

CLAIMS PROCESS

Hayes v. The City of Saint John – Court File No. SJC-533-13

A. OVERVIEW

The purpose of the Claims Process is to provide restorative and expeditious justice to the Class Members while mitigating to the greatest extent possible, any further trauma.

The Court of Appeal of New Brunswick found that the City of Saint John is vicariously liable for the physical, mental and/or sexual harm perpetrated by Kenneth Estabrooks between January 1, 1953 and November 1, 1975, when he was employed by the City of Saint John as a police officer.

Key features of the Claims Process include:

1. Non-adversarial, trauma-informed process
2. No need to be examined by lawyers
3. No need to provide supporting documentation (supporting documentation is only required if the claimant is seeking additional compensation for Eligible Psychological Harm or making a claim on behalf of a Class Member's estate.)
4. Fully confidential

The Claims Process provides Class Members with a paper-based process intended to pay Class Members on a *pro-rata* basis in proportion to the severity of the abuse they suffered, as described in their Claim Form. Class Members will **not** be required to provide any supporting documentation or "proof" of the abuse they describe in their Claim Form.¹ However, Claimants who submit medical records diagnosing and/or documenting psychological harms that are, in whole or in part, related to abuse perpetrated by Kenneth Estabrooks, may be eligible for additional compensation.

Unless otherwise defined in this Claims Process, the capitalized terms used in the Claims Process have the same meanings as those set out in the Settlement Agreement.

B. CLAIMS ADMINISTRATION

Claims will be determined by the Court-appointed Administrator. The Administrator will offer its services to Class Members in English and French.

Confidentiality

The Administrator will keep any information concerning Class Members strictly confidential. The Administrator will institute and maintain procedures to ensure that the identity of all Class

¹ Except for Estate Claimants, as set out in Part C of this Claims Process.

Members and all information regarding any Claims made by Class Members is kept strictly confidential.

In any reports delivered to the Court or to Defendants' Counsel, the Administrator shall refer to the Class Members only by a unique claims identifier number, and not by their names. At the conclusion of the claims administration process, any personally identifiable information obtained by the Administrator shall be securely deleted and destroyed.

Making a Claim

In order to receive compensation from the Settlement Fund, Class Members must complete, execute and deliver a Claim Form to the Administrator within one (1) year of the commencement of the Claims Process (the "**Claims Deadline**"), in substantially the form attached as **Appendix "A"** to this Claims Process. The Claim Form will require each Claimant to provide their contact information and a sworn declaration confirming they are a Class Member and indicating the nature of the sexual abuse they suffered.² The Claim Form will request that the Claimant choose between receiving compensation by cheque or by direct deposit and, if the latter is selected, require the Claimant to provide the requisite bank account information.³

Claim Forms may be submitted by mail, courier or email in a PDF format to the Administrator. If more than one Claim Form and/or related supporting documentation is submitted by a Class Member by the Claims Deadline, the Administrator will treat all claim materials submitted as one Claim Form. The Administrator will have discretion to accept Claim Forms received up to three (3) months after the Claims Deadline, where the Class Member provides a reasonable explanation as to why their Claim was submitted late.

Trauma-Informed Claims Assistance

Class Counsel and the Administrator will be available to assist Class Members both virtually and in-person with the Claims Process, including by helping complete Claim Forms, reviewing Claim Forms for submission, commissioning oaths, and answering any questions about the Claims Process.

Class Counsel will also prepare and make available a trauma-informed resource package. The package will include information and resources to assist Class Members, family members, and their support networks to access emotional and mental health supports as they navigate the Claims Process.

Claim Determinations

² The sworn declaration may be commissioned remotely in accordance with the laws of Ontario.

³ Estate Claimants may not elect to receive compensation by direct deposit.

The Administrator will review each Claim Form and any supporting documentation it receives and determine as soon as is practicable, in accordance with the Claims Process:

1. Whether the Claim Form has been properly completed;
2. Whether the Claimant is a Class Member, as defined in the Settlement Agreement, such that they are eligible to receive compensation from the Settlement ("**Eligible Claimant**"); and
3. The number of points to be allocated to each Eligible Claimant.

In making these determinations the Administrator will, in the absence of reasonable grounds to the contrary, assume the Claimant to be acting honestly and in good faith.

The Administrator's determination that a Class Member is not an Eligible Claimant will be subject to a right of appeal to the New Brunswick Court of King's Bench.

Stage 1: Claim Confirmations and Deficiency Period

The Administrator will confirm receipt of the Claim Form and advise the Claimant and Class Counsel of any deficiencies with their Claim Form within ninety (90) days of receipt of same ("**Confirmation and/or Deficiency Letter**"). As Claim Forms are received, the Administrator will create and maintain a list of Claimants ("**Claimant List**"), which shall include the personal details of each Claimant, whether their Claim is complete or deficient, and whether they are an Eligible Claimant.

The Administrator will provide the Claimant with at least ninety (90) days, or such longer time as the Administrator may allow, to cure any such deficiencies before the Administrator makes a final determination on whether the Claimant is an Eligible Claimant.

Where a Claim Form contains minor omissions or errors of a typographical nature, the Administrator will correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Administrator.

The Administrator may also contact Claimants directly at the contact information provided in their Claim Form to obtain further information to assist the Claimant in completing a deficient Claim and/or to determine whether the Claimant is an Eligible Claimant.

If, after reviewing any Claim Form, the Administrator believes that a Claim may be fraudulent, or the Claimant is not an Eligible Claimant, the Administrator will notify Class Counsel.

Stage 2: Claim Determinations and Appeal Process

The Administrator will ensure that current copies of the Claimant List are provided to Class Counsel on a regular basis throughout the Claims Period.

Once all deficiencies have been resolved or the timeframes for resolving them have passed, the Administrator will determine whether each Claim is eligible for compensation, and the points assigned to the Claim in accordance with the Points System ("**Claim Determination Period**").

The Administrator will provide each Claimant with a notice containing its determination of their Claim ("**Determination Notice**"). The Determination Notice will be dated and state:

1. Whether the Claimant is an Eligible Claimant, and, if not, the reason for that determination;
2. If the Claimant is an Eligible Claimant, the number of points assigned to their Claim; and
3. That the amount of their compensation will be determined following the Claims Deadline, and they will receive their compensation in accordance with their payment election.

Within thirty (30) days of the date of the Determination Notice, a Claimant may appeal to the New Brunswick Court of King's Bench from the Administrator's finding that they are not an Eligible Claimant ("**Appeal Deadline**"). If no appeal is filed by the expiry of the Claimant's relevant Appeal Deadline, the Claimant will be deemed to have accepted the Administrator's determination of their Claim and the determination will be final.

Stage 3: Payments

Once all Claims have been finally determined, including all appeals of eligibility determinations, the Administrator will issue payments by cheque or by direct deposit, in accordance with the Claimant's election, from the Settlement Fund to Eligible Claimants.

If, for any reason, an Eligible Claimant does not cash their cheque within six (6) months after the date of the cheque, the Administrator will undertake best efforts to contact the Eligible Claimant and re-issue their cheque.

If, for any reason, a direct deposit is rejected or otherwise not completed as directed by the Eligible Claimant, the Administrator will undertake best efforts as soon as practicable to contact the Eligible Claimant and redirect their direct deposit.

After undertaking such best efforts, the Administrator will report to Class Counsel on the amount of uncashed and undeposited funds, if any, remaining in the Settlement Fund. Any such funds shall be distributed *cy-près* to a non-profit organization to be selected at the Plaintiff's discretion.

C. COMPENSATION ALLOCATION

Eligibility for Compensation

Class Members must meet all requirements set out in this Claims Process in order to receive payment from the Settlement Fund, including:

1. Class Membership and Excluded Claims

Only Class Members are eligible to receive payment from the Settlement Fund. In determining whether a Class Member is an Eligible Claimant, the Administrator must be satisfied that:

- a) The Claimant suffered injury, loss or damage as a result of being sexually abused by Kenneth Estabrooks;
- b) The sexual abuse occurred in the City of Saint John between January 1, 1953 and November 1, 1975;
- c) The sexual abuse occurred while Kenneth Estabrooks was a City of Saint John police officer; and
- d) The Claimant did not validly opt-out of this class proceeding or did not previously settle claims against the City of Saint John such that their claim(s) in relation to the subject matter of this class proceeding have been released.

2. Completeness

The Administrator must be satisfied that the Claim Form has been fully completed. The Administrator will notify a Claimant and Class Counsel of any deficiencies in their Claim Form and allow for time to cure such deficiencies.

3. Timeliness

The Claimant must have attempted to submit the Claim Form on or before the Claims Deadline. The Administrator, in consultation with Class Counsel, will have discretion to accept Claim Forms submitted up to three (3) months after the Claims Deadline.

4. Estate Claims

Claims may be brought on behalf of the estates of deceased Class Members who were alive as of May 16, 2024 ("**Estate Claimants**"). In order to verify an Estate Claimant has authority to act on behalf of the deceased Class Member's estate, the Estate Claimant will be required to provide the Administrator one of the following documents: (a) Letters of Administration; (b) Letters of Administration with Will Annexed; (c) Letters Probate; or (d) a copy of the deceased Class Member's will appointing the Estate Claimant as executor of their estate.

To be eligible for compensation, Estate Claimants will be required to submit documentary, testimonial, and/or medical evidence in support of their claim that the deceased Class Member was sexually abused by Kenneth Estabrooks while he was a City of Saint John police officer between January 1, 1953 and November 1, 1975. A sworn declaration without supporting documentation will not be sufficient to qualify an Estate Claimant for compensation.

Amount of Compensation

The Administrator will determine the amount of compensation payable to each Eligible Claimant by reviewing the sworn declaration provided indicating the nature of the sexual abuse suffered by the Claimant, as well as any supporting documentation submitted, and assigning points in accordance with the Point System below. In the event that a Claim Form and/or any supporting documentation supports more than one level of Sexual Abuse, the Eligible Claimant shall be assigned the point value corresponding to the highest level of Sexual Abuse supported. For clarity, the highest point total achievable under the Points System is 70.

Sexual Abuse (MANDATORY)	Points⁴
Single incident of fondling, kissing, sexual touching of breasts, genitals or buttocks, or exposure of genitals.	10
Multiple incidents of fondling, kissing, sexual touching of breasts, genitals or buttocks, or exposure of genitals.	15
Single incident of masturbation, simulated intercourse, attempted oral sex, or attempted digital penetration.	20
Multiple incidents of masturbation, simulated intercourse, attempted oral sex, or attempted digital penetration.	25
Oral sex, digital penetration or attempted anal or vaginal penetration accompanied by intimidation, acts or threats of further physical or sexual violence (including threats directed towards Class Member's family). OR Vaginal or anal penetration.	40
Vaginal or anal penetration accompanied by intimidation, acts or threats of further physical or sexual violence (including threats directed towards Class Member's family).	50
Psychological Harm (OPTIONAL)	
Diagnosis and/or documentation of an Eligible Psychological Harm occurring after the Class Member was abused by Kenneth Estabrooks. ⁵	20

⁴ Claims brought by estates of deceased Class Members will be assigned 50% of the point value that would otherwise be applicable.

⁵ "Eligible Psychological Harm" means any of the following: post-traumatic stress disorder, anxiety disorder, depression, eating disorder, sleep disorder, substance use disorder, anger issues, self-harming, sexual dysfunction, intimacy problems, and/or other personality and/or psychotic disorders.

Appendix "A" – Claim Form