Monitoring Report 2023-24: Getting on Track

Year One of the Nova Scotia Human Rights Remedy

Submitted to the Province of Nova Scotia, Nova Scotia Disability Rights Coalition, and Nova Scotia Human Rights Commission

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Expert Monitor

July 30, 2024

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1. Message from the Expert Monitor

July 30, 2024

It is my honor to submit to you *Monitoring Report 2023-24: Getting on Track*, prepared in my role as Expert Monitor, in accordance with the Board of Inquiry Decision and Interim Settlement Agreement. On the recommendation of the two Parties to the Agreement, the Province of Nova Scotia and the Nova Scotia Disability Rights Coalition, the Human Rights Commission appointed me as Expert Monitor earlier this year.

This report presents the results of my review and assessment conducted for two time-periods as outlined in the Interim Settlement Agreement: February 1, 2023, to June 30, 2023; and April 1, 2023, to March 31, 2024. In carrying out my responsibilities, I have endeavoured to fulfill my duty of fairness to both parties. The report provides an independent and impartial assessment of the Province's compliance and progress in relation to the Agreement. The Province produced their first Annual Progress Report on May 31, 2024. On June 28, 2024, the Disability Rights Coalition produced a set of submissions for my consideration. In accordance with the Interim Settlement Agreement, I had 60 days, from receipt of the Progress Report, to file my response.

I would like to acknowledge Dr. Melina Buckley, who serves as independent legal adviser in the monitoring process, for her legal counsel and other contributions to my report.

I also wish to thank the Disability Rights Coalition and the Province for their support and their provision of a considerable amount of information in a timely manner, which has allowed me to exercise my responsibilities. I acknowledge their shared commitment to remedying systemic discrimination in the provision of services to persons with disabilities and to creating equitable and inclusive communities across Nova Scotia.

The task ahead is both momentous and necessary.

Respectfully,

Michael J. Prince, BA, MPA, PhD
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2. At a glance

The Province has undertaken a considerable amount of foundational work during the first year of implementing this Human Rights Remedy. Fundamental reforms are underway, but progress is slower and compliance more uneven than called for in the first two periods of the five-year remedial plan.

The Province's self-assessed progress in the first year was that 53 items were in exact compliance, four were compliance in substance and 33 in substantial progress. The Province did not claim any of the items of less than fully-compliance were due to factors outside the control of Province.

My evaluation differs significantly from that of the Province. Assessing all ninety requirements of the Remedy for 2023-24, I determined that for most of these requirements the Province's actions were not fully compliant with the Interim Settlement Agreement. I found that for this period:

- 17 requirements were in "exact compliance"
- 2 were "compliance in substance"
- 71 attained some level of "substantial progress."

Among those described as substantial progress, there are wide variations in the character and extent of that progress. In this report, I apply in the assessment of substantial progress three standards of more or less progress. These standards are "significant progress," "sufficient progress," and "slight progress." Significant progress refers to the Province making tangible improvements and advancements towards the intended outcomes, obtained to a considerable degree and with influential consequence. Sufficient progress refers to the Province making tangible improvements and advancements towards intended outcomes, realized to an adequate degree and effectiveness. Slight progress refers to the Province making modest tangible improvements and limited advancements towards intended outcomes, to a minimal degree and marginal in result. Applying these three standards, I find that five requirements achieved "significant progress," 23 attained "sufficient progress," and 43 requirements made "slight progress." Remedy requirements are more in progress and partial-compliance than having attained progress and full compliance.

The Province's provision of supporting documentation and explanations was uneven in terms of completeness and relevance. For some requirements reviewed, the documentation presented was in accordance with applicable requirements and reporting framework under the Remedy. For many other items, I found gaps in explanations and insufficient information on the actual situation. The Province has not provided the required reasons for partial-compliance nor explained how it plans, and with what measures, to comply with the Order and remedy the systemic discrimination within the five-year period.

I conclude that the Interim Progress Report and Annual Progress Report do not fully conform to the Interim Settlement Agreement's reporting requirements.

I make fourteen recommendations to ensure continual progress with a collaborative spirit and consultative processes for getting on track.

3. Introduction

In April 2024, the Nova Scotia Human Rights Commission as Expert Monitor appointed me, under the authority of the Interim Consent Order and in accordance with this Interim Settlement Agreement.[1]

This Interim Settlement Agreement (the ISA or the Agreement), represents a collaborative and legally binding process and comprehensive plan designed to result in a systemic human rights remedy.

Under the Agreement, an Expert Monitor undertakes periodic monitoring of the implementation to ensure the Province is continually making substantial progress and eliminating the systemic discrimination – the unfair treatment of people with disabilities as a group.

This report presents the results of my review and assessment conducted as the Expert Monitor. It examines two periods as outlined in the Interim Settlement Agreement: one, February 1, 2023, to June 30, 2023; and the second, April 1, 2023, to March 31, 2024.

3.1 Purpose of this report

The purpose of this report is to provide an independent and impartial assessment of the Province's compliance and progress in relation to the Agreement. In particular, that assessment includes an examination of the indicators, timeframes, targets, and outcome for Year One of this Agreement.

3.2 Significance of the Interim Settlement Agreement

This Agreement is groundbreaking in how it was developed, what it contains, and what it ultimately promises in moving toward an inclusive and fair society in Nova Scotia.

The Remedy sets out a five-year timeframe to implement a broad range of significant changes in provincial and local services, positive shifts in community networks and public attitudes, and in enhanced personal possibilities for individuals living with disabilities and their families.

Each year, the Province is responsible for submitting an Interim Progress Report (by January 15) and an Annual Progress Report (by May 31).

Monitoring contributes to the process of redressing human rights violations and remedying systemic discrimination against persons with disabilities in the provision of social assistance. This report is important to Nova Scotians because it an assessment of the step by step progress made by the Province in fulfilling its obligations to redesign and transform the provision of services and supports to ensure the timely access to accommodative assistance that meets the

[1] Attached to the Interim Consent Order of June 28, 2023, the Interim Settlement Agreement is a 15-page document along with four appendices, agreed to by the Parties on April 25, 2023. Available at https://humanrights.novascotia.ca/sites/default/files/interim_consent_order_settlement_sig_redacted.pdf

diverse needs of persons with disabilities living in Nova Scotia. This redesign and transformation must accommodate the needs of all persons with disability who require social assistance, including children, youth and adults with intellectual disabilities, and those with long-term mental illness and/or and persons with physical disabilities**.**

3.3 Human Rights Remedy

The Remedy is about how to support individuals and their families in building inclusive lives in communities of their own choosing throughout the province. The human rights approach, which underpins the Interim Consent Order and Interim Settlement Agreement, provides guidance in how to assess the Province's activities and progress. This approach recognizes the interests and capacities of individuals. This approach aims to support people in communicating their preferences and making their own decisions. It entails ensuring the provision of accommodative social assistance. In the Nova Scotia context, accommodative social assistance refers to supports and service provided under the *Social Assistance Act*. For those eligible, such assistance is a legal entitlement held by persons with disabilities, provided in a timely and non-discriminatory manner. I will say more about these human rights principles and methods later in this report.

The following table summarizes what this human rights remedy encompasses and involves for people with disabilities, their families, and local communities in Nova Scotia.

Table 1: This Nova Scotia Human Rights Remedy

Not only about	Is also about
Incremental change	Generational and transformational systems change
Altering programs	Designing new approaches to supports and services
Administrative processes and human resource measures	Empowering individuals and families, recognizing their strengths, and respecting their interests and choices
Budgets and assessment tools	First voice consultations and cultural shifts in thinking about disability
Legal settlement and plan of requirements	Dynamic learning and openness to alternative measures that align with the vision

Disability Support Program and social assistance	Provincial government and public service as a whole (e.g., corrections, education, health, housing, mental health) Sector partners in communities in all regions
Five year time frame (2023-2024 to 2027-28)	Long-term commitment to sustainable change

What the Province commits to providing in the way of services and supports, and by what means, are central to advancing the human rights of Nova Scotians with disabilities. While some facilities will close over the next five years and some jobs will change, this remedy is not a downsizing exercise; it is about increasing the capacity of the whole disability sector and strengthening partnerships with other public services and community partners.[2]

This remedy is not optional but required by law. It is not only about people with disabilities, though they are at the core of this human rights remedy; truly to succeed the remedy involves everyone in Nova Scotia. Whole communities in all regions of the province have an active part in dismantling discriminatory policies and practices, and in building new opportunities and new ways of regarding people with disabilities as friends and neighbours, classmates or colleagues, and fellow citizens.

3.4 Keeping in mind all the people involved

As this is a human rights remedy, I devote particular attention to the lives of individuals with disabilities, their families and informal support networks:

- All "first voice" individuals, those with lived experience of disability, having opportunities for participation in consultation and the co-production of solutions.
- Family voice of parents, guardians, siblings and significant others.
- Individuals resident in institutions who have recently moved, as in the case of the closure of Harbourside, or will be moving into communities of choice.
- People in forensic facilities and in psychiatric hospitals who could and want to return to communities of choice.
- Adults with disabilities, under the age of 65, who are in Long Term Care facilities.
- Youth with disabilities leaving the high school system looking for and expecting meaningful roles and opportunities.
- Individuals currently eligible for accommodative services who are on service request lists (wait lists).
- Individuals previously denied social assistance, a benefit provided by the law.
- People with complex needs or with mental health conditions who lack outreach or outpatient services and other supports.

[2] Public Document 78, pp. 10-13.

These are the people with their personal stories at the centre of this monitoring report. In order to be effective, the Province must implement the Human Rights Remedy by taking into account the needs of individuals with disabilities who experience implementation of each remedial requirement in specific life circumstances and in specific local communities. The Province must also evaluate whether implementation operates in real life to meet these particularized needs.

Many of the remedy requirements in the first year involve matters of human resource management.[3] The focus is on laying the foundation for building capacity and transforming the disability system. The requirements include the development of position classifications and new job descriptions, recruitment plans, staff redeployment to support the transfer of functions and changes in care models, and training plans for both existing and new leadership and front-line personnel.

The people with day-to-day responsibilities for ensuring meaningful and effective implementation of the Human Rights Remedy are Disability Support Program managers and staff, officials with various skills at various levels in other provincial government departments and agencies, as well as service providers, facility administrators and staff, unions, consultants and other experts.

In undertaking this assessment, I have sought to keep in mind alongside those requiring accommodative social assistance, the officials and all the other people involved in putting this Settlement Agreement into practice. Together they strive to establish what we may call a virtuous cycle of transformation: more choices and meaningful control by persons with disabilities and their families and supporters, enhanced public services and community resources, and well-trained and supported workforce.[4]

3.5 Structure of this Report

The rest of this report is in four main sections.

The next section explains the role of the Expert Monitor, placing the role within the legal context. This includes describing the framework for monitoring and then outlining legal principles and terms that govern this Human Rights Remedy.

Following that section, I undertake a detailed review of Human Rights Remedy provisions and their implementation in the initial two periods contemplated in the Agreement (February to June 2023 to and Year 1 – April 2023 to March 31, 2024). I provide my overall findings and make specific comments about the progress or lack thereof.

The ensuing section of this report offers observations on what I have learned this first year, and suggestions to the Province on what would make reporting and monitoring more effective going forward.

The final sections present conclusions and summarize my recommendations.

[3] See the *Annual Progress Report*, May 31, 2024, pp. 5-9.
[4] Public document 67, p. 3.

Underpinning and informing my comments, findings, and recommendations are two annexes. In turn, these provide details on my assessments of progress on the Remedy requirements in the *Interim Progress Report* and the *Annual Progress Report* for Year One.

4. Role of the Expert Monitor: legal context and guiding principles

This section provides the context for my role as Expert Monitor. I have drawn together the relevant aspects of the human rights decisions, the Interim Settlement Agreement, and general principles applicable to human rights monitoring. Conscious of the public interest, I have done so to facilitate community awareness and a general understanding of the legal principles of this Agreement.

4.1 Introduction

The first part sets out the framework for monitoring the Interim Settlement Agreement as developed by the Province and the Disability Rights Coalition (DRC) and made legally binding by the Nova Scotia Human Rights Board of Inquiry Interim Consent Order on June 28, 2023.[5]

The second part sets out the governing legal principles and terms that will inform the performance of my responsibilities as Expert Monitor to independently review and comment on compliance with the Interim Settlement Agreement and, where necessary, to make recommendations as to steps the Province should take to ensure that substantial progress continues, and full compliance achieved.

This monitoring function requires me to ensure I have all the information necessary to undertake a detailed analysis of the steps taken and the results achieved under the agreement. Compliance requires eliminating the systemic discrimination against persons with disabilities established in this complaint and fulfilling the legal entitlements of persons with disabilities to accommodative social assistance.

4.2 Framework for Monitoring

The Interim Settlement Agreement provides for four levels of accountability.

First, the Province is required to track and report on its progress on remedying the systemic discrimination through two yearly reports (interim and annual) as well as additional steps such as external evaluation. The Parties have the opportunity to comment on these reports thereby continuing the dialogue established through the consultation and negotiation process leading to the agreement.

[5] Available at https://humanrights.novascotia.ca/sites/default/files/decision_reporting_interim_consent_order_and_interim_settlement_and_on_retaining_jurisdiction.pdf

Secondly, on an annual basis I, as Expert Monitor, review the reports and related disclosed documents, comments by other Parties, and other relevant information and prepare an independent evaluation report.

Thirdly, the Human Rights Commission Board of Inquiry has continuing jurisdiction providing a supervisory role until it approves a final order on the remedy in this matter.

Finally, the Interim Settlement Agreement is accountable to the public and the transparency measures set out within the Agreement promote this public interest function.

I set out the relevant provisions of the Board of Inquiry Decision (June 28, 2003) and the Interim Settlement Agreement that establish this monitoring framework.

4.2.1 Board of Inquiry Decision (2023)

In June 2023, the Board of Inquiry approved a joint application by the Parties to enter the Interim Settlement Agreement as an Interim Consent Order of the Nova Scotia Human Rights Commission. In doing so, the Board recognized the significant consultation and negotiation upon which the Interim Settlement Agreement was developed. In the approval decision, the Board agreed with the DRC's position that the Interim Settlement Agreement was not a "settlement agreement" within the meaning of the *Human Rights Act* but had the potential to become one if it resulted in effective solutions to the systemic discrimination found by the Nova Scotia Court of Appeal:

> I have concluded that the "Interim Consent Order" and "Interim Settlement Agreement" do not constitute a "settlement agreement" within the meaning of s.34 (5) of the *Human Rights Act*. However, they do represent a public commitment by both the Province and those represented by the DRC to an articulated and coherent path towards the potential, and likely final, resolution of the systemic discrimination found by the Nova Scotia Court of Appeal. Pursuit of that path is supported by all of the parties. If the path set out in the "Interim Consent Order" and "Interim Settlement Agreement" reaches its anticipated destination, the current "Interim Consent Order" and "Interim Settlement Agreement" will in fact be recognized in substance as having constituted a final settlement of the complaint, which was first made to the Human Rights Commission in 2014. My reasons for that conclusion are set out in more detail below.[6]

The Board describes the Interim Settlement Agreement as representing "a significant and coherent and comprehensive effort by the parties to create a practical and forward-looking path to a remedy for the discriminatory practices which persisted in the past." Like the Nova Scotia Court of Appeal, the Board emphasized that

> "Remedies for systemic discrimination require systemic remedies because they need to overcome discriminatory institutional practices that have become normalized: Gwen

[6] Maclean, Livingstone, Delaney, and Disability Rights Coalition – Decision order on the Interim settlement agreement, Interim Consent Order, at paragraph 9. I will use the abbreviation "BOI 2023" in the rest of references to this decision.

> Brodsky, Shelagh Day & Frances Kelly article "The Authority of Human Rights Tribunals to Grant Systemic Remedies" (2017), 6 Can. J. Hum. Rts. 1 at p. 4. Policies and structures and attitudes need to change at an institutional level for change to reach to the human level."[7]

The Board also acknowledged the merits of the approach taken by the Parties to date:

> The parties have crafted a path forward which they (a) believe will result in full compliance with the Human Rights Act, and (b) believe is within the practical capacity of Government to provide. They have achieved this through a more extensive consultation process than would have been possible through an inquiry process under the Act. They have reached this stage of resolution in a more cost-effective fashion than would have been likely within an adversarial litigation process.[8]

The Board recognized that even though the Parties "have given their sincere and genuine mutual undertakings to support that path towards a final remedy" they had agreed to a monitoring process because the parties "recognize that the means, and even the ultimate end result, may have to be adjusted or changed". It is for this reason that the Interim Settlement Agreement does not meet the requirements of a "settlement agreement" within the meaning of s.34 (5) of the *Human Rights Act*.[9]

The Board agreed to the joint request by the Parties to continue exercising its jurisdiction over this case to "maintain an independent monitoring and resolution mechanism for acknowledging progress, addressing differences and implementation adjustments that may arise or be required over the 5-year life of the "Interim Consent Order."[10] Built into the Agreement is the Board of Inquiry's role of providing monitoring and difference resolution function. The Board agreed to defer further hearings about a remedy until called upon by one of the parties to do so, consistent with their agreement. The Board highlighted the importance of remaining "conscious of the public interest by facilitating the ongoing co-operative work of the parties" to remedy the systemic discrimination.[11]

In approving the Interim Settlement Agreement as an Interim Consent Order, the Board of Inquiry established a monitoring role for itself and gave legal effect to the expert monitor as one aspect of the implementation process. The Board decision, however, does not specifically refer to the role of the expert monitor.

4.2.2 Interim Consent Order

The Interim Consent Order gives legal effect to the Interim Settlement Agreement developed by the Parties through consultation and negotiation.

[7] BOI 2023, at paragraph 10.
[8] BOI 2023, at paragraph 19.
[9] BOI 2023, at paragraph 20.
[10] BOI 2023, at paragraph 7.
[11] BOI 2023, at paragraph 7.

One important aspect of this process was the joint commissioning of an expert review and report prepared by a Review Team (Mr. Eddie Bartnik and Dr. Tim Stainton) titled *Human Rights Review and Remedy for the Finding of Systemic Discrimination Against Nova Scotians with Disabilities*.[12] The Parties refer to this as the "technical report" and I adopt this practice.

The Interim Settlement Agreement consists of four parts and four detailed appendices setting out the actions and results agreed upon by the Parties, data disclosure requirements, and document disclosure requirements.

In this section, I focus on the framework for the monitoring process established by the Interim Settlement Agreement.

Part A: General Interpretation and Application of the Interim Settlement Agreement recognizes that remedying the systemic discrimination against persons with disabilities at the centre of this complaint will require both continued collaboration between the Province and the DRC and an effective multi-level monitoring process. It includes these three provisions:

> 7. The Parties agree that periodic monitoring by an Expert Monitor is a crucial element of ensuring that the discrimination is remedied.
>
> 8. The Parties agree that the ongoing authority of the Board of Inquiry is necessary to ensure compliance with this Interim Settlement Agreement, and ultimately, to ensure that the discrimination is remedied and issue a final remedial order.
>
> 9. The Parties agree that they will continue to engage in a collaborative way to attempt to resolve any issues between them during the lifetime of this Interim Settlement Agreement.

Part A also contains definitions of key terms and principles to guide interpretation and implementation of the Agreement. I set these out in the next section on key legal terms and principles.

Part B: Indicators, timeframes, targets and outcomes requires the Province to remedy the systemic discrimination as recommended by the Review Team and more specifically in accordance with Appendix A to the Interim Settlement Agreement. Appendix A contains the remedial requirements to be completed in a sequence laid out over the five-year period. The six timeframes are:

- February to June 2023
- Year One (April 1, 2023 – March 31, 2024)
- Year Two (April 1, 2024 – March 31, 2025)
- Year Three (April 1, 2025 – March 31, 2026)
- Year Four (April 1, 2026 – March 31, 2027)

[12] Available at https://novascotia.ca/coms/disabilities/human-rights-remedy-dsp-final-report.pdf

- Year Five (April 1 2027 – March 31, 2028).

The requirements are set out in the form of specific steps indicators, targets, and outcomes.

Appendix B sets out the data disclosure requirements. Appendix C sets out the document disclosure requirements. Appendix D sets out the outcomes of the final remedy. The outcomes summarize the results of the implementing the Agreement's requirements. The four ultimate outcomes are (de)institutionalization, community of choice, assistance as of right, and assistance without delay.

These four appendices comprise the Agreement's substantive provisions designed to eradicate the long-term and continuing systemic discrimination in the provisions of social assistance to persons with disabilities.

Part C: Monitoring of the Interim Settlement Agreement sets out the requirements of and responsibilities within the monitoring framework. Paragraph 14 details the appointment, qualifications, and role of the Expert Monitor. Paragraph 15 requires the Province to provide progress reports and provides for the content and timing of these reports and for the opportunity for any party to comment on the reports. Paragraph 16 provides for the Expert Monitor to review and comment on the Province's progress reports, and other comments received. Paragraph 17 sets out the transparency requirements.

I set out these four provisions here as they describe the monitoring process and my role. These legal requirements shape my work as Expert Monitor and this Monitoring Report. I will be referring to these provisions and giving substance to them, in my evaluation of the Province's progress reports.

14. Appointment of Expert Monitor:

a. Before January 2024, the NSHRC shall select an Expert Monitor for the purposes of making periodic assessments of the Province's compliance and progress under this Interim Settlement Agreement.
b. The qualifications for the Expert Monitor include expertise in human rights principles, and expertise in government systems for supporting persons with disabilities.
c. If the Province and the DRC agree on an individual to serve as the Expert Monitor, the HRC shall appoint that person.
d. If the Parties are unable to agree on an individual, the HRC may select an individual who is qualified under the terms of this Interim Settlement Agreement after considering any input from the DRC and Province with respect to its proposed individual.
e. In any case, the Expert Monitor shall be independent of, and impartial to, both the Province and the DRC. Any reasonable apprehension of bias on the part of the Expert Monitor shall be grounds for removal. The Expert Monitor will treat all Parties with fairness, including in any contact with individual Parties.

f. The HRC shall set the terms and conditions for hiring the Expert Monitor, after input from the Province and the DRC.
g. Costs relating to the monitoring process under this Agreement shall be borne by the Province. Such costs will include:
   i. Cost of hiring the Expert Monitor;
   ii. Reasonable expenses incurred by the Expert Monitor;
   iii. Reasonable expenses incurred by the DRC relating to the monitoring process under this agreement.
h. Should there be any reason to replace the Expert Monitor, the same provisions will apply to the selection and duties of the replacement.

15. Progress Reports:

a. Beginning on January 15, 2024, and every subsequent May 3 I 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 compliant in substance.

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.)

c. If the Province is not in exact compliance with a particular requirement, the Annual Progress Report will also provide reasons for the non-compliance, 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;

d. For greater certainty:

i. The Annual Progress Report will include an updated report on progress on both recommendations, which are binding and recommendations which are non-binding pursuant to this Interim Settlement Agreement.

ii. The first Annual Progress Report will include also cover the portion of Appendix A which relates to the February-June 2023 period.

e. Within thirty (30) days of the Annual Progress Report, any Party to this complaint may provide comments to the Province and the Expert Monitor in response;

i. For greater certainty, nothing prohibits any Party from providing comments to the Province, or the Province and the Expert Monitor, outside of this thirty (30) days.

16. Monitoring Reports:

a. Within sixty (60) days of receiving an Annual Progress report, the Expert Monitor shall provide to all Parties a Monitoring Report.

b. The Monitoring Report will:

i. Review and comment on the accuracy and adequacy of the data provided by the Province and make any necessary recommendations to the Parties for further disclosure in order to fully and properly monitor compliance and progress with this Interim Settlement Agreement.

ii. With respect to 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,) review and comment on whether the Province is in compliance.

iii. If the Province is not in exact compliance:

1. Assess whether there has been compliance in substance;
2. Assess the reasons given by the Province for the non-compliance;
3. Assess whether the Province has adequately considered and addressed any and all alternative measures;
4. Assess whether those alternative measures are equally or more efficacious in achieving the outcomes;
5. Where there are no alternative measures proposed by the Province, comment on whether any or all of those reasons for non-compliance amount to factors outside the control of the Province;
6. Assess whether the Province is making substantial progress towards remedying the discrimination;
7. Make any recommendations as to steps the Province should take to ensure that substantial progress continues to be made.

Paragraph 17 requires the Nova Scotia Human Rights Commission to make the vast majority of documents relating to the monitoring process available to the public online on a dedicated section of its website. The purpose of this provision is to ensure transparency in the compliance and monitoring processes. Only those document that must be kept confidential in order to respect the legally protected right to privacy, or as otherwise required by law, are not made public. This would include, for example, documents that contain personal information about individuals. In order to fulfill my role, I have access to these documents and must respect their confidentiality.

17. Transparency:

a. The NSHRC will make the following available on a dedicated section of its website within a reasonable time after they are provided by the Parties or the Expert Monitor:

i. The Decision of the Nova Scotia Court of Appeal in this matter, dated October 6, 2021;

ii. The Interim Consent Order and this Interim Settlement Agreement;

iii. Each of the Interim Progress Reports and Annual Progress Reports, including the data included in those reports;

iv. Comments by the Parties with respect to Annual Progress Reports;

v. Each of the Monitoring Reports;

vi. Any Decisions of the Board of Inquiry pursuant to this Interim Settlement Agreement.

vii. Any documents specifically listed in Appendix C;

viii. Any other documents disclosed pursuant to this Interim Settlement Agreement, unless at the time of disclosure the Province indicates that the document should not be made public for reasons similar to what might apply under FOIPOP.[13]

Part D. Compliance and enforcement provides for the continuing role of the Human Rights Board of Inquiry. Paragraph 18 sets out the application process for a finding that the Province is not in compliance with the Interim Settlement Agreement either by not providing an adequate progress report or by failing to make substantive progress in remedying the systemic discrimination. Paragraph 19 sets out the process by which the Province may seek a declaration that the Province has remedied the systemic discrimination.

As I note above, the Board of Inquiry has retained jurisdiction to assist the Parties until a final order is entered in this matter. Paragraphs 18 and 19 set out the procedures agreed upon by the Parties with respect to a finding of compliance or non-compliance. Nothing in the Agreement forecloses the Parties from making other types of applications to the Board of Inquiry.

4.3 Governing Legal Principles and Terms

One of the substantial shifts resulting from the DRC's successful systemic complaint is the recognition that accommodative social assistance is a legal entitlement held by persons with disabilities. The Province's duty to provide this assistance in a non-discriminatory manner is now a recognized legal obligation rather than a matter of pure policy choice. The governing legal principles and terms, as a result, must inform the compliance and monitoring processes.

In this section, I begin by setting out the key terms agreed to by the Parties in the Interim Settlement Agreement. These are a summary and refinement of the findings of systemic discrimination: a distillation of a long, multi-faceted legal process.

These key terms are at the core of the compliance process, but they do not exist in a vacuum. As the Parties recognize in Paragraph 2 of the Agreement, as an issue of general interpretation the legal decisions take precedence:

> Where this Interim Settlement Agreement refers to "the discrimination," the Parties acknowledge that this is a reference to the systemic discrimination found in the Court of Appeal's Decision, dated October 6, 2021, and as subsequently interpreted and applied in the Decision of the Board of Inquiry in this matter, dated April 30, 2022. *Any question*

[13] FOIPOP refers to the *Freedom of Information and Protection of Privacy Act*, c. 5 of the R.S.N.S. 1993, as amended. Available at https://nslegislature.ca/sites/default/files/legc/statutes/freedom%20of%20information%20and%20protection%20of%20privacy.pdf

as to the nature of the discrimination will ultimately be resolved by reference to those legal decisions, rather than the terms of this Agreement.[14] (Emphasis added)

In the second section, I summarize and highlight key points made in these two legal decisions with a view to making the governing legal principles more accessible. A third section considers models of human rights monitoring and concludes with a description of the approach I take to my mandate as Expert Monitor.

4.3.1 Interim Settlement Agreement

Part A Paragraph 3 of the Interim Settlement Agreement summarizes the systemic discrimination found by the Court of Appeal and the Board of Inquiry, which has taken place since 1998 and continues to the present. This summary frames that systemic discrimination as four violations of the *Human Rights Act*.[15] These are:

a. **Institutionalization:** The Province of Nova Scotia has violated the *Human Rights Act* by systemically discriminating against persons with disabilities in its provision of social assistance by providing supports and services to persons in need under the *Social Assistance Act*[16] in institutions, rather than in communities.
b. **Assistance as of Right:** The Province of Nova Scotia has violated the *Human Rights Act* by systemically discriminating against persons with disabilities in its provision of social assistance by failing to respect the legal entitlement of persons with disabilities to assistance under the *Social Assistance Act.*
c. **Community of Choice:** The Province of Nova Scotia has violated the *Human Rights Act* by systemically discriminating against persons with disabilities in its provision of social assistance by frequently providing supports and services (social assistance) to persons with disabilities in locations that were at a distance from their own preferred communities.
d. **Delays:** The Province of Nova Scotia has violated the *Human Rights Act* by systemically discriminating against persons with disabilities in its provision of social assistance by frequently placing persons who were found eligible for social assistance on wait lists rather than providing them with assistance from the date of their eligibility.[17]

As I noted above, the decisions of the Nova Scotia Court of Appeal and the Board of Inquiry (2022) take precedence over this summary and "any question as to the nature of the discrimination will ultimately be resolved by reference to those legal decisions, rather than the terms of this Agreement."[18]

[14] Interim Settlement Agreement, Part A, at paragraph 2. I have added the emphasis. From here on, I will use the abbreviation ISA in my references to it.
[15] Available at https://nslegislature.ca/sites/default/files/legc/statutes/human%20rights.pdf
[16] *Social Assistance Act*, c. 432 of the R.S.N.S. 1989, as amended. Available at https://nslegislature.ca/sites/default/files/legc/statutes/socialas.htm
[17] IAS, Part A, at paragraph 3.
[18] IAS, Part A, at paragraph 2.

Many of the specific provisions designed as the "best plan" to remedy the systemic discrimination, are set out in Appendix A in the form of annual indicators, timeframes, targets, and outcomes.

Paragraphs 5 and 6 of the Agreement contains some additional governing terms that will shape the compliance and monitoring process, and are worth quoting in full because they create the standards I am to apply in my evaluation:

> 5. The Parties also agree that:
>
> a. it is possible for the Province to remedy the discrimination without meeting each specific indicator, or target, or without perfectly complying with the associated timelines;
>
> b. a substantial change in circumstances may be encountered which require alternative measures to any of the indicators, targets or timeframes, and such alternative measures are acceptable and even appropriate 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 within the timeframe and achieving compliance with the outcomes as contemplated by this Interim Settlement Agreement, and in particular as set out in Appendix D "Final Outcomes";
>
> c. the ultimate outcome of this Interim Settlement Agreement is the remedying of the discrimination through the achievement of the outcomes, rather than the specific compliance with any particular indicator or target identified in Appendix A.
>
> 6. The following terms are used throughout this Interim Settlement Agreement in describing and assessing the obligation by the Province to remedy the discrimination:
>
> a. "Exact compliance" means that the Province has complied in exact terms with an indicator, timeframe, target or outcome in Appendix A;
> b. "Compliance in substance" means 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, timeframe, target or outcome, without necessarily meeting the exact requirement set out;
> c. "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;

d. "Outside the control of the Province" indicates a situation where the Province has failed to be in compliance, or to make substantial progress, due to circumstances outside its control after demonstrating what reasonable alternative measures were attempted in order to comply or make substantial progress;
e. For the purpose of this Interim Settlement Agreement factors "outside the control" of the Province do not include administrative convenience or reasonably foreseeable circumstances affecting the cost of providing accommodative social assistance for persons with disabilities to meet their different needs, or otherwise complying with this agreement.

The governing terms set out in Paragraph 6, such as "exact compliance" and "substantial progress" are not legal terms of art with precise and fixed meanings. I comment more on this later in this Monitoring Report.

I will say here it is likely there will be differences of opinion among the Parties over their meaning in specific contexts. The terms will develop functional meanings over time through the process of implementing, reporting on progress, commenting on progress reports, and through the monitoring process. It is in applying these words or phrases to specific details of compliance within the remedial plan and in assessing the effectiveness of the remedial steps that these governing terms ultimately become effective.

4.3.2 Nova Scotia Court of Appeal Decision

The Nova Scotia Court of Appeal decision, *Disability Rights Coalition v. Nova Scotia (Attorney General)*, 2021 NSCA 70 is the foundation of the Interim Settlement Agreement.[19]

In this decision, the Court decided the Province had systemically discriminated against persons with disabilities for over two decades, since responsibility for the provision of services transferred to it from municipalities in 1998. In reaching its decision, the Court set out four established legal principles that are important to both the result and the remedial process.

First, the Court of Appeal's decision emphasized that many earlier cases had recognized the historical and continuing patterns of systemic discrimination against persons with disabilities. It referred to a 1997 decision of the Supreme Court of Canada that describes these patterns and their impact. In *Eldridge v. British Columbia (Attorney General)*, [1997] 3 S.C.R. 624, the Supreme Court concluded.

> 56 It is an unfortunate truth that the history of disabled persons in Canada is largely one of exclusion and marginalization. Persons with disabilities have too often been excluded from the labour force, denied

[19] The Nova Scotia Court of Appeal decision is available at https://humanrights.novascotia.ca/sites/default/files/editor-uploads/2021nsca70.pdf

> access to opportunities for social interaction and advancement, subjected to invidious stereotyping and relegated to institutions; … This historical disadvantage has to a great extent been shaped and perpetuated by the notion that disability is an abnormality or flaw. As a result, disabled persons have not generally been afforded the "equal concern, respect and consideration" that s. 15(1) of the *Charter* demands. Instead, they have been subjected to paternalistic attitudes of pity and charity, and their entrance into the social mainstream has been conditional upon their emulation of able-bodied norms; ... One consequence of these attitudes is the persistent social and economic disadvantage faced by the disabled. Statistics indicate that persons with disabilities, in comparison to non-disabled persons, have less education, are more likely to be outside the labour force, face much higher unemployment rates, and are concentrated at the lower end of the pay scale when employed.[20]

Secondly, the Court of Appeal noted Canadian courts and human rights tribunals have recognized the concept of systemic discrimination since the late 1980s, but it is still not well understood. The Court employs the definition developed by Gwen Brodsky, Shelagh Day and Frances Kelly, in their article "*The Authority of Human Rights Tribunals to Grant Systemic Remedies*" (2017), 6 Can. J. Hum. Rts. 1 at p. 4:

> To a large extent the systemic discrimination that needs to be addressed in Canada today is the result of historical attitudes, stereotypes and practices that have become embedded in the normal operation of institutions. This discrimination is not always the result of overt, intentional acts but of discriminatory practices that remain in place because they have become normalized. Institutional inertia helps to entrench these practices and hold them in place. To address that inertia, to make systems change, it is not sufficient to simply identify discrimination and mete out individual corrective remedies, one by one. Systemic problems require systemic remedies.[21]

Thirdly, the Court highlighted that the Nova Scotia Human Rights Act provides broad remedial powers to boards of inquiry when they make a finding of discrimination. The Court of Appeal noted two Supreme Court of Canada decisions, which clarified that remedying systemic discrimination requires a robust approach to the duty to accommodate.[22]

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[20] The Nova Scotia Court of Appeal cites this article at paragraphs 46-49 of its decision.

[21] The Nova Scotia Court of Appeal cites this article at paragraph 190 of its decision.

[22] In *British Columbia (Public Service Employee Relations Commission) v BCGSEU* (*Meiorin)* [1999] 3 S.C.R. 3 and *British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights),* (*Grismer* [1999] 3 S.C.R. 866, the Supreme Court clarified that substantive equality requires that discriminatory standards and policies must be changed so that they take into account the characteristics of

Fourthly, the Nova Scotia Court of Appeal overturned the original Board of Inquiry's finding that meaningful access to services by persons with disabilities could only be "determined in the individual case." The Court held that the Board had erred in failing to distinguish between the individual and systemic discrimination aspects of the complaint:

> Having considered its reasons, we are satisfied the Board erred in conflating the individual and systemic discrimination complaints. The individual complainants sought remedies personal to them for the discrimination suffered. The systemic complaint of the DRC requested broad remedies intended to alleviate practices and policies that were said to disadvantage a large number of persons with disabilities. It did not seek compensation or a similar personal remedy for any individual member of the group.[23]

Supreme Court of Canada jurisprudence previously established that for a systemic complaint to succeed, it is not necessary to establish that all members of a protected group are discriminated against at the same time or in the same manner.[24] Here, the Court of Appeal concluded that the Board of Inquiry's decision was similarly problematic:

> The practical result of such an approach is that no meaningful systemic remedies could ever be awarded. The DRC would be required to present evidence concerning the individual circumstances of a large number of persons with disabilities who were disadvantaged as a result of the Province's policies concerning social assistance.

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the affected groups. Only within revised standards and policies have the potential to provide an effective systemic remedy. It would no longer be acceptable to maintain a discriminatory standard and accommodate an individual who is unable to meet it.

[23] At paragraph 208.

[24] In *Janzen v. Platy Enterprises Ltd.,* (1989) 1 SCR 1252 at paragraph 62, as noted by the Nova Scotia of Appeal in this matter, the Supreme Court explained the problematic nature of such requirements:

> While the concept of discrimination is rooted in the notion of treating an individual as part of a group rather than on the basis of the individual's personal characteristics, discrimination does not require uniform treatment of all members of a particular group. It is sufficient that ascribing to an individual a group characteristic is one factor in the treatment of that individual. If a finding of discrimination required that every individual in the affected group be treated identically, legislative protection against discrimination would be of little or no value. It is rare that a discriminatory action is so bluntly expressed as to treat all members of the relevant group identically. In nearly every instance of discrimination, the discriminatory action is composed of various ingredients with the result that some members of the pertinent group are not adversely affected, at least in a direct sense, by the discriminatory action. To deny a finding of discrimination in the circumstances of this appeal is to deny the existence of discrimination in any situation where discriminatory practices are less than perfectly inclusive. It is to argue, for example, that an employer who will only hire a woman if she has twice the qualifications required of a man is not guilty of sex discrimination if, despite this policy, the employer nevertheless manages to hire some women. [1989] S.C.J. No. 41, at para 62]

> Such evidence might be required if compensation or other individual remedies were sought but is not needed to impose systemic measures to alleviate discriminatory practices. The expense and time involved in the approach adopted by the Board would be massive and represent a practical impediment to pursuing system wide remedies.[25]

The Court of Appeal concluded that the DRC had proven systemic discrimination:

> There is ample evidence in the record and the findings of the Board to support the conclusion that the manner in which the Province provides social assistance to persons with disabilities under the *SAA* creates a disadvantage that is unique to them and not applicable to assistance given to non-disabled persons under the *ESIA*. The impact varies depending upon the circumstances of the individual, but in extreme cases it includes unnecessary extended institutionalization such as experienced by the individual complainants. The results of this differential treatment may also include years-long waits to receive services that persons with disabilities are statutorily entitled to receive, or having to relocate in order to receive these services.[26]

4.3.3 Board of Inquiry Decision 2022

Following the Nova Scotia Court of Appeal decision, a new Human Rights Commission Board of Inquiry was established to resolve remaining issues of potential justifications for the systemic discrimination and on remedies.[27] The Board of Inquiry interpreted and applied the Court of Appeal reasons in deciding its scope of jurisdiction in the wake of that decision. The Board concluded that its "assignment" was to inquire into

a) whether there is a justification or exception for the systemic discrimination found by the Nova Scotia Court of Appeal, and,
b) if not, what is the appropriate systemic remedy for the policies and practices that have created disadvantage since 1998?[28]

The Board's decision focuses primarily on providing the Province with guidance concerning its onus to establish justification for the discrimination. Indirectly, this commentary also outlines legal principles that can be of assistance in the implementation and monitoring processes by clearly locating the genesis of discrimination:

> Institutionalization, wait lists, and forced relocation from a person's community of preference, are each proven manifestations of the systemically discriminatory policies and practices followed by the Province since 1998: 2021 NSCA 70, at para.179. So is the loss of human dignity when services that should be provided as of right are instead made conditional. However, none of these effects or consequences are the actual "differential

[25] At paragraph 210.
[26] At paragraph 222.
[27] Maclean, Livingstone, Delaney, and Disability Rights Coalition – Scope of Jurisdiction Decision. I reference this decision using the abbreviation BOI 2022.
[28] BOI 2022, paragraph 24.

> treatment," or the actual "cause" of the differential treatment. All of these "effects" are instead outcomes that were created by some systemic policies or practices exercised by the Province.[29]

By clearly separating out the manifestations of discrimination from the cause of it, the Board emphasizes the guiding human rights principles that continue to operate at the remedial stage:

> The justifications offered by the Province, if any, must address the question of why the disabled community was required to suffer "burdens, obligations or disadvantages" not imposed on others; or why the disabled community should be limited in its access to "opportunities, benefits, and advantages" that were provided to others: s.4, *Human Rights Act*…
>
> By proposing to remedy symptoms or manifestations of discrimination, rather than the source of the discrimination, is the wrong solution for a systemic problem. Looking for justifications of outcomes rather than the prima facie discriminatory "approach" to the Province's obligations would be a misdirected inquiry.[30]

The Province subsequently decided not to seek to justify the discrimination and instead engaged with the DRC on the remedial issue. The Board of Inquiry also made direct comments on this question. It reiterated the Nova Scotia Court of Appeal's statement that systemic discrimination must be rectified though systemic remedies and therefore, "a series of piecemeal resolutions about particular effects" will not be up to the task.[31]

4.3.4 Human Rights Monitoring

The role of Expert Monitor pursuant to the Interim Settlement Agreement is a novel one. I am not aware of a monitoring framework comparable to this one being employed in a Canadian case, past or present. As the Board of Inquiry noted in its 2023 decision, Canadian courts and human rights tribunals have on occasion had an ongoing supervisory role in the implementation of remedies for violations of *Charter* rights or rights protection by federal or provincial human rights legislations.[32] In these situations, according to the Board, the court or tribunal is exercising its enforcement powers.

In the role of Expert Monitor here, my function is to review, comment upon, assess and make recommendations. I do not have the power to order the Parties to take any action nor refrain from taking any action. At the same time, my comments, assessments, and recommendations have greater persuasive force than a standard project evaluator or policy advisor because my monitoring function is integral to the human rights process initiated under Nova Scotia's *Human Rights Act*.

[29] BOI 2022, paragraph 9.
[30] BOI 2022, paragraph 12.
[31] BOI 2022, paragraph 24.
[32] BOI 2023, paragraph 22-24.

The Canadian Human Rights Tribunal has recognized the importance of oversight in ensuring that a systemic remedy is effective in eliminating discriminatory policies and practices. In *Hughes v Canada (Elections Canada)*, the Tribunal awarded a systemic remedy to address the discriminatory exclusion of voters with disabilities and it designated the Canadian Human Rights Commission requiring it to oversee implementation of the order issued against the Electoral Commission to make voting accessible within a specific period.[33] The Tribunal noted that human rights commissions are well placed to undertake this function but also recognized the role of other parties and the appointment of a monitor to achieve this purpose:

> [r]emedial orders also may include the involvement of the human rights commission or other parties in terms of consultation, or the appointment of a monitor for the implementation of the orders. Such involvement of other actors recognizes that the courts and tribunals have an adjudicative role and formal process that do not translate well into the technical or task-specific aspects of the implementation of orders often affecting the day-to-day operations of a governmental or corporate respondent.[34]

I consider processes to monitoring the protection and promotion of human rights under international treaties and conventions is another useful analogy from which I draw guidance as I undertake this role. For example, the Committee on the Rights of People with Disabilities (CRPD) is an international body established under the International Convention on the Rights of People with Disabilities with the responsibility to monitor and encourage the protection and promotion of the human rights set out in the Convention. Countries that have agreed to undertake legal obligations under the Convention, including Canada, must provide regular reports to the Committee on how these rights are being implemented. The CRPD has provided this advice to countries, referred to as "States" and "State Parties" for the preparation of their reports:

> States should consider the reporting process, including the preparation of their reports, as a way to ensure compliance with their international obligations. Reports benefit from broad-based consultation and constructive engagement. States parties should encourage and facilitate the involvement of disabled persons, civil society organizations and NHRIs [National Human Rights Institutions] in the preparation of their reports.[35]

The CRPD, like other international bodies of this type will usually also invite reports from civil society organizations directly to broaden the information upon which it can base its assessment of a country's compliance with its international legal obligations. United Nation committees like the CRPD will carry out their monitoring role by examining all received reports and hearing testimony from State representatives and civil society organizations. It will then issue a report setting out its findings, including any concerns about violations or potential violations of rights and make recommendations to the State about how to protect and promote human rights. These findings and recommendations are referred to as "concluding observations." These UN committees can also take a proactive role by developing and publishing "general comments" on

[33] *Hughes v Canada (Elections Canada)*, 2010 CHRT 4 at paragraph 100.
[34] *Hughes v Canada (Elections Canada*), 2010 CHRT 4, at paragraph 51.
[35] https://www.ohchr.org/en/treaty-bodies/crpd/reporting-guidelines

the interpretation of the convention's provisions to assist countries in understanding their procedural and substantive obligations. In Canada, the Committee's concluding observations and general comments are not directly enforceable, but they have persuasive force in executive, administrative and judicial processes. For example, Canadian courts and tribunals do refer to these reports in their decisions.

In their article Brodsky, Day and Kelly comment on the effectiveness of this type of monitoring:

> Dialogic processes are regularly used by international human rights bodies that require state parties to report back on the steps they have taken to comply with their findings. It is a process that relies on dialogue and persuasion to achieve the appropriate remedy.
>
> There are distinct advantages to a dialogic approach. The parties may be in an ongoing relationship. Implementation may be complex and additional information may be required. Dialogue allows the parties to participate in finding a solution by providing further information. This allows both sides to be better informed and "own" the process. This increases the likelihood of a more effective remedy that will work for everyone in the long term.[36]

All of this contextual information, the legal decisions in this case, legal principles developed in related court decisions, the provisions of Interim Settlement Agreement, Canadian and international human rights monitoring practices, shape the approach that I take to my mandate as Expert Monitor.

My role is to provide a distinct level of review and accountability within the overarching supervisory structure provided by the Human Rights Commission. I provide an external and independent evaluation of the progress made by the Province in fulfilling its legal obligations under the Interim Settlement Agreement, which is a consent order approved by the Commission.

I seek to assist the Parties as they continue their collaborative work toward implementing the Human Rights Remedy. In particular, I am an additional, albeit passive, voice in this remedial dialogue. As I made clear in the section above on "keeping in mind all the people involved", while this dialogue is mainly shaped by the Province and the DRC, the voices of individuals with disabilities, their families and informal support networks, and the many people responsible for carrying out the remedy must also be taken into account. The individuals with disabilities who require social assistance are the solid core of this transformative process.

Remedying systemic discrimination requires processes and outcomes shaped by substantive equality principles. Evaluation and monitoring for compliance must also be carried out in relation to these legal norms.

The Human Rights Remedy requires the Province to change fundamentally the way it provides care and delivers supports to people with disabilities and their families and other supporters. At the centre of this change is the legal requirement to provide accommodative social assistance under the Province's legislative and regulatory regimes without delay. The provision of services

[36] At page 45.

must promote and respect the equal respect and dignity of individuals. This service provision must be administered in a non-discriminatory manner that accommodates the diverse needs of individuals at different life stages (children, youth, and adults) and different types of disabilities (including intellectual disabilities, long-term mental illness and/or with physical disabilities). Importantly, this includes the specific right to not be placed in an institution/congregate care facility or medical facility ("no new admissions" in residential settings of more than five beds).

Substantive equality norms include a recognition of procedural rights and the inextricable connection between process and outcome. In my review and analysis, I will be paying close attention to Provincial practices with respect to the following rights:

- the right of individuals to make their own decisions about services and supports (for example supported decision-making and individualized funding)
- the right of persons with lived experiences of disability to be consulted (first voice)
- their right to have a say in decision-making (co-production).

The Human Rights Remedy will require broader systemic change connected to the implementation of a transformed approach to the development and delivery of accommodative social assistance. This transformation will depend upon the successful promotion of a rights-respecting culture within all organizations involved in providing social services. This cultural shift requires addressing invidious stereotypes and negatives beliefs and by promoting positive images of and practices in interactions with people with disabilities. As the Interim Settlement Agreement recognizes, substantial efforts will be required to build systems capacity and community-based responsiveness to individuals with disabilities.

The Agreement provides a step-by-step timed plan for eliminating systemic discrimination. The rights of many people depend upon the Province fulfilling its legal obligations to get on track and stay on track in moving forward toward achieving substantive equality with and for people with disabilities throughout Nova Scotia.

5. Expert Monitor Assessment of Year One

5.1 General approach

In accordance with the Agreement, within 60 days of receiving an Annual Progress Report from the Province, the Expert Monitor is to provide all Parties with a Monitoring Report.

The Monitoring Report is to do six things. Firstly, to review and comment on the accuracy of the data provided by the Province with respect to the Agreement.

Secondly, with respect to the indicators, timeframes, targets and outcomes for the relevant year, and any adjustments or changes to these, review, and comment on whether the Province is complying.

Thirdly, if the Province is not in exact compliance, I am to assess whether there has been *"compliance in substance"* and assess the reasons given by the Province for the less than full-compliance.

The Agreement anticipates the possibility of adjustments and changes in measures used to implement requirements of the Remedy. Accordingly, I am to assess whether the Province has adequately considered and addressed all alternative measures; and assess whether these alternative measures are equally or more efficacious in achieving the outcomes. Compliance in substance means the outcome has been achieved but through another means than agreed upon by the Parties in the Interim Settlement Agreement.

Fourthly, where the Province is not in exact compliance or in compliance in substance with any provision, I am to assess whether the Province has made substantial progress toward achieving that provision of the Agreement and toward remedying the systemic discrimination.

Fifthly, the Province can justify its failure to comply with or make substantial progress with a provision by claiming that this failure is due to factors *"outside of its control."* To make this claim, the Province must show that it has considered alternative means to achieve compliance to avoid factors outside of its control. Where the Province makes this justification in its Progress Report, I am to assess whether the factors outside of its control are demonstrated in a manner consistent with the Agreement.

Finally, as Expert Monitor, I have the authority to make recommendations in two broad areas. On the accuracy and completeness of data provided by the Province, I can make any necessary recommendations to the Parties for further disclosure to monitor compliance and progress fully and properly with this Agreement. On continuing to make substantial progress, I can make recommendations as to steps the Province should take to ensure such progress continues.

I offer recommendations in this as well as in sections 6 and 7 of this report and provide a summary of all my recommendations in section 8.

5.2 Understanding exact compliance and compliance in substance

As noted earlier, *"exact compliance"* means the Province has complied in exact terms with an indicator, timeframe, target, or outcome as identified in Appendix A of the Agreement.

Exact compliance is a rigorous standard, one mutually agreed to by the Parties and legally binding under the Agreement. It is a standard fitting for human rights remedies designed to dismantle systemic discrimination against persons with disabilities. It is a recognition of the aspiration and scale of system change required within a five-year timeframe. To service providers, unions, facility operators and community partners, exact compliance signals a steadfast commitment to achieve transformations in the disability service sector. To many individuals and families, and their intimate networks of support and care, it offers not only hope but also a definite plan of action.

In reviewing and assessing the Annual Progress Report and the accompanying data provided by the Province, it was not always apparent or understandable whether the status of exact compliance, which the Province was using, applied to an indicator, timeframe, target, or outcome. A robust interpretation of the term exact compliance is that *all these elements* are met, for a given item to be in exact compliance. At times, however, the Province applies a milder and more flexible interpretation of compliance.

In assessing the Province's obligation to remedy the systemic discrimination, the term "compliance in substance" means the Province has accomplished the underlying purpose of an indicator, timeframe, target, or outcome (listed in Appendix A) by using **alternative measures**.

The Agreement indicates that choices about alternative measures are in terms of efficacy: will it be effective; and how well will it work to address the requirement. These alternative measures are to be equally or more efficacious than the original indicator, timeframe, target, or outcome. This raises some questions. What is the purpose of an agreed requirement and does the alternative measure serve this purpose? Are the reasons for the substitution well documented? As emphasized by the Court of Appeal and in the Board on Inquiry decisions, the focus must remain on remedying the systemic discrimination and providing substantive equality for persons with disabilities.

We can assess choices about alternative measures with another set of important considerations. These relate to opportunities for participation and relations of authority and accountability. The Parties may want to reflect on the following sorts of questions: Does an alternative measure alter who participates and has a voice in implementing a given remedy requirement? How might an alternative measure, as compared to the original indicator or target, affect the ways in which different people can exercise control over their own lives? Does the alternative measure promote supported-decision making, for example? These questions and considerations bear directly on a human rights compliant approach.

The Agreement was the result of a great deal of consultation and negotiation between the Parties and was deeply informed by the technical report. A unilateral decision to substitute requirements is not to be taken lightly. I therefore recommend that in cases where the Province is contemplating an alternative measure, which could materially alter the original terms of a remedy item, that the Province notify and consult with the DRC and adopt an alternative substantial measure only after best efforts to reach agreement.

5.3 Discerning substantial progress

Substantial progress has meaning in relation to the timeframe and the outcome described in Appendix D of the Agreement.

I found it less than straightforward to evaluate the term "substantial progress" to the status of changes and results regarding various requirements for Year One as set out in the progress reports. Many of the results the Province designates "substantial progress" requires qualifying language capable of distinguishing between degrees of "more or less" progress.

I attribute the latitude given to the term "substantial progress" by the Province to result from the lack of gradations for evaluating progress that is short of exact compliance or compliance in substance, but where it would be unfair, at this stage to decide on non-compliance.

In practical terms, the results described in the Province's *Annual Progress Report* are varying degrees and kinds of substantial progress. Given that the Parties and I are bound by the terms of the agreement, I have decided to apply the term "substantial progress" in a way that recognizes gradations. In other words, substantial progress encapsulates a spectrum of activities and results

on the way toward compliance. We need terms that convey the extent of progress made relative to each of the indicators, targets and outcomes set out in the Interim Settlement Agreement, relative to the three timeframes. We need to consider progress made within each reporting year relative to that year, relative to the outcomes required in each of the subsequent years and relative the ultimate outcomes required by March 31, 2028.

I propose to apply in the assessment of "substantial progress" as encompassing three standards, as follows:

- **Significant progress** refers to the Province making tangible improvements and advancements towards the intended outcomes, obtained to a **considerable degree** and with influential consequence.
- **Sufficient progress** refers to the Province making tangible improvements and advancements towards intended outcomes, realized to an **adequate degree** and effectiveness.
- **Slight progress** refers to the Province making modest tangible improvements and limited advancements towards intended outcomes, to a **minimal degree** and marginal in result. Things are more "in progress" than having "made progress."

My first two categories of substantial progress align with the way the Interim Settlement Agreement defines substantial progress. Sub-paragraph 6c. states "" 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. (Emphasis added).

Significant progress means that timely compliance is clearly within reach whereas *sufficient progress* means that timely progress is feasible but there is some doubt it is achievable within the timeframe.

On the other hand, *slight progress* recognizes that some steps taken but it is uncertain that the Province will be able to achieve timely compliance. In this first year of the implementation process, I regard slight progress as partial-compliance.

With respect to the indicators, timeframes, targets, and outcomes for this first year, I have employed these three sub-definitions of substantial progress in my analysis of the progress reports and supporting documentation provided by the Province. The DRC's submission has provided me with an important perspective and information to assist me in making my determination. Indicators, targets, and outcomes come in various forms with different histories and contexts. It is not surprising that progress also comes in various shapes and sizes. This is not to diminish in any way the legal commitment to strive for and attain exact compliance; rather, it is a practical tool for monitoring. The onus remains on the Province to demonstrate it has achieved exact compliance on each of the provisions and with a view to timely overall compliance and the remedying of systemic discrimination in the provision of social services to persons with disabilities.

I recognize that I have offered brief descriptions of significant, sufficient, and slight progress. Their meaning will be clarified through my application of them in this Monitoring Report. I also recognize that the Parties may wish to propose different terms and ways of understanding substantial progress on a going forward basis.

Making these kinds of distinctions about substantial progress is useful for the processes of implementing the Remedy and monitoring implementation. One benefit is to yield assessments of the remedy requirements, which are more precise and fit empirically with the supporting documentation, where provided. A second use is to provide the Province with a refined way to classify specific results in subsequent progress reports, enhancing transparency and accountability. A third use is to advise discussions by the Parties and their decisions, by offering areas for priority attention and mitigation of risks in moving towards remedying the discrimination.

In any event, I recommend that the Parties should work together to clarify and agree upon the character and meaning of "substantial progress." This could involve the adoption of one or more terms, in conjunction with "substantial progress" that represent partial degrees of progress.

5.4 Overall findings

Fundamental reforms are underway, but progress is slower and more uneven than called for in the first two periods of the five-year remedial plan. I appreciate that challenges and opportunities have and will arise, both expected and unanticipated. Groundbreaking changes are apparent in certain spots of the policy and practice landscape and less so in many other areas.

First, I will offer some general observations on the Province's own assessment. The extent of exact compliance, as judged by the Province, varies considerably between the interim and the annual progress reports. In the *Interim Report*, 93 per cent of the items were in exact compliance, compared to 48 per cent in the *Annual Progress Report*.

On items where the Province has reported compliance in substance, for some the Province has not tangibly demonstrated that the remedy item is still attainable by the specified period.

In both the *Interim Progress Report* and *Annual Progress Report*, the Province did not invoke the provision that factors outside of their control resulted in or were responsible for partial-compliance.

This is significant for three reasons. First, it represents a recognition by the Province that it has the capacity to implement the requirements of the Interim Settlement Agreement. Secondly, it suggests that the results reported for this first-year result from intentional efforts and decisions by officials of the provincial government. Thirdly, it implies an acknowledgement that the Province can do more about instances of less than fully compliant through renewed efforts, alternative measures, or other strategies under the control of the Province. I conclude this bodes well for the full implementation of the remedy over the course of the five-year plan despite the deficiencies in the first two periods.

I now turn to my assessment. Across the 90 requirements spanning the two reports, I assessed that 17 provisions were in "exact compliance," 2 items in "compliance in substance" and 71 of some gradation of "substantial progress." Details of my assessments of each requirement are in Annexes A and B to this report.

Table 2 provides a comparative overview of the status assessments by the Province and the Expert Monitor.

Table 2: Comparing assessments of the remedy results, 2023-24

Items (90)	Status reported by the Province	Status assessed by the Expert Monitor
Exact compliance	53	17
Compliance in substance	4	2
Substantial progress	33	28 Significant progress = 5 Sufficient progress = 23
Slight progress		43
Total	90	90

Notable differences in the assessments are (i) the far fewer requirements I have deemed to be "exact compliance," and (ii) the large number of items I have determined to be less than substantial progress, captured by the term "slight progress," which, of course, the Province did not employ. Similarities in the two sets of evaluation are the small number of items deemed "compliance in substance" and the comparable number of items determined to be "substantial progress." The difference between the Province and my assessment on compliance is important. It means the Province should report in detail on the ways and means employed to implement specific requirements.

The overall message from this comparison is this: in contrast to the Province's presentation on results, most items are not in exact compliance with the Remedy plan. I find that a sizeable share of the requirements in this reporting period attained minimal or marginal results. There is important work to do to ensure that the remedy get on track in Year Two.

5.5 Specific observations

This part offers comments on the two periods under review: February 1, 2023, to June 30, 2023, and April 1, 2023, to March 31, 2024. The Interim Progress Report covers the first period, and the Annual Progress Report covers the second.

5.5.1 The Interim Progress Report, January 15, 2024

The Interim Progress Report, which reports on activities for the period February through June 2023, came available on January 15, 2024.[37]

On March 20, 2024, the DRC gave notice they would be addressing the adequacy of the Province's Interim Progress Report in a subsequent submission.

On May 31, 2024, I received a letter from the Director of the Legal Services Division, Department of Justice, regarding the Interim Progress Report and to provide me with the Province's perspective on the adequacy of that Report. The Director wrote:

> As a preliminary matter, I want to acknowledge that the Province misinterpreted the required scope of the report. On reflection, it is clear that the first Interim Progress Report should have covered progress with respect to both the "February-June 2023" targets *and* the anticipated "Year 1" targets. In reality, the Interim Progress Report focused only on the "February-June 2023" targets. This was an error which will not be repeated in future reports, which will clearly focus on the targets for the relevant year.

The Director went to state that in the Province's view, the Interim Progress Report reflected the obligations of the Settlement Agreement.

> The Agreement clearly contemplates a robust Annual Progress Report, which includes "a substantial assessment of the Province's compliance and progress" (s.15(b).). That is what is being provided today. The Interim Progress Report under s.15(a), in contrast, is intended to be less robust, and more in the nature of a checkpoint. The Interim Progress Report includes:
>
> - Data disclosure which the parties have agreed will be in a specific form of report (Appendix B) (s.15(a)(i).)
> - Documents which are necessary in order to demonstrate compliance at that interim stage (s.15(a)(ii).)
> - An identification of any area where the Province anticipates not being in exact compliance (s.15(a)(iii).)
>
> It should be clear that this is a lighter requirement than the Annual Progress Report.

The DRC, in their submission dated June 28, 2024, asks that the Expert Monitor "provide guidance to the Parties regarding the requirements for this Report." They add that, "the DRC and the Province appear to have different interpretations of the Province's obligations with respect to these Reports."[38]

One important function of Interim Reports, as the DRC sees them, is as "an early warning system for the parties and the public" indicating when and how exact compliance is not being realized for an indicator in the remedy. The Province, in their statement quoted above, sees the Interim

[37] Available at https://humanrights.novascotia.ca/remedy#progress
[38] Disability Rights Coalition Submission, June 28, 2024, p. 19.

Report as "in the nature of a checkpoint." In my view, these are complementary images of the Interim Report. Both point to the need for verification through an evidence-based examination or inspection, and for the importance of communicating information on actual or potential risks of partial-compliance or other challenges.

I am mindful that this remedy is about tackling systemic discrimination, and that the Court of Appeal decision, citing earlier Supreme Court of Canada decisions, said remedying systemic discrimination requires a robust approach. To attain the elimination of discriminatory practices requires a coherent and sustained approach, as the 2023 Board of Inquiry decision noted. I am also mindful that continued collaboration between the parties will aid the implementation process. Full, frank, and timely reporting will assist both the process and the attainment of the jointly established outcomes and the steps along the way.

One way to distinguish the requirements of the interim versus annual report is the amount of narrative description required. In my opinion, the interim report is about producing the data and documents and providing a type of red flag about potential delays or risk analysis of year-to-date delays and assessment of how they can be remedied.

I therefore strongly recommend that the Province produce robust Interim Progress Reports each year that include all the necessary documents to demonstrate exact compliance and, where less than full compliance exists, to provide meaningful explanations. This seems especially important given apparent delays in making progress on many items in the first year. I understand that reporting takes time and human resources, but the production of a robust Interim Report should speed up preparing the Annual Progress Report. Importantly, it will also provide an opportunity for the parties to find joint solutions to obstacles and delays.

I reviewed the Province's *Interim Progress Report* prior to receiving the DRC's June 28th submission and then again taking into consideration the DRC's extensive comments and analysis. Annex A of this *Monitoring Report* provides specific details and additional information on my evaluation of each of the 21 requirements.[39]

Table 3 compares the status assessments by the Province and myself as Expert Monitor, for February 1 to June 30, 2023, on the 21 remedy requirements for that period.

Table 3: Interim Progress Report: February 1, 2023 – June 30, 2023

Items (21)	Status reported by the Province	Status assessed by the Expert Monitor
Exact compliance	19.5	5
Compliance in substance	1	--
Substantial progress	0.5	16

[39] An observation on the choice of terms. The Province uses the term "item" and the Disability Rights Coalition uses the term "indicator." I prefer the term "requirement" or" remedy requirement" to emphasize that this is a human rights remedy with legal obligations.

Of the 21 items reported for that period, the Province presents an account of exact compliance for 19.5 of the 21 items.

In reviewing this report, I found the following general deficiencies:

- Information provided on actions or processes underway that have taken place or will take place after the period (e.g., requirement 3, commence efforts to transfer Social Assistance intake function to the Disability Supports Program; and requirement 11, continue with urgent new services aligned with institutional closure, shared services and Independent Living Supports places).
- Certain activities intended to be operational, which were not (e.g., requirement 19, Seniors and Long-Term Care and Disability Support Program work on developing a Individualized Funding program).
- Insufficient documentation (such as the reliance on draft reports) or no supporting documentation on several indicators (e.g., requirements 5, implement intensive technical support and program design; 10, commence priority new services such as Emergency Response team; 14, Harbourside closure and relocation; and 20, review and align current DSP work on developing enhanced supports for children).

Considering these deficiencies and following on my overall analysis (see Annex A), I determined that the Province was in exact compliance with about one-quarter of the items they had identified (5 compared to 19.5).

Given the Province's positive self-rating for the 21 requirements under review (a 93 per cent score on exact compliance) no commentary was presumably deemed necessary to give reasons for the results. In an analogous manner, the Province did not claim that circumstances were outside their control.

With the closure of the Harbourside facility, there has been notable success in placing 21 of the 22 residents in local communities. One participant has returned to a facility because of the absence of services needed by this individual in their rural area. This seems understandable in the short term. Looking ahead it is important to know what plans the Province has in place at a local or regional level to ensure this individual does not remain in a facility and has an effective transition to a suitable housing option with supports.

Establishing a working group (DSP, IWK, Office of Addictions and Mental Health, Nova Scotia Health – NSH), was the one Agreement item for the February-June 2023 period, which the Province reported the status as compliance in substance. In the *Interim Progress Report*, the Province explained, "a formal working group was not established, but many initiatives [are] underway to developed share purpose and language on mandates and partnering on complex cases." The alternative measures being used, which the Province says are equally or more efficacious, include creating the position of Executive Deputy Minister Communities and Social Impact and re-establishing the Remedy Roundtable with expanded representation. Other

measures listed include holding a one-day workshop in July 2023 (outside the period for the Report) and initiating a joint procurement process.

I will make three comments about the substitution of this alternative measure. First, the Province does not explain how these activities are equally or more efficacious than the original remedy item of a working group. Second, the Province does not report on whether it formally consulted with the DRC in advance on this or other items where the Province has adopted alternative measures. Third, without receiving further information about whether the Province consulted with DRC on this specific item, I cannot agree that this is compliance in substance. It may not be necessary for the Province to consult with the DRC on every alternative measure, but this is a weighty decision dealing with matters of governance.

Rather than an effective checkpoint or early warning system, this *Interim Progress Report* does not provide all the necessary relevant information and directs attention to activities external to the timeframe and even to the Remedy agreement.[40]

5.5.2 The Annual Progress Report, April 1, 2023 – March 31, 2024

The *Annual Progress Report* submitted by the Executive Director of the Disability Supports Program, for the April 1, 2023, to March 31, 2024, year, was published on May 31, 2024.[41]

Table 4 compares the assessments of the Province and the Expert Monitor of the 69 remedy requirements for the period April 1, 2023 to March 31, 2024. Information on my evaluation of each of the requirements for this period are in Annex B of this Monitoring Report.

Table 4: Annual Progress Report, April 30, 2023 - March 31, 2024

Items (69)	Status reported by the Province	Status assessed by the Expert Monitor
Exact compliance	33.5	12
Compliance in substance	3	2
Substantial progress	32.5	55

I only agree with one-third of the Province's self-assessment on being in exact compliance. I disagree with the Province's assessments with respect to the following requirements:

- regional closure strategy developed with capacity building (8)
- needs assessment with supported decision-making supports (21)
- individualization of current funding programs (22)

[40] An example of the latter is mentioning the Disability Supplement, which took effect April 2024 and is separate from the Remedy.
[41] Available at https://humanrights.novascotia.ca/remedy#progress

- implement new Independent Living Supports plus and Flex Independent expanded programs (31)
- planning model for support needs (37)
- removing waitlists and establishing a human rights compliant client pathway (41)
- continue review of Report and recommendations, including regional leadership, first voice consultation and co-production (49)
- Government Disability Roundtable and Ministerial/Cabinet reporting (50)
- appoint Clinical Lead to commence design and planning for Regional Teams (51)
- Decide best method to enhance Supported Decision-Making practice (57)
- Develop leadership, innovation and training panel and plan (61).

I evaluated the status of these remedy requirements as either sufficient progress or slight progress.[42] My main reasons for these assessments are that rather than meeting stated timelines and/or targets, the status of these requirements involved delays or were under development or in progress. Annex B provides detailed reasons for the differences in my assessments relative to those made by the Province.

A related issue is the absence of specific and measurable indicators to assess certain results. Requirement 41, for example, states, "Continue work to remove waitlist for eligible applicants and participants by establishing a human rights compliant client pathway that ensures timely access to accommodative assistance." The Province reports a 13.3 per cent decrease in the number of DSP eligible participants on the Service Request List over baseline. This is a decrease from 1,834 to 1,590 or 244 fewer participants on the waitlist as of March 31, 2023.[43] This is progress, yet is it exact compliance? Would a decrease of 3 per cent also amount to exact compliance? The DRC notes that in the first three months of 2024 there was a slight increase of participants on the waitlist.[44] From the documentation provided for this requirement, it is not obvious to what extent a human rights compliant pathway is in place, the extent it is operational, nor its contribution to this decrease in the waitlist.

On compliance in substance, I conclude that for requirements the Province depicts as compliance in substance, documentation on the required explanation for changes in measures was insufficient. Take requirement 60 as an example, which called for "Tender/appointment Leadership and Capability Panel and other key services infrastructure." According to the Province, "It was determined that establishment of a formal Capability Panel was not required to access supporting expertise. Multiple experts providing technical leadership on Remedy projects." The Province lists the names of eight experts. The supporting documentation includes short bios of these experts[45] and a confidential report dated May 2024 (outside the reporting

[42] Specifically, I assessed four of these requirements as attaining sufficient progress and seven as slight progress. I assessed none of the results for these requirements as significant progress. See Annex B for further information.
[43] See *Annual Progress Report*, Appendix B: Remedy Metrics Report. p. 1.
[44] DRC Submission, June 28, 2024, "DRC Comments on Selected Indicators: Year 1 (April 1, 2023 – March 30, 2024)," p. 12. The number of participants on the waitlist went from 1585 as of December 31, 2023, to 1590 as of March 31, 2024. *Annual Progress Report*, Appendix B: Remedy Metrics Report. p. 1.
[45] Public document 79.

period) for a training plan scheduled later in the summer of 2024.[46] No documentation offers even a summary of the advice given by these experts or of how officials are processing and using this expert advice. For a number of requirements, the DRC notes, "the Province failed to explain and justify the areas in which they are not in exact compliance."[47]

I also found several requirements expressed in general terms without specific and measurable elements, making indicators more challenging, and likely inviting differences of perspectives between the Parties. Examples are requirements

13. "Strengthen emergency response capacity;"

21. "Develop needs assessment that includes supported decision-making;"

22. "Begin individualization of current funding programs;" and

30. "Commence early focus on Supported Decision-Making practice enhancement."

5.5.3 A closer look at substantial progress

For the overall 90 items in Year One the Province assessed the compliance status of 33 requirements as substantial progress. I have determined that 71 requirements are in substantial progress. By either count, a sizable portion of the remedy requirements, fall into this category.

I found that the Province applied the level of compliance as including a range of standards. Earlier, I proposed three terms for distinguishing between conditions of "more or less" progress, namely, substantial progress, sufficient progress, and slight progress. Using these terms to assess the status of outcomes for substantial progress in the first year yields the results summarized in Table 5.

Table 5: Discerning substantial progress in Year 1 remedy requirements

Three standards	Interim Progress Report	Annual Progress Report	Totals #	% share (n=71)
Significant Progress	3	2	5	7.0
Sufficient Progress	7	16	23	32.4
Slight Progress	5	37	43	60.6
Totals	15	55	71	100.0

Note: Details are in Annexes A and B of this report

[46] Confidential report 27.
[47] DRC Submission June 28, 2024, p. 2.

I assessed the Province to have made **significant progress on five requirements**. That is, tangible improvements and adequate advancements towards the intended outcomes, obtained to a considerable degree.

I determined the Province made **sufficient progress on 23 requirements** -- tangible improvements and advancements towards intended outcomes, realized to an adequate degree and effectiveness; perhaps not always within the 12-month period, though enough that it is expected to remedy the discrimination in the five-year plan.

The Province attained **slight progress on 43 requirements** of the Remedy. Even within this sub-category, gradations were evident. Some results were particularly slight with partial or no tangible results, or with significant delays in implementation.[48]

These results suggest it is worthwhile to analyse the general category of substantial progress by distinguishing degrees of progress in remedying systemic discrimination in the provision of social services to persons with disabilities in Nova Scotia.

These results also indicate, and support "significant concerns" raised by the DRC about the timelines and substance of the Province's work on the Remedy.[49]

5.5.4 Comments on major themes

In this part, I present commentary on five major themes from Year One. The themes are first voice, supported decision-making, deinstitutionalization, homeshare, and tenders and procuring services. These themes all relate to disability system capacity and to community-based supports and services. All concern creating conditions for individualized solutions and reflect the fact that remedy requirements are interdependent in various direct and indirect ways. This discussion aims to make evident many of those interdependencies and, therefore, the magnified consequences of delay in implementation of any one requirement.

5.5.4.1 First voice participation opportunities

First voice refers to individuals with lived experience of disability, having opportunities for participation in consultation and the co-production of solutions. This is an expression of "nothing about us, without us," a longstanding claim and aspiration of disability advocates and organizations.

The Agreement specifically mentions first voice in item 49, which says, "Province to continue its review of Report and recommendations including regional leadership, first voice consultation and co-production." This relates closely to other requirements on the design of new governance structures, such as regional hubs (item 48) and planning for regional teams (item 51).

[48] For requirement 3 ("Transfer of Disability Support Program (DSP) current model care coordination functions to Local Area Coordination and Intensive Planning Coordination by regions") and requirement 45 ("Develop new policy, operational policies and procedures including triage, local area coordination, intensive planning, and emergency response and referrals"), delays in implementation are eight months into the second year of the Remedy.

[49] DRC Submission, June 28, 2024, p. 2.

In the first *Annual Progress Report*, the information on strengthened governance structures and collaboration contains no specific mention of first voice consultation or co-production. On building leadership and capacity, the *Annual Progress Report* does reference that for the Regional Hub training plan, that plan "includes significant involvement of first voice in the delivery."[50] Along with this specific first voice involvement, the Province engaged with a variety of experts in the disability field and with families around the implementation of the Remedy recommendations.

On "first voice consultations and a lens for co-production," the *Annual Progress Report* lists first voice consultations on individualized funding, workforce needs, a transition study of the Harbourside closure, and the recruitment and assessment process for the new Director of Allied Health position.[51] These have the merit of being concrete and specific activities. They lend themselves to further information on, and evaluation by the individuals and groups participating, for drawing lessons about the nature of their participation, the supports provided to make it work, and its meaning to the participants.

In contrast, consider the statement that the Disability Support Program's Advisory Committee, of which 50 per cent of the members are first voice, continues to advise on Remedy implementation.[52] This acknowledges an important principle of representation by people with disabilities, yet is too general to enable an assessment of compliance. The supporting document on the DSP Advisory Committee is thin on content. It is the terms of reference and a meeting schedule from August 2023 to May 2024. There are no agendas, no meeting materials, no minutes of discussions nor of decisions and recommendations.[53] These gaps in data constrain my ability to assess the Advisory Committee's role in exercising meaningful first voice participation and contributing to disability system capacity.

In turn, this raises the question of other actual or potential consultation opportunities (or not) with respect to policy and legislative reviews of the *Homes for Special Care Act*, the *Adult Capacity and Decision-Making Act* review, and the national building code review. Other documentation on managing the portfolio of changes, describes the participation of first voice representatives as optional. The portfolio model is a centralized approach the DSP is taking to manage the projects, programs and other initiatives associated with the Remedy. "Each portfolio *may have* … First Voice Rep(s)."[54]

I recommend that the Province work toward developing qualitative and/or quantitative indicators for monitoring and evaluating increased first voice participation and collaboration among partners.

This could be measured through various methods: reporting numbers of participants and documenting the decisions and outcomes of meetings, using focus groups or feedback surveys to

[50] *Annual Progress Report*, p. 20.
[51] Ibid. p. 21.
[52] Ibid. p. 21.
[53] Public document 74.
[54] Public document 91, p. 5. Emphasis added.

determine experiences about specific consultations or co-production processes associated, for example, with a program redesign or local planning activity.

Likewise, metrics can be developed for the "family voices" of parents, guardians, siblings and significant others.[55]

5.5.4.2 Supported decision-making

Supported decision-making is an important human right for persons with disabilities, a recognition of inherent dignity and intrinsic capacity.[56] "Supported decision-making provides the supports and accommodates an individual needs to express their decisions, will and preferences. These supports may be human support, technical aids/devices to assist with communications or other forms of support."[57]

Four requirements in the Agreement directly touch on supported decision-making.

- "Develop needs assessment that includes supported decision-making supports" (21).
- "Commence early focus on Supported Decision-Making practice enhancement" (30).
- "Decide best methods for … enhancing Supported Decision-Making practice, including built into planning and needs assessment re relational support" (57).
- "Policy engagement in current review of ACDMA [*Adult Capacity and Decision-Making Act*] Act Review" (58).

For these requirements, the Province rated their status as exact compliance.

I found, however, that for some the documentation was in draft form and that actual training was in development, not implemented in this reporting period.[58] Moreover, the review of the ACDMA finished in 2022.[59] The *Annual Progress Report* provided no further documentation,

[55] In their "Family Leadership Proposal" to the Province, Inclusion Nova Scotia has proposed metrics for assessing results. For example,

- Developing and implementing Remedy and Inclusion training/information sessions in each county of the Nova Scotia mainland.
- Establishing local family groups/committees in each regional hub.
- Supporting the family leadership committee in implementing one provincial event each quarter.
- Growing Inclusion Nova Scotia family membership list across the province by 20%.
- Provide PATH facilitation to 10 families, 2 per region. See Public document 83, p. 3.

[56] Article 12 of the United Nations Convention on the Rights of Persons with Disabilities, which Canada ratified in 2010, says, "States Parties shall recognize that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life." Moreover, States Parties are to "take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity."

[57] Public document 33, p. 7. A related practice is person directed planning. In Nova Scotia, this is a service contracted by the Department of Community Services with community organizations "that offers individuals with disabilities the chance to work one-on-one with a facilitator to discover their values, dreams and goals and support to connect to community resources that align with their goals." (p. 6). In principle, those resources could include a combination of mainstream public services and local community supports, individualized services, and help from informal networks of care.

[58] *Annual Progress Report*, p. 18.

[59] See Public document 97.

which might indicate more recent actions by officials in the Department of Community Services or participation by first voice individuals and groups in the province. One of the recommendations from that ACDMA review said, "Nova Scotia should … examine options for recognizing formal supported decision-making arrangements in legislation."[60] What is the status of this recommendation, and how does it fit with the Province's policy and legislative agenda for the Remedy?

For many adults with disabilities, supported-decision-making can "enable their equal right to decision-making autonomy as members of the community to the greatest extent possible."[61] Supported decision-making is not just a technique and process. It is a rights perspective applicable across many domains of the Remedy – individualized planning and coordination support, needs assessment and resource allocation, regional closure strategy, community living facilitation, and individualized funding.

I recommend that the Province examine options for recognizing formal supported decision-making arrangements in legislation. Some Canadian provinces and territories have adopted such laws and others are actively considering it.[62] I make this proposal recognizing that the provisions in the Interim Settlement Agreement cannot require the legislature to act. However, there is, I believe, a leadership role for the executive branch of the Nova Scotia government, including the public service on this fundamental human right.

5.5.4.3 Deinstitutionalization

As the Technical Report declares, "Closing institutions is central to respecting the rights of persons with disabilities to live in community and is central to understanding the findings of systemic discrimination in NS."

In the February to June 2023 *Interim Progress Report* five requirements deal directly on closing institutions.

- "Develop written policy and process to ensure no new congregate or institutional facilities are established for persons with disabilities" (7).
- "Commence priority new services such as the Emergency Response team to avoid new institutional admissions and support persons with disabilities in their community of choice. A) In particular, the Emergency Response team is required to enable a set date for firm prohibition on admission to institutions and LTC facilities" (10).
- "DCS/DSP to continue with urgent new services that are aligned with the Remedy such as: a) Institutional closure, b) development of new services that are aligned with the Remedy such as Shared Services, and new ILS places" (11).

[60] Ibid, Recommendation 26, p. 7.
[61] Ibid, p. 4.
[62] British Columbia, *Representation Agreement Act*, RSBC 1996, c 405; Manitoba, *Vulnerable Persons Living with a Mental Disability Act*, CCSM c V90; Yukon, *Decision-Making Support and Protection to Adults Act*, SY 2003, c 21. 5; Alberta, *Adult Guardianship and Trusteeship Act*, SA 2008, c A-4.2. 6; Saskatchewan, *Adult Guardianship and Co-decision-making Act*, SS 2000, c A-5.3.

- "Establish "no new admissions" policy once Emergency response capability in place" (13).
- "Harbourside closure completed and relocation of all those people who resided at Harbourside to their community of choice" (14).

For all these requirements, the Province rated their status as exact compliance.

The DRC offers a different assessment. Aside from the Harbourside closure, the DRC observes that actions related to deinstitutionalization did not take place within the February-June 2023 period. The written policy on no new congregate of institutional facilities for persons with disabilities was completed in January 2024. Priority new services to avoid institutional admissions and support individuals in their preferred community did not commence during this period. Strategy documents on facility closures and transitions date from April 2024. No emergency response capability was in place and the "no new admissions" policy dates from May 2024.

The DRC also expresses concerns over the nature of the outreach to Long Term Care (LTC) and nursing home residents under the age of 65 to gauge their interest in community-based living options. No participants in LTC moved into community in this period or even by the end of Year 1. The plan on Shared Services is for a provincial rollout by March 2026, of 200 people living in community.[63] This wide gap between the current state and the target requirement, which is due in less than two years, highlights the necessity on the Province to redouble their efforts and get back on track.

In the *Annual Progress Report*, the following twelve requirements directly address matters of deinstitutionalization:

- "New planning staff appointed and Institutional Closure teams established" (7).
- "" Regional Closure Strategy" developed with facility priority, timelines, capacity building and lifestyle enhancement…" (8).
- "Recruitment and training of 4 Regional Closure Project Leads and 4 Regional Community Capacity Developers" (9).
- "Community Capacity Developers commence, initial training" (10).
- "Regional Closure Project Leads commence (possibly from existing Care Coordination)" (11).
- "Institutional Closures Province-wide Closure single central point of leadership established" (12).
- "Strengthen emergency response capacity" (13).
- "Approve and implement on a priority basis an emergency response strategy and Emergency Response Team: a) Provide enhanced resources necessary to implement strategy; b) Emergency Response Team to be 50% operational" (14).

[63] Public document 48, pp. 5-6. This program is for people with severe physical disabilities who do not require one to one, 24/7 supports.

- "Province to set dates for policy for firm prohibitions on any new admissions ("No new admission policy") to the following DSP funded facilities: RRC, ARC, RCF, Group Homes and Developmental Residences" (15).
- "Province implements policy for firm prohibitions on any new admissions ("No new admission policy") to the following DSP funded facilities: RRC, ARC, RCF, Group Homes and Developmental Residences" (16).
- "Work with SLTC and review and revise policy on admissions to LTC (for young people) and ensure no new admissions to LTC occur due to DSP failure to provide appropriate community supports" (17).
- "Coordinate with facilities to begin planning for staff redeployment" (18).

For these requirements concerning deinstitutionalization, the Province reported exact compliance on four (8, 12, 15 and 18); compliance in substance on one (17); and substantial progress on seven (7, 9, 10, 11, 13, 14 and 16).

In their submission of June 28, 2024, the DRC commented critically on several of these requirements. Their concerns centre on missed timelines and delayed implementation of fundamental actions.

The DRC points to the risk of "knock-on effects." That is, the potential of delays in meeting one requirement adversely affecting other requirements and outcomes. As the DRC describes this risk:

> The delay in hiring the Director of Allied Health Support (aka Clinical Lead) significantly impacted the operational capacity of the Crisis Prevention and Community Response Strategy (aka Emergency Response Teams). This, in turn, has led to the Province missing the deadline to adopt and implement its 'no new admissions' policy. This means that persons with disabilities will continue to be subject to damaging institutionalization – potentially, for several years.[64]

Annex B details the specifics of my assessment of this bundle of requirements on deinstitutionalization. Here I will summarize that I found exact compliance on two items (12 and 18); sufficient progress on one (15); and slight progress on the rest (7, 8, 9, 10, 11, 13, 14, 16 and 17).

For progress so modest, on reforms so central to the Remedy, this is a somber assessment.

I therefore strongly urge that the Province explain and demonstrate how it will achieve these key requirements, and meet their obligations on deinstitutionalization, within the five-year period.

[64] DRC Submissions, June 28, 2024, "DRC Comments on Selected Indicator: February-June 2023," p. 4. The DRC expresses this concern in stronger language in "DRC Comments on Selected Indicators: Year 1 (April 1, 2023-March 30, 2024), p. 3.

5.5.4.4 Homeshare

Homeshare or home sharing[65] is one of new ways in Nova Scotia of supporting individuals with disabilities by expanding housing options to live in local communities as the closing of institutions occurs across the province.[66] The Province defines homeshare as "a program or arrangement where community members [hosts] share their home and provide support to individuals with disabilities who choose to live with them."[67] Moreover, "Hosts are paid to provide support and/or care."[68]

Two requirements in the Agreement discuss homeshare:

- "Commence new policy development for Homeshare expansion" (item 32).
- "New Homeshare options (n=50 in community of choice" (item 39).

On the first of these, the *Annual Progress Report* describes the status as exact compliance, explaining simply that, "program design is underway through the Program Design Project."[69] The intent is to move from a governance model of government-led coordinating and delivery of home sharing (the current approach in Nova Scotia) to an agency-led delivery model as operates in some other provinces.[70] What the supporting documentation shows is underway is a series of six workshops on program design for home sharing through the second year. The first workshop took place on April 25, 2024.[71] Preparatory work began in the first year, such as planning the workshop series and the larger program design project.[72]

If policy development includes information gathering from other jurisdictions in Canada and educating staff, then some such work started. If we understand policy development as launching change in governance and delivery, then progress to date is insufficient, making it difficult to say this item is fully on track. Changes to community living options will take two or three years to implement.[73]

On the second requirement, the Province reports substantial progress, even though the accompanying remedy metrics report shows that, as of March 31, 2024, there are no participants in this program.[74] This is a striking example of the how the term substantial progress stretches beyond an understood meaning. As the DRC notes in their submission, "the Province made no

[65] The Settlement Agreement documents use the term homeshare, while documents provided with the *Annual Progress Report*, use the term home share or home sharing.
[66] Public document 30, pp. 4-5 and 15.
[67] Public document 33, p. 4.
[68] Public document 69, p. 8.
[69] *Annual Progress Report*, p. 15.
[70] Ibid. p. 19. In Nova Scotia, the current model is the Alternate Family Support Program. In other provinces, examples of agency-led governance models for home sharing are British Columbia, Manitoba, Ontario and Saskatchewan.
[71] Public document 69.
[72] Public document 64. See also public document 3, pp. 10-15, on program design for home sharing.
[73] Public document 3, p. 15 and public document 64, pp. 7-8.
[74] *Annual Progress Report*, Appendix B: Remedy Metrics Report, p. 1.

effort to provide reasons for its non-compliance let alone provided an explanation as to what measures it is planning on taking to make up for this non-compliance."[75]

In the Remedy, the five-year plan and targets for homeshare places in community of choice are as follows:

- Year 1: Create a home share option (replacing the Alternate Family Support Program[76]) and establish 50 homeshare places.
- Year 2: Increase of 50 new places by region (n=50) for a total 240
- Year 3: 100 new homeshare options added for a total 340.
- Year 4: another 100 new homeshare options added.
- Year 5: 60 new options allocated for a total 500 by June 2027.[77]

The schedule of continual yearly expansions underscores the significance of no homeshare places established in this first year. Targets for the second and subsequent years further highlight the risks to successful transition of about 400 residents in Adult Residential and Regional Rehabilitation Centres to community-based options over the five years.[78] Home share is one important part of this transition.

Recognizing the need for concerted action on home share places in communities of choice, I recommend that the next Interim Progress Report, January 2025, include a detailed account of what steps the Province has taken to get the plans for home share back on track.

5.5.4.5 Tenders and procuring services

To build capacity and design new programs and delivery systems, the Province naturally relies in certain cases on procuring the services of consultants and other experts for technical advice, professional experience and innovative ideas.

In the *Interim Progress Report*, requirement 19 concerns the development of consistent structures for Individualized Funding programs between the Disability Support Program and Seniors and Long Term Care. To do this work, a request for proposals went out for advice on designing an evaluation and on facilitating stakeholder engagements on IF programming. As this was a requirement expressed in general language, I assessed this work as sufficient progress (see Annex A).

In assessing the *Annual Progress Report*, five provisions deal with processes of tenders and the procurement of services. I found that the results for most of these provisions are inadequate, characterized by delays and inactions, thus meeting a standard of slight progress. For requirement 53, no tender process has commenced for DSP multidisciplinary teams. For

[75] DRC Submission, June 28, 2024, DRC Comments on Selected Indicators: Year1 (April 1, 2023-March 30, 2024). p. 12.
[76] "Alternate Family Support (AFS) provides an approved, private family home, where support is provided for up to two persons who are not related to the AFS provider. Participants may receive varying levels of support with activities of daily living, and routine home and community activities." Public Document 33, p. 3.
[77] Public document 69, p. 10.
[78] Public document 30, pp. 5-7 and 15. Also, see public documents 31, 37, 38, 39 and 40.

requirements 54 and 55, no new mental health proposals were out for tender or awarded for new program delivery starting April 1, 2024. On both these items, the Province claims substantial progress. However, as the DRC observes about item 55, "The Province's response indicates, on its own terms, that it is still not close to compliance with this one."[79]

Lastly, requirement 60 calls for the tender/appointment of a leadership and capability panel and other key services/infrastructure. The Province decided not to establish a formal capability panel, instead procuring "supporting expertise" through service contracts. The Province deems this to be compliance in substance While I have accepted this designation, I remain uncertain, due to the limited documentation provided, as to how this is the equivalent of exact compliance by other means.

Seeing these delays in procuring services to implement the Remedy requirements, I recommend that the next Interim Progress Report, January 2025, include a detailed account of what steps the Province has taken to get procurement planning and management practices and timely decision-making back on track.

6. What is next?

As the parties implement and monitor this historic human rights remedy, we are all learning. In this section, I share some of key lessons of my own from this first year on reporting and related recommendations, and then offer some observations in looking forward to the second year.

6.1 Reporting going forward

In reading more than 100 documents, I found, inevitably in this first year, gaps in the consistency of presentation and in the completeness of information. Moreover, as indicated earlier, for items not in "exact compliance" I found unevenness in whether explanations and plans were provided, as per the Agreement.

To comply with reporting obligations of the Order, I strongly recommend the Province provide consistently across all items and particularly for any not in exact compliance, reasons for the less than full-compliance, the measures the Province plans to implement, and when they plan to do so to ensure compliance within the timeframe. Going forward, the forms could have an agreed upon template with these reporting requirements included.

Compliance is multidimensional. The Agreement recognizes this in the terms developed for monitoring progress. Compliance begins with an awareness of the requirements and the overall remedy. Work by the Province on communications in the first year was important to do and, I would suggest, needs to continue throughout the full five years of the remedy.

Effective change management relies on effective learning reinforced by continual messaging. Although the content of messages, their various formats, and target audiences may well evolve, the basic imperative to inform and educate will be ongoing. From awareness and dialogue comes

[79] DRC Submission, June 28, 2024, DRC Comments on Selected Indicators: Year 1 (April 1, 2023-March 30, 2024), p. 16.

acceptance and a readiness to embrace changes. Moving forward with actions follows, in alignment with established indicators and targets, at the proper time achieving the outcomes of full inclusion in preferred communities.

At times, the Province provided as evidence supporting documents that were published after the timeframe of Year One and/or referred to events that would be taking place in Year Two. Some such events are six or eight months into the second year of the Remedy.[80]

To enhance transparency and accountability, I recommend the Province ensure for future Interim Progress Reports and Annual Progress Reports that all supporting documents are dated, acronyms within each document explained, and lead responsible officials identified. The primary focus of each annual report, and underpinning documentation, should be on the indicators, targets, timeframes, and outcomes of that year. That is central to effective monitoring and public accountability.

As a supplementary feature, I am of the view that annual progress reports may include information on activities and plans that go beyond the specific year under review. For example, as ways to illustrate ongoing efforts at collaboration, to signal intentions and momentum or to indicate the nature of phased commitments in a provincial budget to the Remedy.

One-in-five of the requirements in the *Annual Progress Report* relied wholly or largely on confidential materials as supporting documentation.[81] I recommend the Province should provide (without disclosing any personal information, jeopardizing IT security or revealing the provision of advice, as per the *Freedom of Information and Protection of Privacy (FOIPOP) Act*) a high-level synopsis of information pertinent to that corresponding item. Such information could include a summary of statistics, general policy statements, program overviews, appeal processes and accountability measures.

6.2 Looking at Year Two

One of the major outcomes for Year Two of the Remedy is the "no new admissions" policy taking effect as of January 1, 2025, for Adult Residential Centres (ARCs), Regional Rehabilitation Centres (RRCs) and Residential Care Facilities (RCFs). In support, Intensive Planning and Support Coordinators, Regional Hubs and Regional Closure Team services are to be fully staffed and operational by November 2024.[82] In turn, I will look to the Province meeting the community transition target of a 30 percent reduction for ARC and RRC residents by March 31, 2025.[83]

As a matter of best practice in collaboration, I recommend the Province notify the DRC in a timely manner and consult in a meaningful manner on any items in which "compliance in

[80] Three examples: Eligibility, Funding and Assessment Coordinators to be hired in the fall of 2024; recruitment and training of staff for Individual Planning and Coordination scheduled for July and August 2024; the Individualized Funding Policy, developed in draft format, is planning for a November 2024 rollout.
[81] These were requirements 5, 17, 19, 20, 21, 22, 23, 30, 37, 46, 57, 59, 60 and 68. For details, see Annex B.
[82] Public Document 41.
[83] Public Document 30.

substance" is or appears likely to be the status of an item under the Remedy in all subsequent Reports.

On Disability Support Program eligibility policy, I will be looking for the Province to provide public documentation in subsequent progress reports, which demonstrates the DSP policy, application process, operational procedures, and related screening tool(s) are in accordance with the *Social Assistance Act*. Furthermore, to add greater clarity on the DSP eligibility policy, the Province should establish a program pathway that treats all applicants with disabilities fairly and equitably, regardless of the nature of their condition or impairment.

On home share, I will be looking to see policy, standards, and guidelines in place for (i) the roles and responsibilities of host agencies, hosts, and participants, (ii) screening and matching protocols for host agencies, and (iii) monitoring, oversights, and safeguards by host agencies. I will also be anticipating compliance on the target for home share placements.

On youth with disabilities planning to leave the school system upon graduation, I will be interested to review and comment on the progress made in the adoption of an implementation plan and the provision of new local community pathways into valued roles.

For Year Two, there are 28 remedy requirements. Several are clear and measurable indicators for the April 2024 to March 2025 timeframe.[84] Other requirements, however, refer to "updates"[85] or "reviews."[86] I recommend this warrant another look by the Parties to clarify expectations and confirm a shared understanding around the relevant indicators, data disclosures, and outcomes for these steps.

Remedy requirements are interdepartmental and cross-sectoral in character, relying on actions by organizations in the disability system and community services, of course, along with organization in the mental health and health sectors, housing and municipal affairs, and the secondary and post-secondary education systems in Nova Scotia.[87] Progress on targets is likely to become even more dependent on such networks of collaboration. The role of the Government Roundtable, deputy ministers, and the DSP Advisory Committee, along with other governance structures, become even more important for oversight and monitoring of Remedy implementation.

7. Conclusions: getting on track

Change is underway in Nova Scotia. Important change. Necessary change. Uneven change.

I have determined that the Province is making slight progress on almost half of the human rights remedy requirements for this reporting period. From this finding, a thorny question arises: will systemic discrimination be remedied, and the positive outcomes agreed upon by the Parties be achieved in the timeframe. In short, is this bold and innovative process on track?

[84] Examples for Year 2 are requirements 2, 4, 7, 8, 9, 16 and 28.
[85] Year 2 requirements 1, 14, 19, 20, 21, and 22.
[86] Year 2 requirements 25, 26, 27, and 28.
[87] Public document 3, p. 8 and public document 30, p. 15.

This Settlement Agreement is among the most significant official statements on the rights of persons with disabilities in the province and indeed anywhere else in Canada.

For that reason, I included in my report relevant aspects of the human rights decisions, the Interim Settlement Agreement, and general principles applicable to human rights monitoring. These materials illustrate the nature of the complaint and the dispute between the parties. These same materials contain crucial elements for the negotiated shift to a collaborative approach to remedying the systemic discrimination.

Key terms governing this remedy about compliance, as I noted earlier, will develop purposeful and practical meanings over time through the process of implementing, reporting on progress, commenting on progress reports, and through the monitoring process.

The Agreement expresses a vision based on human rights norms or values including substantive equality, inherent dignity and capacity, self-determination and meaningful choice, towards a shared future of flexible community-based supports and individualized services and arrangements that meet the needs of individuals living with different disabilities.

This Agreement establishes a number of substantive duties and positive obligations on the Province to dismantle system discrimination against individuals living with disabilities and their families.

It sets out a comprehensive plan of action for new standards and new ways of supporting and serving people with disabilities in Nova Scotia. To move from program-oriented services with elaborate rules, through person-centred services, which can often still be within separate programs, towards person-directed support for and by individuals living in and of their communities.

The interim and annual progress reports are twice yearly opportunities to pause and reflect on how the work is going, identify concerns, and work collaboratively to find solutions.

As with other major public undertakings, the success of this Agreement depends on a range of policies and organizations and human relationships. Decisions by the Province on its own (which frequently involves interdepartmental relations and thus requires a whole-of-government approach) and in conjunction with the federal government. Success depends also on the vitality of individuals with disabilities and families, local networks, and the engagement of civil society organizations.

Transformative system change is underway and takes time. It involves moving to a desired future, while delivering current programs, and transitioning from one to the other. Monitoring for compliance is an important component in support of this fundamental human rights project. Besides time and monitoring, transformative change requires concerted and ongoing action by executive leadership at the Province, with commensurate resources, collaborative relationships, and continual effective progress.

My recommendations aim to encourage that collaborative spirit and help structure that collaboration going forward to ensure the Human Rights Remedy gets on track in Year Two and stays on track in subsequent years.

8. Summary of Recommendations

I recommend the following:

1. In cases where the Province is contemplating an alternative measure, which could materially alter the original terms of a remedy requirement, the Province should notify and consult with the Disability Rights Coalition and only adopt an alternative measure after best efforts to reach agreement. (page 30)

2. The Parties should work together to clarify and agree upon the character and meaning of "substantial progress." This could involve the adoption of one or more terms, in conjunction with "substantial progress" that represent partial degrees of progress. (page 32)

3. I strongly recommend that the Province produce robust Interim Progress Reports each year that include all the necessary documents to demonstrate exact compliance and, where less than full-compliance exists, to provide meaningful explanations. This seems especially important given apparent delays in making progress on many requirements in the first year. (page 35)

4. I recommend that the Province work toward developing qualitative and/or quantitative indicators for monitoring and evaluating increased first voice participation and collaboration among partners. (page 41)

5. The Province should examine options for recognizing formal supported decision-making arrangements in legislation. There is a leadership role for the executive branch of the Nova Scotia government, including the public service on this fundamental human right. (page 43)

6. I strongly urge that the Province explain and demonstrate how it will achieve these key requirements, and meet their obligations on deinstitutionalization, within the five-year period. (page 45)

7. Recognizing the need for concerted action on home share places in communities of choice, I recommend that the Interim Progress Report for January 2025 include a detailed account of what steps the Province has taken to get the plans for home share back on track. (page 47)

8. Identifying delays in procuring services to implement the Remedy requirements, I recommend that the next Interim Progress Report, January 2025, include a detailed

account of what steps the Province has taken to get procurement planning and management practices and timely decision-making back on track. (page 48)

9. To comply with reporting obligations of the Order, I recommend the Province provide consistently across all items and particularly for any not in exact compliance, reasons for the partial-compliance, the measures the Province plans to implement, and when they plan to do so to ensure compliance within the timeframe. Going forward, the forms could have an agreed upon template with these reporting requirements included. (page 48)

10. To enhance transparency and accountability, I recommend the Province ensure for Interim Progress Reports and Annual Progress Reports that all supporting documents are dated, acronyms within each document explained, and lead responsible officials identified. (pages 48-49)

11. For remedy requirements where supporting documentation relies on confidential materials, I recommend the Province provide (without disclosing any personal information, jeopardizing IT security or revealing the provision of advice, as per the *Freedom of Information and Protection of Privacy Act*) a high-level synopsis of information pertinent to that corresponding item. Such information could include a summary of statistics, general policy statements, program overviews, appeal processes and accountability measures. (page 49)

12. As a matter of best practice in collaboration, the Province should notify the Disability Rights Coalition in a timely manner and consult in a meaningful manner on any items in which "compliance in substance" is or appears likely to be the status of an item under the Remedy in all subsequent Reports. (page 49)

13. On Disability Support Program eligibility policy, the Province should provide public documentation in subsequent progress reports, which demonstrates the DSP policy, application process, operational procedures, and related screening tool(s) are in accordance with the *Social Assistance Act*. To add greater clarity on the DSP eligibility policy, the Province establish a program pathway that treats all applicants with disabilities fairly and equitably, regardless of the nature of their condition or impairment. (page 49)

14. I recommend that the Parties review the remedy requirements for Year 2 to clarify expectations and confirm a shared understanding around the relevant indicators, data disclosures, and outcomes for these steps. (page 50)