

## NOTICE OF CERTIFICATION OF CLASS ACTION AND PROPOSED SETTLEMENT IN RESTIGOUCHE HOSPITAL CENTRE CLASS ACTION

**Were you admitted to or residing at the Restigouche Hospital Centre in Campbellton, New Brunswick, at any time Between January 1, 1954 and October 1, 2021?**

### **If YES, A Class Action May Impact Your Rights.**

*A court authorized this notice. You are not being sued.*

- You could be impacted by a class action involving the Restigouche Hospital Centre ("RHC") located in Campbellton, New Brunswick.
- A Court has allowed a lawsuit to proceed as a class action for current and former inpatients and residents of the Restigouche Hospital Centre. **If you know a former patient or resident please share this information with them.**
- The lawsuit alleges that the Defendants, the Province of New Brunswick and Vitalité Health Network (collectively referred to as the "Defendants"), breached their legal duties and obligations in the manner that they operated RHC and that these breaches caused the class members to suffer physical and sexual assault.
- The Defendants have agreed to settle eligible claims of class members who allege they suffered physical and sexual harms raised in the class action for

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**[HTTPS://KMLAW.CA/CASES/RESTIGOUCHE-HOSPITAL-CENTRE-CLASS-ACTION](https://kmlaw.ca/cases/restigouche-hospital-centre-class-action)**

This notice has been approved by the New Brunswick Court of King's Bench

\$17 million. The settlement must be approved by the Court in order for it to take effect.

- The Court will determine whether to approve the settlement agreement at a hearing on September 25, 2023.
- You are a Class Member if you meet one of the following definitions:
  - All persons who were admitted to or resided at the RHC between May 24, 2004, and October 1, 2021, and who were alive as of May 24, 2017; and,
  - All persons who were admitted to or resided at the RHC between January 1, 1954, and October 1, 2021, and who were alive as of May 24, 2017, and claim that they were sexually assaulted.

The class definition, which previously included all persons who were admitted to or resided at the RHC between January 1, 1954 and the present, and were alive as of May 24, 2017, has been changed.

**If you do not meet the new class definition, you are not included in this class action and proposed settlement.**

YOUR LEGAL RIGHTS AND OPTIONS AT THIS STAGE	
<b>Do NOTHING</b>	<p><b>Stay in this lawsuit. Share in benefits from the proposed settlement agreement.</b></p> <p>By doing nothing at this time, you will remain able to share in the money or other benefits of the proposed settlement of this class action if the settlement is approved by the Court. In exchange, you give up any rights to sue the Defendants on your own about the same legal claims in this lawsuit.</p>

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	<p>NOTE: If you do not live in New Brunswick, you must submit an Opt In Form to join the class action. The form must be sent to the Administrator no later than August 25, 2023.</p>
<p><b>REMOVE YOURSELF (OPT OUT)</b></p>	<p><b>Get out of this lawsuit and get no benefits from it. Keep individual right to start separate lawsuit.</b></p> <p>If you ask to be removed (opt out), you will not be eligible for any money or benefits under the proposed settlement. But, you keep any rights to sue the Defendants on your own about the same legal claims in this lawsuit, subject to any applicable limitation periods.</p> <p>You must complete an Opt Out Form and send it to the Administrator no later than August 25, 2023.</p>
<p><b>OBJECT TO THE PROPOSED SETTLEMENT</b></p>	<p><b>If you disagree with the settlement and would like to explain why, you can complete an objection form.</b></p> <p>This form will include your name, address and the reasons why you do not support the settlement. You must send the objection form to the Administrator no later than August 25, 2023.</p> <p>You must remain in the class action to submit an objection.</p>

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## BASIC INFORMATION

### 1. What is a class action?

A class action is a lawsuit where one or more people, called “Representative Plaintiffs” sue on behalf of other individuals who have similar claims or issues. In the present case, the Court has appointed Darrell Tidd and Reid Smith as representative plaintiffs.

The Court’s decision in a class action lawsuit affects everyone in the group, except for individuals who have removed themselves from the lawsuit. Individuals with similar claims that are included in the group are known as “Class Members”.

The Class Definition describes who is included in the group or class action. The Class Definition, which will be amended by the Court’s Order dated June 26, 2023, in this class action is:

- All persons who were admitted to or resided at the RHC between May 24, 2004, and October 1, 2021, and who were alive as of May 24, 2017; and,
- All persons who were admitted to or resided at the RHC between January 1, 1954, and October 1, 2021, and who were alive as of May 24, 2017, and claim that they were sexually assaulted.

### 2. What is this lawsuit about?

The lawsuit claims that the Province of New Brunswick and the Vitalité Health Network ("the Defendants") were negligent in operating the RHC. The lawsuit alleges that some RHC residents were mistreated and abused physically and/or sexually by staff and other residents. On October 1, 2021, the Court permitted the lawsuit to proceed as a class action.

The Defendants deny these claims. The Court has not decided which side is right or that the Defendants have done anything wrong.

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### 3. Why is there a proposed settlement?

Trials can be expensive and may take years before a final decision on who is right or wrong is made. By agreeing to the proposed settlement, the Representative Plaintiffs, Class Members and the Defendants avoid the expenses, uncertainties and delays that come with a trial. In particular, if the proposed settlement in this case is approved by the Court, there is guaranteed financial compensation for Class Members who make an eligible claim for compensation. In contrast, if the class action were to proceed to trial, there is a risk that the lawsuit is unsuccessful and Class Members obtain no compensation.

The current proposed settlement agreement also allows Class Members to obtain financial compensation without having to testify in court.

The Representative Plaintiffs and the lawyers representing the Representative Plaintiffs (who are referred to as “Class Counsel”) believe that the proposed settlement provides substantial benefits to Class Members, is fair and reasonable and is in the best interests of all Class Members.

### 4. Who is included in the lawsuit and proposed settlement?

#### **Who is included in the lawsuit and proposed settlement?**

The proposed settlement includes individuals who meet the Class Definition:

- All persons who were admitted to or resided at the RHC between May 24, 2004, and October 1, 2021, and who were alive as of May 24, 2017; and,
- All persons who were admitted to or resided at the RHC between January 1, 1954, and October 1, 2021, and who were alive as of May 24, 2017, and claim that they were sexually assaulted.

This means if you stayed at the RHC at any time between May 24, 2004 and October 1, 2021, you are included in the class action and settlement.

You are also included in the class action and settlement if you stayed at the RHC at any time between January 1, 1957 and October 1, 2021 and were sexually assaulted during your stay.

To be included in the class, individuals have to be alive as of May 24, 2017. If a person attended the RHC between May 24, 2004 and October 1, 2021 and passed away after May 24, 2017, they are included in the class. In this case, that person's Estate Executors, or court appointed Estate Administrators, may make a claim for compensation on their behalf. The same applies to individuals who stayed at the RHC between January 1, 1957 and October 1, 2021, and who claim they were sexually assaulted during their stay.

### **Who is not included in the lawsuit and proposed settlement?**

The class definition as certified by the Court on October 1, 2021, was:

All persons who were admitted to or resided at the RHC between January 1, 1954, and the present, who were alive as of May 24, 2017.

The class definition was changed on June 26, 2023. As a result of the changes, the new class definition excludes individuals who resided at the RHC before May 24, 2004 (except for those individuals who have sexual assault claims). It also excludes individuals who resided at the RHC after October 1, 2021.

Individuals who do not fall within the new class definition are not included in the class and proposed settlement. The following categories of individuals are **NOT INCLUDED** in the class action:

- Individuals who stayed at the RHC after October 1, 2021.
- Individuals who stayed at the RHC before May 24, 2004 and were not sexually assaulted.
- Individuals who stayed at the RHC between May 24, 2004 and October 1, 2021 but were deceased before May 24, 2017.

Individuals who are not included in the class action will not be eligible for compensation under the terms of the proposed settlement agreement. However, they

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retain their rights to sue the Defendants for the same legal claims raised in this class action, subject to applicable limitation periods.

If you are no longer included in the class action because you no longer meet the class definition, you may still be able to separately sue the Defendants about the legal claims in this case. You may wish to consult a lawyer to assist you with such claims. There may also be applicable deadlines set by law (known as limitation periods) for you to bring your claims. As such, you should not delay in seeking legal advice or assistance if you wish to pursue your own claims.

The class action and settlement will also exclude individuals who choose to remove themselves (“opt out”) from the Class Action.

### **What if I’m not sure whether I’m included in the lawsuit or proposed settlement?**

If you are not sure whether you are included in the proposed settlement, you may contact Koskie Minsky LLP toll-free at 1-888-233-2852 or [restigoucheclassaction@kmlaw.ca](mailto:restigoucheclassaction@kmlaw.ca).

### **5. What are the benefits of the proposed settlement?**

If approved, the settlement provides financial compensation for eligible Class Members who meet the requirements of the claims process by submitting a completed Claim Form and supporting documentation where required.

The settlement provides a fund of money that Class Members can make a claim against. The amount of compensation you may receive depends on the specifics of your claim.

The settlement provides a fixed fund of money of \$17 million. The \$17 million will be used to pay out claims made by Class Members through the claims process and other expenses such as Class Counsel fees, disbursements, costs of notice and administration of the settlement, litigation funders’ fees and honorarium payments.

### **What kind of compensation am I eligible for?**

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The amount of money you can get depends on the type of claim you make. There are two types of claims: (1) a Common Experience Payment claim (this is referred to in the proposed Settlement Agreement as a “Section A claim”) and (2) a Grid claim (referred to as a “Section B claim” in the proposed Settlement Agreement).

**You can only make one type of claim.**

**Option 1: Common Experience Payment claim**

If you choose to make a Common Experience Payment Claim, your compensation will be based on how long you stayed at the RHC.

Length of Stay	Compensation Amount
30 days or less	\$1,000
31 days to 100 days	\$3,000
101 days or more	\$5,000

To make a claim under this option, you only need to provide an affirmation (a sworn statement) that you were harmed at the RHC. Your length of stay will be determined based on your admission and discharge records.

**Option 2: Grid claims**

Compensation for Section B claims is as follows:

<b>Sexual Abuse</b>	
Level 1 Sexual Assault <ul style="list-style-type: none"> <li>A single incident of non-consensual sexual touching of a Claimant by staff, or other non-consensual sexual behaviour by staff towards a Claimant that is not a Serious Sexual Assault.</li> </ul>	\$15,000
Level 2 Sexual Assault <ul style="list-style-type: none"> <li>More than one incident of non-consensual sexual touching of a Claimant by staff/ other patient or other non-consensual sexual behaviour that is not a Serious Sexual Assault.</li> </ul>	\$20,000

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<p>Level 3 Sexual Assault</p> <ul style="list-style-type: none"> <li>One or two incidents of Serious Sexual Assault,</li> </ul>	\$35,000
<p>Level 4 Sexual Assault</p> <p>(i) More than two incidents of Serious Sexual Assault; or</p> <p>(ii) Level 3 Sexual Assault resulting in a Major Psychological Injury. Requires medical evidence in addition to the affirmation to support allegation that a Serious Sexual Assault resulted in Major Psychological Injury.</p>	\$60,000 plus Medical Evidence Fees of up to a maximum of \$500 per Claimant
<b>Physical Abuse</b>	
<p>Level 1 Physical Harm</p> <ul style="list-style-type: none"> <li>One or more physical assaults not causing a Serious Physical Injury, but resulting in an observable injury such as a black eye, bruise or laceration; or</li> <li>Use of any one of the following form of restraints: <ul style="list-style-type: none"> <li>Use of physical or mechanical restraint for: <ul style="list-style-type: none"> <li>12 consecutive hours or more up to 24 hours, on two occasions within a 30-day period; or</li> <li>24 consecutive hours or more;</li> </ul> </li> <li>Use of chemical restraints (i.e., by administration of psychotropic medication not prescribed as part of patients' ongoing care plan) on two occasions within a 30-day period; or</li> <li>Placement in a seclusion room for 36 consecutive hours on one occasion within a 30-day period. This excludes placement in seclusion for up to 48 hours upon admission.</li> </ul> </li> </ul>	\$10,000
<p>Level 2 Physical Harm</p> <ul style="list-style-type: none"> <li>One or more physical assaults causing a Serious Physical Injury.</li> <li>Use of the following form of restraints <ul style="list-style-type: none"> <li>Use of physical or mechanical restraint for 24 consecutive hours or more, on two or more occasions within a 30-day period</li> <li>Use of chemical restraints (i.e., by administration of psychotropic medication not prescribed as part of patients' ongoing care plan) on more than two occasions within a 30-day period</li> <li>Placement in seclusion rooms for 36 consecutive hours or more, on more than one occasion within a 30-day period. This excludes placement in seclusion</li> </ul> </li> </ul>	\$25,000

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for up to 48 hours upon admission.	
<p><b>"Serious Physical Injury"</b> means physical injury that led or should have led to hospitalization or serious medical treatment by a physician; permanent or demonstrated long-term physical injury, impairment or disfigurement; loss of consciousness; broken bones; or a serious but temporary incapacitation such that bed rest or infirmary care of several days duration was required.</p> <p><b>"Serious Sexual Assault"</b> means non-consensual oral, vaginal or anal penetration or attempted non-consensual oral, vaginal or anal penetration.</p> <p><b>"Sexual Touching"</b> means non-consensual touching of another individual's body, with a body part or an object, for sexual purposes.</p> <p><b>"Non-Consensual Sexual Behaviour"</b> means conduct involving sexual activity or behaviour that is performed without express and voluntary consent.</p> <p><b>"Major Psychological Injury"</b> means prolonged major psychological trauma symptoms resulting in a diagnosis by a psychiatrist or psychologist of a mental illness/disorder recognized by the Diagnostic and Statistical Manual of Mental Disorders. The diagnosis must occur after the alleged Level 3 Sexual Assault incident(s) in question as per the Compensation Grid. Where a pre-existing diagnosis exist, medical evidence is required to show exacerbation of the pre-existing diagnosis.</p>	

To make a claim under Option 2, you must provide details of the harms suffered, and medical evidence where required. You can claim for both sexual and physical harms. However, you can only claim for one level of harm within each category.

For example, you cannot claim for Level 1 Physical Harm and Level 2 Physical Harm. However, you can make a claim for Level 1 Sexual Assault and Level 2 Physical Harm.

The details of the information that must be provided under Option 2 are set out in Schedule "A" of the Settlement Agreement at paragraphs 10-14.

## YOUR RIGHTS AND OPTIONS

You must decide whether to stay in the Class, whether to remove yourself (opt out) or object to the proposed settlement agreement.

### 6. I agree with the proposed settlement and want to be a part of the class. What do I need to do?

If you agree with the proposed settlement and want to be a part of the class, you do not need to take any action. You will automatically be included in the lawsuit if you meet the class definition (see question 4).

If you live outside of New Brunswick and meet the class definition and want to join the class action lawsuit and be a part of the proposed settlement agreement, you must submit an Opt In Form, which can be downloaded at [www.RestigoucheHospitalCentreClassAction.ca](http://www.RestigoucheHospitalCentreClassAction.ca). You may also request a copy of the Opt In Form from the Claims Administrator. You must complete and submit the Opt In Form before August 25, 2023.

The form can be sent to:

By Email: [info@RestigoucheHospitalCentreClassAction.ca](mailto:info@RestigoucheHospitalCentreClassAction.ca)

or By Mail: NWQ Claims Administrator  
P.O. Box 3355  
London, ON N6A 4K3

### 7. I do not want to be in the lawsuit

If you do not want to be in the lawsuit, you must remove yourself – this is sometimes referred to as “opting out.” If you remove yourself, you will not be entitled to apply for compensation under the proposed settlement agreement. However, you will keep your right to sue the Defendants as an individual regarding the issues in this case, subject to applicable limitation periods

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To remove yourself, you must complete and send an Opt Out Form no later than August 25, 2023 to the Claims Administrator by email or mail. You can download the form here [www.RestigoucheHospitalCentreClassAction.ca](http://www.RestigoucheHospitalCentreClassAction.ca) or request a copy of the form from the Claims Administrator. The form can be sent to:

By Email: [info@RestigoucheHospitalCentreClassAction.ca](mailto:info@RestigoucheHospitalCentreClassAction.ca)

or By Mail: NWQ Claims Administrator  
P.O. Box 3355  
London, ON N6A 4K3

## 8. I disagree with the proposed settlement

### **How do I tell the Court if I object to the proposed settlement?**

If you disagree with the proposed settlement and would like to object to it, you must complete and submit an Objection Form before August 25, 2023. The form must include:

- Your name, address, and telephone number;
- A statement saying that you object to the proposed settlement;
- The reasons you object to the proposed settlement, along with any supporting materials; and
- Your signature.

You can download the Objection Form at [www.RestigoucheHospitalCentreClassAction.ca](http://www.RestigoucheHospitalCentreClassAction.ca) or request a copy from the Claims Administrator.

You can also attend the approval hearing to participate in the proceeding and voice your objection to the proposed settlement. The Court will decide if you will be permitted to speak at the hearing. However, in order to be eligible to participate, you must have completed and submitted an Objection Form on time setting out your reasons for objecting to the proposed settlement.

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## THE LAWYERS REPRESENTING YOU

### 9. Who are the lawyers representing me?

#### **Who are the lawyers for the Representative Plaintiffs and Class Members?**

The lawyers for the Representative Plaintiffs and Class Members are Koskie Minsky LLP of Toronto, Ontario.

You are welcome to contact these lawyers to ask questions about the settlement at no cost to you.

If you want to be represented by or receive advice or representation from another lawyer, you may hire one at your own expense.

### 10. How will the lawyers be paid?

The lawyers who are representing the Representative Plaintiffs took on this lawsuit on a contingency basis, meaning that no fees have been charged at any stage of the lawsuit until success was achieved. The lawyers will not be paid until the Court approves the proposed settlement and declares that the proposed legal fees are fair and reasonable.

The agreement between the lawyers and the Representative Plaintiffs provides that the lawyers can seek 30% of the Settlement Fund plus applicable HST, as payment for the work they performed on the class on a contingent basis, plus repayment of reasonable disbursements. Disbursements are out-of-pocket expenses that the lawyers have paid to advance the lawsuit.

Class Counsel will be seeking approval of their fees and disbursements on or at the same time as the Settlement Approval Hearing. The Court will consider whether these amounts are fair and reasonable and will decide whether to award the value of fees and disbursements requested. Class Counsel's fees, if approved, will be deducted from the \$17 million Settlement Fund.

## DETAILS OF THE APPROVAL HEARING

### 11. What are the details of the Approval Hearing

The Court will hold a hearing to decide whether to approve the proposed settlement and the request for Representative Plaintiffs' counsel's legal fees, disbursements and taxes (the "Approval Hearing").

The Approval Hearing will take place on September 25, 2023, and you can attend the hearing.

Please check [www.RestigoucheHospitalCentreClassAction.ca](http://www.RestigoucheHospitalCentreClassAction.ca) for the most recent information about details of the settlement approval hearing.

### 12. Do I have to attend the hearing?

No. The lawyers representing the Representative Plaintiffs will answer questions from the Court. However, you are welcome to attend the hearing. You may also have your own lawyer attend at your own expense, but it is not necessary.

In order to voice an objection at the hearing, you must submit an Objection Form on time. If you do not wish to attend the hearing, but you did submit an Objection Form on time, the Court will consider it and you do not have to come to the Court to talk about it.

## GETTING MORE INFORMATION

### 13. How do I get more information?

This notice summarizes the proposed settlement. More details are in the Settlement Agreement. You can get a copy of the agreement at [www.RestigoucheHospitalCentreClassAction.ca](http://www.RestigoucheHospitalCentreClassAction.ca) or email [info@RestigoucheHospitalCentreClassAction.ca](mailto:info@RestigoucheHospitalCentreClassAction.ca).

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You may also seek legal advice from Class Counsel concerning the proposed settlement and your claim at no cost to you. You can send your questions to Koskie Minsky by email at [restigoucheclassaction@kmlaw.ca](mailto:restigoucheclassaction@kmlaw.ca). You may also call the toll-free number **1-888-233-2852**.

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