert, Economist, and any Additional Expert on aspects of such Report that are in dispute.
36. The Claimant shall give evidence at the Hearing, unless otherwise agreed by the Claimant and the Defendant, or ordered by the Judge.
37. In making submissions to the Judge, neither party to the Hearing is bound to accept the facts, opinions or conclusions of the Medical Report, Economic Report or any Additional Expert Report. Claimant’s Counsel and the Defendant shall confer and discuss the Reports prior to the Hearing in order to identify potential aspects of the Report on which the parties may differ.

#### **TEST CASES**

38. Class Counsel and Counsel for the Defendant will mutually agree on 4-6 test cases that represent a cross-section of Claimants for initial adjudication by the Judge, in order to provide guidance on likely awards. Failing agreement, the Judge shall select a cross-section of Claimants. In the event a selected Claimant is represented by legal counsel other than Class Counsel, Class Counsel shall be entitled to participate in such adjudication, upon such terms and conditions as the Judge shall reasonably determine.

#### **AMOUNT OF AWARD**

39. The Judge shall adjudicate issues of liability and quantum in the expedited manner described herein, but otherwise upon the same legal principles as if the Claim were being adjudicated in the Supreme Court of Nova Scotia.
40. Subject to paragraphs 43-46, the Judge may make an adjudication of any award of damages to a Claimant, payable by the Defendant from the Settlement Fund, as follows:
  - a. general damages,
  - b. economic loss claims to a maximum of \$300,000,

(the "Damage Award").

41. The Judge may make an additional award for counselling costs incurred at prevailing professional rates, to be reimbursed by the Defendant as incurred, in an amount not exceeding \$6000 per Claimant (the "Counselling Award"). The cumulative total of all counselling awards shall not exceed in total \$400,000.
42. No other heads of damage shall be awarded.
43. For any Claimant who was not a parishioner of the Defendant at the time of the abuse, the Judge shall reduce the Damage Award otherwise payable by 25%, in recognition of waived defences applicable to such individuals.
44. The Judge may make an award for economic loss up to a maximum of \$100,000.00 without an Economic Report.
45. If:
  - a. the Claimant has requested production of an Economic Report;
  - b. the Defendant has not requested production of an Economic Report; and
  - c. the total amount awarded for economic losses is less than \$30,000;then the amount awarded to the Claimant shall be reduced by the cost of the Economic Report.
46. The Judge shall not consider the size or balance of the Settlement Fund in determining the amount of any Award. The Parties and their counsel agree that there is no formula or range of settlement relied upon for calculation of the Settlement Fund.
47. The Judge shall provide a written Decision setting forth the material findings of fact and law (the "Decision") within 60 days or so soon thereafter as is practicable. The Judge shall file all Decisions simultaneously with Counsel for the Defendant, Class Counsel and Counsel for the Claimant.

## **INTEREST**

48. All outstanding Damage Awards and the amount payable to the Claimant as costs pursuant to paragraph 51 shall accrue interest from the date the Damage Award is made, at the Royal Bank of Canada Commercial Prime Rate as calculated from time to time.

#### **COSTS PAYABLE TO CLAIMANT**

49. Subject to paragraph 50, after resolution of all Claims and Appeals in respect of which the Claimant receives a Damage Award, the Defendant shall pay into the Costs Fund:
- a. an amount equal to 6.5% of the Damage Award up to \$200,000,
  - b. an amount equal to 3.25% of the remaining balance of the Damage Award.
50. The Defendant shall have no obligation to fund the amount calculated pursuant to paragraph 49 until the amount calculated exceeds the Approved Class Counsel Costs, at which point the amount payable shall be the amount calculated pursuant to paragraph 49, less the Approved Class Counsel Costs (the "Costs Residue").
51. Subject to paragraph 53, when the Final Distribution occurs, each Claimant shall be allocated a pro rata share of the Costs Residue based on each eligible Claimant's Damage Award payable from the Costs Fund.
52. If the Claimant received an Award greater than the Claimant's Offer to Settle, filed pursuant to paragraph 55, then the Claimant shall receive a supplementary costs bonus in the amount of \$5,000 which shall be paid to the Claimant within 30 days of the Damage Award by the Defendant directly independent of the Costs Fund.
53. If the Claimant receives an Award less than the Defendant's Offer to Settle, filed pursuant to paragraph 55, then \$5,000 of that Claimant's allocated share of the Costs Residue shall be deducted and paid directly back to the Defendant out of the Costs Residue. In the event that the Claimant's share of the Costs Residue is not sufficient to pay such costs, such amount shall be deducted from the Claimant's Damage Award.
54. The Judge shall have the discretion to order the Claimant to reimburse the Defendant for any or all of the costs of an Additional Expert, if the Judge concludes that such opinion evidence did not materially contribute to the award issued. If the general damage

component of any Damage Award is less than \$25,000, the Judge shall have the discretion to order the Claimant to reimburse the Defendant for the costs of the Medical Expert, if the Defendant did not request the Medical Report and the Judge concludes that the Medical Report did not materially contribute to the award issued.

55. Any written Offer to Settle shall be delivered to opposing counsel not less than 10 days before the scheduled Hearing. No Offer to Settle shall be permitted thereafter, unless material new facts or opinion evidence have been brought to the attention of the party filing such Offer within the 10 days preceding the Hearing. Each Offer to Settle shall include a separate amount offered for taxed costs and disbursements to date of settlement. In deciding on the cost consequences of Offers to Settle, the calculation of the Offer shall be based on the cumulative total of the Offer, exclusive of costs, without consideration of any breakdown between general damages and economic loss.
56. After the resolution of each Claim, or after Appeal if one is undertaken, for which a Damage Award is made, the Defendant shall pay to the Claimant:
  - a. \$500 in lieu of out of pocket disbursements incurred by Claimant's Counsel;
  - b. \$1000 for each full day of Hearing or a pro-rated portion thereof, as determined by the Judge.

#### **COSTS PAYABLE TO DEFENDANT**

57. If the Claimant receives no Award, the Claimant shall pay agreed taxed costs to the Defendant in the amount of \$5000.00.

#### **THE COSTS FUND**

58. The Costs Fund shall be funded by the Defendant as, when and in the amounts required to satisfy the amounts payable to Claimants for costs under this Agreement. Defence Counsel shall provide an accounting of payments into and out of the Taxable Costs Fund as reasonably required from time to time by Class Counsel or the Court.

#### **EXPENSE FUND**



59. The Defendant shall pay to MacIntosh, MacDonnell & MacDonald in Trust an initial deposit of \$1 million, to be applied towards payment of Expenses as incurred. The Defendant shall replenish such trust funds as required to permit Defence Counsel to pay Expenses in a timely manner. The Expense Fund shall be funded by the Defendant within 30 days of Court approval of the settlement ("Court Approval"), except for any notice costs incurred prior to the date of Court Approval, which shall be paid by the Defendant when due and which amount shall be charged against the Expense Fund, when established. The Expense Fund shall be held in trust and disbursed by Defendant's Counsel, and such disbursements shall only be made with the agreement of Class Counsel or order of the Court. Defendant's Counsel shall provide an accounting of all receipts and disbursements as required from time to time by Class Counsel or the Court.
60. If the Expenses payable are projected to be in excess of the \$1 million, the excess shall continue to be funded by the Defendant, but upon such cost effective terms and conditions as the Court may direct, upon Application of the Defendant. Such application may not be made before the Defendant has expended \$850,000.00.
61. The cost of the notice program agreed by the parties, and to be approved by the Court, shall not exceed the all-inclusive sum of \$125,000, and shall generally be according to a plan agreed by the Parties or ordered by the Court..
62. Once all Counselling Awards and Expenses have been paid, any balance in the Expense Fund shall be returned to the Defendant.

#### **CLASS COUNSEL COSTS**

63. Class Counsel shall apply to the Court for approval of Class Counsel Costs, to be paid from proceeds of the Costs Fund, in an amount not exceeding \$400,000. The Defendant shall pay into the Taxable Costs Fund the amount approved for Approved Class Counsel Costs within 30 days of such approval.
64. Approved Class Counsel Costs shall be paid to Class Counsel from the Costs Fund within 30 days following such Court approval.
65. The Defendant shall not make any submissions on the application for Approved Class Counsel Costs.

## **SOLICITOR AND CLIENT COSTS**

66. If the Judge makes a Damage Award, Claimant's Counsel shall provide the Judge with a copy of any solicitor-client fee agreement, or the details of any unwritten fee agreement. The Judge shall review the fee agreement, or any proposed unwritten fee agreement, in the absence of the Defendant. The Judge shall conduct a Fee Review to assess the reasonableness of Counsel's proposed fee under the fee agreement in light of all relevant circumstances, including the criteria listed in Nova Scotia Civil Procedure Rule 77.13(2).

The parties to the solicitor-client fee agreement may make submissions to the Judge, either orally or in writing, by way of conference call or in person, as the parties may agree or the Judge may direct.

67. The decision of the Judge pursuant to paragraph 66 may be appealed to the Court by the Claimant or Claimant's Counsel.
68. For further clarity, the Defendant shall not be permitted to make any submissions to the Judge or Court on the amount to be paid to Claimant's Counsel for representing a Claimant pursuant to the provisions of this class action Settlement Agreement.

## **TIMING OF PAYMENT**

69. Each Counselling Award shall be paid periodically from the Expense Fund as counselling expenses are incurred, up to the maximum of the Counselling Award, for a period not exceeding 3 years from the date of the Decision or the date of any agreed settlement, and collectively to a maximum of \$400,000. The Claimant or Claimant's Counsel shall submit invoices for incurred counselling expenses to Defence Counsel. Such amounts shall be paid from the Expense Fund directly to the licensed psychologist or psychiatrist within 30 calendar days of receipt by Defence Counsel.
70. Damage Awards and accrued interest thereon shall be paid as follows:
- a. no earlier than the expiry of the period in paragraph 8, an interim percentage of each Damage Award, and accrued interest thereon shall be paid, which interim percentage shall be 30% unless, on the application of either Party, the Court determines that

- i. an increased percentage is warranted having regard to:
  - 1. the reasonableness and state of the Defendant's liquidation efforts;
  - 2. the number and nature of Claims made; or
- ii. a decreased percentage is warranted having regard to the likelihood of a pro rata reduction being required pursuant to paragraph 73;

This percentage is the "First Interim Percentage".

- b. on or about November 1, 2011, or such earlier date as is agreed by the parties, a second interim percentage of each Damage Award, and accrued interest thereon shall be paid, which interim percentage shall be a further 35% unless, on the application of either Party, the Court determines that
  - i. an increased percentage is warranted having regard to:
    - 1. the reasonableness and state of the Defendant's liquidation efforts;
    - 2. the number and nature of Claims made; or
  - ii. a decreased percentage is warranted having regard to the likelihood of a pro rata reduction being required pursuant to paragraph 73;

This percentage is the "Second Interim Percentage".

- c. the First and Second Interim Percentages of each Damage Award shall be paid to each eligible Claimant from the Settlement Fund within 30 days of (1) the expiry of the final determination of the Claimant's Damage Award after any Appeal, or (2) each Interim Percentage date, whichever is later;
- d. on or about November 1, 2012, or such other date as is agreed to by parties, and subject to application of the pro rata reduction set out in paragraph 73, after resolution of all Claims and Appeals, the final payment of the balance of the Damage Awards and accrued interest (the "Application") shall be paid ("Final Distribution").

71. At the Approval hearing, the Defendant shall provide the court with a report from Ernst & Young outlining the Defendants' plan to raise the funds required under this agreement. The Defendant shall provide to the Court and Class Counsel a quarterly progress report setting out the following:
- a. Details of the efforts made to raise the funds required under this agreement;
  - b. The extent of the funds raised to the date of the report;
  - c. What further efforts are being made to raise the funds required under this agreement.
72. If the Defendant fails to comply with the payment provisions of this Agreement, then, the Court may make such orders as are appropriate to protect and secure the interest of the Class to ensure the timely and complete payment of Class members. Prior to the agreement being submitted to the Court for approval, the Defendant and Plaintiff shall agree on a form of Security Agreement to secure the obligations of the Defendant under the terms of this Settlement. The Security Agreement shall be a registered floating debenture charge on realty, permitting encumbrancing of assets in priority to such uncrystallized debenture, which shall crystallize immediately preceding the earlier of:
- a. Receivership;
  - b. Bankruptcy;
  - c. Other insolvency protective measures;
  - d. Default by the Defendant in its payment obligations hereunder, preceding which 10 days written notice of default has been provided and not remedied.

The form of the Debenture shall be agreed prior to signing this Settlement Agreement.

### **ADJUSTMENTS AND RESIDUE**

73. If the total of all Damage Awards due and owing after expiry of all Appeals, and any interest payable pursuant to paragraph 48 (the "Total Award Amount"), is greater than the Settlement Fund of \$12 million, individual Damage Awards shall be reduced pro rata. Full

Releases as elsewhere described herein shall be deemed to have been provided by each Claimant, notwithstanding any pro-rated shortfall of individual Damage Awards

74. If the Total Award Amount is less than the Settlement Fund, the Defendant shall have no obligation to pay beyond the Total Award Amount.

## **RELEASE**

75. Upon due performance of the Defendant's obligations under this Agreement, all Claimants shall be deemed to have provided a full Release in the form to be agreed by the Parties prior to the agreement being submitted to the Court for Approval. Such Release includes an agreement to indemnify and save harmless the Defendant, its Bishop, its servants, agents, employees, parishioners, and related and affiliated persons and organizations, including the Roman Catholic Church and its representatives (all deemed to be "the Defendant"), of and from all manner of claims, demands, and causes of action, including any and all derivative causes of action, that do or may arise from the abuse of the Claimant, whether as claimed or otherwise, up to and including date of adjudication or settlement. The Release includes the agreement of the Claimant not to make any claim or take any proceedings against any other person or entity who might claim contribution or indemnity from the Defendant by virtue of such claim or proceeding. If there is partial performance, the Release shall be restricted in dollar value to an amount up to the amount received by each Claimant, provided that any approved pro rata reduction in payment as described in paragraph 73 shall be deemed to provide a full Release.

## **APPEALS**

76. All Decisions of the Judge are final and binding, subject to the right of appeal pursuant to paragraphs 67 and 77.
77. Either party may appeal a Decision or ruling of the Judge to the Court (the "Appeal"). The standard of review on an Appeal shall be the same as from the Supreme Court to the Court of Appeal. Any Appeal shall be launched within 30 days of the Decision or ruling. Any further appeals from the Court to the Nova Scotia Court of Appeal shall be governed by the rules applicable to judgments and orders of the Supreme Court of Nova Scotia. Costs may be awarded on the Appeal, and will be payable pursuant to the order the Court.

## **CONFIDENTIALITY**

78. The Hearings shall be in private.

79. The

- a. fact that a Claimant has made a claim;
- b. Claim Form;
- c. Transcripts;
- d. Claimant and Defendant Records;
- e. Reports;
- f. Briefs,

(collectively, the "Information"), shall remain confidential within the legal proceedings, except that the Defendant's counsel and its authorized agents shall have the right to conduct reasonable investigations in relation to the claim. The Defendant shall make all reasonable efforts to minimize the disclosure of Information for such an investigation, shall advise each individual contacted about the importance of maintaining the confidentiality of such Information, and shall make all reasonable efforts to obtain a written undertaking of confidentiality from any such third party.

## **MISCELLANEOUS**


- 80. If an Economist, Medical Expert, Additional Expert or Judge dies or becomes incapacitated, or is unable or unwilling to complete an assignment, the Parties shall agree on a replacement, failing which either party shall apply to the Court for the replacement. The Court shall implement such replacement process based upon criteria that best mirrors the original consensual selection of the parties.
- 81. Earlier drafts of this Agreement shall not be used as a guide to the interpretation of this Agreement.
- 82. The Court retains supervisory jurisdiction over this Settlement Agreement. The Court shall determine any disputes over the interpretation of this Agreement subject to any provisions of this agreement providing the Judge with authority.


83. The Parties shall report to the Court on a quarterly basis as to the status of the administration of the Settlement.

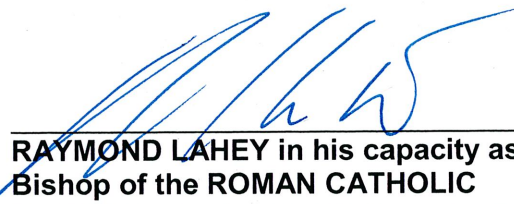
**DATED** this 4<sup>th</sup> day of August, 2009 at Halifax, Nova Scotia.

**IN WITNESS WHEREOF** each party hereto has caused this Agreement to be duly executed as of the date first written above by a party authorized on their behalf.

  
\_\_\_\_\_  
**Witness**

  
\_\_\_\_\_  
**RONALD MARTIN**  
Per: John A. McKiggan, Counsel for the  
Representative Plaintiff

  
\_\_\_\_\_  
**Witness**

  
\_\_\_\_\_  
**RAYMOND LAHEY** in his capacity as  
Bishop of the ROMAN CATHOLIC  
DIOCESE OF ANTIGONISH and THE  
CATHOLIC EPISCOPAL CORPORATION  
OF ANTIGONISH  
Per: Bruce T. MacIntosh, Counsel for the  
Defendants