

## Federal Indian Hospitals Class Action Settlement

### Individual Legal Fees Protocol

#### GENERAL

A. This document outlines the Protocol for Individual Legal Fees with respect to Settlement Agreement between Ann Cecile Hardy and Cecil Hardy and The Attorney General of Canada as approved by the Federal Court of Canada on June 24, 2025 (“**Settlement Agreement**” or “**SA**”) (SA 10.02).

B. Apart from direct quotation, where the SA refers to “**Application**”, it will be referred to as “**Claim**” in this Protocol.

C. Interpretation of this Individual Legal Fees Protocol: Capitalized terms are defined either within the Settlement Agreement (SA 1.01) or otherwise in this Individual Legal Fees Protocol (see below).

#### A. Definitions

In this Individual Legal Fees Protocol:

“**Approved Claimant**” means an Eligible Claimant who has made an Application (referred to throughout as a “Claim”) in accordance with the SA, which has been approved for payment by the Claims Administrator (SA 1.01).

“**Practising Lawyer**” means a lawyer licensed to practise law in a Canadian province or territory by the applicable licensing or regulatory body and who is practising law in that same Canadian province or territory.

“**Final Compensation Determination**” means the final decision of compensation for an Approved Claimant by the Claims Administrator/Independent Reviewer after all opportunity for Reconsideration has passed.

“**Individual Legal Counsel Payment Request Letter**” means the letter that will be sent to a Practising Lawyer to inform them of an Approved Claimant’s Final Compensation Determination with an enclosed Individual Legal Counsel Payment Request Form.

**“Individual Legal Fees Approval Letter”** means the letter that will be sent to a Practising Lawyer regarding their approved legal fees payment.

**“Individual Legal Fees”** means a Practising Lawyer’s entitlement to an amount equaling “up to 5% of the Approved Claimant's award, inclusive of disbursements, plus applicable taxes” determined in accordance with this Protocol (SA 10.02 (1)).

**“Additional Individual Legal Fees”** means an additional amount, beyond the Individual Legal Fees, equaling “up to an additional 5% of the Approved Claimant's award, inclusive of disbursements, plus applicable taxes for legal fees and/or disbursements”, which a Practising Lawyer may request in exceptional circumstances in accordance with Rule 334.4 of the *Federal Courts Rules*, SOR/98/106 and this Protocol (SA 10.02 (3)).

## **B. Background**

1. Pursuant s. 10.02 of the Settlement Agreement, a Practising Lawyer in good standing in any province or territory who assisted an Approved Claimant with their Claim, may be paid an amount equaling up to 5% of the Approved Claimant’s award, inclusive of disbursements, plus applicable taxes. These fees will be paid by Canada, without additional Federal Court of Canada (“**Court**”) approval, subject to the conditions in this Protocol. The Claims Administrator will determine the Individual Legal Fees payable in accordance with this Individual Legal Fees Protocol.
2. Where there are exceptional circumstances, a Practising Lawyer may request, on motion to the Federal Court of Canada, an additional amount, paid by Canada, equaling up to 5% of the Approved Claimant’s award, inclusive of disbursements, plus applicable taxes. For clarity, the highest amount payable by Canada to a Practising Lawyer is an amount equaling up to 10% of the Approved Claimant’s award, inclusive of disbursements, plus applicable taxes.
3. No legal fees will be deducted from any payment received by an Approved Claimant pursuant to the Settlement Agreement.

### **C. Payment of Individual Legal Fees**

4. In order to be eligible for payment of Individual Legal Fees from Canada, a lawyer must be both licensed to practise law and be practising law in a province or territory of Canada, be in good standing with their licensing or regulatory body in that same province or territory, and must have assisted an Approved Claimant with their Claim. For clarity, no payment of Individual Legal Fees will be made if any one of these criteria are not met.
5. A Practising Lawyer will generally be eligible for payment of the amount claimed equaling up to 5% of the Approved Claimant's award, unless the Claims Administrator has reasonable grounds to believe that the conduct of the Practising Lawyer has undermined the assessment of the Claim, misled the Claimant or constituted gross negligence. Reasonable grounds may include:
  - a. Repeated attempts by the Claims Administrator to contact the Practising Lawyer that are not answered, such that deadlines are missed and/or the Claims Administrator must reach out directly to the Claimant.
  - b. The Claimant asserts that they were not assisted by the Practising Lawyer and/or legal professionals within or hired by the Practising Lawyer's law firm/law office, or that the Claimant was misled as to the qualifications of the individuals assisting them.
  - c. During the course of the Claim adjudication, the Practising Lawyer is suspended from practising law by the licensing or regulatory body in their province or territory.
  - d. Conduct of the Practising Lawyer that would constitute misconduct or gross incompetence, even in situations where the Practising Lawyer is not reported to, or suspended by, the licensing or regulatory body in their province or territory. For example, this may include conduct that results in false or misleading information included in the Claimant's Claim (e.g. identical or virtually identical narrative descriptions in Claims submitted for multiple different Claimants).

- e. Any other conduct by a Practising Lawyer that in the Claims Administrator's assessment, renders an amount equal to 5% of the Approved Claimant's award an inappropriate legal fee.
6. In such cases as the above, (Paragraph 5 of this Protocol), the Claims Administrator may assess the amount of Individual Legal Fees payable at an amount less than that claimed by the Practising Lawyer including less than 5% of the Approved Claimant's award.

**D. Payment of Additional Individual Legal Fees in Exceptional Circumstances**

7. Pursuant to section 10.02(3) of the Settlement Agreement, a Practising Lawyer who assists an Approved Claimant with their Claim may request, on written motion to the Federal Court in accordance with Rule 334.4 of the Federal Court Rules, SOR/98-106, an amount equaling up to an additional 5% of the Approved Claimant's award, inclusive of disbursements, plus applicable taxes, to be paid by Canada in accordance with this Protocol and subject to Court approval. It is anticipated that in most cases a fair and reasonable fee will not exceed an amount equal to 5% of the Approved Claimant's award, considering the limited risk to counsel, the uncomplicated nature of the Claims Process, and that usually no additional amounts will be warranted.
8. A Practising Lawyer who believes there are exceptional circumstances which merit fees above 5% of the Approved Claimant's award may bring a motion to the Court for the legal fees and/or disbursements they seek, on direct notice to Canada. Canada in turn will notify the Court and the Claims Administrator of whether it consents to or opposes the motion after being served.
9. A Practising Lawyer must be determined eligible by the Claims Administrator to receive an amount equal to 5% (not less) of an Approved Claimant's award in order to be eligible for an additional amount equaling up to 5% of the award, payable by Canada.
10. Any motions for Additional Individual Legal Fees will be reviewed by the Court taking into account the following:

- a. the total percentage of the value of the Claimant's award requested (including disbursements) by the Practising Lawyer (maximum 10%, including both the Individual Legal Fees and Additional Individual Legal Fees);
- b. the amount of compensation awarded to the Claimant;
- c. the percentage of Individual Legal Fees determined payable by the Claims Administrator;
- d. complexity of the matter;
- e. time spent,
- f. necessary disbursements; and,
- g. other exceptional factors as determined by the Court.

*Notification of Motion Filed*

11. A Practising Lawyer must notify the Claims Administrator if a motion for Additional Individual Legal Fees has been filed with respect to a Claimant. The motion must be filed within 365 days of the date of the Claims Administrator's Individual Legal Fees Approval Letter.
12. Where no notification of a filed motion with the Court has been received by the Claims Administrator within 365 days of the date of the Claims Administrator's Individual Legal Fee Approval Letter, no Additional Individual Legal Fees will be paid, and the applicable file will be closed.

*Court Order Provided to Canada and Administrator*

13. The Practising Lawyer must provide the Court Order to both the Claims Administrator and to Canada within 30 days of issuance of the Order by the Court:
  - a. If the Court orders that any Additional Individual Legal Fees are granted, after the receipt of Order(s) from a Practising Lawyer, issued by the Court, the Claims Administrator will issue any additional payment(s) to the Practising Lawyer, in accordance with the Order.

- b. If the Court orders that no Additional Individual Legal Fees are approved, the Administrator will not issue any Additional Individual Legal Fees to the Practising Lawyer. After receiving a Court Order denying Additional Individual Legal Fees, the Claims Administrator will close the applicable file, provided that payment of determined Individual Legal Fees has been issued.
  - c. If the Court Order is not received from the Practising Lawyer by both the Claims Administrator and Canada within 30 days of issuance of the Order, the Administrator will not issue any Additional Individual Legal Fees to the Practising Lawyer, regardless of the content of the order.
14. This Protocol does not preclude the Court from hearing and/or deciding motions for Additional Individual Legal Fees in batches.

**E. Payment Procedure**

15. The following payment procedure must be completed by a Practising Lawyer who seeks payment of Individual Legal Fees for their assistance with an Approved Claim, regardless of whether they intend to bring a motion to the Federal Court for Additional Individual Legal Fees.
16. The Administrator will issue an Individual Legal Counsel Payment Request Letter to the Practising Lawyer after the associated Claimant is approved.
17. A Practising Lawyer, must submit the following to the Administrator in order to receive payment:
- a. A completed Individual Legal Counsel Payment Request Form (Appendix A of this Protocol) with respect to an Approved Claim within 120 days of the date of the Individual Legal Counsel Payment Request Letter. If this form is not submitted within 120 days of the date of the Individual Legal Counsel Payment Request Letter, absent a Court Order approving Individual Legal Fees unconditionally, no Individual Legal Fees will be issued, and;

- b. A valid retainer agreement between the Claimant and Practising Lawyer.

*Valid Retainer Agreement*

18. The retainer agreement must:

- a. Have been signed and dated by both the Claimant and the Practising Lawyer; and
- b. Indicate that the Practising Lawyer's legal services are provided for the purpose of assisting the Claimant with their Claim under the SA for the Federal Indian Hospitals Class Action Settlement; and
- c. Have been provided to the Claims Administrator prior to the Claimant's Final Compensation Determination or within 120 days of the date of a missing information letter for a complete retainer agreement.

19. Absent a Court Order approving Individual Legal Fees unconditionally, retainer agreements that are incomplete or provided to the Claims Administrator after 120 days of the date of a missing information letter for a complete retainer agreement, will result in the Practising Lawyer being ineligible for Individual Legal Fees.

20. Where a Claim has reached Final Compensation Determination and a lawyer subsequently advises of representation but there was no indication throughout the claims process of the lawyer assisting the Claimant, the lawyer will be deemed ineligible for Individual Legal Fees.

*Reconsideration Scenario*

21. If an Approved Claimant requests Reconsideration of their Compensation Assessment and is entitled to higher compensation following assessment, a Practising Lawyer who assisted the Approved Claimant with their Compensation Reconsideration request only, will be paid an amount equaling up to 5% of the difference between the Claimant's higher compensation amount (as assessed during Compensation Reconsideration) and the original compensation amount (as assessed by the Claims Administrator prior to Compensation Reconsideration). For clarity, a Practising Lawyer who assists with Compensation Reconsideration only, must meet all the requirements of this Protocol to be paid.

## *Due Diligence*

22. The Claims Administrator will conduct due diligence, in accordance with this Protocol, prior to the issuance of payments to confirm the lawyer's eligibility to receive Individual Legal Fees and Additional Individual Legal Fees.
23. Subject to due diligence activities (SA 10.02 (2)), the Claims Administrator will calculate the amount of the Practising Lawyer's payment, inclusive of disbursements, plus applicable taxes, based on the information provided by the Practising Lawyer in the Individual Legal Counsel Payment Request Form (Appendix A of this Protocol), and issue payment to the Practising Lawyer listed on the Form. The Claims Administrator's calculation of the Practising Lawyer's payment amount will be final with no review, recourse or appeal. Prior to issuing payment, the Claims Administrator will send an Individual Legal Fees Approval Letter to the Practising Lawyer notifying them of the amount to be paid.
24. The Practising Lawyer, if in need of previously submitted Claim documentation or information, will obtain same directly from the Claimant. The Claims Administrator will not provide any Claim documentation or information directly to the Practising Lawyer.

### **F. Process to Confirm Practising Lawyers in Good Standing**

25. Prior to the issuance of any payment to the Approved Claimant's Practising Lawyer, the Claims Administrator will undertake due diligence activities (SA 10.02 (2)) to confirm whether the lawyer is a Practising Lawyer in good standing and also eligible to receive Individual/Additional Individual Legal Fees under the terms of this Protocol (Paragraphs 4 to 6).
26. The due diligence activities to be performed by the Claims Administrator will consist of, but are not limited to, the following:
  - a. Confirmation with the relevant Canadian provincial or territory's law society (website) that the lawyer is licensed to practise and is currently practising law in the relevant Canadian province or territory and that the lawyer is in good standing (SA 10.02 (1), (2)); and

b. The Claims Administrator will refer to the following authoritative sources, as applicable:

<b>Province</b>	<b>Authority</b>	<b>Website</b>
Alberta	Law Society of Alberta	<a href="https://www.lawsociety.ab.ca/">https://www.lawsociety.ab.ca/</a>
British Columbia	Law Society of British Columbia	<a href="https://www.lawsociety.bc.ca/">https://www.lawsociety.bc.ca/</a>
Manitoba	Law Society of Manitoba	<a href="https://lawsociety.mb.ca/">https://lawsociety.mb.ca/</a>
New Brunswick	Law Society of New Brunswick	<a href="https://lawsociety-barreau.nb.ca/">https://lawsociety-barreau.nb.ca/</a>
Newfoundland and Labrador	Law Society of Newfoundland and Labrador	<a href="https://lsnl.ca/">https://lsnl.ca/</a>
Northwest Territories	Law Society of Northwest Territories	<a href="https://lawsociety.nt.ca/">https://lawsociety.nt.ca/</a>
Nova Scotia	Nova Scotia Barristers Society	<a href="https://nsbs.org/">https://nsbs.org/</a>
Nunavut	Law Society of Nunavut	<a href="https://www.lawsociety.nu.ca/">https://www.lawsociety.nu.ca/</a>
Ontario	Law Society of Ontario	<a href="https://lso.ca/home">https://lso.ca/home</a>
Prince Edward Island	Law Society of Prince Edward Island	<a href="https://lawsocietypei.ca/">https://lawsocietypei.ca/</a>
Quebec	Barreau du Quebec	<a href="https://www.barreau.qc.ca/">https://www.barreau.qc.ca/</a>
Saskatchewan	Law Society of Saskatchewan	<a href="https://www.lawsociety.sk.ca/">https://www.lawsociety.sk.ca/</a>

Province	Authority	Website
Yukon	Law Society of Yukon	<a href="https://lawsocietyyukon.com/">https://lawsocietyyukon.com/</a>

27. In the absence of a Court Order approving Individual/Additional Individual Legal Fees unconditionally, and where it comes to the attention of the Claims Administrator that any of the requirements of this Protocol have not been met and/or a lawyer is deemed not to be acting in good faith, the Claims Administrator may withhold payment of Individual/Additional Individual Legal Fees until the completion of additional due diligence activities, which may include the request for additional documents from the lawyer or other parties, including the Claimant.

28. If, following additional due diligence, the Claims Administrator determines that the lawyer is not a Practising Lawyer in good standing in any Canadian province or territory, or has concerns regarding the lawyer's compliance with the requirements of this Protocol, or believes that the lawyer may not be acting in good faith, the Claims Administrator may issue an Individual Legal Fees Denial Letter. A lawyer issued an Individual Legal Fees Denial Letter may request that the Claims Administrator reconsider this decision and may provide evidence in support of their request. Where the Claims Administrator declines to reverse its decision and does not confirm the lawyer's eligibility to be paid Individual/Additional Legal Fees under this Protocol, the lawyer may bring a motion to the Court for a determination as to the lawyer's eligibility to receive Individual/Additional Individual Legal Fees.

**G. Timing of Payment of Individual Legal Fees**

29. The Claims Administrator will issue payment of Individual Legal Fees to a Practising Lawyer after:

- a. The Claims Administrator has received a valid retainer agreement (Paragraph 18 of this Protocol) from the Practising Lawyer; and

- b. The Claimant and the Practising Lawyer have been notified of the Final Claimant Compensation Determination, and a compensation payment has been issued to the Claimant; and
  - c. The Claims Administrator has received funds from Canada to allow for payment of Individual Legal Fees; and
  - d. The Claims Administrator has received a completed Individual Legal Counsel Payment Request Form (Appendix A of this Protocol) from the Practising Lawyer and has conducted the required due diligence activities as set out in this Protocol.
30. Where a Practising Lawyer represents more than one Approved Claimant, Individual Legal Fee payments will be batched by the Claims Administrator and made not more frequently than once per month.

#### **H. Multiple Lawyers Retained**

31. In the event that more than one retainer agreement is received by the Claims Administrator with respect to a particular Approved Claimant prior to the Claimant's Final Compensation Determination or within 120 days of the date of a missing information letter for a complete retainer agreement, the Claims Administrator will send a Multiple Lawyers Notification letter to notify the Practising Lawyers that multiple retainers have been received, including the name/contact details of the other Practising Lawyer(s), and the Practising Lawyers must either:
- a. Submit to the Claims Administrator within 60 days of the date of the Multiple Lawyers Notification Letter, a written agreement executed by all the Practising Lawyers nominating one (1) of the Practising Lawyers to be paid Individual Legal Fees with respect to assisting the Claimant with their Claim and/or their request for Reconsideration of their Compensation Assessment (if applicable, and subject to Paragraph 21 of this Protocol),
- OR
- b. Bring a motion to the Federal Court within 365 days of the date of the Multiple Lawyers Notification Letter to determine which Practising Lawyer will be paid, and

their fee percentage and notify the Claims Administrator and Canada once the motion has been submitted.

32. Once a motion has been determined, the Practising Lawyer must provide the Claims Administrator and Canada with the Order from the Federal Court within 30 days of issuance. If the Federal Court determines that none of the Practising Lawyers who submitted retainers are eligible for Individual Legal Fees, the Practising Lawyer shall still provide the Court Order to the Claims Administrator and to Canada within 30 days of issuance of the Order. After receiving a Court Order denying Individual Legal Fees, the Claims Administrator will close the applicable file.
33. Where a written agreement nominating one Practising Lawyer for payment is received, the Claims Administrator will issue an Individual Legal Counsel Payment Request Letter to the stipulated lawyer. The Claim will then proceed through the steps set out in paragraphs 7 to 24 of this Protocol with respect to Individual/Additional Individual Legal Fees.
34. Where an Order approving payment of Individual Legal Fees is received, the Claims Administrator will issue an Individual Legal Counsel Payment Request Letter to the lawyer and the Claim will proceed through the steps set out in paragraphs 7 to 24 of this Protocol with respect to Individual/Additional Individual Legal Fees.
35. Where the Claims Administrator has notified the Practising Lawyers of the steps to be taken where multiple retainers have been received, and where the Claims Administrator has not received written agreement nominating one Practising Lawyer for payment within 60 days, or notification that the Practising lawyers have submitted a motion to the Federal Court within 365 days, of the date of the Claims Administrator's Multiple Lawyers Notification Letter, the Practising Lawyers are not eligible for Individual/Additional Individual Legal Fees and no payment will be issued.

#### **I. Funding of Individual/Additional Legal Fee Payments by Canada**

36. Canada will provide funding to the Claims Administrator to be used for the purposes of future payment of Individual/Additional Individual Legal Fees. On a monthly basis, the Claims Administrator will advise Canada of the funds expected to be required for

Individual/Additional Individual Legal Fee payments, and Canada shall fund such amounts.

**J. Reporting to Canada and Class Counsel by Claims Administrator**

37. On a monthly basis the Claims Administrator will provide to Canada and Class Counsel a list of Approved Claimants where the Claimant has reached Final Compensation Determination and is represented by a lawyer who has submitted a valid retainer and Individual Legal Counsel Payment Request Form. The list provided will include, at a minimum, in respect of each Approved Claimant:

- a. Claimant information;
- b. Name of law firm/law office/Practising Lawyer;
- c. Results of any due diligence activities undertaken by the Claims Administrator;
- d. Percentage (%) for Individual Legal Fees assessed by the Claims Administrator (up to 5%) or alternatively percentage of Additional Legal Fees approved by Court Order;
- e. the Approved Claimant's assessed Compensation Level (Level 1-5); and
- f. Status of payment of Individual or Additional Individual Legal Fees.

38. Upon request by Canada, the Claims Administrator will provide Canada with a copy of the retainer agreement as related to an Approved Claimant.

## **Appendix A.1 (attached)**