Court File No.: CV-14-0018 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

TONI GRANN, ROBERT MITCHELL, DALE GYSELINCK and LORRAINE EVANS

Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act*, 1992

FACTUM OF THE MOVING PLAINTIFFS
(Returnable May 12 and 13, 2021)

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PART I - OVERVIEW

1. The Plaintiffs and Class Counsel have been advancing this novel claim for eight years. The claim primarily alleges that the Province of Ontario owed a duty to consider and, where appropriate, advance certain claims on behalf of Crown Wards who had been abused or were victims of crime. The parties have reached a proposed resolution which will provide compensation to class members without any release of their rights to pursue such claims as against any entity that may be liable for the abuse or other crimes they suffered.

2. After years of hotly contested litigation, and exhaustive negotiations, the parties now seek this Court's approval of the proposed settlement, counsel fees and honouraria pursuant to sections 29 and 32 of the *Class Proceedings Act, 1992* S.O. 1992, c. 6 (hereinafter "*CPA*"). Under all the circumstances, and the nature of the claims which were advanced, it is an excellent settlement.

3. It is important at the outset to consider what this claim alleges, and what it *does not* allege. This claim is not, and never was, a claim for compensation for the abuse itself or injuries arising from any crimes suffered by Crown Wards. It is a novel claim primarily about the alleged failure to consider, and where appropriate, advance claims *while the class members were Crown Wards*. However, the prior *Limitations Act* preserved such claims while the class members were Crown Wards (and therefore minors) and the limitation period did not begin to run. Furthermore, in 2016 the legislature completely eliminated limitation periods for sexual assault claims as well as

physical assaults of minors. Therefore, the class members remain able to pursue any such claims that they have.

4. It is also important to recognize what the proposed settlement does, and *does not* contain. It provides compensation to the class members but does not contain any release of liability in respect of any abuse or crimes suffered by any of the Class Members. Accordingly, this means that if the settlement is approved, Class Members who obtain settlement benefits remain free to apply for any benefits to which they are entitled, or advance individual civil actions against any entities liable for abuse or crimes they suffered.

5. This settlement approval hearing has the potential to be an important vehicle, not just to provide compensation to class members, but also to advise them of the fact that they may have rights of action that arise directly from crimes they suffered, *and* that this settlement does not release those rights.

6. In summary, the settlement is fair and reasonable in all the circumstances and should be approved, for the following reasons:

(a) It provides meaningful compensation in light of the novel and extremely challenging claims that were advanced, and the defences raised;

(b) It contains a claims process that is user friendly, streamlined, and with a presumption of honesty by the claimant. The application is paper-based and non-adversarial (no cross-examination) and therefore intended to avoid re-traumatization;

(c) The class members' rights of action are preserved against any entities liable for the abuse or crimes they may have suffered;

(d) The receipt of compensation under the settlement will not impact class members' eligibility for or the amount, nature and /or duration of social assistance programs administered by or on behalf of the Ministry of Children, Community and Social Services.

PART II - THE FACTS

A. Litigation History

7. This action was forcefully litigated for eight years. This litigation included numerous contested motions as well as a lengthy negotiation process. The negotiations culminated in a settlement which both parties unreservedly recommend to this Court.

8. Class Counsel were retained to commence this action on a contingency fee basis in or around May 2013. The action was commenced on January 22, 2014.

9. On April 8, 2014, the Honourable Justice Pierce was appointed as Case Management Judge.

10. On September 19, 2014 Pierce J. set down a motion for disclosure of the then-Plaintiff's Children's Aid Society (hereinafter "CAS") records, returnable on November 14, 2014. Pierce J. also set a deadline for the Plaintiff to file an amended claim, which

the Plaintiff did. Lastly, Pierce J., set down a one-day hearing for competing Section 5(1)(a) and *Rule* 21 motions.[1]

11. On November 21, 2014 the Court heard the then-Plaintiff's motion for production of her CAS file and granted the relief sought.[2]

12. On April 28, 2015, the Court heard competing Section 5(1)(a) *and* Rule 21 motions brought by the Plaintiffs and Defendant respectively. In reasons released on May 28, 2015, the Court granted the Plaintiffs' Section 5(1)(a) motion and dismissed the Defendant's Rule 21 motion. In that decisions, the Court granted leave to the Plaintiff to file a fresh as amended claim, which the Plaintiff subsequently did.[3]

13. On July 8, 2015, the Court granted the Plaintiffs' motion for production of further CAS files.[4]

14. On January 22, 2016, the Honourable Justice Fregeau denied the Defendant's motion for leave to appeal this Court's decision on the *Rule* 21 motion.[5]

15. On February 17, 2016, the parties reached an agreement with respect to a certification and production timetable.[6]

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[1] Affidavit of David Rosenfeld sworn May 4, 2021, p. 2.; Motion Record of the Plaintiff ("**MR**"), Tab 2, p. 11.

[2] Rosenfeld Affidavit, p. 2.; MR, Tab 2, p. 11.

[3] Rosenfeld Affidavit, p. 2.; MR, Tab 2, p. 11.

[4] Rosenfeld Affidavit, p. 3.; MR, Tab 2, p. 11.

[5] Rosenfeld Affidavit, p. 3.; MR, Tab 2, p. 12.

[6] Rosenfeld Affidavit, p. 3.; MR, Tab 2, p. 12.

16. On February 4, 2016 the Plaintiffs served their motion record in support of certification. It included affidavits from:

(a) Five representative plaintiffs:

(i) Affidavit of Holly Papassay sworn September 10, 2015

(ii) Affidavit of Toni Grann sworn September 11, 2015

(iii) Affidavit of Robert Mitchell sworn September 10, 2015

(iv) Affidavit of Dale Gyselinck sworn September 11, 2015

(v) Affidavit of Lorraine Evans sworn September 9, 2015

(b) A class member and former CAS counsel regarding CAS Polices;

(i) Affidavit of Elizabeth French sworn September 14, 2015.[7]

17. On June 14, 2016 the Defendant served its responding certification record. On July 27, 2016 the Plaintiffs served a Reply Record which included expert evidence from Dr. David Wolfe and Dr. Peter Jaffe.[8]

18. Cross examinations on certification affidavits took place throughout the autumn of 2016.[9]

19. On October 21, 2016 the Court heard the Defendant's motion to compel the Plaintiffs to re-attend cross-examination to answer refusals and have their CAS files marked as exhibits to those cross-examinations. By decision dated November 10, 2016,

[7] Rosenfeld Affidavit, p. 3.; MR, Tab 2, p. 12.

[8] Rosenfeld Affidavit, p. 3.; MR, Tab 2, p. 12.

[9] Rosenfeld Affidavit, p. 4.; MR, Tab 2, p. 13.

the Court ordered the Plaintiffs to answer some, but not all of the refused questions. The Court dismissed the balance of the Defendant's motion.[10]

20. On January 23 and 24, 2017, the Parties conducted a two-day certification hearing. By decision dated March 30, 2017, the Court granted the Plaintiffs' motion for certification. On the consent of the parties, the Certification Order removed Holly Papassay as a Representative Plaintiff. During the certification motion, as a result of the production of records, it became clear that Ms. Papassay had been a CAS ward, not a Crown ward.[11]

21. Following the certification decision, the parties negotiated an agreed upon plan for the notice of certification as well as a discovery plan. The Court endorsed the parties' notice and discovery plans on September 12, 2017.[12]

B. The Commencement of Settlement Negotiations

22. In or about October 2017, the parties agreed to mediate. Shortly thereafter, the parties agreed to appoint Ron Slaght, who is an extremely experienced mediator and litigator, to mediate. The parties initially conducted a 2-day mediation with Mr. Slaght in March 2018. Negotiations, offers and counter-offers continued for almost two years. During these two years of negotiations, a broad range of topics were canvassed and negotiated, including:

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[10] Rosenfeld Affidavit, p. 4.; MR, Tab 2, p. 13.

[11] Rosenfeld Affidavit, pp. 4-5. MR, Tab 2, pp. 13-14.

[12] Rosenfeld Affidavit, p. 5. MR, Tab 2, p. 14.

(a) The nature of the claims being advanced, and the challenges relating to the causes of action, causation and damages;

(b) the class definition;

(c) class population size estimates and incidence rates, including expert actuarial analysis;

(d) an aggregate cap and structure for the funds to be made available for individual compensation;

(e) the structure of a settlement;

(f) claims advanced on behalf of estates of class members;

(g) the claims process and verification;

(h) the scope of the release; and,

(i) notice, notice publication, assessment of claims and administration of the settlement.

23. On January 28, 2021, the Final Settlement Agreement was agreed to by the parties. A copy of the Settlement Agreement is attached hereto as Schedule C.

C. Phase I Notice Approval and Implementation

24. On January 29, 2021, counsel appeared before Justice Pierce seeking approval of the form and content of the Phase I notice and the Phase I notice plan to provide notice of the settlement and fee approval hearing.

D. The Settlement and Proposed Distribution Plan

i. **Key Terms of the Settlement**

25. The key terms of the Settlement include:

(a) A lump sum settlement fund of $10,000,000;

(b) aggregate individual compensation for eligible class members up to $3,600 per individual claimant;

(c) notice to all class members of this settlement, as well as their ability to pursue individual actions and claim for benefits auxiliary to this settlement agreement;

(d) an extremely limited release that preserves class members' rights of action against any entities liable for torts they may have suffered;

(e) a claims process that is user friendly, streamlined, and with a presumption of honesty by the claimant. The application is paper-based, non-adversarial (no cross-examination), and intended to be restorative in nature; and,

(f) that the receipt of compensation under the settlement will not impact the receipt of social assistance benefits by the province;

ii. **Confidential Claims Process**

26. The Settlement Agreement provides for a paper-based confidential claims process. Class Members will not be required to undergo an interview.

27. In no circumstances arising from the implementation of the settlement will any claimant be required to testify in a court or undergo any cross-examination or questioning by an adverse party.

28. The claims process will be confidential. Claimants will be assumed to be acting honestly in completing their forms.

iii. **The Claims Administration Process**

29. Key features of the Claims Administration Process include:

(a) the claims process is non-adversarial and meant to avoid re-traumatization;

(b) the claims process is simple and user-friendly;

(c) claimants are presumed to be acting honestly and in good faith in completing their claim forms;

(d) claimants will have 9 months to prepare and submit their claim forms;

(e) claimants are not required to submit any supporting documentation.

(f) the administrator must initially verify the eligibility of the claimant, that the information provided is complete, and whether the claimant has opted out;

(g) for the period where records are available electronically, the Defendant to check to verify a claimant's Crown wardship, and provide a response to the claim if it chooses within 60 days;

(h) if the Defendant provides a response to the claim, the claimant will be notified and provided with access to the response and with an opportunity to reply;

(i) the administrator and assessor(s) shall review the claim and information available and render a decision on eligibility for compensation;

(j) the administrator shall then inform the claimant of the decision;

(k) if a claim is denied, the claimant may request reconsideration by the administrator and may submit a reconsideration form and any new relevant information;

(l) the administrator shall then issue a decision and inform the claimant; and,

(m) the decisions of the administrator and any reconsideration decisions are final and binding.

PART III - ISSUES AND THE LAW

30. There are two issues to be determined on this motion:

(a) is the proposed settlement fair, reasonable and in the best interests of the class as a whole?

(b) are the legal fees and honouraria fair and reasonable in all of the circumstances?

31. The Plaintiffs respectfully submit that these questions ought to be answered affirmatively.

A. The Settlement is Fair, Reasonable & In the Best Interests of the Class

32. The payment of $10,000,000.00 represents substantial financial recovery for the class which is an excellent result given the narrow release (which permits the pursuit of claims for the abuse itself), extremely challenging claims and difficulties in establishing causation or damages. Furthermore, this compensation is certain and far sooner than any judgment on the common issues or any attendant individual damage assessments might have rendered. Continued litigation of this action would have required the following key steps, necessitating a number of years to complete:

(a) substantial documentary production and further review, respecting historical records spanning decades;

(b) lengthy examinations for discovery;

(c) various pre-trial motions, including ‘milestone’ motions which might have included summary judgement on the limitations period or aggregate damages, including all attendant appeals of those decisions;

(d) extensive trial preparation and management;

(e) the commissioning and retention of experts on topics ranging from the prevailing historical 'standards of the day', varying standards of care over decades, common impacts and the ability to make an aggregate damages award;

(f) a common issues trial;

(g) a likely long reserve of the trial judgment and then appeals arising therefrom; and

(h) potentially thousands of individual assessment hearings if the Plaintiff prevailed on liability but did not secure an aggregate damages award at trial.

33. This action is advanced on behalf of an aging and vulnerable class. The further afield the resolution is, the more class members will not live to see justice done. This court's warning in Seed, also applies to this proceeding:

> "Furthermore, and of some moment, I was more than modestly concerned that if this matter were not resolved currently, but continued or was dragged out by the normal effluxion of hearing time and appeals, many of the class members, particularly those who passed through the defendant institution in the 50's and 60's, would not either participate in any resolution or would not live long enough to realize some finality to this chapter of their respective lives."[13] [emphasis added]

34. In historical cases such as this one, where the events at issue occurred many decades ago, this concern is particularly heightened for the settlement approval court: "[g]iven the advanced age of class members and the historical nature of this litigation, the benefits of an immediate and certain settlement cannot be overstated."[14] [emphasis added]

35. This rationale applies here: the ongoing passing of class members, given their typically advanced ages and/or compromised mortality rates, similarly augur in favour of

[13] *Seed v. Ontario*, 2017 ONSC 3534 at para. 13, Book of Authorities, Tab 1.

[14] *McKillop and Bechard v. HMQ*, 2014 ONSC 1282 at para. 28, Book of Authorities, Tab 2.

an expedient resolution and a recognition of the importance of this particular factor given these circumstances.

36. Where significant risks present themselves to the class in establishing liability and the litigation would prove protracted and complicated, courts have found that "it is in the interests of the class members to have a timely and prompt payment".[15]

37. Continued prosecution through to the culmination of a common issues trial, plus any and all appeals, included the very real risks that: (i) a fiduciary duty to advance legal claims might not found to be owed at all; (ii) liability in negligence might not be established; (iii) an aggregate award of damages could have been denied by the trial judge forcing the class to go through lengthy and protracted individual assessments; and (v) proven damages, at the very end of the day, could have been similar to or even less, than the Settlement.

38. If individual assessments had been ordered instead of aggregate damages, those hearings would have:

(a) been adversarial in nature;

(b) required significant time to complete;

(c) required counsel for all parties involved;

(d) required class members to testify and be cross-examined; and,

(e) required expert evidence on damages and causation.

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[15] *McCarthy v. Canadian Red Cross Society*, [2001] O.J. No. 2474 (S.C.J.) at para. 18, Book of Authorities, Tab 3.

39. Importantly, even putting all the liability and damages risks aside, the sheer time for final resolution of the trial itself created additional challenges: release of judgment and all appeals would have taken years, in a proceeding which pertains to events spanning over fifty years (*i.e.* 1966 to 2017).

40. In contrast, the claims process provided by the Settlement has proven to be a timely method of assessing claims of large groups of claimants having delivered compensation to claimants in a matter of months.

41. As such, a critically important consideration of this settlement "includes the potential that a case such as this one would take considerable expense and many more years to …. exhaust all appeals"[16] (and/or any and all individual assessments), making an expedited simplified paper-based process today, a weighty factor in favour of settlement approval.

i. The Prevailing Legal Test for Settlement Approval – Section 29 of the CPA

42. Section 29 of the *CPA* requires court approval of proposed settlements of class proceedings.[17] The test for approval is whether it is fair, reasonable and in the best interests of the class as a whole, not whether it meets the demand of a particular class member.[18]

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[16] *Dabbs v. Sun Life Assurance Company of Canada*, [1998] O.J. No. 2811 (Gen. Div.) at para. 33, Book of Authorities, Tab 4, aff'd (1998) 41 O.R. (3d) 97 (C.A.); *Ford v. F. Hoffmann-La Roche Ltd*., 2005 CanLII 8751 (O.N.S.C.) at para. 147, Book of Authorities, Tab 5.

[17] *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 29, Schedule B.

[18] *Parsons v. Canada Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at para. 69, Book of Authorities, Tab 6.

43. Several factors have emerged from the prevailing jurisprudence which courts are obliged to consider in evaluating the reasonableness of any proposed settlement. These factors include, but are not limited to, the following:

(a) the likelihood of recovery or success;

(b) the amount and nature of discovery, evidence and/or investigation;

(c) the terms of the settlement;

(d) the recommendation and experience of class counsel;

(e) future expense and likely duration of continued litigation, plus its attendant risks;

(f) the number of objectors and the nature of the objections;

(g) the presence of good faith, arms-length bargaining and the absence of collusion;

(h) the degree and nature of communications by counsel and the representative plaintiff with class members during the litigation; and,

(i) the position and dynamics of the parties taken during the negotiations.[19]

44. Taking all these factors into consideration, the settlement ought to be approved by this Honourable Court.

45. In order to obtain judicial approval, the settlement need not be 'perfect' but rather it must fall within a range of reasonable outcomes.[20] This range of reasonableness test recognizes that a number of different settlement possibilities may be in the best interests of the class when compared to the unpredictable outcomes associated with novel, and protracted, litigation.

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[19] *Sayers v. Shaw Cablesystems Ltd.*, 2011 ONSC 962 at para. 28, Book of Authorities, Tab 7.

[20] *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at para. 69, Book of Authorities, Tab 6.

46. A fair and reasonable settlement is, in and of itself, inherently a compromise which ought to be encouraged by the court and is supported by public policy.[21] The applicable jurisprudence further confirms that there is a strong initial presumption of fairness when the settlement is, as in this case, negotiated at arms' length and recommended by experienced class counsel:

> "Where the parties are represented – as they are in this case – by highly reputable counsel with expertise in class action litigation, the court is entitled to assume, in the absence of evidence to the contrary, that it is being presented with the best reasonable achievable settlement and class counsel is staking his or her reputation and experience on the recommendation." [emphasis added][22]

47. In order to reject the terms of a settlement in such circumstances and all but require the litigation to continue, a court would have to conclude that the settlement has failed to fall within a spectrum of reasonable outcomes.[23] The range of reasonableness test is not a static valuation but one that permits a host of viable – and acceptable – outcomes depending upon the subject matter of the litigation and the nature of damages for which the settlement is intended to provide compensation.[24]

48. Importantly, in the settlement approval context, the Court's role is somewhat limited. The Court cannot engage in a process of accepting some aspects of a settlement, and seeking to reject or re-open others. As the Court of Appeal pointed out, the judge

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[21] *Baxter v. Canada (Attorney General)*, [2006] O.J. No. 4968 at para. 21 (S.C.J.), Book of Authorities, Tab 8.

[22] *Serhan (Trustee of) v. Johnson & Johnson*, 2011 ONSC 128 at paras. 55, 56, Book of Authorities, Tab 9.

[23] *Ford v. F. Hoffmann-La Roche Ltd.*, 2005 CanLII 8751 (O.N.S.C.) at paras. 113–114, Book of Authorities, Tab 5.

[24] *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at para. 70, Book of Authorities, Tab 6.

hearing a settlement approval motion is "not permitted to modify unilaterally the terms of a negotiated settlement without the consent of the parties."[25]

49. Recently, the Federal Court of Appeal expanded on this warning, with Justice Stratas writing:

> The Court must review the evidence, appreciating the inevitable disappointments caused by the settlement process. Strongly held views of individuals in different circumstances collide and are compromised or even cast aside, and sometimes, as a result, some are left out in the cold: *Manuge v. Canada*, 2013 FC 341, [2014] 4 F.C.R. 67 at para. 24; *Parsons v. Canadian Red Cross Society* (1999), 40 C.P.C. (4th) 151 at para. 79. Settlements do not achieve the impossible. They are not perfect. They do not please all.
>
> We must also appreciate the challenges confronting the Court. It has to apply the amorphous standard of "fair and reasonable" to a settlement that affects different people in different ways, some superficially, some deeply. It cannot apply its vision of the ideal and do what it personally feels is right and just. It cannot meddle by changing the settlement terms, imposing its own terms or promoting the interests of certain class members over those of the whole class: *Manuge* at paras. 5, 19. It has to give "[c]onsiderable deference" to "the end product" expressed in the settlement: *Fontaine v. Canada (Attorney General)*, 2006 NUCJ 24 at para. 38. Essentially, as the Federal Court recognized (at para. 51), the Court must apply the standard of "fair and reasonable" to the settlement and make a tough choice: take it or leave it. [emphasis added] [26]

50. In this situation, it cannot be said that the proposed settlement fails to fall within a spectrum of reasonable outcomes based on, *inter alia,*: (i) the limited, novel and risky nature of the claim advanced; (ii) the quantum of the settlement fund; (iii) the expedient paper-based claims process; and (iv) the limited scope of the release.

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[25] *Welsh v. Ontario*, 2019 ONCA 41 at para. 11, Book of Authorities, Tab 10, citing with approval: *Dabbs v. Sun Life Assurance Co. of Canada*, [1998] O.J. No. 1598 at para. 10, Book of Authorities, Tab 4; *Ford v. F. Hoffmann-La Roche Ltd.*, 2005 CanLII 8751 (O.N.S.C.) at para. 127, Book of Authorities, Tab 5.

[26] *Hebert v. Wenham*, 2020 FCA 186 at paras. 9-10, Book of Authorities, Tab 11.

ii. **Specific Factors Weighing in Favour of Judicial Approval**

51. As described above with reference to the evidentiary record on this motion, the primary factors weighing heavily in favour of approval of the settlement include the following:

(a) compensation with a simple paper-based claims administration;

(b) a timely claims process that will result in compensation to class members in months, rather than years;

(b) receipt of compensation under the settlement will not impact class members' eligibility for or the amount, nature and /or duration of social assistance programs administered by or on behalf of the Ministry of Children, Community and Social Services;

(c) liability risks on the merits which the Plaintiff faces in any common issues trial;

(d) multiple defences raised by the Crown which could have led to dismissal of the action outright as set out in paragraphs 62-84, *infra*; and

(e) the possibility of the court ordering individual assessments following a common issues trial, even if the Plaintiffs were successful on the liability issues.

52. The settlement provides definite, meaningful and expedient compensation to an already ageing class when weighed against the risks of continued prosecution to trial, attendant appeals and/or individual assessments.

53. The terms of settlement reflect these class members' own unique circumstances in the following ways:

(a) the release does not in any way limit Class Members' rights of recovery against any entity liable for abuse they may have suffered or any failure to prevent said abuse;

(b) the claims process is simple and avoids forcing class members to re-live their experiences by giving oral testimony or being cross-examined by the Crown; and,

(c) receipt of compensation under the settlement will not impact class members' eligibility for or the amount, nature and /or duration of social assistance programs administered by or on behalf of the Ministry of Children, Community and Social Services.

54. All of these factors taken together demonstrate that this settlement falls well within the zone of reasonableness. Not only does it provide timely compensation without releasing existing rights, the settlement process itself is a vehicle by which Class Members will be advised that they may have additional viable claims arising from abuse they suffered.

iii. **The Terms of Settlement**

55. The key terms of the Settlement Agreement include:

(a) a $10,000,000 settlement fund (the "**Settlement Fund**");

(b) the cost of notice to the class and administration of the claims process is paid from the Settlement Fund;

(c) the compensation is designed not to be subject to tax or impact class members ' eligibility for or the amount, nature and /or duration of social assistance programs administered by or on behalf of the Ministry of Children, Community and Social Services;

(d) the claims application process is paper-based and does not require former Crown Wards to testify or appear in person;

(e) the release preserves claims arising directly from any abuse suffered by Class Members; and,

(f) the maximum potential compensation that a claimant can receive is $3,600.

56. The compensation scheme is intended to be easy to use and time efficient. In the absence of reasonable grounds to the contrary, claimants will be assumed to be acting honestly and in good faith in completing their forms. Claimants will not be required to testify or submit documents with their claim.

57. There is no process for individual hearings or a venue in which the Defendant may challenge a claim made. The Settlement Agreement provides for an entirely paper-based claims process that does not require any claimant to testify. Claimants may submit supporting documentation if they have it available. Otherwise the entire substance of a class member's claim may consist of their written description of events.

58. If the compensation calculated for all claims does not exhaust the Settlement Fund (after legal fees, disbursements, taxes honouraria and administration costs are deducted), then each claimant will receive an increase of up to $600, subject to the amount of funds available in the Settlement Fund. Therefore, the maximum that a claimant can receive is $3,600.

59. In cases arising from or related to historic abuse, class members often convey that they are afraid to be involved in any claims process because they are very reluctant to describe their experiences due to embarrassment, shame or they do not want it publicly known what happened to them. The parties are of the view that this paper-based confidential claims process will alleviate the concerns of many class members in this proceeding.[27]

60. The Proposed Claim Form is simple, user friendly and accessible to the Class Members.[28] In general terms, the Proposed Claim Form consists of three (3) parts:

(a) contact information for the claimant;

(b) space to include a description of abuse suffered; and

[27] Rosenfeld Affidavit, p. 8, MR, Tab 2, p. 17.

[28] Rosenfeld Affidavit, p. 9, MR, Tab 2, p. 18.

(c) the solemn declaration in respect of the substance of the claim.

61. Lastly, but importantly, the Settlement is structured to be non-taxable income. In addition, the Plaintiffs sought the assurance of the Province that the compensation will not impact any social assistance already provided to class members in order to avoid any 'claw backs' of compensation awarded on the basis of a person's current social assistance status.[29]

iv. Liability Risks Faced by the Plaintiffs at Trial, Making Settlement Prudent

62. Many risks and legal challenges faced the Plaintiffs in their ability to establish the Defendant's liability at trial to most or all class members.

(1) Existence of duties & alleged breaches of standards

63. The first threshold issue the trial court would have had to determine with respect to the certified common issues would have been whether a duty of care and/or fiduciary duty were owed by the Crown to the class members in respect of advancing legal rights. The Crown denied owing such duties and argued that clear statutory authority (various iterations of child welfare legislation) demarcated the extent of the Crown's duties and negatived any alleged duty to protect/advance legal claims. The Crown took the alternative position that the Province had properly exercised its discretion to advance claims throughout the class period where and when appropriate.

[29] Rosenfeld Affidavit, p. 7, MR, Tab 2, p. 16.

(2) If duty established, causation and harm become significant hurdles

64. Even if the Plaintiffs were able to prove a duty, they would then need to defeat a limitation defence in respect of breaches that occurred over the last five decades. Upon establishing a novel legal duty and defeating the limitation period defence, the Plaintiffs would then be faced with causation/damages hurdles. This action was commenced in 2014, at a time when limitation periods presumptively applied to sexual assault claims.[30] Accordingly, the Plaintiffs and class could point to potential real harm caused by the failure to pursue claims on a timely basis. However, in 2016, the provincial legislature completely eliminated limitation periods for sexual assault claims as well as physical assaults of minors.[31] Therefore, any potential harm arising from an expired limitation period was eliminated. Moreover, even if limitations periods applied to the Class Members' underlying claims, such limitations periods were not operative while they were Crown Wards. Accordingly, it would have been open to a Court to determine that no harm befell the Class Members by the Crown's failure to secure benefits which remained available to Class Members after their wardships ended.

(3) Crown's Position re: Ontario's Child Protection Legislation and Regime

65. Throughout the class period, Ontario's child protection legislation defined the roles and responsibilities of the Crown and the CAS with regard to Crown wards.

66. Crown ward orders first became available in Ontario in 1966. From 1966 to 1984, Ontario's child protection legislation defined the relationship of the Crown vis-a-

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[30] *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, s. 16 as it appeared on 22 January 2014, Schedule B.

[31] *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, s. 16(1)(h.1-2) as it appeared on 8 March 2016, Schedule B.

vis its wards as that of a "legal guardian". Starting in 1984, the term "legal guardian" was replaced with "parent".

67. Since 1966, the legislation has provided that the Crown's powers, duties and obligations in respect of a Crown ward are to be performed by the CAS having care of the ward. The Crown took the position that this reflected a delegation of their duties.[32] The relevant legislative provisions are set out below:

> 1966 - *Child Welfare Act*, 1965, S.O. 1965, c.14
>
> 32. (1) *The Crown has and shall assume all the rights and responsibilities of a legal guardian* of its wards for the purpose of their care, custody and control, and the powers, duties and obligations of the Crown in respect of the wards of the Crown, other than those assigned to the Director by this Act, may be exercised and discharged by the children's aid society having care of the ward [emphasis added].
>
> The Director may direct that a Crown ward be moved to any other children's aid society or institution designated by the Director.
>
> Every child committed permanently to the care and custody of a children's aid society under The Child Welfare Act, or any predecessor thereof, and who is in the permanent care and custody of the society immediately before this Act comes into force is a ward of the Crown in the care of such society, subject otherwise to the terms of the order making the permanent commitment.
>
> 1978 - Child Welfare Act, 1978, S.O. 1978, c. 85
>
> 40. — (1) The Crown has and shall assume all the rights and responsibilities of a legal guardian of each child who is made a ward of the Crown for the purposes of the child's care, custody and control, and the powers, duties and obligations of the Crown in respect of the child other than the powers, duties and obligations assigned to a Director by this Act shall be exercised and discharged by the society having care of the child [emphasis added].

[32] Defendant's Rule 21 Factum, Exhibit F to Rosenfeld Affidavit, MR, Tab 2, pp. 123-164.

(2) A Director may direct that a Crown ward be transferred to the care of any other society or institution designated by the Director.

1985 - Child and Family Services Act, 1984, S.O. 1984, c. 55

59. (1) Where a child is made a Crown ward under paragraph 3 of subsection 53 (1), the Crown has the rights and responsibilities of a parent for the purposes of the child's care, custody and control and has the right to give or refuse consent to medical, treatment for the child where a parent's consent would otherwise be required, and the Crown's powers, duties and obligations in respect of the child, except those assigned to a Director by this Act or the regulations shall be exercised and performed by the society having care of the child.

(2) Where a child is made a society ward under paragraph 2 of subsection 53(1), the society has the rights and responsibilities of a parent for the purpose of the child's care, custody and control.

1990 - Child and Family Services Act, R.S.O. 1990, c. C.11

63. (1) Where a child is made a Crown ward under paragraph 3 of subsection 57 (1) or under subsection 65.2 (1), the Crown has the rights and responsibilities of a parent for the purpose of the child's care, custody and control and has the right to give or refuse consent to medical treatment for the child where a parent's consent would otherwise be required, and the Crown's powers, duties and obligations in respect of the child, except those assigned to a Director by this Act or the regulations, shall be exercised and performed by the society caring for the child. R.S.O. 1990, c. C.11, s. 63 (1); 2006, c. 5, s. 20.

(2) Where a child is made a society ward under paragraph 2 of subsection 57(1), the society has the rights and responsibilities of a parent for the purpose of the child's care, custody and control.

68. The CAS are not-for-profit corporations that exist independently of the Crown.[33] In accordance with the above legislation, since 1966 Crown ward orders have provided that the child be placed in the care and custody of a CAS, not the Crown itself.[34]

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[33] *Child Welfare Act, 1978*, S.O. 1978, c. 85, s. 6, Schedule B; *Child and Family Services Act, 1984*, S.O. 1984, c. 55, s. 3(1) & 15(2), Schedule B; *Child and Family Services Act*, R.S.O. 1990, c. C.11, s. 3(1) & 15(2), Schedule B.

[34] Affidavit of Kevin Morris, at paras. 5-8, Exhibit L to Rosenfeld Affidavit, MR, Tab 2, pp. 922-924.

69. The Crown maintained that there are no historical or current provisions in child protection legislation in Ontario requiring the Crown to institute legal proceedings on behalf of Crown wards to seek compensation for any abuse they may have suffered. The Crown further maintained that the governing child protection legislation provided the CAS and/or the Children's Lawyer (formerly known as the "Official Guardian") with discretion to institute and conduct proceedings on behalf of Crown wards:

> 1978 - *Child Welfare Act*, 1978, S.O. 1978, c. 85
>
> 51. Where the Official Guardian, or in the case of a child in the care of a society under paragraph 2 or 3 of subsection 1 of section 30, the society, is of the opinion that a child has a cause of action against a person or persons or other right of recovery by reason of the infliction of abuse upon the child and that the institution of proceedings to recover damages or other compensation would be in the best interest of the child, the Official Guardian or the society, as the case may be may institute and conduct such proceedings on behalf of the child in respect of the abuse suffered by the child.
>
> 1985 - *Child and Family Services Act*, 1984, S.O. 1984, c. 55
>
> 77 (1) In this section, "to suffer abuse", when used in reference to a child, means to be a child in need of protection within the meaning of clause 37 (2) (a), (c), (e), (f) or (h).
>
> (2) When the Official Guardian is of the opinion that a child has a case or Action or other claim because the child has suffered abuse, the Official Guardian may, if he or she considers it to be in the child's best interests, institute and conduct proceedings on the child's behalf for the recovery of damages or other compensation.
>
> (3) Where a child is in a society's care and custody, subsection (2) also applies to the society with necessary modifications.
>
> 1990 - *Child and Family Services Act*, R.S.O. 1990, c. C.11
>
> Recovery because of abuse
>
> 81. (1) In this section,
>
> "to suffer abuse", when used in reference to a child, means to be in need of
>
> protection within the meaning of clause 37 (2) (a), (c), (e), (f), (f.1) or (h).

> Recovery on child's behalf
>
> (2) When the Children's Lawyer is of the opinion that a child has a cause of action or other claim because the child has suffered abuse, the Children's Lawyer may, if he or she considers it to be in the child's best interests, institute and conduct proceedings on the child's behalf for the recovery of damages or other compensation.
>
> Idem: society
>
> (3) Where a child is in a society's care and custody, subsection (2) also applies to the society with necessary modifications.

(4) Crown Position that A Parent Does Not Owe a Duty to Enforce the Legal Rights of a Child

70. The Defendant took the position that no Canadian jurisprudence has held that a parent or legal guardian of a child has an obligation to commence or continue legal proceedings on a child's behalf. To the contrary, the Crown maintained that Canadian courts have held that the scope of parental responsibilities does not include an obligation to pursue civil remedies on behalf of the child and/or preserve the child's legal rights.[35] Canadian courts have recognized that it is not the role of the Court to second guess why a parent may or may not have commenced litigation on behalf of a child.[36]

71. This suggestion finds some support in the Limitations Act, 2002, and its predecessors, which provide that limitation periods for minors are preserved until they reach the age of majority.[37] If parents were required to commence litigation on behalf of their children, there would be no basis for suspending the limitation period. Accordingly,

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[35] See, for example, *Howe v. City of Vancouver* (1957), 9 D.L.R. (2d) 78 (B.C.S.C.), Book of Authorities, Tab 12; *Ho v. Chan*, [1995] B.C.J. No 892 (B.C.S.C.) at paras. 6-7, Book of Authorities, Tab 13; *Blue v. The Corporation of the Township of Esquimalt et al*, 2004 BCSC 1241 at para. 18, Book of Authorities, Tab 14; *Gill (Guardian ad litem of) v. Mori*, [2010] B.C.J. No 664 (B.C.S.C. - Master), Book of Authorities, Tab 15; and *Rothwell v. Scruton*, [1997] B.C.J. No 453 (B.C.C.A.), Book of Authorities, Tab 16.

[36] *Thomas v. Radvak*, [1997] A.J. No. 615 (A.B.C.A.) at paras. 19-21, Book of Authorities, Tab 17.

[37] *Limitations Act, 2002*, S.O. 2002, c. 24, Sch. B, s. 6, Schedule B.

there was limited statutory or jurisprudential authority on which the Plaintiff could rely to found the novel duty advanced here.

(5) Barriers to an Award of Aggregate Damages

72. While the possibility of an aggregate award was certified, the ultimate decision on whether to make any such award rested solely with the trial judge based on the evidence tendered at trial.

73. Statutorily, a section 24(1) damage award may only be ordered if: "the aggregate or a part of the Defendant's liability to some or all class members can reasonably be determined without proof by individual class members."[38] While the Plaintiffs were prepared to tender expert evidence opining that harm to each former ward could reasonably inferred from the delayed access to benefits this was, by all accounts, a generally novel approach to the quantification of damages.

Consequences for class members if an aggregate award was denied

74. If judgment pursuant to section 24 had been denied by the trial judge, the court would have to design an individual assessment process to adjudicate upon causation, damages and the application of limitation periods to each class member. The types of issues which would have remained to be determined by referees, experts, individual assessors, claims administrator and counsel, were of some complexity (legally and factually), including:

[38] *Class Proceedings Act, 1992*, S.O. 1992, c. 6, s. 24(1), Schedule B.

a) what did the class member experience?

b) did it constitute compensable harm at the time?

c) was the Province's failure to advance the claim discoverable by the class member? If so, when?

d) was the class member prejudiced in some way by the failure to advance the claim for compensation earlier?

e) how should this prejudice be quantified?

75. The protracted nature and delays associated with this type of process cannot be overstated. The Woodlands litigation is a powerful example. Woodlands was a class action against the Province of British Columbia for its operation and management of a school for children with certain disabilities. Settlement of the action was approved by the court in July 2010, approving an individual claims process for roughly 1,000 former students.

76. After court approval in 2010, the parties requested three substantial extensions[39] by which class members could file claims because the claims process proved to be so much more cumbersome, time consuming and complicated than any party ever contemplated, with a rate of filing only four to five claims per month.[40] Ultimately in that case, the plaintiff requested a ten (10) year extension to the claims deadline (which

[39] The First Claims deadline was September 19, 2011. An extension was granted to September 19, 2012. A further extension and Third Claims deadline was September 19, 2013. In 2015, the plaintiffs requested another extension to the claims deadline, this time in the order of an extra ten (10) years or to November 2024. This would have effectively extended the original one year deadline by thirteen (13) years. An ultimate deadline was ordered in 2015 to be September 19, 2016. See *Richard v. British Columbia*, 2015 BCSC 265.

[40] *Richard v. British Columbia*, 2012 BCSC 1464 at para. 23, Book of Authorities, Tab 18.

was denied by the court, but the claims deadline was extended all the way to September 2016 for an action settled in 2009).[41]

77. The British Columbia settlement approval court described the individual assessment process in that case as the following (years after its inception):

> "The evidence on this application makes it clear that the claims process is much more complicated and time consuming than the parties apparently considered in the negotiations and finalization of the Settlement Agreement. … To date, only a handful of claims have been filed. Of these, nine so-called 'precedential' claims have been decided by the Adjudicators. … These claims took much longer to adjudicate and required much more by way of an evidentiary record than was ever expected by the parties."[42] [emphasis added]

78. Chief Justice Bauman went on to note that for these nine (9) claims alone, over the course of some two (2) years, over 19,000 pages of materials were submitted by the parties, including twenty (20) affidavits and twenty-three (23) expert reports from the class members and twenty-two (22) affidavits and forty-three (43) expert reports from the Defendant, plus a cumulative total of over 1,000 pages of written legal argument.[43]

79. After all the time, expense and effort associated with disposing of these initial 'precedential' claims in Woodlands, the claimant class members had experienced a "near total loss" and the "Province does not accept, in light of the precedential decision, that anywhere near 809 viable claims remain."[44]

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[41] *Richard v. British Columbia*, 2015 BCSC 265, Book of Authorities, Tab 19.

[42] *Richard v. British Columbia*, 2012 BCSC 1464, at paras. 6, 8, Book of Authorities, Tab 18.

[43] *Richard v. British Columbia*, 2012 BCSC 1464, at para. 11, Book of Authorities, Tab 18.

[44] *Richard v. British Columbia*, 2012 BCSC 1464, at para. 15, Book of Authorities, Tab 18.

80. Moreover, five years after settlement approval, the class had only recovered a total of $2.3 million, with less than half of claims having been processed:

> "Five years after the settlement was reached, class counsel had dealt with 269 of the 802 class members who wished to be considered for the filing of a claim, leaving 533 claims to be assessed and either submitted or closed. …. in 2013 the average amount paid per settlement was $22,585. In 2014 the average amount had fallen to $6,550 per claim. This suggests that a higher percentage of remaining claims will not be resolved through the informal settlement process and will instead have to go to formal hearings. Class counsel estimates that even with the additional resources it will take another six to ten years to process the remaining claims. It now seeks a ten-year extension of the claims deadline to November 2024."[45] [emphasis added]

81. In this case, the Plaintiffs and class could have faced a similar outcome even if they managed to succeed on liability but a section 24 damages award was rejected. This alone presented an enormous risk. Such a process, in and of itself, would have been prejudicial by definition given its protracted nature, let alone the obstacles associated with having former wards come forward, one by one, to individually prove their cases.

(6) General litigation Risks

82. A number of more general litigation risks also confronted the Plaintiff in prosecution of the common issues trial, including:

> **Inherent Risks Associated With the Pursuit of Historical Claims: this action involved allegations and facts which spanned over fifty years. Risks associated with the trial therefore included the fading memories of witnesses, incomplete documentary record throughout the entirety of the class members and inability to adduce certain evidence due to the lack of witnesses. Accordingly, the Plaintiffs may**

[45] *Richard v. British Columbia*, 2015 BCSC 265, at paras. 13, 14, Book of Authorities, Tab 19.

have had difficulty adducing evidence of a class-wide failure to advance claims or provide rights advice.

(a) General litigation risks: as will all actions, the risk of witnesses not providing expected evidence, documentation proving insufficient for proof, vagaries of trial dynamics and trial testimony, along with the uncertainty associated with the court making certain necessary findings of fact.

(b) Class action litigation risks: as with many class actions and common issues trials, there was the risk that a court would find insufficient evidence or inferences necessary to ground liability across an entire class, for the entirety of a class period, and refuse to find that an aggregate award of damages was appropriate.

83. In particular, from the very outset, at the very time of commencement of the action, a number of serious legal and factual risks presented themselves to the Plaintiff sin terms of both certification and the merits:

(a) that the case would not be certified and would never become a "class action";

(b) that the Plaintiffs could lose a summary judgment motion;

(c) that the ultimate resolution on the merits could take many years;

(d) the case was complex and novel, spanning decades, involving thousands of individuals and thousands of documents;

(e) even after many years, its ultimate disposition at trial could have resulted in all, or some, of the claims, being dismissed – on the main issue of the existence of a duty to advance claims, the parties were entirely at odds and success for the Plaintiffs was far from assured; and,

(f) that even if some or all of the class were successful on the liability common issues, the court could still find that damages would have to be determined through individual assessments/hearings for each class member, which would have proved uncertain, traumatic, lengthy and expensive.

84. The consequences of an aggregate award being denied to the Plaintiffs cannot be overstated. Consideration of a court approved individual assessment process in British Columbia is informative of how this action could have unfolded without a common damage award at the culmination of trial. In the British Columbian Woodlands School case, which concerned roughly 1,000 class members, the individual assessment process

essentially ground to a halt as only four or five claims could be processed each month, due to the intricacies of the claims process,[46] extending the initial 12-month claim period to over six years post settlement approval.[47]

85. As already judicially determined in *Seed*, where this court was considering a similar paper-based claims process as is before the court here:

> "I would further observe that I am as well more than satisfied that the compensation scheme will prove to be as 'user and friendly' and efficient as is represented. The fact that the Class Administrator and Class Counsel are experienced with this format gives me more than a little comfort that problems experienced in *Richard v. British Columbia* [Woodlands litigation] will likely not occur as an aspect of the instant settlement."[48] [emphasis added]

86. In contrast, the type of claims process set out in this Settlement has a track record of timely assessment and compensation to class members. In Seed 181 approved claims were assessed and paid in nine (9) months and in *Slark, McKillop, Bechard* a total of 3,433 approved claims were assessed and paid in one (1) year and four (4) months.[49]

v. The Objections Reflect the Tragedy of many Class Members' Individual Circumstances, but do not Undermine the Fairness of the Settlement

87. The time period to raise an objection to the settlement was open for 60 days.[50] A robust notice of settlement approval hearing was approved by the Court, and

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[46] *Richard v. British Columbia*, 2012 BCSC 1464 at paras. 11, 23, Book of Authorities, Tab 18.

[47] *Richard v. British Columbia*, 2015 BCSC 265, Book of Authorities, Tab 19.

[48] *Seed v. Ontario*, 2017 ONSC 3534, at para. 17, Book of Authorities, Tab 1.

[49] Rosenfeld Affidavit, pp. 12-13, MR, Tab 2, pp. 21-22.

[50] See Phase 1 Order, Exhibit AA to Rosenfeld Affidavit, MR, Tab 2, pp. 3276-3292.

implemented by Epiq Global. A total of 46 Objection Forms were filed over that 60-day period.[51]

88. The objections fall into the following categories:

Basis of Objection	Number of such objections
1) Objects to individual quantum on basis that amount is insufficient to compensate for the severe abuse suffered[52]	20
2) Objects to individual quantum on basis that amount is insufficient compared to prejudice suffered for delay in receiving benefits[53]	13
3) Objects to quantum. No further rationale given[54]	4
4) Objects to all claimants receiving same amount[55]	3
5) Objects on basis that settlement fund may be insufficient to pay all claims[56]	4
6) Objects to the fact that Settlement is "without admission of liability" by the Defendant[57]	4
7) Objects on basis that they want the eligible claimant definition expanded[58]	3
8) Rationale for objection is unclear[59]	4
9) Objects to the 9 month time period for claims, and other	4

[51] Affidavit of Terri Retzler sworn May 5, 2021, p. 6, MR, Tab 8, p. 3445.

[52] See Exhibit G to Retzler Affidavit; MR, Tab 8, pp. 3477-3479. Objectors within this category are: [redacted]

[53] See Exhibit G to Retzler Affidavit, MR, Tab 8, pp. 3477-3479. Objectors within this category are: [redacted]

[54] See Exhibit G to Retzler Affidavit; MR, Tab 8, pp. 3477-3479. Objectors within this category are: [redacted]

[55] See Exhibit G to Retzler Affidavit; MR, Tab 8, pp. 3477-3479. Objectors within this category are: [redacted]

[56] See Exhibit G to Retzler Affidavit; MR, Tab 8, pp. 3477-3479. Objectors within this category are: [redacted]

[57] See Exhibit G to Retzler Affidavit; MR, Tab 8, pp. 3477-3479. Objectors within this category are: [redacted]

[58] See Exhibit G to Retzler Affidavit; MR, Tab 8, pp. 3477-3479. Objectors within this category are: [redacted]

[59] See Exhibit G to Retzler Affidavit; MR, Tab 8, pp. 3477-3479. Objectors within this category are: [redacted]

aspects of the claims form[60]	
10) Unique/Not categorized[61]	4[62]

89. The objectors in the first category, which object to the quantum of compensation on the basis that is insufficient to compensate for the abuse, make up the plurality, and almost a majority of the total objections. These objections are tragic, and are emotionally compelling. However, they do not relate to the fairness of the proposed settlement, which preserves their claims for the abuse. These objectors simply misunderstand the narrow legal entitlement which was being litigated, and which is being settled, in this action. The case only related to the alleged failure of the Province to consider and in some cases to advance claims on the class members' behalf, while they were Crown Wards. This novel and challenging claim does not relate to the claim for compensation for the abuse itself, which is preserved.

90. Those who object to quantum of individual compensation, as related to the claims advanced, make up a much smaller group (13 individuals). In assessing the weight and how to consider these objections, the Court must remain guided by the overarching principle that the Court ought not to engage in a parsing of the settlement to assess its perfection, but must merely ensure that it falls within a range of reasonable outcomes.[63] Moreover, none of these objections grapple with the difficulty of advancing these claims, the prospects of losing at trial or the prejudice to many class members if

[60] See Exhibit G to Retzler Affidavit; MR, Tab 8, pp. 3477-3479. Objectors within this category are: [redacted]

[61] See Exhibit G to Retzler Affidavit; MR, Tab 8, pp. 3477-3479. Objectors within this category are: [redacted]

[62] The total is greater than 46 because some objectors provided multiple reasons.

[63] *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at para. 69, Book of Authorities, Tab 6.

the resolution is delayed by several years, amongst many other challenges relating to causation and damages. Further, none of these objections provide any "evidence to the contrary…. that [the Court] is being presented with the best reasonable achievable settlement."[64] The litigation was vigorously contested over 8 years by experienced class action counsel and there were hard fought, arms length settlement discussions with an experienced mediator over 2 years. The settlement which was obtained was the "best reasonably achievable settlement".

91. The three claimants who object to the settlement on the basis that all claimants will receive the same amount are in effect seeking a varying quantum based on the severity of the abuse suffered. As this is not, and was never a claim for compensation for abuse suffered, these objections are unfounded. Furthermore, it doesn't take into account the complexity and increased administration costs which would ensue from such a process and which would erode the settlement amounts available to class members.

92. Four putative class members who are all represented by the same counsel suggest that the settlement fund may be insufficient. They suggest a settlement fund of approximately $15 million to be available for class members would be preferable. Leaving aside whether such a settlement with this Defendant was achievable (it was not) this suggested settlement quantum reflects incorrect assertions and an improper approach to the settlement approval motion which is to assess whether the settlement falls "within

[64] *Serhan (Trustee of) v. Johnson & Johnson*, 2011 ONSC 128 at paras. 55, 56, Book of Authorities, Tab 9.

a range of reasonable outcomes."[65] This range of reasonableness test recognizes that a number of different settlement possibilities may be in the best interests of the class when compared to the unpredictable outcomes associated with novel, and protracted, litigation. The objection acknowledges that the claims are "novel" and that it is "impossible to predict what a judge may award".

93. The emotional basis for the objections to the "without admission of liability" language is understandable in light of the real pain that the Class Members feel. However, this objection does not take into account the reality that settlements reflect an alternative to trial, where an adjudication of alleged fault is conducted.

94. Three objectors wished to have the definition of eligible claimant expanded. Two of the objectors wanted the definition expanded to include individuals who had already received civil law or CICB remedies. One wanted it expanded to include current Crown Wards. All three objections fail to account for the fact that these groups will generally have no damages as a result of the failure alleged in this claim.

95. Counsel cannot respond to objections whose rationale is too unclear to decipher. Some may not even be objections at all (one expresses gratitude for the proposed settlement) and there is no way to respond to others where the rationale is not given.

96. Four objections (filed by one counsel) also relate to the length of the claims period as being too short and other procedural issues with the claims process. The 9

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[65] *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.) at para. 69, Book of Authorities, Tab 6.

month claim period is a lengthy claims period when compared to many other class actions, was strenuously negotiated, and was the longest that was achievable here. Furthermore, the objections relating to the nature of the claims form makes comparisons to cases (such as Indian Day Schools) which are inapplicable given the nature of that case and that claims process, which was far more involved and included many different categories.

97. Finally, the uncategorized objections include objections related to the fact that the settlement approval order will be subject to appeal (which is both mandatory and appropriate), an objector's belief that he will be "silenced" by the settlement (there is no non-disclosure/confidentiality term in the Settlement) and an objector's disappointment over not being involved in the negotiations that led up to this settlement (such involvement is not part of Ontario's class actions regime). These objections do not provide any basis on which to conclude that this settlement is not reasonable.

98. In conclusion, this proposed settlement is an excellent result under all the circumstances, and should be approved.

B. The Legal Fees Sought Are Fair and Reasonable in All the Circumstances

99. Class Counsel seeks approval from this court of fee in the amount of $2 million (plus HST and disbursements) payable from the Settlement Fund which reflects a contingency fee percentage of 20% of the total settlement value.[66] Even adding the legal

[66] In total, $260,000, including disbursements and taxes, was awarded by the Court and paid to Class Counsel in respect of costs awards granted on the Rule 21 and certification motions. Of this amount $219,895.76 was paid in legal fees in accordance with the retainer agreement.

fees which were paid as part of the costs awards which were granted by the court on prior motions, the amount sought is significantly less than the amount provided for in the retainer agreement signed by all of the representative plaintiffs, which provides for a contingency fee of 25% of the total recovery. In addition, Koskie Minsky LLP's docketed time over the last eight years (which is in excess of $2.6 million) significantly exceeds the $2 million sought in fees payable from the Settlement Fund.

i. The Prevailing Legal Test & Principles Governing Fee Approval

100. In determining whether to approve Class Counsel's request for legal fees and the retainer agreement itself, this court must determine whether those fees are fair and reasonable in all of the circumstances. The requisite factors to be taken into account are well established and include the following:

(a) the legal and factual complexities of the action;

(b) the risks undertaken, on both the merits and prospects of certification;

(c) the degree of responsibility assumed by class counsel;

(d) the importance of the issues to the class members;

(e) the monetary value of the matters at issue;

(f) skill and competence demonstrated by class counsel throughout the action;

(g) results achieved;

(h) ability of the class to pay and the class' expectation of legal fees;

(i) the opportunity cost to class counsel in the expenditure of time in pursuit of the litigation.[67]

[67] *Smith Estate v. National Money Mart Co.*, 2011 ONCA 233 at para. 80, Book of Authorities, Tab 20.

101. As a general guiding principle, the Court of Appeal for Ontario has confirmed that motions judges must apply the factor of risk to class counsel as one of the court's guiding considerations in their assessment of the 'reasonableness' of legal fees: "[t]he provision of contingency fees where a multiplier is applied to the base fee is an important means to achieve this objective [access to justice]. …. giv[ing] the lawyer the necessary economic incentive to take the case in the first place and to do it well. However, if the Act [the CPA] is to fulfill its promise, that opportunity must not be a false hope."[68]

102. Class counsel fees are not only to reward counsel for meritorious efforts, but to "also encourage counsel to take on difficult and risky class action litigation."[69]

103. "Class Counsel are to be commended for taking on the risk of this class action for a small group and seeing the action to a fair settlement".[70]

104. Pursuant to section 32(1) of the CPA, an agreement respecting fees and disbursements between a solicitor and representative plaintiff shall be in writing and further to the terms of section 32(2), must be approved by the court. Class Counsel has filed the retainer agreement on these motions with the court.[71]

ii. **The Retainer Agreement**

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[68] *Gagne v. Silcorp Ltd*. (1998), 41 O.R. (3d) 417 (C.A.) at pp. 9-10, Book of Authorities, Tab 21.

[69] *Abdulrahim v. Air France*, 2011 ONSC 512 at para. 9, Book of Authorities, Tab 22.

[70] *Johnston v. The Sheila Morrison Schools*, 2013 ONSC 1528 at para. 41, Book of Authorities, Tab 23.

[71] See Exhibit B to Grann Affidavit, MR, Tab 3, pp. 3309-3325.

105. The relevant portions of the retainer agreement ("**Retainer Agreement**") provide as follows:

> The Client acknowledges and understands that, apart from costs recovered in the Action, Class Counsel will be paid fees in the Action (defined below) only in the event of Success. The Client's agreement with Class Counsel in respect of class counsel fees and disbursements is set out below, and the Client understands that the agreement shall not have any force and effect unless approved by the Ontario Superior Court of Justice pursuant to the Ontario *Class Proceedings Act, 1992* or other applicable Court or legislation.
>
> 11. In the event of Success, Class Counsel shall be paid an amount equal to any disbursements not already paid to them by the Defendants as costs, plus applicable taxes, plus interest thereon in accordance with s. 33(7)(c) of the Ontario CPA or other applicable legislation plus the greater of:
>
> (a) if the Action is settled before the commencement of the examinations for discovery, twenty-five percent (25%) of the Recovery less the fee portion of any costs already paid to Class Counsel, plus HST; or
>
> (b) if the Action is settled after the commencement of the oral portion of the examinations for discovery, thirty percent (30%) of the Recovery less the fee portion of any costs already paid to Class Counsel, plus HST; or
>
> (c) if the Action is settled after the commencement of trial of the Common Issues or determined by judgment after the trial, thirty-three and one-third percent (33.3%) of the Recovery less the fee portion of any costs already paid to Class Counsel, plus HST; and
>
> (d) if the Action is settled after a successful trial of the Common Issues, with individual issues including, without limitation, causation and damages, to be determined on an individual basis thereafter ("Individual Issues"), thirty-three and one-third percent (33.3%) of the Recovery less the fee portion of any costs already paid to Class Counsel, plus HST.

106. The terms of the Retainer Agreement are entirely consistent with (and in some cases, identical to) other retainer agreements which have been approved by this court in class proceedings. Retainer agreements in class actions are virtually always on a contingency basis and provide no payment whatsoever if the action is not successful.[72]

[72] Rosenfeld Affidavit, para. 87, MR, Tab 2, p. 31.

107. While a fee agreement reached between a representative plaintiff and class counsel should not be blindly accepted by the court, it also should not be easily rejected or ignored. It has generally been recognized that a fee agreement entered into between the client and counsel ought to be the starting point of the court's 'fair and reasonable' analysis:

> "This is not to fix a fee either by a reconsideration of all the evidence and the application or judgment or arbitrarily, however one characterizes such a process, but rather to decide whether the agreement operates reasonably in the context. … With all this in mind, the court must then ask, as a matter of judgment, whether the fee fixed by the agreement is reasonable and maintains the integrity of the profession? In other words, I think the amount payable under the contract is the starting point for the application of the court's judgment."[73] [emphasis added]

108. In *Cassano v. Toronto-Dominion Bank*, Justice Cullity approved the terms of the contingency fee retainer on the following basis:

> "They had accepted their retainers on the basis of a fee calculation that would vary directly according to the degree of success that was achieved. The percentage of recovery to be applied was not unreasonable, the risks were considerable, the degree of success was substantial."[74] [emphasis added]

109. Class action litigation has been conducted across Canada for years allowing counsel to work on a contingent basis, and counsel, if successful, have received a premium on fees based on contingency agreements upwards to 33%. In such litigation, awarding counsel a premium on fee in exchange for a contingent arrangement has generally been considered by the court to reflect a fair allocation of risk and reward as

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[73] *Commonwealth Investors Syndicate Ltd. v. Laxton*, [1994] B.C.J. No. 1690 (B.C.C.A.) at para. 47, Book of Authorities, Tab 24.

[74] *Cassano v. Toronto-Dominion Bank*, [2009] O.J. No. 2922 (S.C.J.) at para. 63, Book of Authorities, Tab 25.

between lawyer and client. As Justice Strathy (as he then was) determined in the case of *Baker Estate*:

> "There should be nothing shocking about a fee in this range … It serves as an inducement to the lawyer the maximize the recovery for the client and it is regarded as fair to the client because it is based upon the 'no cure, no pay' principle. The profession and the public have for years recognized that the system works and that it is fair. It allows people with injury claims of all kinds to obtain access to justice without risking their life's savings."[75]

110. Justice Belobaba has also consistently approved fee awards in the order of 33% of the final settlement, calling such a percentage "presumptively valid" on its face, pursuant to the terms of the retainer agreement:

> "I have also been persuaded that a one-third contingency fee agreement, if fully understood and accepted, should be accorded presumptive validity. … According presumptive validity to a one-third contingency fee, and thus making class counsel's compensation more certain would take the pressure off certification-motion costs awards as a method for forward-financing the class action lawsuit."[76] [emphasis added]

111. Justice Strathy has also considered the propriety and reasonableness of 'one-third' contingency fee arrangements in many instances and determined such agreements to be "standard", "common place" and "regarded by lawyers, clients and the courts as a fair arrangement between lawyers and their clients, taking into account the risks and rewards of such litigation."[77] It has become judicially well-accepted that "it is only through a robust contingency fee system that class counsel will be appropriately rewarded for the wins and losses over many files and many years of litigation and that

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[75] *Baker (Estate) v. Sony BMG Music (Canada) Inc*., 2011 ONSC 7105 at para. 64, Book of Authorities, Tab 26.

[76] *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686 at paras. 3, 10, Book of Authorities, Tab 27.

[77] *Abdulrahim v. Air France*, 2011 ONSC 512 at para. 13, Book of Authorities, Tab 22.

the class action will continue to remain viable as a meaningful vehicle for access to justice".[78]

iii. Specific Legal Risks Assumed in the Prosecution of this Action

112. The litigation risks that apply to the Plaintiffs and Class (as outlined in paragraphs 62-84, *supra*) apply equally to Class Counsel. For the reasons previously outlined, this was a novel and challenging claim, hotly contested by the Defendant, with no guarantee of Class Counsel ever recovering anything for the time and money spent advancing it.

iv. Expectations of the Class, Ability to Pay & Importance of the Issues

113. The representative Plaintiffs all executed Retainer Agreements. In addition, they have sworn that:

> (a) they were aware of the percentage of compensation Class Counsel would seek, at various stages of the case, if successful;
>
> (b) they knew that Class Counsel spent considerable resources in both fees and disbursements prosecuting the case without promise of payment, unless successful;
>
> (c) they believe the fees sought are fair in all of the circumstances, especially considering the risks presented and the length of time the action took to conclude; and
>
> (d) they believe that had Class Counsel not taken on this action, these class members never would have received the compensation the proposed settlement allows.[79]

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[78] *Middlemiss v. Penn West Petroleum*, 2016 ONSC 3537 at para. 19, Book of Authorities, Tab 28.

[79] Grann Affidavit, pp. 5-6, MR, Tab 3, pp. 3298-3299; Affidavit of Lorainne Evans sworn April 13, 2021, pp. 5-6, MR, Tab 4, p. 3331-3332; Affidavit of Robert Mitchell sworn April 14, 2021, pp. 5-6, MR, Tab 6, p. 3395-3396; and Affidavit of Dale Gyselinck sworn April 14, 2021, pp. 5-6, MR, Tab 5, pp. 3363-3364.

114. There were 46 objections filed in this action. Only one of them mentions fees.[80] That person may not be aware of the very extensive work (with docketed fees of in excess of $2.6 million.

v. **Degree of Responsibility Assumed by Class Counsel**

115. Class Counsel undertook full responsibility for prosecuting a challenging and risky action. The class members represent a population of society that is both vulnerable and disadvantaged. Class Counsel has vigorously advanced the action on their behalf.

vi. **General Risks Undertaken**

116. Class Counsel agreed to pursue this matter without any guarantee that it would be compensated at all for its work. It undertook significant risk in doing so. The action is historical in nature, spanning over fifty years and seeks recognition of a novel, heretofore unrecognized, duty.

117. Detailed written submissions have been provided above with respect to the specific legal risks faced by the Plaintiffs and Class Counsel in prosecuting this case. All of those risks existed at the time Class Counsel considered whether to commence and prosecute this class action.

118. Ultimately, in this case the risks materialized to such an extent that Class Counsel is seeking a fee that is both significantly less than what they are entitled to

[80] See Exhibit H to Retzler Affidavit; MR, Tab 8, pp. 3480-3970.

pursuant to the Retainer Agreement and significantly less than the value of the time Counsel have spent working to advance this file over the past eight years.

vii. ***Time devoted by Class Counsel***

119. This action was large, complex and aggressively defended. As a result, Class Counsel devoted a significant amount of lawyer, student and clerk time to prosecuting this action to trial, efficiently and effectively.

120. In total, approximately 6,500 hours with a time value of over $2,600,00.00 was incurred in the prosecution of this case.

121. Class Counsel recovered $200,000.00 (all inclusive) for fees as a cost award at certification and $60,000.00 (inclusive of HST) for the Rule 21 motion. Other than these amounts, Class Counsel have undergone the significant work on behalf of the class without any payment to date.

viii. **Estimate of Settlement/Claims Administration Time to be Incurred**

122. Should the Settlement be approved, Class Counsel will have to devote significant hours to the implementation of the Settlement, as it will have to:

(a) review, revise and approve notice materials;

(b) monitor the implementation of the notice plan to ensure it has been disseminated in accordance with the approved notice plan;

(c) communicate with class members;

(d) monitor the Claims Process;

(e) address any questions or issues raised by the Claims Administrator in the review of claims;

(f) review updates from the Claims Administrator;

(g) reviewing final distribution lists and processes; and

(h) attend to any other matter that may be raised during settlement implementation that requires Class Counsel's attention.

123. Class Counsel estimates that it may devote 400 to 500 additional hours of lawyer, student and clerk time during the post-Settlement Approval implementation phase.[81]

ix. ***The Honouraria are reasonable in all the circumstances***

124. On a settlement approval motion, the court has jurisdiction to grant a request for honorarium payments to the representative plaintiffs, which is separate from any individual compensation they might be awarded from the settlement fund itself.[82] The parties seek court approval of honorarium payments of $12,500.00 for each of the current representative plaintiffs and $7,500.00 for the previous representative plaintiff.

125. Awards of this nature were recently granted by this Court in *Merlo v. Canada*[83] where McDonald J. canvassed the prevailing test and jurisprudence, identifying the

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[81] Rosenfeld Affidavit, p. 25, MR, Tab 2, p. 34.

[82] *Anderson v. Canada*, [2016] N.J. No 376 (S.C.) at para. 79, Book of Authorities, Tab 29; *Smith Estate v. National Money Mart Co.*, 2011 ONCA 233 at paras. 133–136, Book of Authorities, Tab 20; *Dolmage v. Ontario*, 2013 ONSC 6686, Book of Authorities, Tab 30; *Johnston v. The Sheila Morrison Schools*, 2013 ONSC 1528 at para. 43, Book of Authorities, Tab 23.

[83] *Merlo v. Canada*, 2017 FC 533 at paras. 68–74, Book of Authorities, Tab 31.

following factors to assess whether a representative plaintiff ought to receive an honorarium:

a. active involvement in the initiation of the litigation and the retention of counsel;

b. exposures to a risk of costs;

c. personal hardship or inconvenience in connection with the prosecution of the litigation;

d. time spent and activities undertaken in advancing the litigation;

e. communication and interaction with other class members; and

f. participation at various stages in the litigation, including discovery, settlement negotiations and/or trial.[84]

126. Where representative plaintiffs publicize their own personal accounts that require the public re-living of painful events by giving their name and face to high profile class action litigation, representative plaintiffs have been awarded honorariums: "[b]eing prepared to spearhead such a cause comes at a personal cost and a deprivation of privacy."[85]

127. The court has held that “the honorarium is not an award but a recognition that the representative plaintiffs meaningfully contributed to the class members’ pursuit of access to justice”.[86] In *Dolmage v. Ontario*,[87] LGBT Purge and the Sixties Scoop class proceedings[88] the settlement approval judges made honorarium awards of $15,000.00,

[84] *Robinson v. Rochester Financial Ltd.*, 2012 ONSC 911 at para. 43, Book of Authorities, Tab 32.

$10,000.00 and $10,000.00 respectively, to the representative plaintiffs. Courts have awarded up to $25,000 as an honourarium in the appropriate circumstances.[89]

128. In the circumstances of this case, honorarium payments are also appropriate, deserving and fair. Such payments would go some distance in recognizing the significant difficulty for these individuals who experienced abuse to come forward on behalf of other survivors, tell their stories and confront a painful past. They all swore affidavits in the certification motion and were cross-examined which was an extremely traumatic experience for them, which they endured on behalf of the class.

129. Representative plaintiffs in such cases are exposed in a way that other class members are not: their very personal experiences become matters of public record, in pleadings, affidavits, court transcripts and Reasons for Decision. In this case, Representative Plaintiffs also shared their very personal experiences in the media, acting as the public face of a very sensitive and difficult issue.

130. As the settlement approval court described in *Anderson v. Canada*:

> The Plaintiffs and other witnesses have provided access to justice for hundreds of vulnerable individuals in a historic case. The largely symbolic honoraria are appropriate small tokens of recognition for that effort and are approved.[90]

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[85] *Merlo v. Canada*, 2017 FC 533 at para. 70, Book of Authorities, Tab 31.

[86] *Johnston v. The Sheila Morrison Schools*, 2013 ONSC 1528 at para. 43, Book of Authorities, Tab 23.

[87] *Dolmage v. Ontario*, 2013 ONSC 6686 at para. 51, Book of Authorities, Tab 30.

[88] *Riddle v. Canada*, 2018 FC 641 (Order, para. 29), Book of Authorities, Tab 33.

[89] *Garland v. Enbridge Gas Distribution Inc.*, [2006] O.J. No. 4907 at para. 51, Book of Authorities, Tab 34.

[90] *Anderson v. Canada*, [2016] N.J. No 376 (S.C.) at para. 84, Book of Authorities, Tab 29.

131. The proposed honoraria payments are appropriate, consistent with the quantum awarded in other cases and unquestionably deserved.

PART IV - ORDER REQUESTED

132. The Plaintiffs respectfully request that this court approve the settlement agreement, Class Counsel's legal fee request and the honouraria requests.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 6th day of May, 2021.

Jonathan Ptak
Koskie Minsky LLP

Adam Tanel
Koskie Minsky LLP

Lawyers for the Plaintiffs

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Seed v. Ontario*, 2017 ONSC 3534
2. *McKillop and Bechard v. HMQ*, 2014 ONSC 1282
3. *McCarthy v. Canadian Red Cross Society*, [2001] O.J. No. 2474 (S.C.J.)
4. *Dabbs v. Sun Life Assurance Company of Canada*, [1998] O.J. No. 2811 (Gen. Div.)
5. *Ford v. F. Hoffmann-La Roche Ltd*., 2005 CanLII 8751 (O.N.S.C.)
6. *Parsons v. Canada Red Cross Society*, [1999] O.J. No. 3572 (S.C.J.)
7. *Sayers v. Shaw Cablesystems Ltd*., 2011 ONSC 962
8. *Baxter v. Canada (Attorney General)*, [2006] O.J. No. 4968
9. *Serhan (Trustee of) v. Johnson & Johnson*, 2011 ONSC 128
10. *Welsh v. Ontario*, 2019 ONCA 41
11. *Hebert v. Wenham*, 2020 FCA 186
12. *Howe v. City of Vancouver* (1957), 9 D.L.R. (2d) 78 (B.C.S.C.)
13. *Ho v. Chan*, [1995] B.C.J. No 892 (B.C.S.C.)
14. *Blue v. The Corporation of the Township of Esquimalt et al*, 2004 BCSC 1241
15. *Gill (Guardian ad litem of) v. Mori*, [2010] B.C.J. No 664 (B.C.S.C. - Master)
16. *Rothwell v. Scruton*, [1997] B.C.J. No 453 (B.C.C.A.)
17. *Thomas v. Radvak*, [1997] A.J. No. 615 (A.B.C.A.)
18. *Richard v. British Columbia*, 2012 BCSC 1464
19. *Richard v. British Columbia*, 2015 BCSC 265
20. *Smith Estate v. National Money Mart Co.*, 2011 ONCA 233
21. *Gagne v. Silcorp Ltd*. (1998), 41 O.R. (3d) 417 (C.A.)
22. *Abdulrahim v. Air France*, 2011 ONSC 512
23. *Johnston v. The Sheila Morrison Schools*, 2013 ONSC 1528
24. *Commonwealth Investors Syndicate Ltd. v. Laxton*, [1994] B.C.J. No. 1690 (B.C.C.A.)
25. *Cassano v. Toronto-Dominion Bank*, [2009] O.J. No. 2922 (S.C.J.)
26. *Baker (Estate) v. Sony BMG Music (Canada) Inc*., 2011 ONSC 7105
27. *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686
28. *Middlemiss v. Penn West Petroleum*, 2016 ONSC 3537
29. *Anderson v. Canada*, [2016] N.J. No 376 (S.C.)
30. *Dolmage v. Ontario*, 2013 ONSC 6686
31. *Merlo v. Canada*, 2017 FC 533

32. *Robinson v. Rochester Financial Ltd.*, 2012 ONSC 911

33. *Riddle v. Canada*, 2018 FC 641

34. *Garland v. Enbridge Gas Distribution Inc.*, [2006] O.J. No. 4907

SCHEDULE "B"
RELEVANT STATUTES

1. ***Child Welfare Act, 1978*, S.O. 1978, c. 85, s. 6**

Establishment of societies

6(1) Every society shall be incorporated under *The Corporations Act* or a predecessor thereof as a corporation without share capital and shall be approved by the Lieutenant Governor in Council.

(2) Every society shall be operated for the purposes of,

a) Investigating allegations or evidence that children may be in need of protection;

b) Protecting children where necessary;

c) Providing guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;

d) Providing care for children assigned or committed to its care under this or any other Act;

e) Supervising children assigned to its supervision under this or any Act;

f) Placing children for adoption;

g) Assisting the parents of children born or likely to be born outside of marriage and their children born outside of marriage; and

h) Any other duties given to it by this or any other Act.

(3) Every society shall,

a) Provide the standard of services relating to the purposes set out in subsection 2 of section 6; and

b) Follow the procedures and practices,

That shall be prescribed by the Minister.

(4) The by-laws of every society shall contain such provisions as the regulations prescribe, and a certified copy of the by-laws and any amendments thereto shall be filed with a Director forthwith after they are made, and no such by-laws or amendments shall come into operation until they have been approved by the Minister.

2. *Child and Family Services Act, 1984*, S.O. 1984, c. 55, s. 3(1) & 15(2)

Definitions

3 (1) In this Act,

"agency" means a corporation;

"approved agency" means an agency that is approved under subsection 8 (1) of Part I (Flexible Services);

Designation of children's aid society

15(2) The Minister may designate an approved agency as a children's aid society for a specified territorial jurisdiction and for any or all of the functions set out in subsection (3), may impose terms and conditions on a designation and may vary, remove or amend the terms and conditions or impose new terms and conditions at any time, and may at any time amend a designation to provide that the society is no longer designated for a particular function set out in subsection (3) or to alter the society's territorial jurisdiction.

3. *Child and Family Services Act*, R.S.O. 1990, c. C.11, s. 3(1) & 15(2)

Definitions

3 (1) In this Act,

"agency" means a corporation; ("agence")

"approved agency" means an agency that is approved under subsection 8 (1) of Part I (Flexible Services); ("agence agréée")

Designation of children's aid society

15 (2) The Minister may designate an approved agency as a children's aid society for a specified territorial jurisdiction and for any or all of the functions set out in subsection (3), may impose terms and conditions on a designation and may vary, remove or amend the terms and conditions or impose new terms and conditions at any time, and may at any time amend a designation to provide that the society is no longer designated for a particular function set out in subsection (3) or to alter the society's territorial jurisdiction.

4. *Limitations Act, 2002*, S.O. 2002, c. 24, ss. 6, 16(1)

Minors

6 The limitation period established by section 4 does not run during any time in which the person with the claim,

(a) is a minor; and

(b) is not represented by a litigation guardian in relation to the claim.

No limitation period

16 (1) There is no limitation period in respect of,

(a) a proceeding for a declaration if no consequential relief is sought;

(b) a proceeding to enforce an order of a court, or any other order that may be enforced in the same way as an order of a court;

(c) a proceeding to obtain support under the *Family Law Act* or to enforce a provision for support or maintenance contained in a contract or agreement that could be filed under section 35 of that Act;

(d) REVOKED: 2017, c. 2, Sched. 5, s. 14 (1);

(e) a proceeding under section 8 or 11.2 of the *Civil Remedies Act, 2001*;

(f) a proceeding by a debtor in possession of collateral to redeem it;

(g) a proceeding by a creditor in possession of collateral to realize on it;

(h) a proceeding based on a sexual assault;

(h.1) a proceeding based on any other misconduct of a sexual nature if, at the time of the misconduct, the person with the claim was a minor or any of the following applied with respect to the relationship between the person with the claim and the person who committed the misconduct:

(i) the other person had charge of the person with the claim,

(ii) the other person was in a position of trust or authority in relation to the person with the claim,

(iii) the person with the claim was financially, emotionally, physically or otherwise dependent on the other person;

(h.2) a proceeding based on an assault if, at the time of the assault, the person with the claim was a minor or any of the following applied with respect to the relationship between the person with the claim and the person who committed the assault:

(i) they had an intimate relationship,

(ii) the person with the claim was financially, emotionally, physically or otherwise dependent on the other person;

(i) a proceeding to recover money owing to the Crown in respect of,

(i) fines, taxes and penalties, or

(ii) interest that may be added to a tax or penalty under an Act;

(j) a proceeding described in subsection (2) that is brought by,

(i) the Crown, or

(ii) a delivery agent under the *Ontario Disability Support Program Act, 1997* or the *Ontario Works Act, 1997*; or

(k) a proceeding to recover money owing in respect of student loans, medical resident loans, awards or grants made under the *Ministry of Training, Colleges and Universities Act*, the *Canada Student Financial Assistance Act* or the *Canada Student Loans Act*. 2002, c. 24, Sched. B, s. 16 (1); 2007, c. 13, s. 44 (1); 2010, c. 1, Sched. 14, s. 1; 2016, c. 2, Sched. 2, s. 4 (1); 2017, c. 2, Sched. 5, s. 14 (1).

5. *Limitations Act, 2002*, S.O. 2002, c. 24, s. 16(1) as it appeared on 22 January 2014

No limitation period

16. (1) There is no limitation period in respect of,

(a) a proceeding for a declaration if no consequential relief is sought;

(b) a proceeding to enforce an order of a court, or any other order that may be enforced in the same way as an order of a court;

(c) a proceeding to obtain support under the *Family Law Act* or to enforce a provision for support or maintenance contained in a contract or agreement that could be filed under section 35 of that Act;

(d) a proceeding to enforce an award in an arbitration to which the *Arbitration Act, 1991* applies;

(e) a proceeding under section 8 or 11.2 of the *Civil Remedies Act, 2001*;

(f) a proceeding by a debtor in possession of collateral to redeem it;

(g) a proceeding by a creditor in possession of collateral to realize on it;

(h) a proceeding arising from a sexual assault if at the time of the assault one of the parties to it had charge of the person assaulted, was in a position of trust or authority in relation to the person or was someone on whom he or she was dependent, whether financially or otherwise;

(i) a proceeding to recover money owing to the Crown in respect of,

(i) fines, taxes and penalties, or

(ii) interest that may be added to a tax or penalty under an Act;

(j) a proceeding described in subsection (2) that is brought by,

(i) the Crown, or

(ii) a delivery agent under the *Ontario Disability Support Program Act, 1997* or the *Ontario Works Act, 1997*; or

(k) a proceeding to recover money owing in respect of student loans, medical resident loans, awards or grants made under the *Ministry of Training, Colleges and Universities Act*, the *Canada Student Financial Assistance Act* or the *Canada Student Loans Act*.

6. *Class Proceedings Act, 1992*, S.O. 1992, c. 6, ss. 24(1), 29, 32

Aggregate assessment of monetary relief

24 (1) The court may determine the aggregate or a part of a defendant's liability to class members and give judgment accordingly where,

(a) monetary relief is claimed on behalf of some or all class members;

(b) no questions of fact or law other than those relating to the assessment of monetary relief remain to be determined in order to establish the amount of the defendant's monetary liability; and

(c) the aggregate or a part of the defendant's liability to some or all class members can reasonably be determined without proof by individual class members.

Discontinuance, abandonment and dismissal for delay
Court approval required

29 (1) A proceeding under this Act may be discontinued or abandoned only with the approval of the court, on such terms as the court considers appropriate.

Notice

(2) In approving a discontinuance or abandonment, or in dismissing a proceeding for delay, other than under section 29.1, the court shall consider whether notice should be given under section 19, and whether such notice should include,

(a) an account of the conduct of the proceeding;

(b) a statement of the result of the proceeding;

(c) any other prescribed information; and

(d) any other information the court considers appropriate.

Fees and disbursements

32 (1) An agreement respecting fees and disbursements between a solicitor and a representative party shall be in writing and shall,

(a) state the terms under which fees and disbursements shall be paid;

(b) give an estimate of the expected fee, whether contingent on success in the class proceeding or not; and

(c) state the method by which payment is to be made, whether by lump sum, salary or otherwise.

Court to approve agreements

(2) An agreement respecting fees and disbursements between a solicitor and a representative party is not enforceable unless approved by the court, on the motion of the solicitor.

Fees must be fair and reasonable

(2.1) The court shall not approve an agreement unless it determines that the fees and disbursements required to be paid under the agreement are fair and reasonable, taking into account,

(a) the results achieved for the class members, including the number of class or subclass members expected to make a claim for monetary relief or settlement funds and, of them, the number of class or subclass members who are and who are not expected to receive monetary relief or settlement funds;

(b) the degree of risk assumed by the solicitor in providing representation;

(c) the proportionality of the fees and disbursements in relation to the amount of any monetary award or settlement funds;

(d) any prescribed matter; and

(e) any other matter the court considers relevant.

Same

(2.2) In considering the degree of risk assumed by the solicitor, the court shall consider,

(a) the likelihood that the court would refuse to certify the proceeding as a class proceeding;

(b) the likelihood that the class proceeding would not be successful;

(c) the existence of any other factor, including any report, investigation, litigation, initiative or funding arrangement, that affected the degree of risk assumed by the solicitor in providing representation; and

(d) any other prescribed matter.

Same

(2.3) In determining whether the fees and disbursements are fair and reasonable, the court may, by way of comparison, consider different methods by which the fees and disbursements could have been structured or determined.

Priority of amounts owed under approved agreement

(3) Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award.

Determination of fees where agreement not approved

(4) If an agreement is not approved by the court, the court may,

(a) determine the amount owing to the solicitor in respect of fees and disbursements;

(b) direct a reference under the rules of court to determine the amount owing; or

(c) direct that the amount owing be determined in any other manner.

Considerations

(5) In making an order under clause (4) (a), the court shall take into account the factors set out in subsection (2.1), in accordance with subsections (2.2) and (2.3).

Holdback

(6) The court may determine and specify an amount or portion of the fees and disbursements owing to the solicitor under this section that shall be held back from payment until,

(a) the report required under subsection 26 (12) or 27.1 (16), as the case may be, has been filed with the court and the court is satisfied that it meets the requirements of that subsection; and

(b) the court is satisfied with the distribution of the monetary award or settlement funds in the circumstances, including the number of class or subclass members

who made a claim for monetary relief or settlement funds and, of them, the number of class or subclass members who did and who did not receive monetary relief or settlement funds.

SCHEDULE "C"
SETTLEMENT AGREEMENT

Court File No.: CV-14-0018

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N :

TONI GRANN, ROBERT MITCHELL, DALE GYSELINCK and LORRAINE EVANS

Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

SETTLEMENT AGREEMENT

WHEREAS the Plaintiffs brought this action under the *Class Proceedings Act, 1992* for alleged breaches of fiduciary, statutory and common law duties and other relief arising from an alleged failure by Ontario to give proper consideration and to take reasonable steps to protect and pursue Crown Wards' rights to recover compensation for damages sustained as a result of criminal or tortious acts to which Crown Wards were victims, as more particularly pleaded in their statement of claim issued January 22, 2014;

AND WHEREAS counsel for the parties to this Settlement Agreement have conducted a thorough analysis of the claims, and have also considered the extensive burdens and expense of litigation, including the risks of proceeding to trial;

AND WHEREAS in consideration of all of the circumstances and after extensive arms' length negotiations, both directly and with the assistance of a mediator, the parties, through this Settlement Agreement, seek to resolve all issues raised or which could have been raised in the Action;

AND WHEREAS the Plaintiffs and Class Counsel have concluded that this Settlement Agreement provides substantial benefits to the Class Members and is fair, reasonable and in the best interests of the Class Members;

NOW THEREFORE the parties to this Settlement Agreement agree to settle the issues in dispute in the Action on the following terms and conditions:

1. All funds referred to herein are intended to refer to Canadian dollars.

A. Definitions

2. For the purposes of this Settlement Agreement, the following definitions apply:

(a) "**Action**" means the class proceeding first commenced by Holly Papassay and ultimately amended to include Toni Grann, Robert Mitchell, Dale Gyselinck and Lorraine Evans as representative plaintiffs in the Superior Court of Justice against Ontario bearing Court File No. CV-14-0018;

(b) "**Administration Costs**" means all costs of the Administrator in administrating the Settlement and the Claims Process, including without limitation, the Administrator's costs associated with payment of compensation awarded through the Claims Process, and the costs of implementing the Notice Plan;

(c) **"Approval Order"** means the order approving this Settlement Agreement and providing for a dismissal of the action, attached hereto as **Schedule "A"**;

(d) **"Assault"** means a physical or sexual assault constituting a crime or crimes of violence which occurred before or while a Class Member was a Crown Ward;

(e) "**CICB**" means the Criminal Injuries Compensation Board constituted under the *Compensation for Victims of Crime Act*, RSO 1990, c. C.24;

(f) **"Claim"** means a claim made by a Settlement Claimant by filing a Claim Form with the Claims Administrator in accordance with the Claims Process under this Settlement Agreement;

(g) **"Claim Form"** means the written claim form from a Settlement Claimant seeking compensation from the Settlement Fund under the Claims Process, which form shall be in the form of a Solemn Declaration (without the need for the document to be sworn or affirmed), attached hereto as **Schedule "B"** or otherwise as directed by the Court;

(h) "**Claims Administrator**" means the third party person or entity to be designated by the agreement of the parties and approved by the Court to administer the Claims Process;

(i) **"Class Counsel"** means Koskie Minsky LLP;

(j) "**Claims Process**" means the process set out in **Schedule "C"** hereto by which a Settlement Claimant may apply for compensation from the Settlement Fund as provided for in this Settlement Agreement, and to have their claim determined by the Claims Administrator;

(k) "**Class Members"** means all persons who were alive as of January 22, 2012, who were Crown Wards at any time from the period on or after January 1, 1966 until March 30, 2017;

(l) "**Class Proceedings Levy**" means the levy payable under O. Reg. 771/92 as ordered by the Court;

(m) "**Counsel Fee**" means the amount ordered by the Court to be paid to Class Counsel in respect of Class Counsel's legal fees and disbursements, plus HST;

(n) "**Counsel Fee Approval Date**" means the later of:

(i) 31 days after the date on which the Ontario Superior Court of Justice issues an Order approving the Counsel Fee; and

(ii) the final disposition of any appeals from the order approving the Counsel Fee;

(o) **"Court"** means the Ontario Superior Court of Justice;

(p) "**Crown Ward**" means a person who was the subject of a court order making them a ward of the Crown pursuant to subsection 57(1), paragraph 3, or subsection 65.2(1)(c) of the *Child and Family Services Act, R.S.O. 1990, c.C.11* (or under similar provisions in its predecessor legislation) and includes a person who was subsequently deemed to be a person subject to an extended society care order made under paragraph 3 of subsection 101(1) or clause 116(1)(c) of *the Child, Youth and Family Services Act, 2017*, S.O. 2017, c.14. Sched. 1 on or after April 30, 2018;

(q) "**Final Approval Date"** means the later of:

(i) 31 days after the date on which the Ontario Superior Court of Justice issues the Approval Order; and

(ii) the final disposition of any appeals from the Approval Order;

(r) "**Honoraria**" means a payment of $12,500 to each of Toni Grann, Dale Gyselinck, Lorraine Evans, and Robert Mitchell and $7,500 to Holly Papassay;

(s) **"Notice of Approval of Settlement"** means the Court approved notice to Class Members advising that the Court has approved the Settlement and ancillary relief and advising of the Claims Process, to be disseminated in accordance with the Notice Plan;

(t) **"Notice of Settlement Approval Hearing"** means the Court approved notice to Class Members advising that the proposed Settlement and ancillary relief will be

considered for approval by the Court to be disseminated in accordance with the Notice Plan;

(u) **"Notice Plan"** means the plan attached hereto as **Schedule "D"** or as otherwise directed by the Court to disseminate the Notice of Settlement Approval Hearing and Notice of Approval of Settlement to Class Members;

(v) **"Ontario"** means Her Majesty the Queen in right of Ontario;

(w) **"Releasees"** means Ontario and each of its employees, servants, agents, Ministers, members of the Executive Council under the *Executive Council Act*, insurers, representatives and assigns;

(x) **"Settlement"** means this Settlement Agreement reached between the parties to resolve all issues in the Action as between them, as approved by the Court;

(y) **"Settlement Agreement"** means this agreement, as executed by the parties or their representatives, including the attached schedules;

(z) **"Settlement Claimant"** means a Class Member who as of 5 p.m. on the day prior to the Final Approval Date is no longer a Crown Ward;

(aa) "**Settlement Fund"** means the fund of $10 million (Cdn) that Ontario has agreed to pay in full satisfaction and settlement of the Action, inclusive of payment of Claims, the Honoraria, the Class Proceedings Levy, the Counsel Fee, the Administration Costs and all applicable taxes.

B. Payments by Ontario

3. Ontario shall, within 14 days of the Final Approval Date and subject to any further directions of the Court, segregate and hold the Settlement Fund, less any Administration Costs which had been incurred to that date, apart with interest accrued at the rate of 2% per annum, commencing on the Final Approval Date, forming part of the Settlement Fund, until such time as the payments required under this Agreement have been made.

4. The following payments shall be made from the Settlement Fund:

   (a) first, to payment of the Counsel Fee as directed by the Court;
   (b) second, to pay the Honoraria as directed by the Court;
   (c) third, to pay Administration Costs in due course following receipt of invoices for Administration Costs to implement the Settlement, including in respect of the Claims Process and Notice Plan;
   (d) fourth, to payment of the Class Proceedings Levy as determined by the Court, followed by the payment of Claims of Class Members which have been approved under the Claims Process as provided for herein;[1] and
   (e) any amounts remaining in the Settlement Fund after the above payments are made will be returned to Ontario.

5. The Plaintiffs will bring a motion for approval of the Settlement, the Counsel Fee and the Class Proceedings Levy. The parties agree that approval of the Settlement, Counsel Fee and Class Proceedings Levy may each be determined separately by the Court. The Defendant agrees that $2,000,000 plus HST and disbursements are to be paid for the Counsel Fee, subject to Court approval. Ontario will take no position on the motion brought by the Plaintiffs to approve this fee. The parties and counsel to the Class Proceedings Fund shall be permitted to make submissions regarding the proper calculation and the mechanism for payment of the Class Proceedings Levy, in accordance with this agreement. Ontario reserves its right to make submissions on all matters with the sole exception of the quantum of Counsel Fee.

6. Ontario shall pay to Class Counsel the Counsel Fee from the Settlement Fund as ordered by the Court, either within 14 (fourteen) days of the Final Approval Date or within 14 (fourteen) days of Counsel Fee Approval Date, whichever is later. Ontario shall pay the Honoraria to Class Counsel in trust at the same time as payment of the Counsel Fee.

[1] The amount payable to the Class Proceedings Fund will be calculated on the net amount remaining in the Settlement Fund after the payment of the Counsel Fee, Honoraria and Administration Costs incurred to date and an estimate of Administration Costs to completion, and prior to the determination and payment of the Claims of Class Members.

Ontario shall pay the Administration Costs from the Settlement Fund (save for the Administration Costs incurred prior to the Final Approval Date, which will be paid by Ontario and will be a deduction from the Settlement Fund) as they become due to implement the Settlement. The Administrator shall be instructed to ensure that Administration Costs do not exceed the amounts available in the Settlement Fund. Ontario shall not be responsible for the payment of any Administration Costs unless there are sufficient funds remaining in the Settlement Fund to pay such Administration Costs.

7. Subject to paragraphs 8, 9, 10 and 11 below, each Settlement Claimant who has been determined under the Claims Process to have been a victim of an Assault shall be entitled to one payment of $3,000 (the "Settlement Payment") and may proceed with their claims as set out in paragraphs 17 and 18 of this Settlement Agreement.

8. For greater clarity, a Settlement Claimant shall be entitled to make a maximum of one claim for compensation in the maximum amount of $3,000 (or any *pro rata* payment that may be available from the Settlement Fund as provided for in paragraph 9 below) in respect of one or more incidents of an Assault.

9. If after payment of the Counsel Fee, the Honoraria, the Administration Costs and the Class Proceedings Levy, the Settlement Fund will have insufficient funds remaining to make the payments to the Settlement Claimants who are determined under the Claims Process to be entitled to a payment of $3,000 in accordance with paragraph 7 above, payments to such Class Members shall be reduced on a *pro rata* basis. If there is any money remaining in the Settlement Fund after payment of the Class Counsel Fee, the Honoraria, the Administration Costs, the Class Proceedings Levy and the allocation of compensation in accordance with paragraph 7 above, the payments to such Class Members whose claims are accepted by the Administrator will be increased on a *pro rata* basis by up to an amount equal to 20% of the Settlement Payment (up to $600).

10. If practicable, Ontario shall provide one cheque to the Claims Administrator from the Settlement Fund for the global compensation of all Settlement Claimants as calculated and determined in accordance with the Claims Process and one cheque for the Class Proceedings Levy when that amount is determined and calculated. The Administrator

shall calculate and direct payment for the amounts owing to Settlement Claimants on the basis of the net settlement fund amount after Ontario has completed or reserved payment for all Administration Costs as directed by the Administrator.

11. A Class Member may not receive any payment from the Settlement Fund in respect of an Assault for which the Class Member has already obtained compensation through an application to the CICB or civil proceeding.

12. Any amounts remaining in the Settlement Fund after all of the payments in paragraph 4 have been made will be returned to Ontario.

C. Releases

13. On the Final Approval Date each Settlement Claimant, whether or not he or she submits a Claim or otherwise receives compensation under the Claims Process, will be deemed by this Settlement Agreement to have completely and unconditionally released, remised and forever discharged the Releasees of and from any and all actions, counterclaims, causes of action, claims, whether statutory or otherwise, and demands for damages, indemnity, contribution, costs, interest, claims for loss or harm or any other claim for relief or remedy of any nature and kind whatsoever, known or unknown, whether at law or in equity and howsoever arising, which they may heretofore have had, may now have or may hereafter have whether commenced or not for all claims against the Releasees that were raised or pleaded in the Action, including all claims pleaded in the Action or otherwise relating to any alleged failure to give proper consideration or to take reasonable steps to protect or pursue Crown Wards' rights to recover compensation for damages sustained as a result of criminal or tortious acts to which Crown Wards were victims (the "Released Claims"), except for such Settlement Claimant's entitlement, if any, to be paid in respect of a Claim under the Claims Process pursuant to the terms herein. This release shall be deemed to apply to and bind any Settlement Claimants who are minors or who are under a disability.

14. On the Final Approval Date, each Settlement Claimant will be forever barred and enjoined from commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively, or derivatively, asserting against the Releasees any of the Released Claims in paragraph 13 above.

15. On the Final Approval Date, each Settlement Claimant will be forever barred and enjoined from commencing, instituting or prosecuting any action, litigation, investigation or other proceeding in any Court of law or equity, arbitration, tribunal, proceeding, governmental forum, administrative forum or any other forum, directly, representatively, or derivatively, against any person or entity that could or does result in a claim over against the Releasees or any of them for contribution, indemnity in common law, or equity, or under the provisions of the *Negligence Act* and the amendments thereto, or under any successor legislation thereto, or under the *Rules of Civil Procedure*, relating to the Released Claims. It is understood and agreed that if such Settlement Claimant commences such an action or takes such proceedings, and the Releasees or any of them, are added to such proceeding in any manner whatsoever, whether justified in law or not, such Settlement Claimant will immediately discontinue the proceedings and claims or otherwise narrow the proceedings and claims to exclude the several liability of the Releasees. This Settlement Agreement shall operate conclusively as an estoppel in the event of any claim, action, complaint or proceeding which might be brought in the future by such Settlement Claimant with respect to the matters covered herein. This Settlement Agreement may be pleaded in the event that any such claim, action, complaint or proceeding is brought, as a complete defence and reply, and may be relied upon in any proceeding to dismiss the claim, action, complaint or proceeding on a summary basis and no objection will be raised by such Settlement Claimant in any subsequent action that the parties in the subsequent action were not privy to the formation of this Settlement Agreement.

16. For greater clarity, this settlement and the releases provided herein shall not preclude the Settlement Claimants from asserting the Released Claims against any person or entity other than the Releasees (a "**Third Party**"), save and except that it is an express term of this Settlement that each Settlement Claimant shall be deemed to have agreed that any such claim against a Third Party shall be restricted to the several liability of such Third Party and otherwise restricted as necessary such that the Third Party has no basis to claim over or seek contribution, indemnity, declaratory relief or any other relief whatsoever against the Releasees in respect of the claim. It is understood and agreed that if a Settlement Claimant commences a claim against a Third Party and a Releasee is added to such proceeding in any matter whatsoever, whether justified in law or not, such Settlement Claimant will immediately discontinue the proceedings and claims or otherwise narrow the proceedings and claims to exclude the liability of the Releasees and all other released parties in respect of the Released Claims.

17. This Settlement shall not affect any Class Member's right to make a claim to any administrative process for compensation for victims of crime, and the parties agree that no payments made to Class Members under this Settlement are in respect of any compensation for any injuries or loss occurring in or resulting from the commission of a crime of violence constituting an offence against the *Criminal Code*. It is expressly understood, acknowledged and agreed that Ontario has announced that the CICB will be discontinued and new applications to the CICB are not being accepted, and that Ontario has made no representation or warranty, and nothing in this Settlement Agreement or arising from the Claims Process shall be construed as constituting:

(a) a representation, warranty, admission or determination of any kind that any Class Member is entitled to or will be awarded any compensation or relief by the CICB or other administrative process for compensation for victims of crime or in any other proceeding;

(b) a representation or warranty that Class Members have or will in the future have recourse to the CICB or other administrative process for compensation for victims of crime, a court or any other adjudicative tribunal; or

(c) a representation or warranty that any particular processes, procedures or substantive law, including but not limited to the application of any limitation periods, will or will not apply to any future claim for damages or compensation through the CICB or other administrative process for compensation for victims of crime, a court or any other adjudicative tribunal.

D. Notice and Administration of the Claims Process

18. It is understood and agreed that Court approval of this Settlement Agreement is required.

19. As soon as practical, the Plaintiffs shall advise the Court and schedule a motion to seek Court approval of the Notice Plan and timing of the dissemination of the Notice of Settlement Approval Hearing.

20. The Notice Plan shall provide for:

(a) Notice of the Settlement Approval Hearing to be in a form to be agreed by the parties or as directed by the Court, and shall be disseminated as provided for in **Schedule "D"** or otherwise as ordered by the Court;

(b) Notice of Approval of Settlement to be in a form to be agreed by the parties or as directed by the Court, and shall be disseminated as provided for in **Schedule** "D" or otherwise as ordered by the Court; and

(c) The Notice of Approval of Settlement shall include information advising Crown Wards about available administrative processes in Ontario for compensation for victims of crime.

21. The costs of the Notice of Settlement Approval hearing and all other costs of the Administrator incurred up to the date of Final Settlement Approval shall be paid by Ontario and shall not be refundable in the event that this settlement is not finally approved. If the settlement is finally approved, all such Administration Costs previously

incurred by Ontario are to be deducted from the amount to be segregated and held as the Settlement Fund.

22. The Claims Administrator will be mutually agreed upon by the parties and approved by the Court and shall perform the administration of the Claims Process. The fees and disbursements of the Claims Administrator will be included as part of the Administration Costs.

23. The Claims Process will be conducted in accordance with **Schedule "C"** hereto and in accordance with the terms of this Settlement Agreement as a whole.

24. It is understood and agreed that no compensation paid to a Settlement Claimant under this Settlement will affect their eligibility for or the amount, nature and/or duration of social assistance programs administered by or on behalf of the Ministry of Children, Community and Social Services.

25. Ontario will send a letter to the federal government in the form attached hereto at Schedule "E" to request the federal government's agreement that any social assistance benefits available to Class Members from the federal government will not be affected by any settlement funds received by individual Class Members. However, it is expressly acknowledged and understood by the parties that any final decision in this regard is not within the power or control of Ontario and therefore Ontario's obligations in this regard will be satisfied upon delivery of the letter.

E. Communications

26. The parties, including counsel and Representative Plaintiffs, agree that when commenting publicly on the Action or this Settlement Agreement, they shall:

(a) inform the inquirer that the Action has been settled to the satisfaction of all parties;

(b) inform the inquirer that it is the view of the parties that the settlement of the Action is fair, reasonable and in the best interests of the Class; and

(c) decline to comment in a manner that casts the conduct in this action of any party in a negative light or reveals anything said during the settlement negotiations.

G. No Admissions

27. This Settlement is made on the express understanding that Ontario does not admit, and shall not be deemed as having admitted, any of the claims or allegations contained in the pleadings in the action or any liability whatsoever to the Plaintiffs or Class Members, and such allegations and claims are denied.

28. This Settlement Agreement, whether or not consummated, and any proceedings taken pursuant to this Settlement Agreement, are for settlement purposes only. Neither the fact of, nor any provision contained in this Settlement Agreement or its Schedules, or any action taken hereunder, shall be construed as, offered in evidence as, and/or deemed to be evidence of a presumption, concession or admission of any kind by the parties of the truth of any fact alleged or the validity of any claim or defence that has been, could have been or in the future might be asserted in any litigation, Court of law or equity, proceeding, arbitration, tribunal, government action, administrative forum, or any other forum, or of any liability, responsibility, fault, wrongdoing or otherwise of any parties except as may be required to enforce or give effect to the Settlement and this Settlement Agreement.

H. Termination

29. This Settlement Agreement shall, without notice, be automatically terminated if the Court does not approve this Settlement Agreement and such decision is not reversed on appeal. In the event of termination, this Settlement Agreement shall have no further force or effect, save and except for this section and section 21, which shall survive termination.

I. General

30. This Settlement Agreement shall be governed, construed and interpreted in accordance with the laws of the Province of Ontario.

31. This Settlement Agreement constitutes the entire agreement between the parties and may not be modified or amended except in writing, on consent of the parties, and with Court approval, if necessary.

32. This Settlement Agreement may be signed by the parties in counterpart which shall have the same effect and enforceability as a single executed document.

IN WITNESS WHEREOF, each of the parties has caused this Settlement Agreement to be executed on his/her/their behalf by his/her/their duly authorized counsel of record, effective as of _____, 2021.

Date: January 28, 2021

KOSKIE MINSKY LLP
Counsel for the Plaintiffs

Date: January 28, 2021

Loraine Evans

Date: January 28, 2021

Toni Grann

Date: January 28, 2021

Dale Gyselinck

Date: January 28, 2021

Robert Mitchell

Date: February 3, 2021

Name: Elizabeth (Lisa) Brost

Counsel for Her Majesty the Queen in right of Ontario

SCHEDULE "A"

SETTLEMENT APPROVAL ORDER

Court File No.: CV-14-0018 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

THE HONOURABLE	)	_____DAY, THE
	)	
	)	
JUSTICE PIERCE	)	_____ DAY OF _____, 2020
	)	

B E T W E E N :

TONI GRANN, ROBERT MITCHELL, DALE GYSELINCK and LORRAINE EVANS

Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the Plaintiffs for an order approving the settlement of this action pursuant to subsection 29(2) of the *Class Proceedings Act, 1992* was heard this day by video conference, at 125 Brodie Street North, Thunder Bay, Ontario.

WHEREAS this action was certified as a class proceeding by order dated March 30, 2017 (the "**Certification Order**"),

AND UPON READING the consent of the Defendant, which has been provided without admission of liability in respect of the claims which have been asserted in this proceeding;

AND UPON HEARING the submissions of counsel for the Plaintiffs and Defendant, and upon reading the materials filed, including any written objections, the motion record of the Plaintiffs, and the factum of the Plaintiffs,

1. **THIS COURT ORDERS AND DECLARES** that for the purposes of this Order, the following definitions shall apply:

(a) "**Approval Order**" means this order approving the Settlement Agreement and providing for a dismissal of the action;

(b) "**Class**" or "**Class Members**" means all persons who were alive as of January 22, 2012, who were Crown Wards at any time from the period on or after January 1, 1966 until March 30, 2017;

(c) "**Crown Ward**" means a person who was the subject of a court order making them a ward of the Crown pursuant to subsection 57(1), paragraph 3, or subsection 65.2(1)(c) of the *Child and Family Services Act, R.S.O. 1990, c.C.11* (or under similar provisions in its predecessor legislation) and includes a person who was subsequently deemed to be a person subject to an extended society care order made under paragraph 3 of subsection 101(1) or clause 116(1)(c) of *the Child, Youth and Family Services Act, 2017*, S.O. 2017, c.14. Sched. 1 on or after April 30, 2018;

(d) "**Final Approval Date**" means the later of:

(i) 31 days after the date on which the Ontario Superior Court of Justice issues the Approval Order; and

(ii) the final disposition of any appeals from the Approval Order;

(e) "**Releasees**" means Ontario and each of its employees, servants, agents, Ministers, members of the Executive Council under the *Executive Council Act*, insurers, representatives and assigns;

(f) **"Settlement Agreement"** means the executed Settlement Agreement between the parties attached hereto as **Schedule "A"**;

(g) **"Settlement Claimant"** means a Class Member who as of 5 p.m. on the day prior to the Final Approval Date is no longer a Crown Ward;

(h) **"Settlement Fund"** means the settlement fund established pursuant to the Settlement Agreement;

2. **THIS COURT ORDERS AND DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the Class Members.

3. **THIS COURT ORDERS** that the Settlement Agreement be and hereby is approved and shall be implemented in accordance with its terms, this Order and further orders of this Court.

4. **THIS COURT ORDERS AND DECLARES** that the claims of the Settlement Claimants are dismissed and released against the Releasees in accordance with the terms of the Settlement Agreement.

5. **THIS COURT ORDERS AND ADJUDGES** that, save as set out above, this action is dismissed without costs and with prejudice with respect to all claims asserted by or on behalf of each Settlement Claimant, and that such dismissal shall be a defence to any subsequent action in respect of the subject matter hereof.

6. **THIS COURT ORDERS AND ADJUDGES** that this action is discontinued without costs and without prejudice with respect to all claims asserted by or on behalf of each Class Member who is not a Settlement Claimant.

7. **THIS COURT ORDERS, ADJUDGES AND DECLARES** that this Order and the Settlement Agreement are binding upon all Class Members except any persons who have validly opted out, including those persons who are under a disability.

8. **THIS COURT ORDERS AND DECLARES** that without in any way affecting the finality of this Order, this Court reserves exclusive and continuing jurisdiction over this action, the Plaintiffs, all of the Class Members and the Defendant for the limited purposes of implementing the Settlement Agreement and enforcing and administering the Settlement Agreement and this Order.

9. **THIS COURT ORDERS** the Long Form Notice attached as **Schedule "B"**, or substantially in the same form thereof, is hereby approved.

10. **THIS COURT ORDERS** the Short Form Notice attached as **Schedule "C"**, or substantially in the same form thereof, is hereby approved.

11. **THIS COURT ORDERS** the Claim Form attached as **Schedule "D"**, or substantially in the same form thereof, is hereby approved.

12. **THIS COURT ORDERS** that class counsel may make non-material changes to the Long Form Notice, the Short Form Notice, or the Claim Form, and any changes as are desirable and necessary, upon receipt of the defendant's consent

13. **THIS COURT ORDERS** that the Plan of Dissemination attached as **Schedule "E"**, or substantially in the same form thereof, is hereby approved.

14. **THIS COURT ORDERS** that the notice stipulated at paragraphs nine (9), ten (10) and thirteen (13) of this order satisfies the requirements of the *Class Proceedings Act, 1992* and shall constitute good and sufficient service upon Class Members of notice of this Order and approval of the settlement of this action.

15. **THIS COURT ORDERS** that the distribution of notice as contemplated in the Plan of Dissemination shall commence within fourteen (14) days of the Final Approval Date.

16. **THIS COURT ORDERS** that the legal fees, disbursements and taxes owing to Class Counsel shall be determined by further order of this Court and are to be paid out of the Settlement Fund in accordance with the terms of the Settlement Agreement.

17. **THIS COURT ORDERS** that the levy and payment for disbursements plus taxes owing to the Law Foundation of Ontario shall be determined by further order of this Court and are to be paid out of the Settlement Fund in accordance with the terms of the Settlement Agreement.

18. **THIS COURT ORDERS** that Epiq Global shall be and hereby is appointed as Claims Administrator pursuant to the Settlement Agreement and fees and expenses of the Claims Administrator shall be paid out of the Settlement Fund in accordance with the terms of the Settlement Agreement.

19. **THIS COURT ORDERS** that honoraria in the amount of $12,500 shall be paid to each of Toni Grann, Dale Gyselinck, Lorraine Evans, and Robert Mitchell and in the amount of $7,500 to Holly Papassay in accordance with the terms of the Settlement Agreement.

20. **THIS COURT ORDERS** that it may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the Settlement Agreement and this order.

_____

SCHEDULE "B"
CLAIM FORM

CALL [PHONE NUMBER] OR VISIT [WEBSITE]

CROWN WARD CLASS ACTION

COMPENSATION CLAIM FORM

This settlement is for all persons who were alive as of January 22, 2012, who were Crown Wards at any time from the period on or after January 1, 1966 until March 30, 2017, and who are no longer Crown Wards (now referred to as children in extended society care).

The deadline to submit a claim is [insert deadline].

If you need help completing this Claim Form, or have any questions contact the Claims Administrator at [phone number] or by email at [email].

Part 1: Name and Contact Information		
Full Name:		
Any Other Names: Please also provide all previous names, pre-married names, nicknames, or names used before and while a Crown Ward and before and after adoption:		
Date of Birth:		
Birth Mother's Full Name(s), including maiden name, if known:		
Birth Father's Full Name:		
Are you are making a claim on behalf of someone as their litigation guardian or the Public Guardian and Trustee?	□ Yes	□ No
Representative's Name:		
Representative's Relationship to Claimant:		
Is the Claimant deceased?	□ Yes	□ No
If so, on what date did the Claimant pass away?		

Note: Please attach any documents you may have that confirm your authority to legally represent the Claimant.	
Mailing Address:	
City/Town:	
Province:	
Country:	
Postal Code:	
Daytime Telephone Number:	
Evening Telephone Number:	
Email Address (if available):	

Part 2: Qualification for Compensation		
Were you an Ontario Crown Ward?	□ Yes	□ No
When did you become on Ontario Crown Ward?	Date:	
What city or town did you live in when you became a Crown Ward?		
When did you stop being a Crown Ward?	Date:	
In the following section, **"Assault"** means a physical or sexual assault which constituted a crime of violence.		
Were you the victim of an Assault before becoming a Crown Ward and/or while you were a Crown Ward?	□ Yes	□ No
If you answered "yes" to the question above, briefly describe the Assault(s) and what injuries or psychological/emotional harm it caused you. (you may attach additional page(s) if needed to answer) _____		

Have you obtained compensation from the Criminal Injuries Compensation Board in respect of all of the Assault(s) identified above?	☐ Yes	☐ No
Have you obtained compensation through a civil lawsuit in respect of all of the Assault(s) identified above?	☐ Yes	☐ No

If you have received compensation for all of the Assaults identified above, please describe how you received this compensation:	

Part 3: Solemn Declaration		
By completing this Claim Form and signing below I solemnly declare that all information I have provided in this form is true to the best of my knowledge and belief, that it is the same force and effect as if made under oath, and that it was freely given. **Remember, it is a serious offence to make a false statement.**		
I was a Crown Ward during the period between January 1, 1966 and March 30, 2017:	☐ Yes	☐ No
I am no longer a Crown Ward:	☐ Yes	☐ No
I confirm that the Province of Ontario can review my records to verify information contained in my Claim Form. This is necessary for you to get money.	☐ Yes	☐ No
Name:		
Date:		
Signature:		
Witness's Name:		
Date:		
Witness's Signature:		

Part 4: Submit Your Claim Form
All Claim Forms must be sent to the address below by no later than [claims deadline]. You may email, fax or mail [or submit electronically by way of the online form if applicable] your Claim Form to the Claims Administrator [administrator name] as per the following:

Crown Ward Class Action

[address]

[email]

[fax]

If you fail to submit a Claim Form to the Claims Administrator by [claims deadline], you will not receive any compensation from this settlement.

Do not send this Claim Form to the Court.

SCHEDULE "C"
CLAIMS PROCESS

1. All defined terms in the Settlement Agreement are applicable to the Claims Process herein. In addition, for purposes of this Schedule an “Excluded Claim” means a Claim by a person who:

    (a) has previously and validly opted out of the Action in writing; or

    (b) has previously settled a claim against Ontario and has executed a release in favour of Ontario or any of the other Releasees for matters that are the subject of this Action;

2. Any Settlement Claimant who wishes to claim for a payment from the Settlement Fund shall deliver or otherwise provide to the Claims Administrator a Claim Form no later than nine (9) months after the Final Approval Date (the “Claims Delivery Deadline”). If the Claims Administrator does not receive a Claim Form from a Settlement Claimant by the Claims Delivery Deadline, then the Settlement Claimant shall not be eligible for any payment whatsoever under the Claims Process.

3. The Claim Form will require the Settlement Claimant who seeks a payment from the Settlement fund to:

    (a) provide all full names applicable to the Settlement Claimant during the Class Period, current contact information, date of birth, and, if known, their birth mother’s maiden and/or married name, their birth father’s name and the city and year in which they became a Crown Ward;

    (b) confirm that they are a Class Member in that they were a Crown Ward at any time from the period on or after January 1, 1966 until March 30, 2017 and, if the Claim Form is submitted on behalf of a deceased individual by a representative of the Estate of a Class Member, that the claimant was alive as of January 22, 2012;

(c) confirm that they are a Settlement Claimant in that as of 5 p.m. the day before the Final Approval Date they were no longer a Crown Ward;

(d) provide information to establish that they were the victim of an Assault prior to or while they were a Crown Ward;

(e) confirm that they have not obtained compensation through an application to the CICB or through a civil proceeding in respect of the Assault;

(f) confirm that their claim is not an Excluded Claim; and

(g) provide consent to Ontario to access any files held by a Children's Aid Society or any other source pertaining to the claimant's Crown wardship.

4. Settlement Claimants may file with their Claim Form any supporting documents they have, if available, although supporting documentation is not necessary. Settlement Claimants will not be required to obtain or furnish information or records from any applicable Children's Aid Society or otherwise to support their Claim. However, Ontario may seek information from any applicable Children's Aid Society or other source in order to verify the information contained in any Claim Form.

5. The Claims Process will be paper-based and strictly confidential and will be conducted to the extent possible on an expeditious basis. There will be no oral or electronic hearing. Further, the alleged offender in respect of any Claim by a Settlement Claimant under the Claims Process will not be entitled to receive any notice of the Claim and will not be permitted to participate in any claim adjudication under the Claims Process.

6. A Settlement Claimant may not submit more than one Claim. If more than one Claim Form is submitted the Claims Administrator will treat all claim materials submitted as one Claim.

7. If a Settlement Claimant lacks capacity to complete a Claim Form then it may be completed by the Settlement Claimant's parent or litigation guardian or the Public Guardian and Trustee (PGT), as applicable.

8. The Claims Administrator shall review each Claim Form and verify that the Settlement Claimant is eligible for compensation. In particular, the Claims Administer will consider whether, and be satisfied:

    (a) that the Claim has been submitted by a Class Member who is a Settlement Claimant as defined in the Settlement Agreement;

    (b) if the Claim has been submitted on behalf of a Settlement Claimant who lacks capacity, that the parent, litigation guardian or the PGT bringing the Claim has authority to act on behalf of the Settlement Claimant;

    (c) if the Claim has been submitted on behalf of a Settlement Claimant's estate, that the individual filing the Claim has the requisite authority to do so;

    (d) that the Claim is in respect of an Assault that occurred prior to or while they were a Crown Ward;

    (e) that the Settlement Claimant has confirmed that they have not obtained compensation through an application to the CICB or through a civil proceeding in respect of the Assault; and

    (f) that their Claim is not an Excluded Claim.

9. The Claims Administrator shall treat all Claims Forms and related supporting materials as confidential and shall not disclose such materials without the Settlement Claimant’s consent to any person other than Class Counsel, to Ontario if requested pursuant to paragraph 10 of this Schedule, or as may be required by law.

10. The Claims Administrator shall provide to Ontario a list, including the names and dates of birth and, if known, the birth mother’s maiden and/or married name, the birth father’s name and the city and year in which they became a Crown Ward, of those Settlement Claimants who have submitted a claim that the Claims Administrator has determined appear to be eligible for a payment from the Settlement Fund. Ontario shall conduct searches of the Adoption and Crown Ward Database for any persons on the list who claim to have become a Crown Ward after January 1, 1991 to determine whether there is a record of such person

having become a Crown Ward, and will advise the Administrator of the search results. Furthermore Ontario shall have the right to review and audit the Claim Forms and supporting records and information relating thereto in respect of Claims which have been approved by the Claims Administrator, and to provide a response to any Claim Form to the Claims Administrator within 60 days of Ontario receiving such Claim Form confirming whether or not the Claim is on behalf of a Settlement Claimant via secure email. Any Claim Forms and related supporting records provided by the Claims Administrator to Ontario pursuant to this paragraph shall be treated by Ontario as confidential and shall not be disclosed without the Settlement Claimant's consent to any person except Class Counsel, the Claims Administrator or employees, servants, insurers, agents, ministries, Ministers or their designates or representatives of or advisors to Ontario, or as may be required by law.

11. Any documents or response provided to the Claims Administrator by Ontario pursuant to paragraph 10, along with the underlying Claim Form above, shall be sent to the Claimant by the Claims Administrator. The Settlement Claimant shall have the right to submit any further documentation or response within 30 days of said date. However, in the event that further time is needed for the Settlement Claimant to provide a response or obtain documentation to verify whether a Settlement Claimant meets the definition of Settlement Claimant, the Claims Administrator may extend this deadline for a reasonable amount of time.

12. The Claims Administrator shall take reasonable measures to verify that each Settlement Claimant is eligible for a payment from the Settlement Fund. The Claims Administrator may make inquiries of the Settlement Claimants or Ontario in the event of any concerns, ambiguities or inconsistencies in the Claim Forms or documents submitted by Ontario. If the Claims Administrator determines that the Claimant does not meet the definition of Settlement Claimant or that the Settlement Claimant has not made any Claim which meets the criteria as set out in paragraph 9 of this Schedule, the Settlement Claimant's Claim will be disallowed.

13. As soon as possible after (i) all timely Claim Forms have been processed (ii) the time to request a reconsideration for disallowed claims has expired; and (iii) all administrative

reviews have concluded, the Claims Administrator shall allocate amounts to the Settlement Claimants from the Settlement Fund pursuant to the provisions of the Settlement Agreement.

14. In determining whether payments to Settlement Claimants may be reduced or augmented in accordance with paragraph 9 of this Settlement Agreement, the Claims Administrator shall take into account the Administration Costs that it will incur to complete its administration of the settlement, as well as any interest which has accrued on the Settlement Fund.

15. The Claims Administrator shall advise Ontario and Class Counsel of the amounts to be awarded to each Settlement Claimant and the global compensation amount required to satisfy those payments. If practicable, Ontario shall provide one cheque for the global payment amount to the Claims Administrator and the Claims Administrator shall mail the individual compensation cheques to the Claimants at the postal addresses indicated in the Claim Forms, within 30 days. If, for any reason, a Settlement Claimant does not cash a cheque within 6 months after the date of the cheque, the Settlement Claimant shall forfeit the right to compensation. Ninety days prior to the expiry of the 6 month period described above, the Claims Administrator shall provide Class Counsel and Ontario with a list of Settlement Claimants who have not cashed their compensation cheques. Sixty days prior to the expiry of the 6 month period described above, the Claims Administrator shall send each such Settlement Claimant a letter advising the Settlement Claimant that they have 60 days to cash the compensation cheque. Thirty days prior to the expiry of the 6 month period described above, the Claims Administrator shall provide an accounting to Class Counsel and Ontario of any interest accrued by the Claims Administrator in relation to any monies it has held pending the clearance or expiration of all cheques.

16. The Claims Process is intended to be expeditious, cost effective and "user friendly" and to minimize the burden on the Settlement Claimants. The Claims Administrator shall, in the absence of reasonable grounds to the contrary, assume the Settlement Claimants to be acting honestly and in good faith.

17. Where a Claim Form contains minor omissions or errors, the Claims Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Claims Administrator.

18. The Claims Process is also intended to prevent fraud and abuse. If the Claims Administrator believes that a Claim is fraudulent or contains intentional and material errors, then the Claims Administrator shall disallow the claim in its entirety.

19. Where the Claims Administrator disallows a claim in its entirety pursuant to paragraph 12 or paragraph 18, the Claims Administrator shall send to the Settlement Claimant at the Settlement Claimant's postal or email address as indicated in the Claim Form and, if requested by Class Counsel, to Class Counsel a notice advising the Settlement Claimant that their Claim has been disallowed and that he or she may request the Claims Administrator to reconsider its decision by administrative review and the Settlement Claimant may provide any additional documents or information and commentary supporting the claim.

20. Any request for reconsideration must be received by the Claims Administrator within 30 days of the date of the notice advising of the disallowance provided for in paragraph 20 of this Schedule. However, in the event that further time is needed for the Settlement Claimant to make the request for reconsideration, the Claims Administrator may extend this deadline for a reasonable amount of time. If no request for reconsideration is received by the Claims Administrator within this time period, the Settlement Claimant shall be deemed to have accepted the Claims Administrator's determination and the determination shall be final and binding and not subject to further review by any court or other tribunal.

21. Where a Settlement Claimant files a timely request for reconsideration with the Claims Administrator in accordance with paragraph 21 of this Schedule, the Claims Administrator shall advise Ontario and Class Counsel of the request. The Claims Administrator shall conduct an administrative review of the Claimant's request for reconsideration.

22. Following its determination in an administrative review, the Claims Administrator shall advise the Settlement Claimant of its determination of the request for reconsideration. In the

event the Claims Administrator reverses a disallowance, the Claims Administrator shall send the Settlement Claimant at the Settlement Claimant's postal or email address as indicated in the Claim Form (copied to Class Counsel), a notice specifying the revision to the Claims Administrator's disallowance and will make the payment at the applicable time.

23. The determination of the Claims Administrator in an administrative review is final and binding and is not subject to further review by any court or other tribunal.

24. The Claims Administrator will provide monthly reports on administration to Ontario and Class Counsel, or at other junctures as requested.

SCHEDULE "D"
PHASE 2 NOTICE PLAN

1. The Administrator shall:

   (a) distribute a print notice (the "**Long Form Notice**") by regular mail and by email (if available) to Class Members whose contact information has been provided, or is otherwise known to the Administrator or Class Counsel or who have contacted the Administrator or Class Counsel;

   (b) cause the short version of the print notice (the "**Short Form Notice**") to be published in a 1/8 page ad in the following print publications: National Post; Globe & Mail; Toronto Star; Ottawa Citizen; Belleville Intelligencer; Kingston Whig Standard: Napanee Guide; Brampton Guardian-TH; Burlington Post/Flamborough Review; Caledon Citizen; Cambridge Times-TH: Georgetown/Acton Ind. Free Press; Glanbrook Gazette; Grimsby/Lincoln/West Lincoln; NewsNow; Guelph Tribune-TH; Hamilton Spectator; King Weekly Sentinel; Waterloo Record; Markham Economist & Sun; Milton Canadian Champion; Mississauga News-TH; Oakville Beaver-TH; Richmond Hill /Thornhill Liberal; Toronto, All Metroland Publications; Vaughan Citizen; Alexandria Glengarry News; Arnprior Chronicle-Guide; Chesterville Record; QC Aylmer Bulletin d'Aylmer; West Quebec Post; Smiths Falls Record News; Winchester Press; Ayr News; The Brantford Expositor; Exeter Lakeshore Times-Journal; London, The Londoner; Norwich Gazette St. Thomas Times-Journal; Strathroy Age Dispatch; Tavistock Gazette; Tillsonburg Independent News; West Lorne West Elgin Chronicle; Pembroke/Petawawa News; Peterborough Examiner; Cornwall Standard Freeholder; Kenora Daily Miner; Owen Sound Sun Times; Chatham Daily News; North Bay Nugget; Woodstock Sentinel-Review; Orangeville Citizen; Brockville Recorder; St. Catharines Standard; Stratford Beacon Herald; Stratford Beacon Herald; Sarnia Observer; Sudbury Star; The Review; Windsor Star; and Thunder Bay Chronicle-Journal;

(c) distribute the Long Form Notice by mail and email to Ontario Friendship Centres, First Nations Offices and Band Offices, the Inuit Tapirit Kanatami, and the Métis Nation of Ontario;

(d) distribute the Long Form Notice by mail and e-mail to the following community social service organizations:

Assaulted Women's Helpline

Fem'aide

Talk4Healing

(e) print the Short Form Notice in *Maclean's*;

(f) print the Short Form Notice in the following Indigenous publications: First Nations Drum; Turtle Island News; Ha-Shilth-Sa; Wawatay News; Sioux Lookout Bulletin; Eagle Feather News; Indian Time; Sault Star; and Anishanabek News;

(g) purchase and distribute internet banner notices on Google Display Network and Facebook ;

(h) distribute the Long Form Notice to all Ontario offices of the Elizabeth Fry Society, the John Howard Society, the Criminal Lawyers' Association, Canadian Defence Lawyers, Canadian Counsel of Criminal Defence Lawyers, Aboriginal Legal Services, Nishnawbe-Aski Legal Services, the Treaty 3 Legal Department, the Six Nations Legal Department, the Indigenous Bar Association, the Ontario Association of Child Protection Lawyers, and by posting the Short Form Notice on the Criminal Lawyers' Association listserv; and

(i) issue a national press release in a form to be agreed to by the parties or as may be directed by the Court.

2. The Defendant shall:

(a) disseminate the Short Form Notice to all Children's Aid Societies in Ontario and request that the Children's Aid Societies post the Short Form Notice in a prominent place in the offices of Children's Aid Societies until XXXXXX ;

(b) disseminate the Short Form Notice to the Ontario Association of Children's Aid Societies ("OACAS") and the Association of Native Child and Family Services Agencies of Ontario ("ANCFSAO"), and request that these organizations disseminate the Short Form Notice to their membership and request that the OACAS disseminate the Short Form Notice to individuals enrolled in the Aftercare Benefits Initiative and the YouthCAN program;

(c) cause the Short Form Notice to be posted in a conspicuous place within each currently operating correctional institution as defined in the *Ministry of Correctional Services Act*, R.S.O. 1990, c. M.22l until XXXXXXX; and

(d) direct that the Short Form Notice be posted in all probation and parole offices throughout Ontario until XXXXXXX, to the extent reasonably practicable.

3. Within seven (7) days of court approval of the proposed settlement, Class Counsel shall post the Long Form Notice on its website.

4. The Administrator shall establish a toll-free support line to provide assistance to Class Members, family, guardians or agency staff, or other persons who make inquiries on their own behalf or on behalf of Class Members.

SCHEDULE "E"
FORM OF LETTER TO FEDERAL GOVERNMENT

Dear _____

Ontario has recently settled the class action *Grann v. Her Majesty the Queen in Right of the Province of Ontario* bearing Superior Court of Justice (Thunder Bay) file no. CV-14-0018, which involved claims that Ontario failed to give proper consideration and to take reasonable steps to protect and pursue Crown Wards' rights to recover compensation for damages sustained as a result of criminal or tortious acts to which Crown Wards were victims.

Under the terms of settlement Ontario has agreed to pay compensation to individual class members who file claims that meet the criteria for a payment from a settlement fund. Ontario has further agreed that any settlement payments received by those class members will not affect eligibility for, the amount, nature and/or duration of social assistance programs administered by or on behalf of the Ministry of Children, Community and Social Services.

We are writing to request your agreement that any social assistance benefits available to class members from your government will not be affected by any settlement funds received by individual class members. Please advise us if you are prepared to proceed on this basis.

Yours truly

Court File No.: CV-14-0018 CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Thunder Bay
Proceeding under the Class Proceedings Act, 1992

FACTUM OF THE MOVING PLAINTIFFS
(Returnable May 12 and 13, 2021)

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