

**SASKATCHEWAN COURT OF KING’S BENCH**  
**PROPOSED CLASS PROCEEDING**

BETWEEN:

**LOUIS GARDINER, MARGARET AUBICHON, MELVINA AUBICHON,  
EMILE JANVIER, DUANE FAVEL, AND DONNA JANVIER**

Plaintiffs

- and -

**THE ATTORNEY GENERAL OF CANADA AND  
THE GOVERNMENT OF SASKATCHEWAN**

Defendants

**BRIEF OF LAW**

**PART I- INTRODUCTION**

1. The Plaintiffs apply for court approval of Settlement Agreements reached with both defendants—the Attorney General of Canada (“**Canada**”) and the Government of Saskatchewan (“**Saskatchewan**”)—in this proposed class action brought on behalf of former students of the Île-à-la-Crosse residential school (“the **ILC School**”) and their families.

2. Like other residential schools that Indigenous children were forced to attend, the ILC School caused indelible harm to students (the “**Survivors**”) over a century of the School’s existence. The alleged abuses that occurred at the ILC School include psychological, physical, and sexual abuse, and active attempts to destroy the students’ Indigenous identities. Students were punished violently for speaking Cree, Dene, or Michif or engaging in any traditional practices,

were called racial slurs, and endured open disparagement and shaming of their Indigenous culture, heritage and language.

3. The Settlement Agreements provide over \$92 million to resolve this litigation in favour of approximately 2,000 eligible Survivor Class Members and their family members. The financial benefits include: direct compensation to Survivors for the common experiences and harms of attending the ILC School; direct compensation to Survivors who experienced sexual abuse and/or serious physical abuse; a fund to support projects devoted to healing, wellness, language, culture, education, and commemoration – an indirect, community-building benefit to all Survivors and their families; as well as amounts for claims administration, legal fees, and disbursements.

4. The Settlement Agreements were reached after years of hard-fought litigation and intensive, arm's-length negotiations. Although no amount of money can right the wrongs that happened at the ILC School, the Settlement Agreements together are a significant step along the path of reconciliation and comprise a suitable compromise of the Survivors' claims against Canada and Saskatchewan. They offer appropriate levels of compensation flowing from claims processes that are designed to be accessible, culturally sensitive, and trauma-informed – and they offer certainty in the face of significant litigation risks and an aging Survivor population.

5. The proposed Settlement Agreements are fair, reasonable, and in the best interests of the Class Members, and therefore ought to be approved, along with various ancillary relief, including appointment of the Claims Administrator and Assessor, and the Plaintiffs' plan for dissemination of notice about the Settlements.

## PART II - THE FACTS

### A. History of the Île-à-la-Crosse School

6. The Île-à-la-Crosse School was a residential/boarding school founded by the Catholic Oblates of Mary Immaculate (“**OMI**”) in 1860 for the stated purpose of educating Indigenous children.<sup>1</sup> Over the years, approximately 2,400 children,<sup>2</sup> from Île-à-la-Crosse and the surrounding region stretching across Northern Alberta, Saskatchewan, and Manitoba, attended the ILC School.<sup>3</sup> The students were mostly Métis, as well as Dene and Cree.

7. Between the 1870s-1890s, the new Canadian government provided the OMI with sporadic funding to help operate the ILC School. For a period of time beginning in 1897, the ILC School was incorporated into the broader system of “Indian Residential Schools” and received regular federal funding, though the OMI remained responsible for staffing and operations.<sup>4</sup>

8. Following the formation of Saskatchewan in 1905, the OMI continued to operate the ILC School, with the new province provided funding on a sporadic basis in response to grant requests.<sup>5</sup> Beginning in the 1940s, Saskatchewan began to regularize its responsibility for funding schools in the north of the province, including the ILC School, via an administrative structure which involved boards of elected trustees charged with the day-to-day responsibility of school management.<sup>6</sup> By

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<sup>1</sup> “History of the Ile-a-la-Crosse Residential School”, p. 5, Exhibit “A” to the Joint Affidavit of Dr. Amanda Fehr and Dr. Katya MacDonald, sworn 28 February 2024 (“**Fehr & MacDonald Affidavit**”).

<sup>2</sup> “Île-à-la-Crosse School – Class Size Estimate” at para. 35, Exhibit “B” to the Affidavit of Peter Gorham, sworn 6 January 2026 (“**Second Gorham Affidavit**”).

<sup>3</sup> “History of the Ile-a-la-Crosse Residential School”, pp. 7, 9, 21, Exhibit “A” to the Fehr & MacDonald Affidavit.

<sup>4</sup> “History of the Ile-a-la-Crosse Residential School”, pp. 6-7, Exhibit “A” to the Fehr & MacDonald Affidavit.

<sup>5</sup> “History of the Ile-a-la-Crosse Residential School”, pp. 11-12, Exhibit “A” to the Fehr & MacDonald Affidavit.

<sup>6</sup> “History of the Ile-a-la-Crosse Residential School”, p. 15, Exhibit “A” to the Fehr & MacDonald Affidavit; Affidavit of Dawn Campbell, sworn 16 July 2024 (“**Campbell Certification Affidavit**”) at paras. 11-12.

the mid-1970s, the ILC School had been closed, and a new, community-run public school board was established.<sup>7</sup>

9. For most of the history of the ILC School, it operated both as a residential or boarding school and as a day school.<sup>8</sup> Children who attended as “day schoolers” did not live in the residence facilities of the ILC School; they lived off-site, usually with family.

10. OMI also operated the nearby Beauval residential school,<sup>9</sup> which, unlike the ILC School, is recognized by Canada as an Indian Residential School (“**IRS**”).<sup>10</sup> Survivors reported that the priests who had forced their families to send them to the ILC School were the same as those who were forcing children into Beauval IRS.<sup>11</sup>

11. Similar to Beauval and other recognized IRSs, Survivors endured abuse, mistreatment, and cultural erasure and denigration at the ILC School. Survivors reported being punished for speaking their Indigenous languages or engaging in cultural practices;<sup>12</sup> being verbally and psychologically abused with respect to their Indigenous identity;<sup>13</sup> having their hair cut off upon arrival, without their consent; forced physical labour; and excessive physical punishment.<sup>14</sup> Sexual and physical abuse also occurred at the ILC School, often committed by priests and nuns.<sup>15</sup>

12. The extent of Canada and Saskatchewan’s responsibility for the day-to-day operations of the ILC School is a heavily disputed question. The Plaintiffs’ position has been that both

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<sup>7</sup> “History of the Ile-a-la-Crosse Residential School”, p. 16, Exhibit “A” to the Fehr & MacDonald Affidavit.

<sup>8</sup> Campbell Certification Affidavit at para. 5.

<sup>9</sup> “History of the Ile-a-la-Crosse Residential School”, p. 21, Exhibit “A” to the Fehr & MacDonald Affidavit.

<sup>10</sup> *Gottfriedson v. Canada*, [2015 FC 766](#) at [Sched. A](#).

<sup>11</sup> “History of the Ile-a-la-Crosse Residential School”, p. 21, Exhibit “A” to the Fehr & MacDonald Affidavit.

<sup>12</sup> See e.g. Affidavit of Emile Janvier, sworn 23 February 2024, at para. 12.

<sup>13</sup> See e.g. Affidavit of Margaret Aubichon, sworn 23 February 2024, at para. 15.

<sup>14</sup> “History of the Ile-a-la-Crosse Residential School”, p. 21, Exhibit “A” to the Fehr & MacDonald Affidavit.

<sup>15</sup> “History of the Ile-a-la-Crosse Residential School”, pp. 22-25, Exhibit “A” to the Fehr & MacDonald Affidavit.

governments were sufficiently involved in the establishment, maintenance, and operation of the ILC School to ground duties owed to all of the students who attended. The Defendants have both rejected this proposition repeatedly.<sup>16</sup>

## **B. History of the Proceeding and Survivors' Efforts to Secure Accountability**

### **(i) The *Aubichon/Chartier* Action, IRSSA and Article 12**

13. On December 9, 2005, *Aubichon et al. v. Canada* (the “*Aubichon/Chartier Action*”) was commenced as a proposed class action on behalf of survivors of the ILC School, as the ILC School had been excluded from the Indian Residential Schools Settlement Agreement (“**IRSSA**”). When IRSSA was brought before the Saskatchewan Court for approval in late 2006, the plaintiffs in the *Aubichon/Chartier* Action objected to the exclusion of the ILC School from that settlement. In his decision to approve the IRSSA, Ball J. recognized the validity of these objections, but nevertheless held that the IRSSA remained fair overall.<sup>17</sup>

14. On January 20, 2007, the *Aubichon/Chartier* Action plaintiffs filed an amended statement of claim which added Saskatchewan as a defendant. In response, Saskatchewan brought an application for an order to disallow the amendments.<sup>18</sup> Justice Ball dismissed Saskatchewan’s application, but noted that many of the claims raised in the *Aubichon/Chartier* Action were at least presumptively out-of-time:<sup>19</sup>

[31] Accepting the pleadings as true, a number of the plaintiffs’ claims are *prima facie* statute barred. The plaintiffs may choose to apply for orders determining that no time

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<sup>16</sup> “Harper promised compensation ‘in error,’ minister says”; *CBC News*, 19 January, 2007, Exhibit “A” to the Affidavit of Joshua Merchant, sworn 16 March 2026 (“**Merchant Affidavit**”); Campbell Certification Affidavit at paras. 6-8; “Requests made pursuant to Article 12 to add Institutions to the Settlement Agreement”, p. 112, Exhibit “C” to the Merchant Affidavit.

<sup>17</sup> *Sparvier v. Canada (Attorney General)*, [2006 SKQB 533](#) at para. [10](#).

<sup>18</sup> *Aubichon v. Canada (Attorney General)*, [2007 SKQB 406](#) at para. [1](#).

<sup>19</sup> *Aubichon v. Canada (Attorney General)*, [2007 SKQB 406](#) at para. [31](#).

limitation period applies or allowing the claims to be brought. Alternately, the defendants may apply for orders determining that some or all of the claims are statute barred. ...

15. While the *Aubichon/Chartier* Action was ongoing, attempts were also made to have the ILC School added as an IRS under IRSSA Article 12, which created a process by which individuals could request to have a school recognized as an IRS and, therefore, to be included in the IRSSA. Requested schools were researched by Canada and assessed against criteria, including that “Canada must have been jointly or solely responsible for the operation of the residence and care of the children resident there”.<sup>20</sup>

16. Canada concluded that the ILC School was operated by a religious organization, and that Canada was not jointly or solely responsible for the School’s operation; the applications were therefore denied.<sup>21</sup> Canada has never varied that position.

**(ii) The Steering Committee’s Negotiations with Canada**

17. In parallel to the *Aubichon/Chartier* Action, the Île-à-la-Crosse Boarding School Steering Committee (the “**Steering Committee**”) was formed to advocate for the collective interests of Survivors.<sup>22</sup> The Steering Committee is composed of Survivors and children of Survivors from across Saskatchewan, as well as appointed members who represent key interests like the Village of Île-à-la-Crosse and the Métis Nation-Saskatchewan (“**MNS**”).<sup>23</sup>

18. The Steering Committee launched an independent effort in 2018 to obtain a negotiated resolution of the Survivors’ claims. Saskatchewan refused to engage with the Steering Committee,

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<sup>20</sup> “Requests made pursuant to Article 12 to add Institutions to the Settlement Agreement”, p. 1, Exhibit “C” to the Merchant Affidavit.

<sup>21</sup> “Requests made pursuant to Article 12 to add Institutions to the Settlement Agreement”, p. 112, Exhibit “C” to the Merchant Affidavit.

<sup>22</sup> Affidavit of Herbert Norton, sworn 13 March 2026 (“**Norton Affidavit**”), at para. 8.

<sup>23</sup> Norton Affidavit at para. 12.

but Canada, the MNS, and the Steering Committee executed a “Memorandum of Understanding for Île-à-la-Crosse Exploratory Discussions” in July 2019 (the “**2019 MOU**”).<sup>24</sup> The 2019 MOU committed Canada to open a formal dialogue to address the legacy of the ILC School, including considering options that could inform the potential paths to resolution of litigation, although it had no formal mandate to settle the action.<sup>25</sup> Unfortunately, dialogue between the parties broke down in the fall of 2021.<sup>26</sup>

**(iii) Commencement of the *Gardiner* Action & the certification application**

19. Significant litigation steps occurred prior to the Settlement Agreements. In addition to the events described above with respect to the *Aubichon/Chartier* Action, and following the breakdown of the MOU discussions, the Steering Committee sought out new counsel to commence fresh litigation to move forward with Survivors’ claims. On December 22, 2022, the Plaintiffs commenced a new proposed class action on behalf of Survivors and their family members against both Canada and Saskatchewan (the “***Gardiner* Action**”).<sup>27</sup>

20. Plaintiffs’ counsel in the *Gardiner* Action collected and reviewed over 1,300 documents from sources including Canada, Saskatchewan, and the Archdiocese of Keewatin-Le Pas (which holds the Catholic Church’s records respecting the ILC School).<sup>28</sup>

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<sup>24</sup> “Memorandum of Understanding for Île-à-la-Crosse Exploratory Discussions”, Exhibit “F” to the Norton Affidavit.

<sup>25</sup> Norton Affidavit at para. 26.

<sup>26</sup> Norton Affidavit at para. 27.

<sup>27</sup> Affidavit of Louis Gardiner, sworn 16 March 2026 (“**Gardiner Affidavit**”) at para. 18.

<sup>28</sup> Affidavit of Chanpreet Pabla, sworn 16 March 2026 (“**Pabla Affidavit**”) at paras. 4-5.

21. The Plaintiffs brought a certification application in the *Gardiner* Action that was initially opposed by both Defendants. Even after an Agreement in Principle was reached with Canada, Saskatchewan continued to oppose certification.

22. In support of certification, the Plaintiffs delivered their own affidavits, detailing their experiences at the ILC School and their qualifications to act as representative plaintiffs for the Class.<sup>29</sup> They also delivered an expert report from Dr. Amanda Fehr and Dr. Katya MacDonald, two Saskatchewan historians, reflecting their review and analysis of archival and other documents concerning the history of the ILC School.<sup>30</sup> On March 26, 2024, following a case conference, Bardai J. (as he then was) set a timetable for the certification application, and later booked the hearing of the application for spring 2025.<sup>31</sup>

23. In response to the certification application, Canada filed an expert report from actuary Peter Gorham estimating the size of the Class.<sup>32</sup> Saskatchewan filed an affidavit from Dawn Campbell, a senior civil servant with the Government of Saskatchewan, who deposed that:

- (a) She had reviewed over 300 archival documents regarding the ILC School;<sup>33</sup>
- (b) None of the documents indicated that the Government of Saskatchewan had any role in the management, staffing, or day-to-day operation of the ILC School;<sup>34</sup>
- (c) None of the documents indicated that any teachers or other staff employed at the ILC School were employees of the Government of Saskatchewan;<sup>35</sup>

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<sup>29</sup> Gardiner Affidavit at para. 20.

<sup>30</sup> “History of the Ile-a-la-Crosse Residential School”, Exhibit “A” to the Fehr & MacDonald Affidavit.

<sup>31</sup> Gardiner Affidavit at para. 20; Fiat of the Honourable Justice Naheed Bardai re Certification Application Timetable, 27 March 2024.

<sup>32</sup> Affidavit of Peter Gorham, sworn 8 July 2024.

<sup>33</sup> Campbell Certification Affidavit at para. 3.

<sup>34</sup> Campbell Certification Affidavit at para. 6.

<sup>35</sup> Campbell Certification Affidavit at para. 7.

(d) The OMI was responsible for the management, staffing, and day-to-day operation of, at minimum, the student boarding operation at the ILC School;<sup>36</sup>

(e) The Government of Saskatchewan provided funding grants to the ILC School, as well as providing school supplies and requiring that teachers be licensed;<sup>37</sup>

(f) In 1946, responsibility for day-to-day operations of the schooling operation of the ILC School was transferred to the Île-à-la-Crosse Committee, organized under the umbrella of the Northern Administrative Area of the public school system, with funding from the Government of Saskatchewan;<sup>38</sup>

(g) Starting in around 1968, the Northern School Board, which operated under *The School Act*, became responsible for managing and operating the ILC School;<sup>39</sup> and

(h) None of the documents raised concerns about safety or abuse at the ILC School.<sup>40</sup>

24. In reply, the Plaintiffs filed a further expert report from Dr. Macdonald.<sup>41</sup>

25. After initially seeking to stay the *Aubichon/Chartier* Action via contested application,<sup>42</sup> the *Gardiner* Action plaintiffs ultimately negotiated a consent stay of the *Aubichon/Chartier* Action, pending resolution of the *Gardiner* contested certification application.<sup>43</sup> Later, the plaintiffs in both actions, and their counsel, agreed that the actions should be consolidated and prosecuted by a consortium of law firms to facilitate the settlement that had been reached with

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<sup>36</sup> Campbell Certification Affidavit at para. 6.

<sup>37</sup> Campbell Certification Affidavit at paras. 9-10

<sup>38</sup> Campbell Certification Affidavit at para. 15; Letter from Minister of Education, 12 March 1946, Exhibit “F” to the Campbell Certification Affidavit.

<sup>39</sup> Campbell Certification Affidavit at para. 12.

<sup>40</sup> Campbell Certification Affidavit at para. 14.

<sup>41</sup> Reply Affidavit of Dr. Katya MacDonald, sworn August 29, 2024.

<sup>42</sup> *Gardiner v. Canada (Attorney General)*, [2023 SKKB 237](#).

<sup>43</sup> Order of the Honourable Justice Timothy Keene re Interlocutory Stay of *Aubichon/Chartier* Action, 20 November 2024,

Canada. On January 28, 2026, this Court granted a consent consolidation order to form this “**Consolidated Action**”, with the *Gardiner* Action plaintiffs as Plaintiffs.

**(iv) Negotiation of the Settlements**

26. From the outset of the *Gardiner* Action, the Plaintiffs pursued a focussed plan to advance the action as quickly as possible, whether through settlement with the defendants or pressing forward to trial.<sup>44</sup>

27. Only Canada was initially receptive to settlement discussions initiated by the Plaintiffs.<sup>45</sup> Canada and the Plaintiffs exchanged several rounds of settlement offers and engaged in extensive back-and-forth, resulting in the successful negotiation of an agreement in principle, which was signed on February 26, 2025.<sup>46</sup>

28. On March 4, 2025, the Plaintiffs and the federal Minister of Crown-Indigenous Relations and Northern Affairs announced the execution of the Agreement-in-Principle. Minister Gary Anandasangaree stated that the agreement will “address Canada’s responsibility towards the Survivors of Île-à-la-Crosse School”, and acknowledged that “[i]t has taken the Survivors far too long to receive justice for the abuses and loss of culture at this institution.”<sup>47</sup>

29. The Plaintiffs renewed efforts at settlement with Saskatchewan in March 2025, in light of the partial settlement that had been negotiated with Canada, while continuing to press forward with

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<sup>44</sup> Gardiner Affidavit at para. 21.

<sup>45</sup> Gardiner Affidavit at para. 23.

<sup>46</sup> Gardiner Affidavit at para. 24.

<sup>47</sup> Announcement of the Agreement-in-Principle between the Plaintiffs and the Attorney General of Canada, 4 March 2025 (“**Canada AIP Announcement**”), Exhibit “M” to the Pabla Affidavit.

a contested certification application. In August 2025, following lengthy consideration, the Plaintiffs accepted Saskatchewan's offer to settle.<sup>48</sup>

30. Premier Scott Moe announced the Agreement-in-Principle on September 29, 2025, issuing an apology to Survivors and stating his “sincere hope that this agreement provides closure to the former students of the Île-à-la-Crosse School, and that it serves as a foundation for continued collaboration and success in the future.”<sup>49</sup>

31. Negotiations toward the comprehensive and detailed final settlement agreements continued through to January 2026,<sup>50</sup> when both Settlement Agreements were executed.

### **C. Dissemination of Phase I Notice**

32. This Court approved the Notices of Hearing for Certification and Settlement Approval and the Notice Plan for distributing the notices (the “**Phase I Notice Plan**”) on February 5, 2026. Deloitte LLP, also the proposed Claims Administrator for the Settlements, was appointed Notice Administrator. In approving the Notice Plan, this Court commented that the Notices of Hearing and Phase I Notice Plan “ensure the fair conduct of the action and protect the interests of the class members.”<sup>51</sup>

33. The Parties, Plaintiffs' counsel, and the Notice Administrator all fulfilled their obligations under the Phase I Notice Plan. Among other steps:<sup>52</sup>

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<sup>48</sup> Gardiner Affidavit at paras. 25-26.

<sup>49</sup> Announcement of the Agreement-in-Principle between the Plaintiffs and the Government of Saskatchewan, 29 September 2025 (“**Saskatchewan AIP Announcement**”), Exhibit “N” to the Pabla Affidavit.

<sup>50</sup> Gardiner Affidavit at paras. 25, 29.

<sup>51</sup> Fiat of the Honourable Justice Rochelle Wempe re Notice of Certification and Settlement Approval Hearing, 5 February 2026.

<sup>52</sup> Affidavit of Guillaume Vadeboncoeur, sworn 13 March 2026 (“**Vadeboncoeur Affidavit**”) at para 25.

- (a) The Notice Administrator created a website, [ilexsettlement.ca](http://ilexsettlement.ca), which contains information about the Settlements, including frequently asked questions, court documents, and contact information for Plaintiffs' counsel;
- (b) The Notice Administrator created a toll-free telephone line and call centre to provide phone support for those seeking more information about the Settlements;
- (c) The Short Form and Long Form Notices of Hearing were distributed to people who had previously contacted Plaintiffs' counsel about this case or had signed up for updates with Plaintiffs' counsel, and they were posted on Plaintiffs' counsel websites along with answers to frequently asked questions;
- (d) Plaintiffs' counsel attended four town hall sessions in Northern Saskatchewan and in Saskatoon, to present summaries of the Settlements and answer questions from Survivors, family members, and community members;
- (e) Plaintiffs' counsel and Plaintiffs made appearances on local radio stations in Saskatchewan to talk about the settlements and the approval process;
- (f) Plaintiffs' counsel answered questions posed by Survivors about the settlements;
- (g) The Notice Administrator prepared translated versions of the Short Form and Long Form Notices of Hearing in French, Michif, Dene, and Plains Cree, which were posted on their website and Plaintiffs' counsel's websites, and handed out at the town hall meetings;  
and
- (h) The Notice Administrator effected an online advertising campaign.

34. In addition, the announcement of the Agreements-in-Principle with Canada and Saskatchewan, together with the announcement of the execution of the final settlement agreements on January 30, 2026, resulted in significant media coverage in Saskatchewan and nationally.<sup>53</sup>

**D. Key terms of the Settlements**

35. The Settlement Agreement with Canada (the “**Canada Settlement**”) includes:

- (a) A fund of \$27.335 million for Experience Payments of up to \$10,000 for Survivors who attended the ILC School for up to four school years, and up to \$15,000 for Survivors who attended the ILC School for five or more school years;<sup>54</sup>
- (b) The ability for estate representatives and non-executor heirs, to receive a deceased Survivor’s Experience Payment entitlement;<sup>55</sup>
- (c) A one-year claims period, followed by a six-month extension period;<sup>56</sup>
- (d) A contribution of \$5 million for the costs of administering the Canada Settlement and disseminating notice to the Class;<sup>57</sup>
- (e) A Legacy Fund of \$10 million to support projects that meet the objectives of the promotion of healing, wellness, language, culture, education, commemoration, and reconciliation.<sup>58</sup> Any unspent residue from the Experience Payments fund will be allocated to the Legacy Fund<sup>59</sup>

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<sup>53</sup> Vadeboncoeur Affidavit at para. 26; Selection of press coverage re announcement of Settlements, Exhibit “C” to the Vadeboncoeur Affidavit.

<sup>54</sup> Settlement Agreement between the Plaintiffs and the Attorney General of Canada, 28 January 2026 (“**Canada Settlement**”), s. 7.01, Appendix “1”, Schedule “A” to the Notice of Application.

<sup>55</sup> Estate Claims Protocol (Experience Payments), Schedule “3” to the Settlement Agreement Addendum (Canada), 16 March 2026 (“**Canada Settlement Addendum**”), Appendix “1”, Schedule “B” to the Notice of Application.

<sup>56</sup> Claims Protocol (Experience Payments) at paras. 6-7, Schedule “2” to the Canada Settlement Addendum.

<sup>57</sup> Canada Settlement, s. 5.01.

<sup>58</sup> Canada Settlement, s. 4.01.

<sup>59</sup> Legacy Fund Distribution Plan, p. 1, Schedule “H” to the Canada Settlement.

- (f) If no settlement with Saskatchewan is approved by the Court, up to \$5 million toward the ongoing cost of litigation of the Class Members' claims against Saskatchewan;
- (g) A paper-based, confidential, user-friendly, and trauma-informed process for submitting claims for Experience Payments, in which claimants are presumed to be acting honestly and in good faith;<sup>60</sup>
- (h) For claims which the Claims Administrator would deny wholly, review by a third-party Assessor to confirm or modify the Claims Administrator's decision;<sup>61</sup>
- (i) An agreement that Experience Payments are non-taxable benefits that shall not affect eligibility for any social assistance programs administered by Canada;<sup>62</sup> and
- (j) Separate payment of legal fees to Class Counsel and honoraria to requested recipients, subject to Court approval, which shall not reduce any other amount paid under the Canada Settlement.<sup>63</sup>

36. The Settlement Agreement with Saskatchewan (the "Saskatchewan Settlement") includes:
- (a) An all-inclusive fund of \$40.2 million, which the Plaintiffs propose will be applied for compensation for sexual abuse and serious physical abuse suffered at the ILC School, as well as for Class Counsel's legal fees and the costs of administering the Saskatchewan Settlement;<sup>64</sup>

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<sup>60</sup> Canada Settlement, s. 12.03.

<sup>61</sup> Claims Protocol (Experience Payments) at para. 15, Schedule "2" to the Canada Settlement Addendum.

<sup>62</sup> Canada Settlement, ss. 7.01, 7.03.

<sup>63</sup> Canada Settlement, s. 3.01, 3.03.

<sup>64</sup> Settlement Agreement between the Plaintiffs and the Province of Saskatchewan, 30 January 2026 ("**Saskatchewan Settlement**"), s. 3.01, Appendix "1", Schedule "C" to the Notice of Application.

- (b) Individual awards for Abuse Compensation ranging from up to \$50,000 to up to \$235,000, depending on the severity of the abuse and its effects, which are additional to amounts awarded as Experience Payments;<sup>65</sup>
- (c) A two-year claims period, followed by a one-year extension period;<sup>66</sup>
- (d) A paper-based, confidential, user-friendly, and trauma-informed process for submitting claims for Abuse Compensation, in which Claimants are presumed to be acting honestly and in good faith;<sup>67</sup>
- (e) For claims which the Claims Administrator would deny, in whole or in part, review by a third-party Assessor to confirm or modify the Claims Administrator's decision. The Assessor will adopt an inquisitorial role to obtain further information from denied claimants before reaching final determinations on their claims;<sup>68</sup>
- (f) An agreement that Abuse Compensation shall not affect eligibility for any social assistance programs administered by Saskatchewan, and no amount is to be paid to Saskatchewan's provincial health insurer;<sup>69</sup> and
- (g) Terms under which any residue of the \$40.2 million fund, after payment of Abuse Compensation, will be applied to provide additional Experience Payments for Survivors who were residential students.<sup>70</sup>

37. The proposed distribution of the Saskatchewan Settlement is proposed by the Plaintiffs based on their judgment that it would be fair, reasonable, and in the best interests of the Class

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<sup>65</sup> Distribution Protocol at para. 9, Schedule "B" to the Saskatchewan Settlement.

<sup>66</sup> Saskatchewan Settlement, s. 4.02, 4.04.

<sup>67</sup> Saskatchewan Settlement, s. 4.01.

<sup>68</sup> Saskatchewan Settlement, s. 4.03. See also the Affidavit of Patti Shedden, sworn 16 March 2026 ("**Shedden Affidavit**").

<sup>69</sup> Saskatchewan Settlement, s. 3.05.

<sup>70</sup> Distribution Protocol at para. 14, Schedule "B" to the Saskatchewan Settlement.

Members for the Saskatchewan Settlement to address two areas that are not addressed in the Canada Settlement: compensation for sexual abuse and serious physical abuse, and additional experience payment compensation for residential/boarding students.

38. Pursuant to the Settlements, the Defendants are committing a total of more than \$92 million (inclusive of legal fees and disbursements) to resolve this litigation.

### **PART III -ISSUES AND THE LAW**

39. The issues in this application are:

- (a) Should this proceeding be certified as a class action?
- (b) Should the Court approve the Settlements?
- (c) Should the Court grant the ancillary relief set out in the draft order attached as Schedule “A” to the Notice of Application?

#### **A. Consent certification ought to be granted**

40. Class certification is necessary to ensure that the Settlements are binding and effective for the whole Class. Canada and Saskatchewan have agreed to consent to an order certifying this proceeding as a class action for purposes of effecting the Settlements.<sup>71</sup> Courts have consistently held that, in such circumstances, while “all the criteria for certification must still be met, [...] compliance with the certification criteria is not as strictly required”.<sup>72</sup>

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<sup>71</sup> Canada Settlement, s. 9.02; Saskatchewan Settlement, s. 6.01.

<sup>72</sup> *Vistoli v. Haventree Bank*, [2024 ONSC 1887](#) at para. 8.

41. If the Settlements are not approved, and litigation resumes, the Plaintiffs' application to certify this case as a class action on a contested basis will have to be brought back on. It is ready to proceed.

42. The criteria for certification are set out in s. 6(1) of the *Class Actions Act*:

- (a) The pleadings disclose a cause of action;
- (b) There is an identifiable class;
- (c) The claims of the class members raise common issues;
- (d) A class action would be the preferable procedure; and
- (e) The proposed representative plaintiff is adequate.

**(i) The pleadings disclose causes of action**

43. The Plaintiffs allege that, in the course of its role with respect to the ILC School, Canada breached its fiduciary duty owed to the Class; was negligent in relation to the Class; violated the Class Members' Aboriginal Rights under s. 35 of the *Constitution Act, 1982*; and breached its obligations under international law.<sup>73</sup> These claims have all been pleaded properly:

- (a) Breach of Fiduciary Duty:<sup>74</sup> the Plaintiffs have pleaded that Canada undertook to act in the best interests of the Class;<sup>75</sup> that the Class Members were a defined class vulnerable to Canada's control;<sup>76</sup> and that the Class Members had substantial practical interests that stood to be adversely affected by Canada's exercise of control.<sup>77</sup>

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<sup>73</sup> *Gardiner et al. v. The Attorney General of Canada and the Government of Saskatchewan*, Statement of Claim for the Consolidated Action filed 24 March 2025 (“**Consolidated Claim**”) at paras. 71-94.

<sup>74</sup> *Alberta v. Elder Advocates of Alberta Society*, [2011 SCC 24](#) at [para. 36](#).

<sup>75</sup> Consolidated Claim at paras. 72, 77.

<sup>76</sup> Consolidated Claim at paras. 74-77.

<sup>77</sup> Consolidated Claim at paras. 76.

(b) Negligence:<sup>78</sup> the Plaintiffs have pleaded that Canada owed a duty of care to the Class;<sup>79</sup> that Canada's conduct in relation to the Survivors breached the applicable standard of care;<sup>80</sup> that the Class Members sustained damage;<sup>81</sup> and that the damages sustained by the Class Members were foreseeably caused by Canada's breach of the standard of care.<sup>82</sup>

(c) Breach of the *Constitution Act, 1982, s. 35*: the Plaintiffs have pleaded that the Class Members have rights to speak their traditional languages and practice their spiritual, religious, and cultural activities; that these rights were protected by s. 35 of the *Constitution Act, 1982*; and that Canada violated these rights.<sup>83</sup>

(d) Breach of International Law: the Plaintiffs have pleaded that Canada owed duties to the Class Members under international law, and that Canada violated these duties by its conduct in relation to the ILC School.<sup>84</sup>

44. The Plaintiffs allege that Saskatchewan was negligent. This claim has also been properly pleaded. The Plaintiffs have pleaded that: Saskatchewan owed a duty of care to the Survivors;<sup>85</sup> Saskatchewan's conduct breached the applicable standard of care;<sup>86</sup> the Class Members sustained damage;<sup>87</sup> and the damages sustained by the Class Members were foreseeably caused by Saskatchewan's breach of the standard of care.<sup>88</sup>

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<sup>78</sup> *Mustapha v. Culligan of Canada Ltd.*, [2008 SCC 27](#) at para. 3.

<sup>79</sup> Consolidated Claim at paras. 71, 74-75.

<sup>80</sup> Consolidated Claim at paras. 80-81.

<sup>81</sup> Consolidated Claim at paras. 95-99.

<sup>82</sup> Consolidated Claim at paras. 95-99.

<sup>83</sup> Consolidated Claim at paras. 92-94.

<sup>84</sup> Consolidated Claim at paras. 86-87.

<sup>85</sup> Consolidated Claim at para. 88.

<sup>86</sup> Consolidated Claim at paras. 89-90.

<sup>87</sup> Consolidated Claim at paras. 95-99.

<sup>88</sup> Consolidated Claim at paras. 95-99.

**(ii) There is an identifiable class**

45. To establish the existence of an identifiable class pursuant to s. 6(1)(b) of the *Class Actions Act*, a plaintiff must:<sup>89</sup>

- (a) satisfy the court that the proposed class definition permits an objective determination of whether an individual is a member;
- (b) provide evidence to establish that the class exists; and
- (c) establish a rational connection between the proposed class definition, the proposed cause of action and the proposed common issues.

46. In this case, the proposed class definition is:

**Survivor Class** means every person who was alive on December 9, 2003, and who attended as a student or for educational purposes at the Île-à-la-Crosse School during the class period, including their estates, heirs, executors, administrators, personal representatives and/or trustees. For greater clarity, “Île-à-la-Crosse School” means the Île-à-la-Crosse School and residence in operation approximately during the Class Period, also known as the Île-à-la-Crosse Mission School or the Île-à-la-Crosse Boarding School. The Île-à-la-Crosse School does not include the Rossignol School, any other school run by the Île-à-la-Crosse School Division, or any other school remaining in operation following the Class Period; and

**Family Class** means any spouse, parent, child, grandchild, or sibling of a Survivor Class Member, or the surviving spouse of a deceased Survivor Class Member.

47. This class definition satisfies the certification test. It uses objective criteria related to attendance at the ILC School, and is rationally connected to the proposed common issues because all persons who attended the ILC School share an interest in the determination of the question of

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<sup>89</sup> *Pederson v. Saskatchewan (Minister of Social Services)*, [2016 SKCA 142](#) at para. 69.

whether the Defendants' roles in the operation of the ILC School resulted in breaches of the Defendants' common law, fiduciary, constitutional, and international law obligations.

48. According to the expert actuarial report of Mr. Gorham, there were as many as 2060 Survivors of the ILC School living as of December 9, 2003.<sup>90</sup> The Court can readily conclude from this evidence that there are “two or more persons with common issues respecting a cause of action or a potential cause of action”.<sup>91</sup>

**(iii) There are common issues**

49. To satisfy s. 6(1)(c) of the *Class Actions Act*, a plaintiff must establish that “the claims of the class members raise common issues”.<sup>92</sup> A common issue “must be common to all claims”, and its resolution must “advance the litigation” for the class.<sup>93</sup>

50. The proposed common issues for this class action, are consistent with the common issues certified in similar institutional abuse class actions, including in those which resulted in the Indian Day Schools Settlement Agreement and the Day Scholars Settlement Agreement.<sup>94</sup> The proposed issues centre on whether the Defendants' conduct caused the ILC School to operate as a harmful environment for the Class Members, in breach of the Defendants' common law, fiduciary, constitutional, and international law duties. Resolving these common issues would substantially advance each Class Member's claim against the Defendants.

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<sup>90</sup> Île-à-la-Croix School – Class Size Estimate” at paras. 36-37, Exhibit “B” to the Second Gorham Affidavit.

<sup>91</sup> *Class Actions Act*, S.S. 2001, c. C-12.01, s. 2, “class”.

<sup>92</sup> *Class Actions Act*, S.S. 2001, c. C-12.01, ss. 2, “common issues”, 6(1)(c).

<sup>93</sup> *MacInnis v. Bayer Inc.*, [2023 SKCA 37](#) at para. 54.

<sup>94</sup> See e.g. *McLean v. Canada (Attorney General)*, [2018 FC 642](#); *Gottfriedson v. Canada*, [2015 FC 706](#) at para. 20. See also *Rumley v. British Columbia*, [2001 SCC 69](#) at para. 11.

**(iv) A class action is the preferable procedure**

51. The preferable procedure criterion in s. 6(1)(d) of the *Class Actions Act* requires a plaintiff to establish that the class action “will be a fair, efficient and manageable method of advancing the claim”, as well as “preferable to other reasonably available means of resolving the claims of the class members”.

52. Where certification is being sought on consent for settlement purposes, a class action is typically the preferable procedure. As the Ontario Superior Court of Justice held in *Waheed v. Pfizer Canada Inc.*:<sup>95</sup>

Where there is a cause of action, an identifiable class, common issues, and a settlement, there is a strong basis for concluding that a class proceeding is the preferable procedure because certification would serve the primary purposes of the *Class Proceedings Act, 1992*; namely, access to justice, behavioural modification, and judicial economy.

53. The same reasoning applies here. Certifying this proceeding as a class action is the only means through which the Class will benefit from the compensatory and non-compensatory elements of the Settlements. There is no alternative procedure through which these benefits can be obtained, other than individual actions, which raise serious and substantial barriers to access to justice (both financial and psychological), particularly in light of the merits-based defences that the Defendants have asserted. Accordingly, and in light of the other certification criteria being fulfilled, the Court ought to conclude that a class action is the preferable procedure in this case.

**(v) There are suitable representative plaintiffs**

54. To satisfy the requirement in s. 6(1)(e) of the *Class Actions Act*, a plaintiff must show that there is at least one person who is willing to act as representative plaintiff who:

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<sup>95</sup> *Waheed v. Pfizer Canada Inc.*, [2011 ONSC 5057](#) at para. 27.

- (a) would fairly and adequately represent the interests of the class;
- (b) has produced a plan for the class action that sets out a workable method of advancing the action on behalf of the class and of notifying class members of the action;  
and
- (c) does not have, on the common issues, an interest that is in conflict with the interests of other class members.

55. These criteria are satisfied. As set out in their affidavits, the proposed representative plaintiffs have already demonstrated extraordinary commitment to advancing this class action, and have no conflicts with other Class Members on the common issues. Further, in the Settlements, the proposed representative plaintiffs have produced a plan for definitively concluding the action and notifying the Class.

## **B. Settlement approval ought to be granted**

56. Subsection 38(1)(a) of the *Class Actions Act* provides that a class action may only be settled with the approval of the Court.<sup>96</sup> To approve a class action settlement, the Court must be satisfied that the settlement is “fair, reasonable, and in the best interests of the class as a whole.”<sup>97</sup>

57. In *Perdikaris v. Purdue Pharma Inc.*, Barrington-Foote J. referred to the “need for serious judicial scrutiny” over class action settlements “to protect the rights of the many class members not before the court”.<sup>98</sup> At the same time, reflecting the general public policy favouring the

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<sup>96</sup> *Class Actions Act*, S.S. 2001, c. C-12.01, s. 38(1)(a). The *Act* defines “class action” as one which has been certified by the Court, and this proceeding has not yet been certified. Nonetheless, this Court has inherent jurisdiction to approve a pre-certification settlement, and the Saskatchewan practice has been to seek Court approval in such circumstances: *Driediger v. Ashley Furniture Industries Inc.*, [2010 SKQB 437](#) at para. [8](#).

<sup>97</sup> *Perdikaris v. Purdue Pharma Inc.*, [2018 SKQB 86](#) at para. [14](#).

<sup>98</sup> *Perdikaris v. Purdue Pharma Inc.*, [2018 SKQB 86](#) at para. [16](#).

resolution of complex litigation, Laing C.J.Q.B. (as he then was) affirmed in *Driedger v. Ashley Furniture Industries Inc.* that “[t]he exercise of settlement approval does not lead the court to a dissection of the settlement with an eye to perfection in every aspect. Rather, the settlement must fall within a zone or range of reasonableness.”<sup>99</sup>

58. Settlements reflect compromises between opposing parties, and the case law encourages approval courts to “show deference to the process that resulted in the resolution”.<sup>100</sup> As Mitchell J. explained in *Watch v. Live Nation Entertainment Inc.*:<sup>101</sup>

There is a strong presumption of fairness in matters where a proposed final settlement has been negotiated by experienced class counsel at arm’s length and presented to the Court for approval. Such counsel are in a unique position to assess the risks and rewards of the litigation, and their recommendations should be accorded considerable weight by a reviewing Court.

59. Further, while this class action is based on events which have had deep social and political impacts, the fairness and reasonableness of the Settlements can, and should, only be assessed in light of the legal issues that our court system is practically capable of resolving:<sup>102</sup>

The parties have chosen to settle the issues on a legal basis and the agreement before the court is part of that legal process. The court is therefore constrained by its jurisdiction, that is, to determine whether the settlement is fair and reasonable and in the best interests of the classes as a whole in the context of the legal issues. Consequently, extra-legal concerns even though they may be valid in a social or political context, remain extra-legal and outside the ambit of the court's review of the settlement.

60. Courts in Saskatchewan and across Canada have adopted a consistent set of factors to be assessed in determining whether to approve a class action settlement:<sup>103</sup>

- (a) The likelihood of recovery or the likelihood of success;

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<sup>99</sup> *Driedger v. Ashley Furniture Industries Inc.*, [2010 SKQB 437](#) at para. 11.

<sup>100</sup> *Estey v. Attorney General (Nova Scotia)*, [2025 NSSC 368](#) at para. 16.

<sup>101</sup> *Watch v. Live Nation Entertainment Inc.*, [2025 SKKB 10](#) at para. 29.

<sup>102</sup> *Parsons v. Canadian Red Cross Society*, [1999] O.J. No. 3572 (Sup. Ct.) at para. 77, quoted in *Parsons v. Canadian Red Cross Society*, [2016 ONSC 4809](#) at para. 52.

<sup>103</sup> *Watch v. Live Nation Entertainment Inc.*, [2025 SKKB 10](#) at para. 33.

- (b) The amount and nature of discovery evidence;
- (c) Settlement terms and conditions;
- (d) Recommendations and experience of counsel;
- (e) Future expense and likely duration of litigation;
- (f) Recommendations of neutral parties, if any;
- (g) Number of objectors and nature of objections;
- (h) Presence of good faith and absence of collusion;
- (i) Degree and nature of communications by counsel and the representative plaintiffs with class members during litigation;
- (j) Information conveying to the Court the dynamics of, and the positions taken by the parties during litigation; and
- (k) If counsel fees were negotiated, how big a factor are they.

61. Courts have acknowledged that the weight to be assigned to each factor varies depending on the circumstances of the case; that not all factors necessarily need to be considered; and that no one factor is determinative.<sup>104</sup>

**(i) These Settlements are in line with previous comparable settlements**

62. These Settlements follow a number of prior court-approved settlements in class actions on behalf of Indigenous survivors of institutional abuse and cultural erasure, including:

- (a) the IRSSA;<sup>105</sup>
- (b) the Newfoundland Residential Schools Settlement Agreement (*Anderson*);<sup>106</sup>

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<sup>104</sup> *Hardy v. Canada (Attorney General)*, [2025 FC 1140](#) at para. 84.

<sup>105</sup> *Sparvier v. Canada (Attorney General)*, [2006 SKQB 533](#).

<sup>106</sup> *Anderson v. Canada (Attorney General)*, [2016 NLTD\(G\) 179](#).

- (c) the Sixties Scoop Settlement Agreement (*Riddle*);<sup>107</sup>
- (d) the Indian Day Schools Settlement Agreement (*McLean*);<sup>108</sup>
- (e) the IRS Day Scholars Settlement Agreement (*Gottfriedson*);<sup>109</sup>
- (f) the Indian Boarding Homes Settlement Agreement (*Percival*);<sup>110</sup> and
- (g) the Federal Indian Hospitals Settlement Agreement (*Hardy*).<sup>111</sup>

63. Certain features are shared across most or all of these precedent settlements, which have all: involved litigation against the Federal Crown; all offered compensation for abuse, loss of culture, or both; and provided non-compensatory benefits in the form of foundations (or “**Legacy Funds**”). A chart comparing key terms of these settlements, including the Settlements herein as a comprehensive resolution to this action, is attached to this Brief as Appendix 1.

64. These precedents, and the lessons learned from each experience, are all relevant to this Court’s analysis of the fairness and reasonableness of the Settlements in this case.

**(ii) The Settlements terms and conditions are reasonable**

65. Under the Settlements, the Defendants will commit more than \$92 million to resolve this litigation. At \$40.2 million, the Saskatchewan Settlement is the largest class action settlement ever made by the Government of Saskatchewan. This is a truly substantial achievement that promotes not only the rights of the Class Members, but also the public interest in reconciliation, and the

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<sup>107</sup> *Riddle v. Canada*, [2018 FC 641](#).

<sup>108</sup> *McLean v. Canada*, [2019 FC 1075](#).

<sup>109</sup> *Tk'emlúps te Secwépemc First Nation v. Canada*, [2021 FC 988](#).

<sup>110</sup> *Percival v. Canada*, [2024 FC 824](#).

<sup>111</sup> *Hardy v. Canada (Attorney General)*, [2025 FC 1140](#).

goals of class proceedings (access to justice, behaviour modification, and judicial economy) generally.

66. With respect to the compensation available for individual Survivor Class Members, the fairness of the claims process, and the non-compensatory benefits offered, the terms and conditions of the Settlements are excellent. This factor weighs strongly in favour of approval.

**(a) The compensation available compares favourably with precedents**

67. Compared with the settlements in precedent cases, the Settlements herein offer substantially equivalent compensation, despite the serious merits-based challenges that were not present, or not present to the same extent, in other settlements. The highest level of the compensation grid exceeds what has been available in the majority of the similar precedents. Survivor Class Members who suffered the most severe forms of abuse are entitled to up to \$235,000 in Abuse Compensation, plus up to \$10,000-15,000 in Experience Payments. This is materially more than the \$200,000 maximum available under the Indian Day Schools and Federal Indian Hospitals Settlement Agreements, and the \$210,000 maximum available under the Indian Boarding Homes Settlement Agreement.<sup>112</sup>

68. The Experience Payments, which provide compensation for loss of language and culture, are valued in amounts comparable to those in the precedent cases. Under both the Day Scholars and Indian Boarding Homes Settlement Agreements, compensation for loss of culture was fixed at \$10,000.<sup>113</sup> Given that even trial judgments in this context have been assessed as likely ranging

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<sup>112</sup> *McLean v. Canada*, [2019 FC 1075](#) at para. [36](#); *Hardy v. Canada (Attorney General)*, [2025 FC 1140](#) at para. [37](#), *Percival v. Canada*, [2024 FC 824](#) at paras. [39-40](#).

<sup>113</sup> *Percival v. Canada*, [2024 FC 824](#) at para. [39](#); *Tk'emlúps te Secwépemc First Nation v. Canada*, [2021 FC 988](#) at para. [27](#).

from \$10,000 to \$40,000,<sup>114</sup> the amounts available under the Settlements herein constitutes a favourable resolution for the class.

69. Among the precedent settlements, there are examples of settlements with capped funds,<sup>115</sup> and examples of settlements with uncapped funding obligations.<sup>116</sup> The fixed settlement fund model can mean that, if the value of the approved claims exceeds funds available, each award is reduced on a *pro rata* basis. It can also mean that awards will not be paid until all claims have been determined, owing to the need to assess the sufficiency of available funds.

70. The Settlements have been designed to mitigate concerns about delay and *pro rata* payments. Given Mr. Gorham's estimates of survivorship as at December 9, 2003,<sup>117</sup> a *pro rata* reduction of Experience Payments is unlikely. In addition, to mitigate against the concern about payments being delayed pending determination of all claims, the Settlements provide for the possibility of partial interim payments, which will enable the Claims Administrator to partially pay Class Members with approved claims well before the final determination of all claims.<sup>118</sup>

71. Further, with a fixed fund, there is certainty around the total obligations of the Defendants, and the total benefits which will be available to the class. If not all the Canada settlement funds allocated to Experience Payments are needed to meet those claims, the balance goes into the Legacy Fund. Similarly, if not all the Saskatchewan settlement funds are needed to meet the abuse

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<sup>114</sup> *Brown v. Canada (Attorney General)*, [2018 ONSC 3429](#) at para. 21.

<sup>115</sup> For example, the Sixties Scoop Settlement Agreement (*Riddle v. Canada*, [2018 FC 641](#) at para. 25) and the Newfoundland and Labrador Residential Schools Settlement Agreement (*Anderson v. Canada (Attorney General)*, [2016 NLTD\(G\) 179](#) at para. 5).

<sup>116</sup> For example, the Indian Boarding Homes Settlement Agreement (*Percival v. Canada*, [2024 FC 824](#) at para. 74) and the Federal Indian Hospitals Settlement Agreement (*Hardy v. Canada (Attorney General)*, [2025 FC 1140](#) at para. 40).

<sup>117</sup> "Île-à-la-Crosse School – Class Size Estimate" at paras. 36-37, Exhibit "B" to the Second Gorham Affidavit.

<sup>118</sup> Saskatchewan Settlement, s. 10.03.

claims, the balance will be paid to residential Survivors. There is no reversion of any of the settlement funds to either Defendant, other than any amount not spent in the \$5 million budget for notice and administration regarding the Canada Settlement.

72. Some of the precedents, such as the Federal Indian Hospitals Settlement Agreement, provide compensation for “abuse” defined to include “[u]nreasonable or disproportionate acts of discipline”.<sup>119</sup> Compensation for such harms falls within the Experience Payments under these Settlements, as they do not meet the lowest-level Abuse Compensation threshold.

73. The distinctions between the ILC School Settlements, and those precedents with more expansive definitions of “abuse”, reflect differences in the litigation risks. As explained in more detail below, it would have been open to the Defendants to contend that the legislative and historical record did not provide a basis for the duties alleged by the Plaintiffs in this case, to an extent not seen in other cases. In any event, given the threshold for compensable harm in tort law, which requires that harm be “serious and prolonged”,<sup>120</sup> it is unlikely that further litigation could have resulted in avenues to compensation for the Class Members who suffered these lowest-level harms.

74. It is also true that some class action settlements have offered higher levels of abuse compensation than what is available under the Settlements herein. Those benefits have typically been offset by much more imposing procedural burdens. For instance, the Independent Assessment Process (“IAP”) under the IRSSA, was an adversarial process wherein Canada had cross-

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<sup>119</sup> See e.g., the Indian Day Schools Settlement Agreement: *Waldron v. Canada (Attorney General)*, [2024 FCA 2](#) at para. [25](#).

<sup>120</sup> *Mustapha v. Culligan of Canada Ltd.*, [2008 SCC 27](#) at para. [9](#).

examination rights, and adjudicators could order claimants to undergo medical examinations.<sup>121</sup> Further, IAP claimants who alleged abuse by other students were required to prove that staff “knew or ought to have known about the abuse”.<sup>122</sup> In other settlements, higher levels of available compensation have reflected more imposing procedural requirements, as well less manifest litigation risk than what the Plaintiffs faced here.<sup>123</sup>

75. In all of these circumstances, the compensation available under the Settlements constitutes a major benefit to the class, and weighs in favour of approval.

**(b) The Claims Process is fair and reasonable**

76. The Canada Settlement includes a protocol for claims for Experience Payments. The Plaintiffs, after consultation with the proposed Claims Administrator, have produced an Abuse Compensation Protocol. Together, these protocols include substantial procedural benefits in favour of Survivor Class Members, including:<sup>124</sup>

- (a) The Claims Process is intended to be "trauma informed, culturally sensitive, expeditious, cost-effective, user-friendly, and confidential";
- (b) The Claims Process is intended to "minimize the burden" on claimants and "mitigate any likelihood of re-traumatization through the Claims Process";

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<sup>121</sup> *Independent Assessment Process – Summary of the Final Report*, Independent Assessment Process Oversight Committee (“**IAP Final Report**”), p. 32, Exhibit “K” to the Pabla Affidavit.

<sup>122</sup> IAP Final Report, p. 45, Exhibit “K” to the Pabla Affidavit.

<sup>123</sup> For instance, in *GX v. Yukon (Government of)*, a settlement was reached after the defendant had conceded that it owed a duty of care and fiduciary duty, and that it had breached the standard of care with respect to much of the subject matter of the claim: [2026 YKSC 5](#) at para. 12. In other words, the settlement in that case was premised on the plaintiffs already having achieved substantial success on the common issues.

<sup>124</sup> Canada Settlement, s. 12.03; Saskatchewan Settlement, s. 4.01; Experience Payment Claims Protocol at para. 16(b), Draft Abuse Compensation Protocol, Recitals D and E, Exhibit “A” to the Gardiner Affidavit.

- (c) In the absence of reasonable grounds to the contrary, it will be assumed that a claimant is acting honestly and in good faith";
- (d) All reasonable and favourable inferences that can be drawn in the favour of claimants will be drawn; and
- (e) The absence of a record of a Survivor's attendance at the ILC School will not, by itself, disqualify the claimant from being eligible for compensation.

77. Courts have commented favourably on settlements that "minimize to the extent possible the risk of re-traumatization and creates an atmosphere that encourages Class Members to come forward and tell their stories."<sup>125</sup> The same principles of trauma-informed practice and accessibility cannot be promised through a traditional, adversarial court process. As the Federal Court stated in approving the Indian Day Schools Settlement Agreement: "absent a settlement, the prospect of re-traumatization to deal with the merits of the class action seems to be a near certainty."<sup>126</sup>

78. Finally, if the Settlements are approved, the documents obtained by the Plaintiffs (described below), as well as further documents produced by Canada and any third parties, will be transferred to the Claims Administrator to establish a "Document Database" whose contents will be used to assess claims.<sup>127</sup> Pursuant to the Settlements, documents showing that a Survivor attended the ILC School will be accepted as determinative of the Survivor's attendance.<sup>128</sup> On the other hand, the absence of evidence in the Document Database showing that a Survivor attended the ILC School will not weigh against a claim.<sup>129</sup> The precedent settlements had nothing analogous

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<sup>125</sup> *Percival v. Canada*, [2024 FC 824](#) at para. [22](#), *McLean v. Canada*, [2019 FC 1075](#) at para. [107](#).

<sup>126</sup> *McLean v. Canada*, [2019 FC 1075](#) at para. [83](#).

<sup>127</sup> Claims Protocol (Experience Payments) at para. 13, Schedule "2" to the Canada Settlement Addendum.

<sup>128</sup> Claims Protocol (Experience Payments) at para. 14(a), Schedule "2" to the Canada Settlement Addendum.

<sup>129</sup> Claims Protocol (Experience Payments) at para. 14(b), Schedule "2" to the Canada Settlement Addendum.

to the Document Database, which will be of significant benefit to claimants who do not personally have supporting documents in their possession.

**(c) Estate claims would not be possible through further litigation**

79. The Settlements provide benefits which are simply not achievable through further litigation. In particular, the Settlements permit the heirs of deceased Class Members to submit claims for compensation.<sup>130</sup> These provisions of the Settlements differ radically from the general law of Saskatchewan, under which damages for pain and suffering, loss of expectancy, and related heads of damages cannot be claimed on behalf of the estate of a deceased person; rather, pursuant to the *Survival of Actions Act*, “only those damages that resulted in actual pecuniary loss to the deceased or the deceased’s estate are recoverable.”<sup>131</sup>

80. Even if the Plaintiffs had proceeded to trial and achieved total success on the common issues, a substantial proportion of Survivor Class Members might have been ineligible for damages in the individual assessment process that followed. Only by bringing estate claims out of the general law of Saskatchewan and into the realm of a consensual class action settlement can this be avoided.

81. In light of the historical nature of this proceeding, the estate claim provisions of the Settlements provide a benefit of tremendous significance to deceased Survivors’ family members. According to the expert actuarial report of Mr. Gorham, between December 2003 and February 2026, the number of living Survivors declined from approximately 2060 to 1580 – a reduction of

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<sup>130</sup> Estate Claims Protocol (Experience Payments) at para. 7, Schedule “3” to the Canada Settlement Addendum.

<sup>131</sup> *The Survival of Actions Act*, S.S. 1990-91, c. S-66.1, ss. 6(1)-(2).

about 23-24%.<sup>132</sup> Given the additional time it would take to reach a judgment on the common issues, resolve any appeals, and establish the process for making individual claims, it is a tragic certainty that the number of eligible Survivors would be even lower if it were necessary to pursue a litigated resolution. In other words, the difference between the submissions of claims under these Settlements now, versus a fully litigated and successful resolution to the class action, is the eligibility of more than a quarter of Survivor Class Members still living on December 9, 2003.

82. The cutoff date for the eligibility of an estate, December 9, 2003, is substantially earlier than the analogous cutoff dates under other settlements:<sup>133</sup> for example, the cutoff date in the Federal Indian Hospitals Settlement Agreement is January 25, 2016,<sup>134</sup> while the cutoff date in the Federal Indian Day Schools Settlement Agreement was July 31, 2007.<sup>135</sup>

83. Given the multi-generational impacts of the ILC School, these broad provisions for estate claim eligibility will make it possible for the family and descendants of Survivors to access compensation. The fact that there would be no access at all for these inter-generational Survivors, but for the Settlements, is a factor which strongly favours settlement approval.

**(d) The non-compensatory benefits offered are significant**

84. Canada has agreed to pay \$10 million to establish a Legacy Fund to support “commemoration, education, wellness/healing projects, truth-telling events, and culture and language restoration projects”.<sup>136</sup> The goals of the Legacy Fund include healing from the impacts of the ILC School, as well as supporting the languages and strengthening the communities that the

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<sup>132</sup> Île-à-la-Crosse School – Class Size Estimate” at paras. 37, 43, Exhibit “B” to the Second Gorham Affidavit.

<sup>133</sup> Settlement Agreement Comparison Chart, Appendix “1” to this Brief of Law.

<sup>134</sup> *Hardy v. Canada (Attorney General)*, [2025 FC 1140](#) at para. 47.

<sup>135</sup> *McLean v. Canada*, [2019 FC 1075](#) at para. 39.

<sup>136</sup> Legacy Fund Distribution Plan, p. 1, Schedule “H” to the Canada Settlement.

ILC School sought to destroy. The Legacy Fund Distribution Plan established under the Canada Settlement specifically identifies “the Métis language of Michif, but also Cree and Dene”<sup>137</sup> as the languages to be prioritized for restoration projects.

85. The precedent settlements have generally included non-compensatory funds in the nature of the Legacy Fund. Plaintiffs’ counsel estimates that, on a *per capita* basis (relative to the number of Survivor class members), the Legacy Fund is larger than any similar foundation established to date. Specifically, this Legacy Fund equates to nearly \$6000 per Class Member, while the next largest fund, established pursuant to the IRS Day Scholars Settlement Agreement, equated to just over \$3000 per class member.<sup>138</sup>

86. As the Federal Court observed in its decision to approve the Indian Boarding Homes Settlement Agreement, non-compensatory foundation benefits “could not have reasonably resulted from anything other than settlement of the claims”.<sup>139</sup> Further litigation could not have obtained a benefit of this nature, which enhances the behaviour modification aspect of the Settlements.

87. A further non-monetary benefit of the Settlements is the narrowly-crafted liability release, pursuant to which Class Members may, if they choose, pursue individual proceedings against individuals or Church entities, as long as their claims are pleaded so as to exclude the Defendants’ proportionate shares of liability.<sup>140</sup> This compares favourably with the release provisions in the IRSSA, pursuant to which Class Members’ claims against Anglican and Catholic church entities were wholly released.<sup>141</sup>

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<sup>137</sup> Legacy Fund Distribution Plan, p. 1, Schedule “H” to the Canada Settlement.

<sup>138</sup> Settlement Agreement Comparison Chart, Appendix “1” to this Brief of Law.

<sup>139</sup> *Percival v. Canada*, [2024 FC 824](#) at para. 78.

<sup>140</sup> Canada Settlement at ss. 14.01-14.02; Saskatchewan Settlement at ss. 11.02-11.03.

<sup>141</sup> Settlement Agreement Comparison Chart, Appendix “1” to this Brief of Law.

88. Finally, the conclusion of the Settlements has resulted in a public apology by the Premier of Saskatchewan,<sup>142</sup> as well as an acknowledgment of responsibility by Canada’s Minister of Crown-Indigenous Relations.<sup>143</sup> Such statements are “benefit[s] the Court could not order”,<sup>144</sup> even if the Plaintiffs had achieved total success at trial. While an apology does not undo harm that occurred in the past, it can often “represent an intangible but significant step forward.”<sup>145</sup> The public statements given by the Premier and the Minister represent real achievements of this class action, and should be considered in the settlement approval analysis.

**(e) The Family Class will receive indirect benefits**

89. The Settlements provides indirect benefits to the Family Class through the Legacy Fund established by the Canada Settlement. This is the same approach used in previous settlements in class actions on behalf of Indigenous survivors of institutional abuse, including the Indian Boarding Homes Settlement Agreement,<sup>146</sup> the Indian Day Schools Settlement Agreement,<sup>147</sup> and *Tataskweyak Cree Nation v. Canada* (the Safe Drinking Water Settlement Agreement).<sup>148</sup>

90. There is no Saskatchewan legislation which entitles persons to pursue derivative claims for non-fatal injuries caused to their family members.<sup>149</sup> As a result, if the Plaintiffs had pressed on through further litigation, it is likely that the claims of the Family Class Members would be determined to be excluded by legislation. Thus, in the circumstances, the fact that the Settlements

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<sup>142</sup> Saskatchewan AIP Announcement, Exhibit “N” to the Pabla Affidavit.

<sup>143</sup> Canada AIP Announcement, Exhibit “M” to the Pabla Affidavit.

<sup>144</sup> *Jane Doe (#7) v. Newfoundland and Labrador*, [2022 NLSC 133](#) at para. 36.

<sup>145</sup> *Jane Doe (#7) v. Newfoundland and Labrador*, [2022 NLSC 133](#) at para. 63.

<sup>146</sup> *Percival v. Canada*, [2024 FC 824](#).

<sup>147</sup> *McLean v. Canada*, [2019 FC 1075](#) at para. 36.

<sup>148</sup> *Tataskweyak Cree Nation v. Canada (Attorney General)*, [2021 FC 1415](#).

<sup>149</sup> While Saskatchewan law allows for wrongful death claims to brought in accordance with the *Fatal Accidents Act*, R.S.S. 1978, c. F-11, the Plaintiffs did not plead those claims, and they do not fall within the scope of this class action.

provide indirect benefits for the Family Class constitutes a major benefit for the family members of Survivors.

**(iii) Likelihood of recovery**

91. The “likelihood of recovery” factor asks the Court to assess the litigation risk faced by the Plaintiffs, and whether the Settlements are fair and reasonable in light of the likelihood that the Class would be successful in obtaining recovery at the end of the litigation.

92. Here, the Court must consider the litigation risks applicable at three distinct stages:

- (a) The certification application;
- (b) The common issues trial; and
- (c) The individual issues stage.

93. For recovery to be achieved, the Plaintiffs would need to succeed in the first two stages, and each Class Member would need to succeed in the third. As set out below, significant risks would be faced at each stage.

**(a) Certification risk was significant**

94. The Defendants have consented to the certification of this proceeding as a class action for settlement purposes. Prior to the Settlements, the application for certification was contested by the parties. It is far from certain that certification would be granted on that basis. In particular, the Plaintiffs could have faced challenges in satisfying the cause of action requirement in s. 6(1)(a) of the *Class Actions Act*, including limitations issues and duty of care issues.

95. In the context of a contested certification application, it would have been open to the Defendants to ask the court to distinguish this case from cases involving IRSs, in light of the specific arrangements between Canada and Church authorities that brought Canada into closer proximity with IRS students. Notably, the *Indian Act* created a legislative regime pursuant to which Canada was specifically authorized to establish and operate IRSs, or to contract with religious institutions for that purpose, as well as to compel children with status to attend these “schools”.<sup>150</sup> Early litigation over IRSs emphasized the role of the direct agreements between Canada and Church authorities, particularly for the purposes of establishing Canada’s vicarious liability for torts committed by employees of IRSs.<sup>151</sup>

96. The historical record in this case suggests that, to the extent that there were ever direct arrangements between Canada and the OMI over the operation of the ILC School (which is uncertain), those arrangements may only have persisted through to around 1905, with the formation of the province of Saskatchewan.<sup>152</sup> At a contested certification application, the Plaintiffs would have faced the real risk that later instances of Canada’s funding and interactions with ILC School administration, after the formation of Saskatchewan, would not be sufficient to establish legal duties of care to Survivors. A finding that the Plaintiffs could only establish a valid cause of action for a period ending before 1910 would not be of practical benefit to the surviving Class.

97. The Plaintiffs would face similar challenges in their claims against Saskatchewan. In the *Ross v. Canada* proposed class action respecting the Timber Bay Residence, for example,

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<sup>150</sup> *Blackwater v. Plint*, [2005 SCC 58](#) at para. [49](#).

<sup>151</sup> *Blackwater v. Plint*, [2005 SCC 58](#) at para. [33](#).

<sup>152</sup> “History of the Ile-a-la-Crosse Residential School”, pp. 11-12, Exhibit “A” to the Fehr & MacDonald Affidavit.

Saskatchewan argued that any fiduciary duty to the survivors had not been established, and in particular that funding alone cannot create liability.<sup>153</sup>

98. Further, the historical record shows that, in the 1940s, when Saskatchewan began to regularize the funding and administrative regime for schooling in Northern Saskatchewan, it established local boards of trustees to manage the day-to-day operation of schools.<sup>154</sup> Saskatchewan's evidence for the certification application was that it was these boards, and not the Government of Saskatchewan itself, that were responsible for operating schools like the ILC School.<sup>155</sup> In the context of a contested certification application, given the role of the local school boards in Saskatchewan, the Plaintiffs faced a real risk that the pleaded facts would not be found to give rise to a legal duty on the part of the Government of Saskatchewan.

99. Indeed, in *Youngchief v. The Attorney General of Canada et al.*, the Alberta Court of King's Bench recently relied on a similar argument in denying an application to certify a class action against Alberta relating to the establishment and operation of the Notre Dame School, where it was alleged that Indigenous class members were subjected to abuse. The Court concluded:<sup>156</sup>

[25] I find that the *School Act* 1955 and the *School Act* 1970 specifically do not give Alberta or the responsible Minister the power to control or monitor the management or operation of schools, or deem the school boards or school staff to be agents of Alberta of the responsible Minister, nor do they give Alberta or responsible Minister the power to control the activities of the school board. Pursuant to the *School Acts*, these duties lie legally with the independent school board.

100. The facts alleged by the Plaintiffs in this case are arguably analogous to those relied upon by the plaintiff in *Youngchief*. There was a real risk that the Court in this case would have reached

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<sup>153</sup> *Ross v. Canada (Attorney General)*, [2018 SKCA 12](#) at para. [35](#).

<sup>154</sup> Campbell Certification Affidavit at para. 15.

<sup>155</sup> Campbell Certification Affidavit at para. 15; Letter from Minister of Education, 12 March 1946, Exhibit "F" to the Campbell Certification Affidavit.

<sup>156</sup> *Youngchief v The Attorney General of Canada*, [2025 ABKB 35](#) at para. [25](#).

the same conclusion as the Court in *Youngchief*, and have denied certification against Saskatchewan for the same reason.<sup>157</sup>

101. The Plaintiffs' other claims against Canada also faced significant challenges. The Plaintiffs' fiduciary duty claim against Canada was risky for the same reasons given by the Federal Court in *McLean* in describing the fiduciary duty claim made by survivors of Indian Day Schools:

[88] I note, however, that there are two bases of fiduciary duty within this claim. The first could be the broader fiduciary duty of Canada owed to Aboriginal children to protect and preserve their connections to their communities, culture, and support systems. Advancing this duty would have some risk given the finding in the *Brown* summary judgment.<sup>158</sup> The second basis is a more narrow duty that Canada may have owed to students in day schools to protect them from abuse after mandating their attendance in the day schools. In *Blackwater v. Plint*, [citation omitted], the Supreme Court of Canada found that this type of fiduciary duty may exist regarding residential school students but accepted that breach of that duty would require proof of dishonesty or intentional disloyalty by Canada. Therefore, establishing either type of fiduciary duty carried with it some risk.<sup>159</sup>

102. The Plaintiffs faced similar risks in advancing their claims against Canada for breach of the Class Members' Aboriginal Rights under s. 35 of the *Constitution Act, 1982*. While the maintenance of Indigenous cultural identities has been recognized as an actionable s. 35 interest,<sup>160</sup> the same conclusion has not been reached in respect of the interest in bodily integrity, on which the abuse claims are premised, which Indigenous peoples share with the population generally.<sup>161</sup> In other words, it is conceivable that the Court may have only certified claims for breach of s. 35

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<sup>157</sup> In *Cardinal v. Alberta*, the Alberta Court dismissed a certification application which challenged Alberta for its role in relation to persons who alleged to have been sterilized in Alberta hospitals for a similar reason, finding that "hospital boards had full and final authority over all matters pertaining to hospital operations": [2025 ABKB 270](#) at para. 58. Both *Cardinal* and *Youngchief* can be distinguished from *Popp v. Canada*, where the Saskatchewan Court found that the plaintiffs had established valid causes of action against the Saskatchewan Health Authority and Athabasca Health Authority for persons who alleged to have been sterilized in hospitals operating under those Authorities; the plaintiffs in *Popp* did not pursue certification against either Canada or Saskatchewan: [2025 SKKB 89](#).

<sup>158</sup> In *Brown v. Canada (Attorney General)*, the Ontario Superior Court of Justice rejected a proposed fiduciary duty that would have obligated Canada to take steps to protect the languages and cultures of status Indian children on reserves adopted into non-Indigenous families: [2017 ONSC 251](#) at paras. 70-71.

<sup>159</sup> *McLean v. Canada*, [2019 FC 1075](#) at para. 88.

<sup>160</sup> *Varley v. Canada (Attorney General)*, [2025 FC 753](#) at para. 135.

<sup>161</sup> See *Waldron v. Canada (Attorney General)*, [2024 FCA 2](#) at para. 94.

arising from the impact of the ILC School on the Class Members' cultural identities, and not from their experiences of abuse. As explained below, those claims for loss of culture were likely presumptively statute-barred.

103. The Plaintiffs' reliance on the Honour of the Crown would have likely faced a response from the Defendants that this principle typically only applies in relation to collectives of Indigenous peoples and their collective interests, rather than to individual Indigenous persons.<sup>162</sup>

104. Further, the Plaintiffs' claim for breach of international law is highly novel, drawing on a body of Canadian case law that, while continuing to develop, contains few examples of successful trial verdicts.<sup>163</sup> Several of the international law instruments relied on by the Plaintiffs were ratified by Canada after the closure of the ILC School in 1976, also raising potential questions about their temporal applicability to the Class Members' claims.<sup>164</sup> Thus, the scope of this claim, and the likelihood of recovery, remain highly uncertain.

**(b) Risks at the common issues trial would be significant**

105. Even if the Plaintiffs succeeded in a contested certification application, they would still need to succeed at the trial of the common issues. Again, success was far from guaranteed.

106. The establishment of a cause of action as tenable by no means suggests that a plaintiff will prevail on the merits, and there was no indication that either Canada or Saskatchewan would not contest the merits vigorously as well. In the IRS Day Scholars matter, for example, even following the plaintiffs' success in a contested certification process, Canada maintained that it bore no

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<sup>162</sup> *Behn v. Moulton Contracting Ltd.*, [2013 SCC 26](#) at para. [29-30](#).

<sup>163</sup> See e.g. *Nevsun Resources Ltd. v. Araya*, [2020 SCC 5](#).

<sup>164</sup> Consolidated Claim at para. 86.

liability for any of the pleaded causes of action (which mirror those in this action<sup>165</sup>), right up until the trial doorstep, when the action finally settled.

107. It would still be open to the trial judge to conclude, for example, that the evidence adduced at trial failed to make out the claims as pleaded. In the absence of any legislative or contractual duties imposed on the Defendants with respect to the establishment and operation of the ILC School, the Plaintiffs would be required to lead evidence as to the Defendants' actual involvement in the funding and oversight of the ILC School. Given the historical nature of the claim, as well as based on the documents obtained in the litigation, it is not a foregone conclusion that sufficient evidence to establish legal duties could have been adduced. Rather, there was a real risk that the trial court would have concluded that proximate responsibility for conditions at the ILC School lay with the OMI and the local school authorities, neither of whom are parties to this proceeding.

108. Second, a trial in this case would have necessitated the marshalling of a massive evidentiary record, including historical documentary evidence, evidence from Class Members concerning the abuses they suffered, and expert evidence. In *Anderson v. Canada*, the Supreme Court of Newfoundland and Labrador agreed that the need to assemble a record of this size and nature, in itself, gave rise to significant litigation risks. In particular, the Court explained:<sup>166</sup>

This class action involved allegations concerning events that occurred between 35 to 65 years ago and spanned a 30 year period. Hundreds of class members and former staff of the Facilities are now of advanced age; many have passed away. Risks associated with continuing the common issues trial included fading memories of elderly witnesses, incomplete document retention, and a potential inability to adduce evidence because of a lack of witnesses.

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<sup>165</sup> *Gottfriedson et al. v. Her Majesty the Queen in Right of Canada*, Amended Statement of Defence of the Attorney General of Canada, 8 April 2019, Exhibit "J" to the Pabla Affidavit.

<sup>166</sup> *Anderson v. Canada (Attorney General)*, [2016 NLTD\(G\) 179](#) at para 47.

109. These considerations apply with equal force in this matter, and strongly support settlement approval.

**(c) Risks at the individual assessment stage would also be significant**

110. Even assuming that the common issues were resolved in favour of the Plaintiffs, the risks which would need to be overcome to secure recovery for the Class Members would persist through to the individual issues stage.

111. In this class action, the necessity of individual assessments would have been inescapable. As the Supreme Court of Canada explained in *Rumley*, in institutional abuse cases involving allegations of systemic wrongdoing, such as this one, only the issues of the nature of the duty owed and whether the duty was breached can be resolved at the common issues trial; by contrast, “issues of injury and causation will have to be litigated in individual proceedings”.<sup>167</sup> Thus, the individual assessments in this case would require each Class Member to prove both (1) the existence and extent of their injuries, and (2) that their injuries were caused by the faults of the Defendants.

*Scale and complexity of individual claims*

112. If the Plaintiffs succeeded at the common issues trial, the next step (after the conclusion of appeals, if any) would be an application under s. 29 of the *Class Actions Act* to establish the procedures to be followed to resolve each Class Member’s individual issues.

113. There are few precedents in this context. In the federal prisons administrative segregation case, *Reddock v. Attorney General of Canada*, even with issue estoppels respecting general causation of harm, the individual damages process is illustrative of the challenges that can still

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<sup>167</sup> *Rumley v. British Columbia*, [2001 SCC 69](#) at para. 36.

arise at this stage of the proceeding. Certain “bellweather” cases respecting individual causation and damages were argued by summary judgment before a judge, and resulted in the court awarding low levels of individual compensatory damages to some plaintiffs, and denying others altogether.<sup>168</sup>

114. In *Cavanaugh v. Grenville Christian College*, an institutional abuse class action, the abuse compensation protocol was “designed to emulate and facilitate normal adjudication of personal injury claims”, which is neither trauma-informed, nor readily accessible to all survivors of abuse.<sup>169</sup>

*Legal fees are separate*

115. Plaintiffs’ counsel did not begin to engage Canada in negotiations respecting counsel fees and disbursements until after the execution of the Agreement-in-Principle with Canada, which locked in the totality of Canada’s monetary liabilities under the Canada Settlement, as well as Survivor Class Members’ individual entitlements to Experience Payments.<sup>170</sup> Thus, nothing in the negotiations with Canada over counsel fees and disbursements impacted the Plaintiffs’ negotiation of the Canada Settlement.

116. The Saskatchewan Settlement is structured differently from the Canada Settlement, and does not involve a separate negotiated payment of counsel fees. Rather, counsel fees will be deducted from the global fund of \$40.2 million, which was intended to include all “four pillars” of the claim against Saskatchewan, including legal and administration costs. The Agreement-in-

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<sup>168</sup> *Reddock v. Attorney General of Canada*, [2024 ONSC 3238](#) at paras. [15](#), [17-19](#), [24](#), [26](#), [346](#).

<sup>169</sup> *Cavanaugh v. Grenville Christian College*, [2022 ONSC 5405](#) at paras. [29](#), [38](#).

<sup>170</sup> Gardiner Affidavit at para. 24; Agreement-in-Principle between the Plaintiffs and the Attorney General of Canada, 26 February 2025, Exhibit “A” to the Canada Settlement.

Principle with Saskatchewan explicitly recognizes that Class Counsel’s fees will be in the amount “as approved by the Court”, and that “[t]he Government of Saskatchewan shall take no position on the legal fees or disbursements requested by Class Counsel”.<sup>171</sup> Accordingly, counsel fees were not a factor in the negotiation of the Saskatchewan Settlement.

**(iv) The Saskatchewan Ministry of Health has consented to the settlements**

117. Saskatchewan’s *Health Administration Act* prohibits the settlement of a proceeding based on alleged personal injuries except if (1) the settlement provides for repayment of the publicly insured healthcare costs to the Ministry of Health, or (2) the Ministry has otherwise consented to the settlement.<sup>172</sup> Here, the Ministry of Health has consented to the Settlements.<sup>173</sup> Accordingly, the applicable requirements in the *Health Administration Act* have been satisfied.

**C. Ancillary relief should be granted**

**(i) The PGT disclosure order is appropriate**

118. The Plaintiffs have engaged with the Saskatchewan Public Guardian and Trustee (“PGT”) to support its efforts to identify and submit claims on behalf of the persons and estates it represents.<sup>174</sup> In this application, the Plaintiffs are seeking an order for the disclosure of Class Member information obtained by the Claims Administrator to the PGT. The documents which will form the Document Database include certain student lists which had been in the possession of

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<sup>171</sup> Agreement-in-Principle between the Plaintiffs and the Government of Saskatchewan, 29 September 2025, para. 11, Schedule “A” to the Saskatchewan Settlement. While the amount of fees on the Saskatchewan Settlement is stated in the Distribution Protocol, this term, like all other terms of the Distribution Protocol, was included by the Plaintiffs, rather than through negotiations with Saskatchewan: Saskatchewan Settlement, s. 3.03.

<sup>172</sup> *The Health Administration Act*, R.S.S. 1978, c. H-0.0001, ss. 19(5)-(6). See also *Perdikaris v. Purdue Pharma Inc.*, [2018 SKQB 86](#) at para. 50.

<sup>173</sup> Letter from Christoph Meier to Presiding Justice, 26 February 2026, Exhibit “L” to the Pabla Affidavit.

<sup>174</sup> Pabla Affidavit at para. 12.

Church authorities. The PGT Disclosure Order will enable the PGT to receive copies of those student lists, cross-reference them against its own client lists, and identify clients who may be entitled to claim under the Settlements.

119. This Court has jurisdiction to make the PGT Disclosure Order under s. 14 of the *Class Actions Act*, which enables the Court to “make any order it considers appropriate respecting the conduct of a class action to ensure a fair and expeditious determination”, as well as s. 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, which authorizes disclosure of personal information without consent where required “to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information”.<sup>175</sup> In *Dadzie v. Ontario*, the Ontario Superior Court of Justice recently relied on the same authority to authorize disclosure of class member information to the Ontario Public Guardian and Trustee.<sup>176</sup>

120. Providing the PGT with the student lists would facilitate access to justice for people whom the law has deemed incapable. The PGT Disclosure Order should be granted.

**(ii) Deloitte should be appointed Claims Administrator**

121. The Plaintiffs further propose that Deloitte LLP ("**Deloitte**") be appointed as Claims Administrator for the Settlements. Deloitte has extensive experience in administering complex claims processes in similar significant class action settlements addressing historical abuse of

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<sup>175</sup> *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, s. 7(3)(c).

<sup>176</sup> *Dadzie v. Ontario*, [2025 ONSC 6342](#) at paras. [202-212](#).

Indigenous peoples, including the Day Schools Settlement and the IRS Day Scholars Settlement.<sup>177</sup>

122. Deloitte also has the internal resources and experience required to ensure that the Claims Process is administered in a manner that is "trauma informed, culturally sensitive, expeditious, cost-effective, user-friendly, and confidential".<sup>178</sup> Other courts have commented on Deloitte's "extensive experience in class action settlements",<sup>179</sup> and its "commitment to trauma-informed approach", drawn from its "experience in acting on other large-scale institutional class actions".<sup>180</sup>

123. Deloitte is well-poised to act as Claims Administrator in this Settlement, given their experience in this area and their competency to address the unique needs of this Class. The Plaintiffs submit that Deloitte ought to be appointed as Claims Administrator in this action.

**(iii) Patti Shedden should be appointed Assessor**

124. The Settlements call for the appointment of a third-party "Assessor".<sup>181</sup> In both the Claims Protocol and the draft Abuse Compensation Protocol, the duties of the Assessor include:<sup>182</sup>

- (a) Reviewing initial determinations by the Claims Administrator and reversing decisions by the Claims Administrator where appropriate;
- (b) Contacting Claimants whose abuse claims were denied by the Claims Administrator to assist them in navigating the Claims Process;

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<sup>177</sup> Vadeboncoeur Affidavit at paras. 5-14.

<sup>178</sup> Canada Settlement, s. 12.03; Saskatchewan Settlement, s. 4.01(a).

<sup>179</sup> *Tiller v. Canada*, [2020 FC 321](#) at para. 76.

<sup>180</sup> *A.B. v. Canada*, [2025 FC 282](#) at para. 124.

<sup>181</sup> Saskatchewan Settlement, s. 4.03.

<sup>182</sup> Draft Abuse Compensation Protocol, paras. 19, 26, Exhibit "A" to the Gardiner Affidavit; Claims Protocol (Experience Payments) at para. 15, Schedule "2" to the Canada Settlement Addendum.

- (c) Asking questions and obtaining additional information to assist in the final assessment of claims; and
- (d) Making final determinations on claims that were initially denied by the Claims Administrator.

125. The Assessor role under the Saskatchewan Settlement is broader than similar roles under prior settlements, and adopts elements of the inquisitorial model. This is a significant benefit to Claimants; in their *Final Report* on the implementation of the IAP under the Indian Residential Schools Settlement Agreement, the Independent Assessment Process Oversight Committee reported that most of the IAP claimants interviewed agreed that the inquisitorial model “was important to providing a claimant-centred approach.”<sup>183</sup>

126. Ms. Shedden is well-suited for the role of Assessor,<sup>184</sup> and should be appointed by the Court.

**(iv) The Phase II Notice Plan should be approved**

127. The Phase II Notice Plan largely mirrors the Court-approved earlier notice plan respecting the Notices of Hearing. Both notice plans were developed based on Plaintiffs’ counsel’s and the Notice Administrator’s substantial experience disseminating notice for similar class action settlements.<sup>185</sup>

128. The proposed Settlement Approval Notices provide detailed information about the Settlements, including about who will be eligible and what benefits will be available under the

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<sup>183</sup> IAP Final Report, p. 66, Exhibit “K” to the Pabla Affidavit.

<sup>184</sup> Shedden Affidavit; Vadeboncoeur Affidavit.

<sup>185</sup> Vadeboncoeur Affidavit at paras. 31-35.

Settlements, in accessible language. The Notices also provide information respecting the details of the proposed Claims Process, important timelines to note, and the right to opt out for those who do not wish to be bound by the Settlements.

129. The methods of notification set out in the Notice Plan are comprehensive, and the Settlement Approval Notices will be effective in communicating the information required for Class Members to understand their rights and options in relation to the Settlements if approved. Approval of the Notice Plan and Notices of Hearing should be granted.

#### **PART IV - ORDERS REQUESTED**

130. For the foregoing reasons, the Plaintiffs respectfully request orders:

- (a) Certifying this proceeding as a class action;
- (b) Approving the Settlements; and
- (c) Granting the ancillary relief set out in the draft order attached as Schedule “A” to the Notice of Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of March, 2026.



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**Sotos LLP**  
**Goldblatt Partners LLP**  
**Merchant Law Group LLP**

Counsel for the Plaintiffs

**APPENDIX “1” - SETTLEMENT AGREEMENT COMPARISON CHART**

<b>Settlement Agreement</b>	<b>Harms Compensated</b>	<b>Releasees</b>	<b>Range of Compensation</b>	<b>Claims Period Duration</b>	<b>Death Date Cutoff for Estate Claims</b>	<b>Fixed Fund vs. Claims Made</b>	<b>Size of Legacy Fund per Survivor</b>	<b>Legal Fees Deducted?</b>
<b>Île-à-la-Crosse Residential School</b>	Loss of culture (Experience Payments, “EPs”)  Abuse (Abuse Compensation)	<u>Canada Settlement:</u> Canada, its servants, agents, officers, employees, etc.  <u>Saskatchewan Settlement:</u> Saskatchewan, its servants, agents, officers, employees, etc.  No Church or perpetrator releases	EPs – up to \$10,000 to \$15,000  Abuse Compensation – up to \$50,000 to \$235,000	EPs - 1 year  Abuse - 2 years	December 9, 2003	EPs - fixed fund (\$27.335M)  Abuse - fixed fund (\$40.2M, less legal fees and administration costs)	\$10M/1700 (estimated) = \$5,882.35 pp	CAN – no; paid separately  SK – yes; settlement is all-inclusive
<b>IRSSA</b>	Loss of culture (CEP)  Abuse (IAP)	Canada and servants, agents, officers, employees, etc.  Roman Catholic Dioceses and other entities  Anglican Dioceses and other entities	CEP - \$10,000 baseline (+\$3,000/year)  IAP - \$5,000 to \$275,000  (+\$250,000 for actual income losses proven through a trial process)	CEP - 4 years  IAP - 5 years	May 30, 2005  October 5, 1996 ( <i>Cloud</i> Class Action)	claims-made	\$205M/80k = \$2,562.50 pp	no; paid separately
<b>Newfoundland and Labrador Residential Schools</b>	Loss of culture (GCP)  Abuse (ACP)	Canada and servants, agents, officers, employees, etc.	GCP - \$15,000 to \$20,000  ACP - \$50,000 to \$200,000	6 months	November 23, 2006	fixed fund (\$50M)	none	yes; settlement was all-inclusive
<b>Sixties Scoop</b>	Loss of culture	Canada and servants, agents, officers, employees, etc.	\$25,000 to \$50,000 (depending on # of claims)	9 months	February 20, 2009	fixed fund (\$500-750M)	\$50M/22.4k = \$2,232.14 pp	no; paid separately
<b>Indian Day Schools</b>	Abuse	Canada and servants, agents, officers, employees, etc.	\$10,000 to \$200,000	2.5 years	July 31, 2007	claims-made	\$200M/127k = \$1,574.80 pp	no; paid separately
<b>IRS Day Scholars</b>	Loss of culture	Canada and servants, agents, officers, employees, etc.	\$10,000	1.75 years	May 30, 2005	claims-made	\$50M/15.484k = \$3,229.14 pp	no; paid separately

Settlement Agreement	Harms Compensated	Releasees	Range of Compensation	Claims Period Duration	Death Date Cutoff for Estate Claims	Fixed Fund vs. Claims Made	Size of Legacy Fund per Survivor	Legal Fees Deducted?
<b>Indian Boarding Homes</b>	Loss of culture (Category 1)  Abuse (Category 2)	Canada and servants, agents, officers, employees, etc.	Category 1 - \$10,000  Category 2 - \$10,000 to \$200,000	2.5 years	July 24, 2016	claims-made	\$50M/33k = \$1,515.15 pp	no; paid separately
<b>Federal Indian Hospitals</b>	Abuse	Canada and servants, agents, officers, employees, etc.	\$10,000 to \$200,000, varying by severity of abuse	2.5 years	January 25, 2016	claims-made	\$385.5M/167.1k = \$2,307 pp	no; paid separately

## SCHEDULE “A”

TAB	DOCUMENT
1.	<i>A.B. v. Canada</i> , <a href="#">2025 FC 282</a>
2.	<i>Alberta v. Elder Advocates of Alberta Society</i> , <a href="#">2011 SCC 24</a>
3.	<i>Anderson v. Canada (Attorney General)</i> , <a href="#">2016 NLTD(G) 179</a>
4.	<i>Aubichon v. Canada (Attorney General)</i> , <a href="#">2007 SKQB 406</a>
5.	<i>Behn v. Moulton Contracting Ltd.</i> , <a href="#">2013 SCC 26</a>
6.	<i>Blackwater v. Plint</i> , <a href="#">2005 SCC 58</a>
7.	<i>Brown v. Canada (Attorney General)</i> , <a href="#">2017 ONSC 251</a> .
8.	<i>Brown v. Canada (Attorney General)</i> , <a href="#">2018 ONSC 3429</a>
9.	<i>Cardinal v. Alberta</i> , <a href="#">2025 ABKB 270</a> .
10.	<i>Cavanaugh v. Grenville Christian College</i> , <a href="#">2022 ONSC 5405</a>
11.	<i>Dadzie v. Ontario</i> , <a href="#">2025 ONSC 6342</a> .
12.	<i>Driediger v. Ashley Furniture Industries Inc.</i> , <a href="#">2010 SKQB 437</a>
13.	<i>Estey v. Attorney General (Nova Scotia)</i> , <a href="#">2025 NSSC 368</a>
14.	<i>Gardiner v. Canada (Attorney General)</i> , <a href="#">2023 SKKB 237</a>
15.	<i>Gottfriedson v. Canada</i> , <a href="#">2015 FC 766</a>
16.	<i>GX v. Yukon (Government of)</i> , <a href="#">2026 YKSC 5</a> .
17.	<i>Hardy v. Canada (Attorney General)</i> , <a href="#">2025 FC 1140</a>
18.	<i>Jane Doe (#7) v. Newfoundland and Labrador</i> , <a href="#">2022 NLSC 133</a>
19.	<i>Parsons v. Canadian Red Cross Society</i> , <a href="#">2016 ONSC 4809</a>
20.	<i>Pederson v. Saskatchewan (Minister of Social Services)</i> , <a href="#">2016 SKCA 142</a>
21.	<i>Percival v. Canada</i> , <a href="#">2024 FC 824</a>
22.	<i>Perdikaris v. Purdue Pharma Inc.</i> , <a href="#">2018 SKQB 86</a>
23.	<i>Popp v. Canada</i> , <a href="#">2025 SKKB 89</a> .
24.	<i>MacInnis v. Bayer Inc.</i> , <a href="#">2023 SKCA 37</a>
25.	<i>McLean v. Canada (Attorney General)</i> , <a href="#">2018 FC 642</a>
26.	<i>McLean v. Canada</i> , <a href="#">2019 FC 1075</a>
27.	<i>Mustapha v. Culligan of Canada Ltd.</i> , <a href="#">2008 SCC 27</a>
28.	<i>Nevsun Resources Ltd. v. Araya</i> , <a href="#">2020 SCC 5</a>
29.	<i>Reddock v. Attorney General of Canada</i> , <a href="#">2024 ONSC 3238</a> .

**TAB      DOCUMENT**

30. *Riddle v. Canada*, [2018 FC 641](#)
31. *Ross v. Canada (Attorney General)*, [2018 SKCA 12](#)
32. *Rumley v. British Columbia*, [2001 SCC 69](#)
33. *Sparvier v. Canada (Attorney General)*, [2006 SKQB 533](#)
34. *Tiller v. Canada*, [2020 FC 321](#)
35. *Tk'emlúps te Secwépemc First Nation v. Canada*, [2021 FC 988](#)
36. *Varley v. Canada (Attorney General)*, [2025 FC 753](#)
37. *Vistoli v. Haventree Bank*, [2024 ONSC 1887](#)
38. *Waheed v. Pfizer Canada Inc.*, [2011 ONSC 5057](#)
39. *Waldron v. Canada (Attorney General)*, [2024 FCA 2](#)
40. *Watch v. Live Nation Entertainment Inc.*, [2025 SKKB 10](#)
41. *Youngchief v The Attorney General of Canada*, [2025 ABKB 35](#)

**SCHEDULE “B”**

*Class Actions Act*, [S.S. 2001, c. C-12.01](#), s. 14, 29(1), 25(1)

## Interpretation

**2** In this Act:

“class” means two or more persons with common issues respecting a cause of action or a potential cause of action;

“class action” means an action certified as a class action pursuant to Part II;

“common issues” means:

- (a) common but not necessarily identical issues of fact; or
- (b) common but not necessarily identical issues of law that arise from common but not necessarily identical facts;

## Class certification

**6(1)** Subject to subsections (2) and (3), the court shall certify an action as a class action on an application pursuant to section 4 or 5 if the court is satisfied that:

- (a) the pleadings disclose a cause of action;
- (b) there is an identifiable class;
- (c) the claims of the class members raise common issues, whether or not the common issues predominate over other issues affecting individual members;
- (d) a class action would be the preferable procedure for the resolution of the common issues; and
- (e) there is a person willing to be appointed as a representative plaintiff who:
  - (i) would fairly and adequately represent the interests of the class;
  - (ii) has produced a plan for the class action that sets out a workable method of advancing the action on behalf of the class and of notifying class members of the action; and
  - (iii) does not have, on the common issues, an interest that is in conflict with the interests of other class members.

### Court may determine conduct of actions

**14** The court may, at any time, make any order it considers appropriate respecting the conduct of a class action to ensure a fair and expeditious determination and, for that purpose, may impose on one or more of the parties any terms it considers appropriate.

### Determination of individual issues

**29(1)** If the court determines common issues in favour of a class or subclass and determines that there are issues, other than those that may be determined pursuant to section 35, that are applicable only to certain individual members of the class or subclass, the court may:

- (a) determine those individual issues in further hearings presided over by the judge who determined the common issues or by another judge of the court;
- (b) appoint one or more persons, including one or more independent experts, to conduct an inquiry into those individual issues pursuant to The King's Bench Rules and report back to the court; or
- (c) with the consent of the parties, direct that those individual issues be determined in any other manner.

(2) The court may give any necessary directions relating to the procedures that must be followed in conducting hearings, inquiries and determinations pursuant to subsection (1).

(3) In giving directions pursuant to subsection (2), the court shall choose the least expensive and most expeditious method of determining the individual issues that is consistent with justice to members of the class or subclass and the parties and, in doing so, the court may:

- (a) dispense with any procedural step that it considers unnecessary; and
- (b) authorize any special procedural steps, including steps relating to discovery, and any special rules, including rules relating to admission of evidence and means of proof, that it considers appropriate.

### Settlement, discontinuance, abandonment and dismissal

**38(1)** A class action may be settled, discontinued or abandoned only:

- (a) with the approval of the court; and
- (b) on the terms the court considers appropriate.

(2) A settlement may be concluded in relation to the common issues affecting a subclass only:

- (a) with the approval of the court; and
- (b) on the terms the court considers appropriate.

(3) A settlement pursuant to this section is not binding unless approved by the court.

\*\*\*\*\*

*The Health Administration Act, [R.S.S. 1978, c. H-0.0001](#), ss. 19(5)-(6)*

(2) Where, as a result of the negligence or other wrongful act of any other person, a beneficiary suffers personal injuries for which the beneficiary receives health services, the beneficiary has the same right to recover the cost of those services from the person guilty of the negligence or other wrongful act as the beneficiary would have had if he or she had been required to pay for the health services.

(3) Subject to sections 19.2 and 19.3, on the provision of health services to a beneficiary mentioned in subsection (2), the minister shall be subrogated to all rights of recovery of the beneficiary from any person with respect to the cost of those health services and may bring an action in the name of the beneficiary to enforce those rights.

(4) Nothing in subsection (2) or (3) restricts the right of the beneficiary to recover any sum with respect to the personal injuries in addition to the cost of health services received by the beneficiary.

(5) Where a beneficiary brings an action to recover any sum with respect to the personal injuries mentioned in subsection (4), the beneficiary shall, on behalf of the minister, include in his or her claim a claim for the cost of health services received by the beneficiary.

(6) Except with the written consent of the minister, no action mentioned in subsection (5) shall be settled without provision being made for payment in full of the cost of health services received by the beneficiary.

\*\*\*\*\*

*Privacy Act, [R.S.S. 1978, c. P-24](#), s. 4(1)(c)*

Defences

**4(1)** An act, conduct or publication is not a violation of privacy where:

- (c) it was authorized or required by or under a law in force in the province or by a court or any process of a court; or

\*\*\*\*\*

*Personal Information Protection and Electronic Documents Act, [S.C. 2000, c. 5, s. 7\(3\)\(c\)](#)*

Disclosure without knowledge or consent

**7(3)** For the purpose of clause 4.3 of Schedule 1, and despite the note that accompanies that clause, an organization may disclose personal information without the knowledge or consent of the individual only if the disclosure is

(c) required to comply with a subpoena or warrant issued or an order made by a court, person or body with jurisdiction to compel the production of information, or to comply with rules of court relating to the production of records;

\*\*\*\*\*

*The Survival of Actions Act, [S.S. 1990-91, c. S-66.1, ss. 6\(1\)-\(2\)](#)*

Only pecuniary loss recoverable

(1) Subject to subsection (3), if a cause of action survives pursuant to section 3, only those damages that resulted in actual pecuniary loss to the deceased or the deceased's estate are recoverable.

(2) Aggravated damages or damages for:

- (a) the loss of expectation of life;
- (b) the loss of expectancy of earnings subsequent to death;
- (c) pain and suffering;
- (d) physical disfigurement; or
- (e) loss of amenities;

are not recoverable as a result of this Act.