

## **Exceptional Circumstances Protocol**

### **A. GENERAL**

1. This Exceptional Circumstances Protocol (the "**ECP**") imports the definitions used in the Settlement Agreement and Compensation Protocol for the Lapple Action and the Dadzie Action.
2. ECF Administrative Costs may be withdrawn from the Exceptional Circumstances Fund by the Administrator, with approval by Class Counsel, as payments to the Administrator come due.
3. Pursuant to the Memorandum of Understanding entered into by the Parties dated May 13, 2025, the distribution of funds under this ECP is determined at the sole discretion of Class Counsel and approved by the Court. This ECP forms part of the Settlement Agreement and the Defendants make no admission of liability, fault or wrongdoing with respect to any Claimant who may be eligible for compensation under this ECP or with respect to any other matter or issue that is in any way related to this ECP.

### **B. ADMINISTRATION**

4. The Administrator appointed to administer the Settlement and the Compensation Protocol shall also administer this ECP.
5. Where a Claimant:
  - a. has indicated on his/her/their Claim Form that he/she/they was/were incarcerated in a Correctional Institution before the applicable Presumptive Limitation Period and wish(es) to be considered for an award from the Exceptional Circumstances Fund; or
  - b. was/were incarcerated at the Toronto South Detention Centre during the applicable Presumptive Limitation Period,the Administrator shall determine the Claimant's eligibility for an award under this ECP.
6. Class Members may be eligible for awards under both the Compensation Protocol and this ECP. Accordingly, this ECP is intended to be administered in tandem with the administration of the Compensation Protocol.
7. If the Administrator requires clarification with respect to the determination of a Claim under this ECP, the Administrator shall seek direction from Class Counsel, who shall consider the question with reference to any analogous provisions of this ECP and/or the Compensation Protocol.

8. Without limiting the generality of sections 6 and 7, the provisions of the Compensation Protocol respecting the Claims Deadline and any extensions thereto apply to this ECP, with necessary modifications.
9. A determination by the Administrator with respect to a Claimant's eligibility under this ECP is final and binding, and there shall be no right of reconsideration, appeal, or review by the Claimant.

### **C. ALLOCATION OF COMPENSATION**

10. Compensation under this ECP is available for Claimants who satisfy the criteria for any of the following categories:
  - a. **"Dadzie Exceptional Circumstances Awards"** for Dadzie Class Members who experienced at least one SRL between August 11, 2010 and August 10, 2014 and who meet the eligibility criteria for a Dadzie Exceptional Circumstances Award set out in sections 13 to 21 below;
  - b. **"Pre-Limitation Period Exceptional Circumstances Awards"** for Lapple Class Members who experienced at least one SRL between May 30, 2009 and August 14, 2014, and for Dadzie Class Members who experienced at least one SRL between May 30, 2009 and August 10, 2010, and who meet the eligibility criteria for a Pre-Limitation Period Exceptional Circumstances Award set out in sections 22 to 32 below; and
  - c. **"TSDC Exceptional Circumstances Awards"** for Claimants incarcerated at the Toronto South Detention Centre who meet the eligibility criteria for a TSDC Exceptional Circumstances Award set out in sections 33 to 35 below.
11. For the purposes of this ECP, the methodology for determining the number of SRLs experienced by a Claimant shall be the same as the methodology described in sections 44-45 of the Compensation Protocol.
12. Subject to the terms of this ECP, where this ECP requires the Administrator to assess a Claimant's entitlement to Basic Recovery and/or Differential Impact, the Administrator shall apply the same methodology used for the Compensation Protocol, with necessary modifications.
  - a. **Dadzie Exceptional Circumstances Awards**
13. A Claimant who is a Dadzie Class Member may be eligible for a Dadzie Exceptional Circumstances Award if the Claimant experienced at least 16 SRLs between August 11, 2010 and November 27, 2017, at least some of which occurred on or prior to August 10, 2014.

14. A Claimant who successfully rebuts the applicable Presumptive Limitation Period under the Compensation Protocol is not eligible for a Dadzie Limitation Period Award with respect to any SRLs that fall within the applicable limitation period for that Claimant as determined under section 90 of the Compensation Protocol.
15. If the Claimant has indicated on his/her/their Claim Form that he/she/they was/were incarcerated in a Correctional Institution before the applicable Presumptive Limitation Period, the Administrator shall consider the Claimant for a Dadzie Exceptional Circumstances Period Award.
16. The Administrator shall determine the quantum of a Dadzie Exceptional Circumstances Period Award as follows:
  - a. the Administrator shall determine the total number of SRLs experienced by the Claimant between August 11, 2010 and November 27, 2017;
  - b. the Administrator shall determine the compensation that would have been payable under the Basic Recovery Grid and Differential Impact Grid, if applicable, in respect of all SRLs experienced by the Claimant between August 11, 2010 and November 27, 2017, as determined under subsection 16(a);
    - i. for the avoidance of ambiguity, if the Claimant experienced fewer than 16 SRLs during the applicable Presumptive Limitation Period, the Administrator shall include any SRLs experienced during that period in determining the quantum of the Dadzie Exceptional Circumstances Award;
  - c. the Administrator shall subtract the amount awarded to the Claimant under the Compensation Protocol (if any) from the amount determined in subsection 16(b) (including paragraph 16(b)(i));
  - d. the quantum of a Dadzie Exceptional Circumstances Award payable to the Claimant from the Exceptional Circumstances Fund shall be 70% of the amount determined in subsection 16(c).
17. Any Claimant who receives a Serious Harm Award under the Compensation Protocol is only eligible for a Dadzie Exceptional Circumstances Award for Basic Recovery, and not for Differential Impact, under this ECP.
18. A Claimant need not establish legal incapacity or a lack of discoverability to be eligible for a Dadzie Exceptional Circumstances Award.
19. A Claimant's eligibility for a Dadzie Exceptional Circumstances Award is in addition to the Claimant's eligibility, if any, for any award under the Compensation Protocol.

20. For the avoidance of ambiguity, the provisions of this ECP relating to Dadzie Exceptional Circumstances Awards do not enable a Claimant to seek a Serious Harms Award in respect of SRLs experienced between August 11, 2010 and August 10, 2014.
21. Within 200 days after the Claims Deadline, HMKRO shall provide to the Parties and to the Administrator a Claimant Spreadsheet containing the information listed in paragraph 39 of the Compensation Protocol for all Dadzie Exceptional Circumstances Award Claimants.

**b. Pre-Limitation Period Exceptional Circumstances Awards**

22. A Claimant who successfully rebuts the applicable Presumptive Limitation Period under the Compensation Protocol is not eligible for a Pre-Limitation Period Exceptional Circumstances Award with respect to any SRLs that fall within the applicable limitation period for that Claimant as determined under section 90 of the Compensation Protocol.
23. If the Claimant has indicated on his/her/their Claim Form that he/she/they was/were incarcerated in a Correctional Institution before the applicable Presumptive Limitation Period, the Administrator shall consider the Claimant for a Pre-Limitation Period Exceptional Circumstances Award.
24. Within 200 days after the Claims Deadline, HMKRO shall provide to the Parties and to the Administrator a Claimant Spreadsheet containing the information listed in paragraph 39 of the Compensation Protocol for all Pre-Limitation Period Exceptional Circumstances Award Claimants.
25. The Administrator shall determine the total number of SRLs experienced by the Claimant within the following periods (“**Pre-Limitation Periods**”):
- a. for a Lapple Class Member, between May 30, 2009 and August 14, 2014; and
  - b. for a Dadzie Class Member, between May 30, 2009 and August 10, 2010.
26. If the Claimant experienced 101 or more SRLs during the applicable Pre-Limitation Period, the Claimant's Pre-Limitation Period Exceptional Circumstances Award shall be:

	<b>101-150 SRLs</b>	<b>151-200 SRLs</b>	<b>201+ SRLs</b>
<b>Basic Recovery Only</b>	\$3,300	\$4,500	\$5,600
<b>Basic Recovery and Differential Impact</b> (if applicable)	\$5,100	\$6,900	\$8,600

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27. A Claimant's eligibility for a Pre-Limitation Period Exceptional Circumstances Award for Differential Impact is determined in the same manner as a Claimant's eligibility for a Differential Impact Award under section 57 of the Compensation Protocol.
28. Any Claimant who receives a Serious Harm Award under the Compensation Protocol is only eligible for a Pre-Limitation Period Exceptional Circumstances Award for Basic Recovery, and not for Differential Impact, under this ECP.
29. Any Claimant who is not eligible for a Pre-Limitation Period Exceptional Circumstances Award under section 25, but who (i) experienced 101 or more SRLs during the Class Period; and (ii) was approved for an award under the Compensation Protocol that is less than the amount for which he/she/they would have been eligible under the grid in section 26 had all of his/her/their SRLs occurred before the applicable Presumptive Limitation Period, is eligible for a Pre-Limitation Period Exceptional Circumstances Award equal to the difference between the amount the Claimant was awarded under the Compensation Protocol and the amount for which he/she/they would have been eligible under the grid in section 26 had all of his/her/their SRLs occurred before the applicable Presumptive Limitation Period.
30. A Claimant need not establish legal incapacity or a lack of discoverability to be eligible for a Pre-Limitation Period Exceptional Circumstances Award.
31. A Claimant's eligibility for a Pre-Limitation Period Exceptional Circumstances Award is in addition to the Claimant's eligibility, if any, for any award under the Compensation Protocol.
32. For the avoidance of ambiguity, the provisions of this ECP relating to Pre-Limitation Period Exceptional Circumstances Awards do not enable a Claimant to seek a Serious Harms Award in respect of SRLs experienced before the Presumptive Limitation Period.

**c. TSDC Exceptional Circumstances Awards**

33. A Claimant must have experienced at least 16 SRLs during the applicable Presumptive Limitation Period to be eligible for a TSDC Exceptional Circumstances Award.
34. If the Claimant Spreadsheet indicates that, during the applicable Presumptive Limitation Period, a Claimant was incarcerated at the Toronto South Detention Centre for at least six months and less than one year, cumulatively, the Claimant is eligible for a TSDC Exceptional Circumstances Award of \$1,500.
35. If the Claimant Spreadsheet indicates that, during the applicable Presumptive Limitation Period, a Claimant was incarcerated at the Toronto South Detention Centre one year or

more, cumulatively, the Claimant is eligible for a TSDC Exceptional Circumstances Award of \$2,500.

#### **D. Distribution of the Exceptional Circumstances Fund**

36. The Exceptional Circumstances Fund shall be distributed as follows:

- a. first, to pay Class Counsel Fees on the Exceptional Circumstances Fund;
  - b. second, to pay ECF Administration Costs;
  - c. third, to pay the levy to the Class Proceedings Fund pursuant to *Class Proceedings*, O Reg 771/92;
  - d. fourth, to pay awards to Claimants approved for compensation under Part C of this ECP; and
  - a. fifth, any remaining funds shall be distributed in accordance with sections 44 and 46 of this ECP after the expiry of the time referred to in subsection 43(b).
2. If there are insufficient funds remaining in the Exceptional Circumstances Fund to pay all awards determined under Part C of this ECP, each award shall be reduced such that the amount paid to Class Members does not exceed the funds remaining in the Exceptional Circumstances Fund, in the following manner:
- e. first, if the value of all TSDC Exceptional Circumstances Awards determined by the Administrator exceeds 30% of the value of all awards determined under Part C of this ECP, all TSDC Exceptional Circumstances Awards shall be reduced *pro rata*, such that the total value of all TSDC Exceptional Circumstances Awards does not exceed 30% of the total value of all awards to be distributed to Class Members from the Exceptional Circumstances Fund; and
  - f. second, if it remains the case that there are insufficient funds in the Exceptional Circumstances Fund to pay all awards determined under Part C of this ECP, following any reduction of TSDC Exceptional Circumstances Awards under subsection 37(a), all such awards shall be reduced *pro rata* (with TSDC Exceptional Circumstances Awards further reduced) such that the total amount to be paid to Class Members does not exceed the funds remaining in the Exceptional Circumstances Fund.
37. As soon as possible following the Claims Deadline, and upon request of any of the Parties prior to that, the Administrator shall provide the Parties with an accounting of all ECF Administration Costs.

38. Within thirty (30) days of the completion of the adjudication of all Claims under this ECP, other than those in relation to potential amounts under section 44 of this ECP, the Administrator shall advise the Parties of:

- a. the ECF Administration Costs incurred from the Claims Deadline to the current date;
- b. the ECF Administration Costs expected to be incurred from the current date to the completion of the administration of the ECP;
- c. the details of Claims approved under Part C of this ECP, including:
  - i. the Basic Recovery and Differential Impact amounts determined for each Claimant approved for a Dadzie Exceptional Circumstances Award and/or a Pre-Limitation Period Award;
  - ii. the total quantum of Basic Recovery and Differential Impact amounts determined for all Claimants approved for a Dadzie Exceptional Circumstances Award and/or a Pre-Limitation Period Award; and
  - iii. the total CPF Levy payable from the Exceptional Circumstances Fund; and
- d. the extent and details of any *pro rata* reductions to satisfy the conditions in section 37 (the "**ECP Report**").

39. Where applicable, the Administrator shall pay any amounts awarded under this ECP, other than amounts under section 44, together with, and in the same manner as, the payment to a Claimant for any amounts awarded under the Compensation Protocol.

40. For Claimants who have only been approved for awards under this ECP, other than amounts under section 44, the Administrator shall issue payments by cheque or direct deposit at the same time that payments are issued to other Claimants under the Compensation Protocol.

41. For Claimants who have only been approved for awards under this ECP, at the time referred to in section 102 of the Compensation Protocol, the Administrator shall:

- a. provide the Parties with a list of such Claimants who have not cashed their compensation cheques and/or received their direct deposit;
- b. request that Class Counsel verify such Claimant's contact information and, if Class Counsel cannot verify the information, verify the last-known contact information with HMKRO as reflected in OTIS and/or with the AGC; and

- c. send each such Claimant a further letter (copied to Class Counsel) and attempt to contact the Claimant by telephone advising him/her/them that he/she/they has/have ninety (90) days to cash the compensation cheque and/or to complete the direct deposit.

42. With respect to any amounts approved under this ECP:

- a. the Administrator may issue a new cheque or allow a direct deposit to be redirected at the request of a Claimant approved for an award under this ECP; and
  - b. if a cheque is not cashed by a Claimant or the direct deposit is not completed as directed by a Claimant six (6) months after the date of the cheque or the deposit, the amounts awarded under the ECP shall be returned to the Exceptional Circumstances Fund.
3. Upon the completion of all payments and/or the expiry of the time referred to in subsection 43(b), the Administrator shall report to the Parties on the amount of funds, including uncashed and undeposited funds, remaining in the Exceptional Circumstances Fund. If there are sufficient funds remaining such that a distribution would be practicable, Class Counsel shall, in consultation with the Administrator, direct that the Administrator distribute such funds in equal amounts of no more than \$3,300, or a lesser maximum amount reached on a comparable *pro rata* basis if awards under Part C of this ECP have been reduced *pro rata*, to Claimants who:
- a. indicated on their Claim Form that they wish to be considered for an award from the Exceptional Circumstances Fund;
  - b. were incarcerated in a Correctional Institution at which a Staffing-Related Lockdown occurred on 100 or more days, as shown by the SRL Inventory, regardless of the credit accorded to each Staffing-Related Lockdown under paragraph 44 of the Compensation Protocol;
  - c. are credited with 100 or fewer SRLs, as determined under paragraph 44 of the Compensation Protocol; and
  - d. are otherwise eligible for Pre-Limitation Period Exceptional Circumstances Awards;
43. An amount paid under section 44 of this ECP does not constitute a "Claim" for the purposes of section 97 of the Compensation Protocol.
44. Any amounts remaining in the Exceptional Circumstances Fund after the distribution, if any, contemplated in section 44 shall be distributed *cy-près* to (1) the John Howard Society of Ontario, and (2) Elizabeth Fry Societies in Ontario.



45. Within thirty (30) days of the distribution of all amounts remaining in the Exceptional Circumstances Fund in accordance with sections 44 and 46, the Administrator shall advise the Parties of:

- a. the ECF Administration Costs incurred from the date of the ECP Report to the current date;
- b. the ECF Administration Costs expected to be incurred from the date of the ECP Report to the completion of the administration of the ECP;
- c. the details of any amounts paid to Claimants under section 44 of this ECP; and
- d. the details of any *cy-près* payments to the John Howard Society of Ontario, and Elizabeth Fry Societies in Ontario under section 46 of this ECP (the "**Final ECP Report**").