

BETWEEN:

Her Majesty the Queen as Represented by the Minister of Health and Long-Term Care (the  
"Ministry")

Respondent

- and -

Ontario Human Rights Commission (the "Commission"), The Canadian Association for  
Community Living, Community Living Ontario and People First Ontario (the "Coalition")

Intervenors

### MINUTES OF SETTLEMENT

**WHEREAS** the Commission and the Coalition have intervened in this Application in support of the applicant;

**AND WHEREAS** these parties have agreed to a settlement resulting in the withdrawal of the intervenors;

**AND WHEREAS** the parties recognize their rights and obligations under the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*;

**NOW THEREFORE** the parties agree as follows:

### CONSULTATION PROCESS

- 1) The Associate Deputy Minister of Health and Long-Term Care, Delivery and Implementation (Associate Deputy Minister) and/or her staff will initiate a consultation process with community representatives recommended by the Coalition and agreed to by the Ministry.
- 2) The consultation will address:
  - a. proposals for home care and community services reform that may impact on persons with intellectual disabilities, including eligibility criteria;
  - b. immediate short-term proposals for improvement in the delivery of home care and community services for persons with intellectual disabilities;

- c. the generalized experiences of persons with intellectual disabilities with the home care and community services system and policy approaches that would improve those experiences; and
  - d. with the appropriate consent, the experience of identified individuals with intellectual disabilities whose desire to live in the community is circumscribed by their current access to home care and community services.
- 3) In addition to the purposes set out in section 1 of the *Home Care and Community Services Act, 1994*, the following are the guiding principles for the consultation:
- a. That the provision of home care and community services for persons with intellectual disabilities be guided by a person/patient-centred focus and include integrated care planning.
  - b. There should be greater use of self-directed approaches to deliver these services to persons with intellectual disabilities.
  - c. Individualized care planning and supports relating thereto are important for persons with intellectual disabilities.
  - d. Home care and community services for persons with intellectual disabilities should be available to these people in their own homes and in other community settings so that alternatives to institutional care exist.
  - e. Successful practices in other jurisdictions and within Ontario relating to the provision of home care and community services for persons with intellectual disabilities should be identified to serve as potential models.
  - f. Current providers of home care and community services for persons with intellectual disabilities will benefit from a modernized policy and program framework.
- 4) The Coalition and other community members will raise awareness of the principles of the United Nations *Convention on the Rights of Persons With Disabilities* and the *Common Principles on the Inclusion of People with Disabilities in their Communities* at the consultation process.
- 5) The Associate Deputy Minister and/or her staff will:
- a. convene bi-monthly (every two months) meetings commencing within three months of the signing of these Minutes;
  - b. invite relevant staff from other ministries to participate in meetings;

- c. provide secretariat support for agendas and minutes, and meeting spaces for these meetings; and
  - d. offer briefings, as appropriate, on program or policy announcements relating to the provision of home care and community services that may impact persons with intellectual disabilities.
- 6) The bi-monthly meetings in (5) will be held by tele-conference or, where available, video-conference. Participants may also attend in person but will do so at their own expense.
- 7) The Ministry will provide any logistical or technological support required for the community representatives to participate in the tele-conference or, where available, video-conference meetings.
- 8) With the appropriate consent, the community representatives will identify, as needed and as appropriate, individuals with intellectual disabilities whose desire to live in the community is circumscribed by their current access to home care and community services. Where appropriate, these cases will be referred to their respective LHINs and local service planners and providers for further discussions concerning the development of integrated care plans relating to these services.
- 9) In order to facilitate the identification and referral of cases by the community representatives, outlined in (8), the Ministry will provide Community Living Ontario with a lump-sum payment of \$20,800 to enable Community Living Ontario to hire a part-time staff person for the duration of the consultation process. This amount represents 20 hours per week, at \$20 per hour, for 12 months. This staff person will be responsible for: reaching out to service providers across Ontario; identifying individuals with intellectual disabilities whose desire to live in the community is circumscribed by their current access to home care and community services; completing any consent/privacy processes pre-requisite to referral; preparing summaries of the individual cases; bringing forward the individual cases to the consultation process; research on (3)(e), above, and any other work that is required by Community Living Ontario in order to facilitate the participation of the community representatives in the consultation process.
- 10) Within 12 months of the signing of these Minutes, a joint summary of the consultation will be prepared by Ministry staff and community representatives. In the alternative, Ministry staff and community representatives will each prepare a separate summary within 14 months of the signing of these Minutes. The summary will include:
  - a. Suggestions from community representatives with respect to improving the home care and community services programs and supports for people with intellectual disabilities;



- b. Generalized descriptions of the experiences of people with intellectual disabilities brought to the Ministry's attention through this process (respecting the privacy of health care information);
  - c. Suggestions about pilot projects; and
  - d. Suggestions about other health care models.
- 11) Nothing in these Minutes precludes any party from making the summary (or summaries) publicly available, including on their website, provided that personal information and personal health information is properly redacted.
- 12) The Associate Deputy Minister will consider this summary (or summaries) in the development of home care and community services policy and programs that may impact on persons with intellectual disabilities.

#### **MEMORANDUM TO CCACs AND LHINs**

- 13) The Ministry will issue a memorandum with the subject "Direction on the Application of Service Maximums in Regulation 386/99 under the *Home Care and Community Services Act, 1994*" in the form attached as Appendix "A".
- 14) Where an individual is identified to a ministry contact, the contact will refer the case to the appropriate LHIN and assist the CCAC and/or LHIN, where needed and possible, in identifying and developing possible solutions.

#### **SECTION 14 OF THE CODE**

- 15) Ontario agrees that it will provide to the Commission and the Coalition a copy of its written submissions to the Tribunal on all issues, including its submissions on section 14 of the *Human Rights Code*, at the same time that it is required to serve these submissions on counsel for the Applicant.
- 16) In addition, Ontario agrees that it will provide, at least 5 days before the date scheduled for oral submissions, an outline of its oral submissions concerning section 14 of the *Code*, including reference to the case law citations that it is likely to rely upon in oral argument in relation to section 14. If no written submissions are required, this outline will be provided 10 days before the date scheduled for Ontario's oral submissions.
- 17) Ontario agrees to put the separate or joint written submissions of the Coalition and Commission before the Tribunal as part of its final submissions on s. 14. The

Coalition and the Commission will provide such submissions to counsel for Ontario at least three days prior to the date that Ontario's oral submissions are to be presented to the Tribunal.

- 18) The parties to the settlement shall jointly write to the Tribunal within 1 day of the signing of these minutes as follows: "The Respondent and the Intervenors have agreed to a tentative settlement that would result in the withdrawal of the intervenors as formal participants in this hearing. We are requesting that the Tribunal agree to consider as part of final argument written submissions on s. 14 of the Code prepared by the Coalition and/or the Commission that would be put before the Tribunal by counsel for the Respondent in the Attorney General's capacity as Chief Law Officer of the Crown. The Tribunal is requested to confirm as soon as possible in a case assessment direction that it will consider submissions put before it in this manner."
- 19) Ontario agrees that it will not oppose the Commission or the Coalition seeking intervenor status should either the Applicant or the Respondent seek to judicially review the decision of the Tribunal with respect to its interpretation of section 14 of the *Code*.
- 20) Further, should neither the Applicant nor the Respondent judicially review the Tribunal's decision, Ontario agrees to not oppose the Commission's standing, as a public interest applicant or person affected by the Tribunal's decision regarding the interpretation of section 14 of the *Code* to itself bring a Notice of Application to judicially review the Tribunal's interpretation of section 14 of the *Code*.
- 21) Counsel for the Commission and the Coalition will not seek to, and it is agreed will have no rights to, make oral submissions to the Tribunal on the understanding that they are neither a party nor are they any longer an intervenor.
- 22) Counsel for the Commission and the Coalition, as is the case with any person in Ontario, may attend to view and hear the submissions of Ontario's counsel on the date that oral submissions are made and are free to speak and consult with counsel for the Applicant.

#### **WITHDRAWAL BY INTERVENORS**

- 23) Counsel for the Coalition and Commission shall write to the Registrar of the Human Rights Tribunal of Ontario no later than two days after receiving a case assessment direction confirming that the Tribunal will consider the s. 14 submissions, to advise that they are withdrawing from participation as intervenors.

#### **NO ADMISSION OR RETRACTION**

- 24) The Ministry does not admit any violation of the *Code* and the Coalition and the Commission do not retract their position that there was a violation of the *Code*. This settlement does not constitute an acknowledgement by the Commission or the

Coalition that the measures in it are sufficient to comply with the *Code* on a permanent basis.

25) Nothing in this settlement affects the Applicant's ability to put forward his case nor will it limit the scope of remedies available to him. Nothing in this settlement precludes the Respondent from relying on the reforms and the process outlined in this settlement as part of its submissions on remedy. Nothing in this settlement or the Coalition's withdrawal precludes the Applicant seeking to rely on the evidence of the Coalition, including the expert evidence of Michael Kendrick, if the Applicant calls the evidence. Nothing in this settlement precludes the Respondent from challenging such evidence on any other basis.

26) This agreement, including Appendix "A", is subject to approval of the Minister of Health and Long-Term Care and shall be null and void if such approval is not provided. Counsel for the Respondent shall advise the other parties no later than Thursday June 9, 2016 at 5pm in this regard. This agreement is also null and void if the Intervenors do not withdraw from the proceeding within two days of receiving the Tribunal's case assessment direction.

Signed at Toronto this 8<sup>th</sup> day of June, 2016.

  
\_\_\_\_\_

for the Coalition

  
\_\_\_\_\_

for the Commission

  
\_\_\_\_\_

for the Ministry



Ministry of Health  
and Long-Term Care

Office of the Minister

10<sup>th</sup> Floor, Hepburn Block  
80 Grosvenor Street  
Toronto ON M7A 2C4  
Tel 416-327-4300  
Fax 416-326-1571  
www.ontario.ca/health

Ministère de la Santé  
et des Soins de longue durée

Bureau du ministre

Édifice Hepburn, 10<sup>e</sup> étage  
80, rue Grosvenor  
Toronto ON M7A 2C4  
Tél 416-327-4300  
Télééc 416-326-1571  
www.ontario.ca/sante



HLTC2980MC-2016-XXXX

## APPENDIX A

**MEMORANDUM TO:** Community Care Access Centre Chief Executive Officers

**FROM:** The Honourable Dr. Eric Hoskins  
Minister of Health and Long-Term Care

**SUBJECT:** Direction on the Application of Service Maximums in  
Regulation 386/99 under the *Home Care and Community  
Services Act, 1994*

---

CCACs play a critical role in the success of home and community care by coordinating and delivering services that help people stay independent in their homes longer. We know that CCACs are providing increasingly more complex care, often over longer periods of time. I want to thank you for your continued commitment to delivering quality home and community care services to Ontarians.

As you are aware, service maximums for nursing, and homemaking and personal support services are set out in Regulation 386/99 under the *Home Care and Community Services Act, 1994* (HCCSA).

I would like to remind you that on October 1, 2015, the maximum number of nursing visits or hours that a CCAC may provide to a person was increased. CCACs are now permitted under Regulation 386/99 to provide clients with up to 150 visits within a 30-day period versus the previous limit of 120 visits within a 30-day period. The changes to the Regulation also permit CCACs to determine that "extraordinary circumstances" exist that would justify the provision of additional services and to provide more than the maximum number of visits or hours to clients under the circumstances set out in the Regulation.

Care Coordinators shall consider a full range of service options based on client need, and provide the necessary referrals to additional community support services or

.../2

interprofessional resources in primary care practices for clients who are receiving or reaching the prescribed service maximums, to help them continue to live independently in the community. Where needed, your ministry contact can assist Care Coordinators in identifying appropriate community supports.

The ministry continues to engage with clients, including those with complex care needs and developmental disabilities, and other ministries that serve these individuals to assess the impact of the legislative maximums. CCACs are directed to inform your ministry contact in compliance with privacy legislation, of cases in which CCACs are delivering services at or near the regulated maximums in order to inform policy considerations.

Yours sincerely,

Dr. Eric Hoskins  
Minister

c: Chief Executive Officers, Local Health Integration Networks  
Catherine Brown, Chief Executive Officer, Ontario Association of Community Care  
Access Centres  
Dr. Bob Bell, Deputy Minister, Ministry of Health and Long-Term Care  
Nancy Naylor, Associate Deputy Minister, Delivery and Implementation



bc: Sunil Gurmukh, Ontario Human Rights Commission  
S. Priya Morley, WeirFoulds LLP