

IN THE MATTER OF: The Nova Scotia Human Rights Act, R.S.N.S. 1989, c. 214, as amended

And

IN THE MATTER OF: Board File No. 51000-30-H14-0148

BETWEEN:

Disability Rights Coalition ("The DRC")

(Complainant)

and

The Province of Nova Scotia ("The Province")

(Respondent)

And

The Nova Scotia Human Rights Commission ("NSHRC")

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**DRC Submissions Regarding the Province's Annual Report of May 31, 2024  
Submitted to the Expert Monitor and the Parties June 28, 2024**

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**Vincent Calderhead and Katrin MacPhee**  
Pink Larkin  
1463 South Park Street, Suite 201  
Halifax, NS B3J 3S9  
**Counsel for the Complainant**  
**Disability Rights Coalition**

**Kevin Kindred**  
Department of Justice (NS)  
1690 Hollis Street, 8th Floor  
Halifax, NS B3J 3J9  
**Counsel for the Respondent,**  
**Attorney General of Nova Scotia**

**Kymerly Franklin and Kendrick Douglas**  
Nova Scotia Human Rights Commission  
5657 Spring Garden Road  
3rd Floor, Park Lane Terrace  
PO Box 2221, Halifax, NS B3J 3C4  
**Counsel for the Nova Scotia Human Rights Commission**

## **Overview**

1. These are the submissions of the Disability Rights Coalition (“the DRC”) to the Expert Monitor regarding the Province’s Annual Progress Report dated May 31, 2024.
2. The DRC appreciates that the Province is making progress and expending effort to implement the Remedy. However, the DRC has significant concerns about the timeliness and substance of the Province’s work with regard to a number of crucial aspects of the Remedy.
3. The Province is substantially behind the Remedy timeline in achieving key Remedy targets related to establishing Emergency Response Teams, Local Area Coordination, Intensive Planning and Support Coordination, the Homeshare and ILS plus programs, and the implementation of the “no new admissions” to institutions policy. The Province has not explained or demonstrated how it will make up for lost time in implementing the Remedy.
4. The DRC is concerned about several groups it fears will be excluded from the benefits of the Remedy, including adults under 65 institutionalized in Long Term Care, those deemed ineligible for support with the DSP, those who will be unnecessarily institutionalized due to delays, and Mi’kmaw persons with disabilities. We have centred these groups within these submissions.
5. The DRC also focuses in these submissions on the Province’s compliance with the elements of the Remedy pertaining to supported decision-making and individualized funding.
6. Finally, these submissions address the Province’s failure to meet its reporting requirements in the Annual Progress Report and its Interim Progress Report of January 15, 2024. Measures to promote transparency and accountability were embedded by the Parties into the Settlement Agreement. Transparency and accountability are crucial to rebuilding public trust in the DSP and the Remedy.

## **Outline of Submissions**

7. In these submissions the DRC will provide a response to the Report in narrative form which highlights significant areas of concern regarding the Province’s compliance with the Remedy.
8. These submissions also contain an analysis of the Province’s compliance with a number of the items in the “Appendix A-Status and Compliance” table for both the February 1, 2023-June 2023 and April 1, 2023-March 30, 2024 reporting periods. The DRC has not responded to each item in these Appendices, our submissions are limited to specific items to which the DRC wishes to draw the Expert Monitor’s attention.

## **The Province has Failed to Comply with the Reporting Requirements in the Interim Consent Order**

9. By virtue of Section 15 of the Interim Consent Order, the Interim Settlement Agreement (“the Agreement”) is legally binding on the Parties as an Interim Consent Order of the NSHRC Board of Inquiry.
10. The Province has failed to comply with the provisions of the Agreement which require it to explain and justify the areas in which they are not in exact compliance. Section 15 c) of the Agreement

specifies that when the Province is not in exact compliance with a particular requirement, the Annual Progress Report will provide **reasons for the non-compliance** (emphasis added), along with an assessment of:

- i. Any and all alternative measures (indicators, targets or timeframes) that are equally or more efficacious to the indicators or targets identified in the plan in achieving the outcomes;
- ii. whether compliance in substance has been made, with the onus on the Province to demonstrate such;
- iii. whether, and how, the Province has still made substantial progress towards remedying the discrimination, with the onus on the Province to demonstrate such;
- iv. any additional or other measures the Province has taken or intends to take in order to ensure that substantial progress continues to be made;
- v. where relevant, whether the reasons for any non-compliance amount to factors outside the control of the Province;

11. The terms “exact compliance,” “compliance in substance,” “substantial progress,” and “outside the control of the Province” are all defined at Section 6 of the Agreement.

12. With respect to each item in Appendix A for the reporting periods, readers of the Report ought to ask themselves, “Has the Province, in fact, done exactly what is required in the Agreement and in the timeline required by the Agreement?” If the answer to either of these questions is no, Report readers should be asking the following questions:

- a. Has the Province provided reasons for its non-compliance?
- b. Has the Province *demonstrated* whether compliance in substance has been made?

Compliance in substance is defined in Section 6 of the Agreement to mean that the Province has “accomplished the underlying purpose of an indicator, timeframe, target or outcome in Appendix A, by using alternative measures which are equally or more efficacious than the original indicator...without necessarily meeting the exact requirement set out.”

This reporting requirement therefore requires the Province to prove it has accomplished the underlying purpose of the indicator through an alternative measure that is equally efficacious as the original indicator.

- c. Has the Province provided an assessment of whether and how the Province has made substantial progress towards the Remedy?

Substantial progress is defined in Section 6 of the Agreement to mean 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.”

With respect to each Appendix item for which the Province is not in exact compliance, the Province is required to provide an assessment of whether and how it has made sufficient progress on the basis of which it still anticipates meeting the five-year timeframe of the Remedy.

- d. Has the Province demonstrated the substantial progress it has made with respect to each item in the Remedy? This entails *demonstrating*, normally through documentation,<sup>1</sup> why the Province anticipates it will still meet the overall five-year timeframe for remedying the discrimination, despite missing the indicator in question.
13. The Province’s Annual Progress Report falls far short of these reporting standards. With respect to many items in the Appendices, the Province has not provided reasons for its lack of compliance, nor has it demonstrated that it has achieved the underlying purpose of the indicator through an equally efficacious alternative measure.
14. Further, the Province has not provided an assessment with respect to each indicator as to whether it still anticipates remedying the discrimination in the five-year remedy timeframe despite its lack of exact compliance, and it has not *demonstrated* the evidentiary basis for its belief that it will still meet the five-year timeframe regarding each indicator.
15. The requirement for an explanation and demonstration of why the Province anticipates that it will meet the five-year timeframe for the Remedy takes on added importance given that the Province has labelled its performance in some 34 of the indicators in Year One (April 2023 – March 2024) as ‘substantial progress’.
16. The Province also appears to be using the labels of “Exact Compliance” and “Substantial Progress” in a manner which does not conform with the negotiated definitions of the terms.
17. For instance, indicator 35 in the April 1 2023-March 30 2024 Appendix A is “Expanded ILS program as alternative to Small Option Homes.” The Province labels itself in “Substantial Progress.” The only information it provides about this Indicator is “see Item 31.” Item 31 is “Implementation commences including new ILS plus and Flex Independent expanded programs.” The Province claims it is “exact compliance” with this indicator.
18. It appears that the Province has labelled itself as being both in “exact compliance” and as having achieved “substantial progress” with respect to these two indicators which it views as

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<sup>1</sup> This term ‘demonstrating’ calls to mind the classic statement by the Supreme Court of Canada in *R. v. Oakes, 1986 CanLII 46*, [DRC’s Book of Authorities, Tab 1]:

....to meet its burden under s. 1 of the *Charter*, the state must show that the violative law is "demonstrably justified". The choice of the word "demonstrably" is critical. The process is not one of mere intuition, nor is it one of deference to Parliament's choice. It is a process of demonstration. This reinforces the notion inherent in the word "reasonable" of rational inference from evidence or established truths.

interconnected. Clearly the Province cannot be both in “exact compliance” and having made “substantial progress” for the same work. This suggests the Province is using these labels arbitrarily or interchangeably.

19. The Province has also claimed “exact compliance” for a number of indicators where it clearly has not met this threshold. For instance, indicator 5 for Year 1 is “Benchmark staffing ratios to be met: Ratios set 1:20 for Intensive Planning and Coordination Staff (IPCS) and 1:50 for Local Area Coordination (LAC) with 1 Supervisor for each 8 staff.”
20. The Province claims “exact compliance” with this Indicator. However, we know from other points in the Report that the IPCS and LACs are not yet in place and the staff to fill these positions have not yet been hired. As such, the staffing ratios are purely hypothetical.
21. The issue of ‘belated’ compliance is significant in a time-bound Remedy. Thus, for many of the indicators in the early February-June 2023 period (e.g., #s 7, 8, 9, 10 & 12<sup>2</sup>), the Province has claimed ‘exact compliance’ even though a cursory review makes clear that, even assuming the substantive requirements of the indicator have been met, they were *not* accomplished in the required February-June 2023 timeframe.
22. The Parties deliberately incorporated into the Agreement measures designed to promote accountability and transparency with respect to the Province’s implementation of the Remedy.
23. Under section 7 of the Agreement the Parties “agreed that periodic monitoring by an Expert Monitor is a crucial element of ensuring that the discrimination is remedied.” The Parties also negotiated transparency provisions in the Agreement to ensure the documents related to the Report could be scrutinized by the Public.
24. In order for the Expert Monitor, the DRC, and the public to play a meaningful role in Remedy monitoring, we must be provided with Reports that conform with the Agreement’s reporting requirements.
25. The issue here extends beyond the Province’s problematic self-assessments to the requirement for supporting documentation. In many cases, the Province simply points to Presentations intended for training or other purposes and which, as a result, fail to usefully address and substantiate specific indicators in Appendix A.
26. The Province’s first Annual Report falls far short of the negotiated and legally binding standards for transparency and accountability in the Order. The DRC calls upon the Expert Monitor to direct the Province to rigorously conform with the reporting requirements of the Agreement in its subsequent Annual Progress Reports.

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<sup>2</sup> In the case of indicator #12 for Feb-June 2023 (appointment of a ‘Clinical Lead’), the Province’s Interim Progress Report (filed January 2024), identified its compliance as ‘substantial’. However, in its recently filed compliance report covering the same period, it has now labelled its compliance as “exact”.

## **Delays in Implementing Key Aspects of the Remedy**

27. The Province is significantly behind the Remedy timeline in implementing a number of important aspects of the Remedy. The DRC has serious concerns about whether the Province will truly be able to remedy the discrimination within the five-year negotiated timeline in light of these delays. The DRC highlights below some worrying examples of delay with respect to significant aspects of the Remedy.

### *Emergency Response Teams (Renamed the Crisis Prevention and Community Response Strategy)*

28. The Emergency Response Teams, which form an important element of the deinstitutionalization aspect of the Remedy, were supposed to be 50% operational by March 30, 2024.<sup>3</sup> Indeed, these teams were supposed to “commence” operating during the February-June 2023 reporting period.<sup>4</sup>
29. From the comments and documents the Province provided with respect to Indicators 13 and 14 in Appendix A of the Year One Remedy report, the Province is only at the “strategic development” phase of designing these teams. The Province is therefore over a year behind the Remedy timeframe for the establishment of these Teams.
30. The Province states that it anticipates the Teams will be in place by November 2024, but has not explained, let alone ‘demonstrated’ why it anticipates this will be the case.

### *The Hiring of the Director of Allied Health Supports*

31. The reason the Province cites for the delay in establishing the Emergency Response Teams was that the teams were contingent on having the Director of Allied Health Supports in place to lead the Emergency Response/Crisis Prevention and Community Response Strategy. As was noted above, the Emergency Response Team was supposed to be in place before the end of June 2023, and the Director was to be hired on a priority basis by the end of June 2023.<sup>5</sup>
32. The Director of Allied Health Supports only began their position on May 21, 2024.
33. Indicator 8 of the February 2023-June 2023 Appendix required the Province to “take immediate actions to address any staff ceilings or other barriers to early recruitment of necessary staff-for example to do the early policy and program work required.”
34. The Province has not explained why the hiring for a position the Province sees as crucial to the Remedy was delayed for almost a full year. It has not explained any barriers it encountered in the hiring process, nor has it explained why it maintains confidence that it will meet the five-year Remedy timeframe despite this troubling delay.

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<sup>3</sup> See Indicator 14 of Appendix A, Year 1: April 1 2023-March 30, 2024.

<sup>4</sup> See Indicator 10 of Appendix A, Year 1: February 2023-June 2023.

<sup>5</sup> See Indicators 10, 13, 15 of Appendix A, Year 1: February 2023-June 2023.

### *The Delayed Implementation of the No New Admissions to Institutions Policy*

35. The Province was required by March 30, 2024 to implement its policy for the firm “prohibition on any new admissions to the following DSP funded facilities: RRC, ARC, RCF, Group Homes and Developmental Residences.”<sup>6</sup>
36. The Province did not meet this Indicator. The Province recently set January 1 2025 as the “no new admissions” date for ARCs, RRCs, and RCFs, and January 1, 2026 as the “no new admissions date” for Group Homes and Developmental Residences.<sup>7</sup>
37. The Province will be at least seven months delayed in its implementation of the policy for larger institutions, and at least nineteen months delayed in its implementation of the policy for smaller institutions.
38. The DRC is also troubled that the Province unilaterally altered the Order, which is legally binding, by creating distinct “no new admission” policy implementation dates for large and smaller institutions.
39. The Technical Report of the Independent Experts emphasized the centrality of implementing a “no new admissions” policy to successful deinstitutionalization efforts.<sup>8</sup> The DRC emphasizes its concern that the Province is significantly delayed with respect to such an important indicator in the Remedy and sympathizes with the individuals who will be newly and wrongly institutionalized before the policy is in effect.

### *The Delayed Creation of the LACs and IPSCs*

40. The Province is significantly delayed in its progress regarding Local Area Coordination (LAC) and Intensive Planning and Support Coordination. By March 30, 2024, the Province was supposed to have done the following:
  - Transfer of DSP current model care coordination functions to Local Area Coordination (LAC) and Intensive Planning and Support Coordination (IPSC) by regions; handover planning coordination support from current model of Care Coordinators to LACS and IPSCs<sup>9</sup>,
  - Recruited Regional Lead positions for LACs and IPSCs,<sup>10</sup>
  - Met the benchmark staffing ratios of 1:20 for IPSC staff and 1:50 for LAC staff,<sup>11</sup>
  - Recruited and trained 25 new LACs and 40 new IPSCs,<sup>12</sup>

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<sup>6</sup> Indicator 16 of Appendix A-Year 1: April 1 2023-March 30, 2024.

<sup>7</sup> Indicators 15 and 16 of Appendix A-Year 1: April 1 2023-March 30, 2024.

<sup>8</sup> See pages 20 and 45 of Mr. Eddie Bartnik and Dr. Tim Stainton’s *Technical Report of the Independent Experts to the Disability Rights Coalition and the Province of Nova Scotia*, February 6, 2023.

<sup>9</sup> Indicator 3 of Appendix A-Year 1: April 1 2023-March 30, 2024.

<sup>10</sup> Indicator 4 of Appendix A-Year 1: April 1 2023-March 30, 2024.

<sup>11</sup> Indicator 5 of Appendix A-Year 1: April 1 2023-March 30, 2024.

<sup>12</sup> Indicator 6 of Appendix A-Year 1: April 1 2023-March 30, 2024.

- Develop new policies, operational policies and procedures pertaining to LACs and IPSCs.<sup>13</sup>
41. The Province has not yet hired Team Leads for LACs and IPSCs, nor has it recruited or trained any of the frontline LAC or IPSC staff. The policies and operational procedures are in draft form.<sup>14</sup> The transfer of the current care coordinator functions to LAC and IPSC staff has not yet occurred, and the Province anticipates this will not happen until November of 2024.<sup>15</sup>
  42. The Province provided an email from Ralph Broad, Director of Inclusive Neighbourhoods, to Maria Medioli and Andrea Denton. In this email from November 2023 Mr. Broad explained his recommendation to hire and train senior Local Area Coordination operational management prior to hiring and training front-line staff.<sup>16</sup> Mr. Broad's recommendation may be reasonable, however, the staggered hiring of some LAC staff cannot justify the delay in achieving all the targets with respect to establishing the LACs and IPSCs or the severity of the delays.

#### *Delayed Creation of the Homeshare Program*

43. Homeshare features prominently in the Report of the Independent Experts. Homeshare is defined in the Expert Report as "a program or arrangement where community members share their home and provide support to individuals with disabilities who choose to live with them."<sup>17</sup>
44. Homeshare is an important component of the Remedy and the transition towards community-based living. The Experts envisioned that 500 people would be supported in Homeshare environments by the end of June 2027.<sup>18</sup>
45. By March 30, 2024 the Province was supposed to have created 50 new Homeshare spaces. The Province claims "substantial compliance" with this item. However, the program only appears to be in the development, and has not yet been rolled out.<sup>19</sup>
46. The Province therefore appears to be significantly delayed in its progress with respect to the Homeshare project and has not provided any rationale as to why the Parties, the Expert Monitor, and the Public should feel confident this aspect of the Remedy will be fully operational by the end of the Remedy timeline.

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<sup>13</sup> Indicator 45 of Appendix A-Year 1: April 1 2023-March 30, 2024.

<sup>14</sup> Indicator 4 of Appendix A-Year 1: April 1 2023-March 30, 2024.

<sup>15</sup> Indicator 3 of Appendix A-Year 1: April 1 2023-March 30, 2024.

<sup>16</sup> See Public Document 9, Rationale from Ralph Broad on recruiting and training Regional Hub leadership in advance of frontline staff.

<sup>17</sup> See page 9 of Mr. Eddie Bartnik and Dr. Tim Stainton's *Technical Report of the Independent Experts to the Disability Rights Coalition and the Province of Nova Scotia*, February 6, 2023.

<sup>18</sup> *Ibid* at page 54.

<sup>19</sup> See Indicator 32 of Appendix A-Year 1: April 1, 2023-March 30-2024; Public Document 69-Home Share Program Design Workshop.



### *Delayed Creation of the ILS Plus Program*

47. ILS Plus stands for “Independent Living Support Plus.” ILS is currently a program offered by the DSP. The Experts defined the Program in their report as “a community-based option offered by DSP that offers support (up to 31 hours per week) through and approved service provider for individuals to live independently in community.”<sup>20</sup>
48. The Experts recommended growth in the ILS program and the creation of an “ILS Plus” program to enable a larger number of DSP participants to access support by “bridging the funding gap between the current ILS funding limits and that available to residents of Small Option homes.”<sup>21</sup>
49. The Province was required to commence implementation of the new ILS Plus program during the first year of the Remedy, and to offer this new support option to 200 people.<sup>22</sup> The Province has not achieved this target. No one is yet being supported through ILS Plus<sup>23</sup> and the Policy for the Program appears to still be in draft form.

### *Conclusion regarding Delayed Implementation of the Remedy*

50. The Province is significantly behind the negotiated and legally binding timeframe for many Indicators in the Remedy.
51. These delays are all the more alarming given that many of the foundational tasks required to meet these Indicators, like drafting policies, creating job postings, classifying new positions, and running hiring competitions, are all within the Province’s control. Moreover, these tasks are common governmental functions. The Province has not claimed that the delays are due to factors outside of their control.
52. The delay in achieving the timeline for matters within the Province’s control does not bode well for the Province’s ability to meet subsequent incremental milestones and, thus, the overall Remedy timeframe. The DRC calls on the Province to do everything within its power to comply with both the substance and the timelines in the Remedy.
53. The DRC requests that the Monitor issue strong recommendations with respect to the Province’s better compliance with these key early aspects of the Remedy.

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<sup>20</sup> See page 9 of Mr. Eddie Bartnik and Dr. Tim Stainton’s *Technical Report of the Independent Experts to the Disability Rights Coalition and the Province of Nova Scotia*, February 6, 2023.

<sup>21</sup> *Ibid* at pages 58, 118, 125.

<sup>22</sup> Indicators 17 and 34 of Appendix A-Year 1: April 1 2023-March 30, 2024.

<sup>23</sup> See the Province’s Appendix B [Metrics Report](#) filed with its Annual Report.

## Concerns Regarding Eligibility for the DSP

### *Discrimination based on Disability within the DSP*

54. The Disability Support Program is governed by the *Social Assistance Act*, RSNS 1989, c 432, which mandates the Province “furnish assistance” to “persons in need” under the *Act*.<sup>24</sup> Unfortunately, the Province has historically treated some persons with disabilities as ineligible for assistance under the *Act* due to the purported “complexity” or significance of the individual’s disability-related needs.
55. The Complainants led evidence at the Human Rights Board of Inquiry hearing regarding this longstanding practice with respect to eligibility for the DSP. For instance, the Board of Inquiry heard that for a period of time one of the individual Complainants, Beth MacLean, was deemed “unclassifiable” by the DSP and therefore ineligible for DSP support. This was noted in the Chair’s decision.<sup>25</sup>
56. The Province has also historically treated persons with physical disabilities as ineligible for support with the DSP, despite the fact that the *Social Assistance Act* does not distinguish between those with physical or intellectual, mental, or developmental disabilities. Moreover, it is obviously discriminatory and contrary to the *Human Rights Act* to deny a service to persons with physical disabilities that is available to those with other disabilities when there is no legislative basis for their exclusion. The Province’s practice of excluding persons with physical disabilities from the DSP has led to the institutionalization of many people under 65 with physical disabilities in LTC facilities.
57. The Report from the Independent Experts discussed at length the fragmented nature of disability supports in Nova Scotia, and the siloing of supports available through the DSP and other programs.<sup>26</sup> The Experts quoted one participant who said that being “bounced among services available” felt like being “kicked around like an old football.”<sup>27</sup>
58. In response to the issue of fragmentation and siloing between programs serving persons with disabilities the Experts called upon the Province to multidisciplinary and clinical support teams to reform the Province’s siloed approach to disability supports.<sup>28</sup> The Experts also recommended the creation of Intensive Planning and Support Coordination Services to support “new people entering the system with significant support needs.”<sup>29</sup> Further, the Experts recommended the expansion of the Shared Services Program, which they noted “provide(s) support in community for individuals with high personal care and nursing needs who otherwise are referred to Long Term Care (LTC) facilities.”<sup>30</sup>
59. The Experts also discussed the need to review and update the DSP Policy Manual eligibility provisions, including the rescission of sections 9.3 and 9.4, under which applicants were ineligible

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<sup>24</sup> *Social Assistance Act*, RSNS 1989, c 432, s 9 (1) [DRC Book of Authorities, Tab 2].

<sup>25</sup> *MacLean v Nova Scotia (Attorney General)*, 2019 CanLII 130602 at page 68, [DRC Book of Authorities, Tab 3].

<sup>26</sup> See pages 55-58 of Mr. Eddie Bartnik and Dr. Tim Stainton’s *Technical Report of the Independent Experts to the Disability Rights Coalition and the Province of Nova Scotia*, February 6, 2023.

<sup>27</sup> *Ibid* at page 56.

<sup>28</sup> *Ibid* at pages 55-58.

<sup>29</sup> *Ibid* at page 9.

<sup>30</sup> *Ibid* at page 32.

based on their “Medical Needs” or “Behavioural Needs.”<sup>31</sup> The Experts recommended these policy provisions be rescinded. This Indicator was adopted into the Order for the period from February-June 2023, and these policy provisions were in fact removed by the Province—albeit only in January 2024.<sup>32</sup>

60. The Order contains several features recommended by the Experts to create a human-rights compliant DSP which does not treat some persons as presumptively ineligible for support based on their disability: the Multidisciplinary Allied Health Teams, Intensive Planning and Support Coordination Services, and the expansion of the Shared Services Program.

61. The DRC is troubled by references in the documents disclosed by the Province as part of this Report which suggest Province is maintaining barriers to eligibility for the DSP based on the nature of the applicant’s disability. These distinctions are not grounded in the *Social Assistance Act*. They are contrary to the recommendations of the Independent Experts and the terms of the Order. Furthermore, they discriminate against applicants based on their disability.

62. REDACTED - Confidential documents  
[REDACTED]

63. REDACTED - Confidential documents  
[REDACTED]

64. REDACTED - Confidential documents  
[REDACTED]

65. Another indication that the Province is maintaining barriers to eligibility based on diagnoses is a statement at the bottom of page 5 of the text of the Annual Report:

As we removed policies which historically operated as barriers to eligibility for DSP, it highlighted the need for a more collaborative approach to assessing eligibility for persons with complex medical needs. A new approach is being established to find alternative options if DSP is not the right fit for an individual and to support navigating to alternative

<sup>31</sup> *Ibid* at page 35.

<sup>32</sup> *Ibid*, page 48 of the Report, Indicator 16 of Appendix A: Year 1: February-June 2023, Document 29: Eligibility Policy Changes.

programs. This added effort will help reduce the feeling we heard from individuals and families about being “bounced around” from one program to another.

66. The DRC is very worried that the Province appears to be maintaining the siloed, fragmented, diagnosis-based approach to eligibility which was so thoroughly critiqued by the Independent Experts. The draft eligibility screening tool seems to be a Trojan horse through which the “Medical Needs” and “Behavioural needs” policy provisions which were removed from the policy manual will be maintained within the DSP.
67. Moreover, a crucial part of Indicator 44 for the first year of the Remedy was to review and update the DSP eligibility policy in compliance with the Social Assistance Act.<sup>33</sup> In addition to rescinding Policies 9.3 and 9.4, the Province is obligated to revise its DSP eligibility policies to ensure they comply with the Act and with its human rights obligations. None of the materials the Province provided in relation to eligibility indicate the Province has reviewed and updated its eligibility policies to comply with its legal obligations. The disturbing eligibility criteria mentioned above makes clear that the Province has failed to address this threshold requirement.
68. The DRC wishes to remind all parties that eligibility under the *Social Assistance Act* (and leaving aside financial eligibility), is for *all* persons with disabilities—without discrimination—who need some level of supports or services to live in community.<sup>34</sup>
69. The DSP envisioned by the Expert Report and the Remedy Order treats applicants based on their needs and does not exclude some individuals based on their diagnosis. Treating persons with physical disabilities as ineligible for support with the DSP is contrary to the indicators in the Remedy regarding the deinstitutionalization of adults under 65 from LTC facilities.
70. The DRC calls upon the Expert Monitor to direct the Province to follow the recommendations in the Expert Report and the provisions in the Order which require the Province to establish a human-rights compliant program that does not treat some applicants as ineligible based on the nature of their disability.

#### *Persons Deemed Ineligible for the DSP*

71. Appendix B, the “Remedy Metrics Report,” requires the Province to disclose the number of DSP found ineligible for support. As of March 31, 2024, 1514 Participants were deemed ineligible for the DSP. As of December 31, 2023 this figure was 1393. The timeframe for when this number of applicants were found ineligible appears to be “April 2023 to March 2024.”
72. Supplemental Appendix B Remedy Metrics Report is a table that provides data about the reasons for which these applicants have been deemed ineligible. By far the most common reason for ineligibility is simply noted as “Other,” 704 of the 1514 people found ineligible were categorized as such. The second-largest category of applicants deemed ineligible are categorized as “Failed to

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<sup>33</sup> Indicator 44: Complete review and update of DSP eligibility policy in accordance with the Social Assistance Act, including rescinding Eligibility policy sections 9.3 and 9.4.

<sup>34</sup> See section 4(d) of the *Social Assistance Act*, supra note 23, and the NS Court of Appeal decision in this matter, *Disability Rights Coalition v. Nova Scotia (Attorney General)*, 2021 NSCA 70, [DRC Book of Authorities, Tab 4], para. 219.

Provide Information.” 401 of the applicants were categorized as such. The third largest category is “Application Terminated,” 200 of the 1514 were in this category.

73. At the DRC’s request the Province provided a brief explanation of how it applies the categories of “Other,” “Failed to Provide Information,” and “Application Terminated.” This document can be found on the NSHRC’s website created to share Remedy Reports.<sup>35</sup>
74. The DRC is concerned that 1514 is a very large number of applicants found ineligible over a short period of time. 1514 applicants denied in less than a year represents 37% of the total number of current DSP participants. This is also a group about which the DRC has very limited information.
75. The Province states that the category of “other” includes “those not meeting DSP diagnostic and functional assessment criteria” as well as “those who decided not to proceed with the application to DSP.”<sup>36</sup>
76. The Province was required in Year 1 of the Remedy to “review and address” the circumstances of eight individuals previously found ineligible for the DSP. Of the eight individuals reviewed, one was a 45-year old who the DSP referred to Long Term Care who died in May 2020, another was a 60-year old who the DSP referred to Long Term Care who died in August 2023.
77. One of the Applicants was 36 years old and deemed eligible for support through the Independent Living Support Program. They previously had been denied access to the DSP as the Province only identified one potential service provider in Yarmouth, and this provider apparently declined to support them due to concerns about their behaviour.
78. Three of the other people reviewed are living in Long Term Care, and the Province noted they could be supported by the DSP in collaboration with Continuing Care. The last two people reviewed were noted as potentially able to live independently with collaboration with Continuing Care.<sup>37</sup>
79. In short, all 8 of the individual applicants reviewed were persons with disabilities in need of support who applied for assistance with the DSP and were denied due to the nature of their disability or, in one case, disability-related behaviour.
80. The DRC is concerned that the circumstances of the 8 people previously denied support are representative of a much larger number of persons with disabilities who were denied access to the DSP due to their medical needs or behaviours. In particular, the DRC is concerned that many people under 65 in LTC have applied for support with the DSP and been denied that support. If this is accurate, these individuals may feel skepticism or distrust towards the DSP. The DRC addresses the Province’s efforts to engage adults under 65 living in LTC with respect to community-based living below. The possibility that many of these individuals have previously been denied support through the DSP should enhance the Province’s efforts to engage meaningfully with this population regarding community-based living, as there may be distrust that needs to be overcome before members of the group will indicate interest in being supported through the DSP.

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<sup>35</sup> Comments on ‘Appendix B: Ineligibility Details’ in January 2024 Interim Progress Report, <https://humanrights.novascotia.ca/remedy#progress>.

<sup>36</sup> *Ibid.*

<sup>37</sup> Confidential Document 71, Policies 9.3 and 9.4 Redacted, 8 Identified Ineligible Applicants Update.

81. The DRC is also concerned about a lack of flexibility and accommodative measures within the application process. The DSP has heard anecdotal accounts of applicants being told by an intake worker that they needed to provide medical evidence to support their application within a short period of time or their application would be closed. The DSP has also heard that individuals who lack a family doctor struggle to meet the DSP's requirements for medical evidence to support an application.
82. Many Nova Scotians struggle to access health care in the face of a widespread shortage of primary care providers. The DRC calls upon the Province to take an accommodative and flexible approach to applications for the DSP.

### **Adults under the Age of 65 Institutionalized in Long-Term Care**

83. The DRC is anxious to ensure that adults under 65 living in Long-Term Care ("LTC") share fully in the benefits of a human rights compliant DSP and that their needs are prioritized within the Remedy's implementation. We cannot allow the historically siloed nature of disability supports available in the Province to dictate which adults with disabilities enjoy inclusive lives in community and which remain institutionalized.
84. By the end of the Remedy timeframe, all DSP eligible persons living in LTC who choose to return to community are supposed to have moved out of LTC facilities.<sup>38</sup> One of the negotiated Appendix D: Outcome criteria is that the Province will "develop and implement an explicit policy and practice that all persons in need with disabilities residing in LTC facilities or nursing homes are given the option of community-based supports and services under the SAA (Social Assistance Act)."<sup>39</sup>
85. As of December 31, 2023, 474 adults under 65 were living in LTC. As of March 31, 2024, this had increased slightly to 476 adults under 65 are living in LTC.<sup>40</sup>
86. Indicator 17 for Year One of the Remedy required the Province to "work with Seniors and Long-Term Care and review and revise the policy on admissions to LTC (for young people) and ensure no admissions to LTC occur due to DSP failure to provide appropriate community supports."
87. The Province commented with respect to Indicator 17 that this policy was not necessary, as the same goal could be achieved by removing the provisions in the DSP policy manual through which applicants were deemed ineligible on the basis of their medical or behavioural needs.<sup>41</sup> This does not appear to be accurate given that the number adults living in LTC increased over a short period of time.
88. The Province has provided a "Shared Services Expansion Presentation" as part of its Annual Report. This presentation envisions a phased deinstitutionalization of adults in LTC. Page 6 of that presentation suggests that by the end of the Remedy timeline that up to 414 adults living in LTC will be supported in community-based settings. The DRC questions why the figure of 414 seems to be

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<sup>38</sup> Indicator 22 of Appendix A, Year 5: April 1, 2027-March 30, 2028.

<sup>39</sup> Appendix D: Outcomes of the Remedy.

<sup>40</sup> Appendix B: Remedy Metrics Report.

<sup>41</sup> See Indicator 17: Appendix A-Year 1: April 1 2023-March 30 2024.

the maximum number of persons the Province anticipates will move out of LTC, as this does not represent all 476 adults under 65 living in LTC.<sup>42</sup>

89. The DRC also notes that the Shared Services Project Expansion presentation states that “Shared Services is for candidates whose needs are compatible with living in community and not requiring 1:1, 24/7 support.” The DRC understands from our question-and-answer session with the Province that this statement refers only to the initial phase of the Service’s expansion and does not speak to who will be eligible for Shared Services in later phases of the Remedy. The DRC sincerely hopes that this is true, as the statement is plainly contrary to the Remedy and is discriminatory.
90. The DRC also questions the approach the Province appears to be taking towards ascertaining the wishes of adults under 65 living in LTC about their desire to move to community.
91. The Province is well aware and has stated in its documentation that persons who have been institutionalized will often resist or fear leaving the institution and moving into a community-based setting. The Province appears to be taking a thoughtful approach towards ascertaining the wishes of people who are currently living in ARCs, RCFs, and RRCs. For instance, the Province commissioned a thorough study of the Harbourside closure to learn how to better communicate with and support people affected by institution closure.<sup>43</sup>
92. For adults under 65 institutionalized in LTC, the only document we have which speaks to information they have been provided about moving to community is a form letter titled “Shared Services Indication of Interest.” This form requests persons living in LTC to check boxes about whether they wish to be assessed for Shared Services, which would enable them to move to a community-based setting.<sup>44</sup>
93. The Province’s Annual Report notes that it identified 100 people as eligible for Shared Services and that these 100 people were sent a letter about moving to community (presumably, this letter is the form disclosed at Document 49). Of the 100 recipients, 45 filled out the form, and only 26 indicated they were interested in moving in the first, second, or third phase of the Shared Services Expansion project.<sup>45</sup>
94. The DRC sincerely hopes that this form does not represent the extent of efforts being made to engage current residents of LTC facilities about community living. If it is, it would be entirely unsurprising if a majority of those surveyed indicated they were not interested in leaving LTC.
95. The DRC calls upon the Province to apply meaningful effort to engage with residents in LTC, to inform them about their options for community living, and to apply the principles of supported decision-making with respect to this engagement.

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<sup>42</sup> Public Document 48: Shared Services Expansion Program Presentation, September 13, 2023, page 6/18.

<sup>43</sup> Public Document 73: Harbourside Transition Study.

<sup>44</sup> Public Document 49: Shared Services Indication of Interest

<sup>45</sup> The Province’s Annual Report, page 13.

96. Meaningful efforts at engagement should include in-person meetings with residents regarding their options for community-based living. Form letters in the mail are simply an insufficient outreach measure to reach people and communicate with them regarding a life-altering decision.

### **Mi'kmaq Persons with Disabilities**

97. There is already a notable gap between the services for persons with disabilities available on and off reserve in Nova Scotia.
98. The DRC understands that there is essentially some limited funding for homecare-type services on reserve. If a person's disability-related needs cannot be met a low level of support, that person is often required to move away from their community into an institutional setting off reserve, such as a LTC facility or a DSP-funded facility.
99. This is a very shameful state of affairs, as Mi'kmaq persons with disabilities who are institutionalized experience the same harms from institutionalization as all others, as well as the added loss of cultural connection and the potential for language barriers between themselves and those providing them with care. Indeed, this situation is reminiscent of the forced institutionalization of the Residential School System.
100. The Province takes the position that the Remedy does not apply on reserve and that the Federal Government is responsible for funding services for Mi'kmaw persons with disabilities.
101. Despite this issue of jurisdiction, the Province cannot sidestep the impact that the Remedy will have upon Mi'kmaq persons with disabilities. There are currently Mi'kmaq people living in DSP institutions.
102. The DRC lacks a clear understanding of where the Province views the boundaries of its obligations with respect to this group of participants, and why the Province is able to offer support to these individuals in institutional settings but not in community-based settings.
103. In the absence of effort from the Province with respect to the Remedy's impact on Mi'kmaq persons with disabilities, they could be deinstitutionalized without proper supports, or re-institutionalized in other settings, such as LTC or hospitals.
104. The DRC is gravely concerned that the Remedy could worsen the circumstances of Mi'kmaw persons with disabilities while supports simultaneously improve for non-Indigenous persons with disabilities.
105. The DRC calls upon the Province to prioritize working with Bands and the Federal government to reach an agreement wherein Mi'kmaw persons with disabilities have equitable access to community-based supports by the end of the Remedy's timeframe.



## Individualized Funding Bands

106. The adequacy of funding available to participants will be crucial to the success of the Individualized Funding model. In order to support participants to live meaningful, inclusive lives in community, the funding must be sufficient for participants to afford housing, the cost of labour for supports, basic necessities, and items for recreation to enhance participants' quality of life, all at the market rates for these items. In short, it must be "accommodative assistance".<sup>46</sup>
107. For example, with respect to the adequacy of the ILS+ funding, the Province has indicated that "DSP is implementing ILS+ providing up to a maximum of 12 hours/day or 84 hours/week of support hours".<sup>47</sup> However, the whole purpose of ILS+ is to bridge what the Technical Experts referred to as the 'funding gap' between traditional ILS and the 24/7 support of Small Option homes.<sup>48</sup> As things stand, the Province's limited ILS+ funding will be inadequate for some, thereby failing to accommodate their needs.
108. The Province has disclosed a draft document titled REDACTED - Confidential documents s  
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109. The DRC encourages the Province to index all allowance amounts under the IF Policy to inflation, and to commit to reviewing the amounts paid yearly. These measures will be essential to maintaining the adequacy of the funding levels, and ensuring that participants are able to afford housing, support, and other items.
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REDACTED.<sup>50</sup> REDACTED - Confidential documents  
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REDACTED. They must be needs-based in order to comply with the Province's obligation under the *Social Assistance Act* to furnish assistance to those in need.
111. REDACTED REDACTED - Co  
REDACTED. The DRC expects that Individualized Funding will not only enable an individual to afford the bare necessities of life, but to engage in recreational activities, hobbies, social and community events. In short, we expect the budget for recreation and discretionary expenses will be sufficient to enable a live a meaningful life of inclusion.

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<sup>46</sup> It is crucial to remember the terms of the Order contained in the February-June 2023 section of Appendix A: "For the purposes of this Interim Settlement Agreement, "accommodative assistance" means social assistance, including supports and services, that meet the different needs of persons with disabilities."

<sup>47</sup> See, the Province's comments re indicator #s 31 & 33 for Year 1.

<sup>48</sup> In the Technical Report at page 52, (recommendation 1.2), and reproduced in Appendix A as important footnote #7 to indicator #31 for Year 1, Bartnik & Stainton set out the following description: "'ILS plus': Bridges the funding gap between Independent Living Support (ILS), Flex Independent and SOH where people can get an individual funding allocation for a share of SOH costing and incentives/support to find a local more personalized solution."

<sup>49</sup> Confidential Document 58-Individualized Policy Validation at page 8.

<sup>50</sup> *Ibid* at page 9.

## Supported Decision-Making

112. Supported decision-making is defined in the Expert Report as follows:

Supported Decision Making is the right to use support to make decisions. Supported decision making provides the supports and accommodations an individual needs to express their decisions, will and preferences. These supports may be human support, technical aids/devices to assist with communication or other forms of support.<sup>51</sup>

113. Supported decision-making is a central to the Remedy. As the Experts explained: “The right and support to make decisions is a fundamental component of Individualized Funding and to have control and choice in your life.”<sup>52</sup>

114. Indicator 57 for Year One required the Province to: “decide best method for embedding HR principles and enhancing Supported Decision-Making practice, including build into planning and needs assessment re relational support.” The Province claims exact compliance with this measure. However, none of the documents the Province cites pertain to supported decision making *within the needs assessment*. The Province’s comments regarding this Indicator do not explain how it intends to embed Supported-Decision Making within needs assessments. The Province’s needs-assessment mechanism for persons with disabilities *must* include critically important supports for supported decision making itself—in order for the person’s needs to be properly accommodated.

115. It is critically important that the Province’s needs assessment tool include supported decision making. Without building in supports for supported decision-making there is a real risk that the voice of the person with disabilities will be lost in the assessment process. An illustration of this problem appears in relation to the letter sent to younger residents of long-term care homes seeking their decision about whether to move into community.

116. The DRC calls on the Province to achieve this Indicator and embed Supported Decision-Making practice into the needs assessment for applicants to the DSP.

## The New ESIA Benefit

117. The Province references the introduction of a new \$300 benefit for people with disabilities who are not eligible for DSP and who receive assistance through the *Employment Support and Income Assistance* (“ESIA”) Program—the Province’s main social assistance program.

118. While the DRC is pleased that individuals on ESIA will receive additional financial assistance, this new \$300 benefit is available to those on the Province’s regular Income Assistance program. It does not form part of the Remedy and is not available to those receiving support through the DSP.

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<sup>51</sup> See page 12 of Mr. Eddie Bartnik and Dr. Tim Stainton’s *Technical Report of the Independent Experts to the Disability Rights Coalition and the Province of Nova Scotia*, February 6, 2023.

<sup>52</sup> Ibid at page 22.

119. The Province includes within its Service Request List statistics (Additional Service Request List Details) data regarding the number of individuals awaiting support through the DSP who are in receipt of ESIA. The DRC cautions that ESIA, even with the additional \$300 benefit per month, is no substitute for immediate, accommodative assistance in the community of choice for all persons in need. Indeed, people awaiting DSP have always been able to apply for Income Assistance.

### **Reporting Requirements for the Interim Progress Reports**

120. The DRC provided notice on March 20, 2024 to the Parties and the Expert Monitor that we would address the adequacy of the Province's Interim Progress Report of January 15, 2024 in these submissions. The DRC asks that you provide guidance to the Parties regarding the requirements for this Report, as the DRC and the Province appear to have different interpretations of the Province's obligations with respect to these Reports.

121. Section 15 of the Interim Settlement Agreement imposes the following obligations on the Province with respect to each Interim Progress Report:

#### 15. Progress Reports:

- a. **Beginning on January 15, 2024**, and every subsequent May 31 and January 15 thereafter for the duration of this Interim Settlement Agreement, the Province **will provide** to the Parties and the Expert Monitor an Interim Progress Report, which includes:
  - i. **Accurate data relating to compliance and progress with each aspect 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.) The report of data shall be in substantially the form attached as Appendix B of this Interim Settlement Agreement (which may be modified from time to time by joint agreement of the Province and the DRC in consultation with the Expert Monitor.)
  - ii. **Any documents which are necessary to disclose in order to demonstrate compliance and progress, including but not limited to the documents referred to in Appendix C.**
  - iii. An identification of any area where the Province anticipates that it may not be in exact compliance, **along with an explanation of the reasons and what steps the Province has taken or intends to take in response in order to be complaint in substance** (emphasis added).
- b. Beginning May 31, 2024, and annually thereafter, the Province will provide to the Parties and the Expert Monitor an Annual Progress Report, which includes:
  - i. **all the requirements of an Interim Progress Report;** and
  - ii. a substantive assessment of the Province's compliance and progress with the indicators, timeframes, targets and outcomes for the relevant year as set out in Appendix A (including any adjustments or changes to

indicators, timeframes, and targets identified in previous Progress Reports or Monitoring Reports) (emphasis added).

122. Section 15 of the Agreement therefore requires the Province to provide the following by way of an Interim Progress Report every January 15<sup>th</sup> for the life of the Remedy:
- Accurate data relating to compliance and progress with each aspect of Appendix A of this Interim Settlement Agreement...the report of this data shall be in substantially the form as Appendix B.
  - Any documents which are necessary to disclose in order to demonstrate compliance and progress, including but not limited to the documents referred to in Appendix C,
  - An identification of any area where the Province anticipates that it may not be in exact compliance, along with an explanation of the reasons and what steps the Province has taken or intends to take in response in order to be complaint in substance.
123. These requirements for the Report are set out plainly in 15 (a), and the DRC's interpretation of 15 (a) is bolstered by the fact that 15 (b) refers to the Annual Progress Report containing "all the requirements of an Interim Progress Report" as well as a substantive assessment of the Province's compliance with the Remedy.
124. The DRC does not interpret the Agreement to require the Province to provide a narrative assessment of its compliance with the Remedy as part of the Interim Progress Report. The DRC recognizes that the "substantive" assessment set out in 15 (b) (ii) is only required as part of the Annual Progress Report.
125. However, the Interim Progress Report must contain the elements of the Province's Annual Progress Report, aside from a narrative/substantial assessment.
126. The Province's first Interim Progress Report from January 2024 fell short of the requirements in the Agreement. With respect to all items in Appendix A for the period from February-June 2023, there was also a failure to disclose the documents necessary to demonstrate compliance and progress. The Province has provided very few documents to demonstrate its compliance and progress in meeting the targets set out in Appendix A. This failure is contrary to the disclosure requirement in Section 15 (a) (ii).
127. With respect to all but three Indicators in Appendix A for the period from February-June 2023, the Province provided no information about its compliance, and no supporting documentation regarding its compliance as part of the Interim Progress Report.
128. In this Annual Report, the Province claimed it was in "exact compliance" with items in the February-June 2023 reporting period for targets it only achieved many months after this reporting period ended.<sup>53</sup> In essence, the Province retroactively claimed compliance for meeting these targets outside of the Reporting Period. This highlights the importance of the Interim Progress Report as an

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<sup>53</sup> See, for example, Indicators 7, 12, and 13 of the Appendix A-Year 1: February-June 2023.

early warning to the Parties and the Public about which aspects of the Remedy the Province is falling behind and which aspects appear to be on track.

129. The Interim Progress Report serves an important role in Remedy monitoring. It promotes the goals of transparency and accountability with respect to the Remedy; it is an early warning system to flag compliance failures.
130. The DRC seeks the Expert Monitor's guidance with respect to these aspects of the Province's reporting in order to ensure that the overarching purposes of human rights monitoring are properly achieved.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 28<sup>nd</sup> day of June 2024.



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Vince Calderhead and Katrin MacPhee

