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July 17, 2025

VIA EMAIL: mprince@uvic.ca

Dr. Michael Prince
University of Victoria
3800 Finnerty Road
Victoria, BC V8P 5C2

Dear Dr. Prince:

Re: Disability Rights Coalition v. Province of Nova Scotia – Comments in Reply to those of the Province of Nova Scotia dated July 11, 2025

The DRC appreciates the opportunity to respond to the Province's recent submission dated July 11, 2025. Our comments below are intended to clarify our position on the issues raised and to support a constructive and collaborative approach to the ongoing implementation of the Remedy.

Re "No indicator, target or timeline is mandatory"

There is uncertainty as to what the Province means by "mandatory". In the context of a legal, quasi-constitutional human rights proceeding, we presume that the Province means "legally obligatory".

The Province's claim that the provisions of Appendix A are not legally mandatory, is unfounded and at odds with how the parties negotiated the Remedy and have seen it implemented over the past two years.

In its letter, the Province selectively references portions of the Interim Settlement Agreement in support of its claim—a claim that is at odds with the core overarching principles underlying both the *Interim Consent Order* and the *Interim Settlement Agreement* ("*ISA*").

The first provision cited by the Province simply states what would be self-evident to all parties by this point in the Remedy; it is "possible" that, despite an imperfect implementation of one or other of the obligations in Appendix A, the systemic discrimination could still be remedied—presumably within the five-year timeframe.

This says nothing about whether the Appendix A requirements are legally mandatory. Rather, it merely confirms that if the Province acts in a conscientious way, it can 'catch up' for an earlier imperfect implementation.

The following provision in section 5—one not quoted by the Province—goes on to explain that, in appropriate situations, an alternative measure may be adopted in the place of one in Appendix A "so long as the alternative measures are equally or more efficacious than the original indicators, targets or timeframes and there continues to be substantial progress towards remedying the discrimination".

This simply confirms that there may be some flexibility vis-a-vis implementation of specific measures set out in the Remedy so long as they are equally or more efficacious than the one substituted. The DRC acknowledges that some flexibility to ensure effective implementation may be required, and we are open to discussing proposed changes to the Remedy. Crucially, though, this is *not* an indication that the Appendix A measures are not legally required.

The second passage cited [s. 5(c)] is a reference to the state of affairs at the end of the Remedy—the final "Outcomes" i.e., Appendix D,[1] and that its requirements must be met even if, along the way, there may have been failures to achieve a particular Appendix A requirement. (It should be noted that the introductory wording to Appendix D states that it is meant as a summary of the requirements in Appendix A.)

While the two passages cited by the Province reference the situation where the Province has failed to carry out its Appendix A obligations, this is entirely different than suggesting that the Appendix A obligations are neither binding nor legally required.

We observe here that the Province concludes its argument by stating that the *only* "mandatory" requirement in the Remedy is that the discrimination be remedied within five years.

More broadly, the provisions of section 5 of the *Interim Settlement Agreement* ("the ISA"), relied on by the Province, must be read consistently with the *Interim Consent Order* and the remainder of the *ISA*.

These provisions stipulate, among other things, that the provisions of the ISA (including Appendix A) take the form of an "Order of the Board of Inquiry"[2] and are "legally binding"[3] on the Parties.

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[1] "Outcomes" is defined in s. 11(c) of the *Interim Settlement Agreement* as "the final steps that are required to be achieved in order to fully implement the best plan as contained in Appendix A, and which are summarized by the parties at Appendix D".

[2] *Interim Consent Order*, s. 15

[3] Ibid and see s. 2 of the ISA: "the Parties to this proceeding, the DRC, the NSHRC and the Province, acknowledge that they have agreed to the terms of this Interim Settlement Agreement, and have requested that it become an Interim Consent Order of the Board of Inquiry binding on them."

Further, under the heading "Indicators, timeframes, targets and outcomes", the ISA states:

> "The Province shall remedy the discrimination as recommended by the Review Team, and specifically, in accordance with the indicators, timeframes, targets and outcomes identified in Appendix A to this Interim Settlement Agreement." (emphasis added)

As noted above, the final Outcomes are stated to be the achievement of the "required" steps contained in Appendix A and summarized in Appendix D.

Finally, the *ISA* provides that should the Province apply to the Board of Inquiry for a declaration that it has remedied the systemic discrimination, the legal test the Board is to apply on such an application is whether there has been compliance or compliance in substance:

> …with the binding provisions of Appendix A of this Interim Settlement Agreement (including any adjustments or changes to indicators, timeframes, and targets identified in previous Progress Reports or Monitoring Reports) and Appendix D".

Accordingly, there is no basis for the Province's contention that the provisions of Appendix A are not legally obligatory or binding. Indeed, we are reminded that the Monitor took the opportunity in last year's Report to characterize the nature of the measures in Appendix A as follows: "I prefer the term "requirement" or" remedy requirement" to emphasize that this is a human rights remedy with legal obligations."[4]

Having said all of that, the Monitor need not be concerned with the Province's submissions concerning the legal status of the provisions of Appendix A. This is because, pursuant to section 16 of the *ISA*, the Monitor's assessing role is, *inter alia*, to i) assess compliance with the requirements of Appendix A, and ii) to assess whether the Province is making "substantial progress" toward remedying the discrimination.[5]

The DRC states that while the Monitor may comment on the legal status of the provisions in Appendix A within the Remedy, technically, there may be no need to.

If the Province wishes to make a claim that the Appendix A obligations are not legally binding, or not legally mandated etc., this is something the Province could take to the Board of Inquiry as provided for under section 16 of the *Interim Consent Order*.

Re "***The Monitor cannot create new requirements***"

Despite what the Province argued earlier regarding the non-mandatory status of the requirements in Appendix A, under this heading, the Province now appears to reverse its position, arguing that the implementation of the provisions of Appendix A forms the entirety of the work "required" to remedy the discrimination.

[4] Se Expert Monitor's Report (July 2024) at page 35, footnote 39.

[5] Sections 16(b)(ii) and 16(b)(iii).6 of the *ISA*.

Indeed, the Province now states that 'progress is to be measured in reference to that work', despite the fact that four lines earlier, it argued that "progress must be made against the ultimate goal, without undue fixation on any given indicator or timeline."

This leads the Province to claim that there can be no additional work requirements added—over and above those in Appendix A. It implies, without clearly stating, that the DRC has attempted to do this with respect to eligibility and entitlement within the DSP.

The DRC encourages the Monitor to follow up on last year's recommendations by confirming these eligibility and entitlement-related obligations discussed by the DRC in its Submissions and its comments on the Province's Compliance reports.

None of the DRC's submissions and comments regarding eligibility and entitlement in the Disability Support Program are 'new work'.

The DRC's eligibility and entitlement positions are all cited and sourced as rooted in the Remedy,[6] and the *Social Assistance Act* along with relevant human rights principles.

Accepting the Province's claim that Appendix D is not meant to 'create new work for the Province' but is, simply, a summary of the steps required by Appendix A,[7] it is obviously an important and helpful source in more fully understanding the scope and content of the dozens of the yearly obligations on the Province, (many of them broadly worded), as negotiated and agreed to in Appendix A. Specifically, it is indicative of the Parties' understanding of the Province's obligations when Appendix A was negotiated.

Indeed, Appendix D is integral to the Interim Consent Order and the ISA.[8] Despite the Provinces, implication, Appendix D is, on its own terms, a summary of the requirements in Appendix A—there is no 'new work', no add-ons in Appendix D.

Re A lack of evidence is not evidence of a lack

Despite the introductory comments in the Province's letter, the Province is seeking to directly reply to the DRC's submissions—a practice which it conceded is not contemplated by the agreement.[9]

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[6] Regarding eligibility and entitlement related requirements in the Remedy discussed by the DRC, see #s 15 & 16 in Appendix A for February-June 2023; for Year 1 (2025), see #17 and, especially requirement #44 in Year 1 (2025); and #s 19 & 21 in DRC's discussion of Year2

[7] See definition of "Outcomes" in s. 11(c) of the Settlement Agreement

[8] See, for example, the definition: "Substantial progress" means that, from an overall perspective, the Province is making sufficient progress in complying with Appendix A that it is still anticipated that the discrimination will be remedied in the timeframe contemplated by Appendix A in accordance with Appendix D, irrespective of any specific indicator, timeframe, target of Appendix A;

[9] The Province's letter states: "Accordingly, the parties did not build in a process by which the Province would respond [to] the DRC's comments, as would be the case in an adjudicative process."

The Province's suggestion that the Monitor give notice of any evidentiary gaps allowing the Province an opportunity to provide this evidence, contemplates a process that is not provided for in the Order. This is very different from what we agreed to.

The Province has the burden of demonstrating its progress during its Annual Reports, and substantiating the claims it makes in these Reports.

The Monitor's Report from 2024 made plain that the Province had failed to adequately demonstrate—with evidence—the claims it had made. Now is not the time for a 'do-over.' Holding an additional meeting with the Parties in which the Province would be permitted to supplement their Annual Report would not be procedurally fair to the DRC, which would not be provided the opportunity to respond to any new information presented during this meeting.

Rather, the agreed-to process contemplates the Monitor filing his Report with recommendations, which may also include reference to any evidentiary gaps found along with recommendations as to how these can be remedied in subsequent reports.

The DRC envisions the need for an increasingly collaborative relationship with the Province as the Remedy is implemented, and we have a better understanding of the full impact of the Remedy on all persons with disabilities. We remain committed to working with the Province in the effective implementation of the Remedy and in the spirit of the agreements reached.

We hope these comments support the ongoing work of addressing systemic discrimination.

Yours truly,

Vince Calderhead