

CITATION: Brown v. His Majesty the King in Right of the Province of Ontario, 2026 ONSC 2880

COURT FILE NO.: CV-25-742100-CP

DATE: 20260521

SUPERIOR COURT OF JUSTICE - ONTARIO

BETWEEN: WARWICK BROWN, Plaintiff

AND:

HIS MAJESTY THE KING IN RIGHT OF THE PROVINCE OF ONTARIO,
Defendant

BEFORE: Justice Glustein

COUNSEL: *Jonathan Ptak, Elie Waitzer, Adam Tanel, and Anne Lewis*, for the plaintiff

Lisa Brost and Paul Kim, for the defendant

HEARD: May 1, 2026

REASONS FOR DECISION

NATURE OF THE MOTION AND OVERVIEW

[1] There are four motions before the court.

[2] The plaintiff, Warwick Brown (“Brown”) brings three motions:

- (i) a motion under the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 (the “CPA”) to approve the settlement agreement executed on January 21, 2026 (the “Settlement Agreement”) and ancillary relief including the appointment of Epiq Class Action Services Canada Inc. (“Epiq”) as claims administrator and approval of the proposed notice plan;
- (ii) a motion under the CPA to approve Class Counsel (Koskie Minsky LLP) fees and disbursements and for payment of an honorarium of \$15,000 to Brown; and
- (iii) a motion for an order under s. 12 of the CPA to authorize Class Counsel to provide a copy of its contact list for the class action (the “Class Counsel Contact List”) to the Office of the Public Guardian and Trustee, Ontario (“OPGT”) and the Public Guardian and Trustee of British Columbia (the “PGT BC”), in order to comply with

the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (“*PIPEDA*”).

[3] A former class member, Raymond Feeney (“Feeney”), brings a motion that the opt out form he delivered on June 3, 2020 be rescinded since (i) due to medical difficulties, Feeney did not understand the consequences of his decision to opt out of the present class action and (ii) Feeney wishes to participate in the proposed settlement of the class action.

[4] For the reasons that follow, I grant all of the motions. I address all of the motions in these reasons.

FACTS

[5] I first review the background facts to the present class action and then consider the relevant facts for each of the motions before the court.

Background to the class action

[6] Between 1953 and 1984, thousands of children were housed and detained at youth institutions across Ontario known as Training Schools. Some were detained for committing criminal offences; others for minor infractions such as truancy, petty crime, or being unmanageable. Upon admission, children became wards of the province. Ontario was solely responsible for the operation of the Training Schools.

[7] The present action alleges systemic issues in Ontario's management and operation of thirteen Training Schools, including inadequate staff training, lack of reporting and accountability measures, misuse of physical discipline and solitary confinement. It is alleged that children were exposed to a toxic and harmful environment where physical and sexual abuse were widespread.

[8] The class consists of all persons who resided at any of the thirteen Training Schools during various periods of time between January 1, 1953 and April 2, 1984, when the *Training Schools Act* was repealed and replaced by the *Young Offenders Act*.

[9] Numerous class members made representations to the court at the present settlement approval hearing. Their descriptions of the abuse they suffered at the Training Schools was gut-wrenching. All class members who spoke at the hearing described the trauma they suffered at the Training Schools. Many of the class members continue to feel the devastating effects of this trauma, now more than 40 to 70 years on from their detention at the Training Schools.

Facts relevant to the settlement motion

History of the proceeding

[10] This action was commenced on December 8, 2017. It concerns allegations dating back to 1953. The plaintiff advanced causes of action in negligence and breach of fiduciary duty in respect of the defendant's operation and management of the Training Schools.

[11] The plaintiff's certification record was over 1,000 pages and included affidavits from thirteen class members (including then-representative plaintiff, Kirk Keeping), Don Weitz (a former Training Schools consulting psychiatrist), and two expert damages witnesses. The defendant contested certification, filing a five-volume record that included a responding expert damages report. All seventeen certification affiants were cross-examined. Given the breadth of the evidence, the plaintiff obtained leave to file a 57-page certification factum.

[12] Two weeks before the certification motion was scheduled to be heard in December 2018, the defendant consented to certification. Following certification, the parties completed an extensive discovery process between 2019 and 2022. The defendant produced over 15,000 documents in several tranches. The plaintiff engaged in a comprehensive review of these productions. The parties completed oral discoveries, fulfilled undertakings, and reached a Rule 36 agreement to admit Dr. Weitz's evidence at trial due to his failing health.

[13] After the completion of documentary and oral discoveries, the parties took steps to prepare for trial and scheduled a three-day mediation session in June 2023, with the retired Justice Todd Archibald serving as the mediator. In advance of mediation, the parties exchanged lengthy mediation briefs and expert reports which would be used at trial.

[14] The plaintiff served an expert damages report and a 110-page report filed by the plaintiff's expert on the standard of care applicable to the operation of the Training Schools. It was authored by Dr. James Anglin, an expert who chaired a provincial committee that developed standards for youth institutions in the 1970s. Dr. Anglin reviewed over 1,000 documents from the defendant's productions in preparing his report.

[15] The defendant served responding reports from four highly qualified experts on the applicable standard of care in Ontario, other Canadian provinces, and the United States. One was authored by Patricia Meade, a former Training School staff member and director of numerous youth facilities throughout Canada during the class period. Another was provided by Professor Nicholas Bala, an internationally recognized expert on youth justice whose publications have been cited by the Supreme Court of Canada.

[16] The initial mediation was unsuccessful but productive. The parties identified several key issues and agreed to work cooperatively to further address them before returning to mediation. The defendant agreed to produce additional data upon which the parties' respective experts prepared refined class size estimates.

[17] At the same time, Class Counsel worked diligently to advance the action towards trial, serving five additional reply reports on standard of care, damages and class size from various experts, including Dr. Anglin. One report was authored by Alan Markwart, the director of a youth custody center in British Columbia and B.C. representative to several federal/provincial/territorial committees responsible for developing national youth justice policy during the class period.

[18] In total, the parties filed over a dozen reports from nine experts.

[19] The plaintiff also served will-say statements for over twenty fact witnesses who attended each of the thirteen Training Schools across the three-decade class period, moved to transfer the action from Thunder Bay to Toronto (for the convenience of the anticipated trial witnesses), and amended the litigation timetable to schedule trial in mid-2026.

Settlement discussions and 2025 mediation

[20] Amid trial preparations, the parties agreed to engage in a second round of mediation. The parties had numerous bilateral discussions leading up to two full day in-person sessions. The parties exchanged many offers and position statements over those two hard fought days. Detailed expert reports on class size were relied upon in assessing and making settlement offers. With the assistance of the mediator, the parties reached an agreement in principle on some of the key terms of the settlement on May 6, 2025.

[21] Over the next nine months, the parties exchanged many drafts of the Settlement Agreement and held many lengthy counsel meetings to negotiate and finalize terms. This work culminated in the execution of the Settlement Agreement on January 21, 2026.

Key terms of the Settlement Agreement

[22] The Settlement Agreement provides for a settlement fund of \$60 million and a second opt-out right for class members who prefer to retain full agency over the litigation of their individual claim. For each class member who opts out of the class action during the second opt-out period, the settlement fund will be reduced by \$60,000, up to a maximum reduction of \$6 million regardless of how many class members opt out.

[23] The key terms of the Settlement Agreement and compensation plan include:

- (i) Individual compensation to class members ranges from \$5,000 to \$100,000.
- (ii) A streamlined, paper-based and trauma-informed claims process will be used. Causation is assumed and class members benefit from a presumption that their claims are made honestly and in good faith. Unlike the traditional court process, class members will not be subject to examination or cross-examination.

- (iii) While no supporting documentation will be required to make a claim, class members will have access to an expedited process to request their historical Training School records from Ontario if they choose to have them.
- (iv) Class members will have fifteen months to submit their claims, with a potential three-month extension for late claims at the claims administrator's discretion.
- (v) Reimbursement of up to \$1,500 is available for support services incurred due to re-traumatization or anxiety caused by making a claim.
- (vi) Persons representing estates of deceased class members will be able to make claims pursuant to a simplified estates protocol which will not require a probate application to the court.
- (vii) In the event there are insufficient funds in the settlement fund to compensate all successful claimants, individual compensation amounts provided for in the compensation plan will be reduced on a *pro rata* basis.
- (viii) Ontario will issue a public acknowledgement of harm experienced by class members at the Training Schools.
- (ix) Ontario will erect a plaque commemorating the history and legacy of the Training Schools.
- (x) Class members have a second opportunity to opt out of the class action, open until nine months after the Settlement Agreement is approved.

[24] Compensation is provided under two tracks. Under Track 1, a class member will receive \$5,000 by checking a box on the claim form that they suffered harm and indicating (i) which Training School they attended and (ii) their best knowledge of the dates during which they suffered harm while at a Training School.

[25] Under Track 2, a class member will submit a witnessed declaration. Supporting documentation is not required. Ontario may submit responding documentation without argument or submissions.

[26] Under Track 2, compensation for (i) minor physical assault (if not a serious physical injury but resulting in an observable injury) or (ii) solitary confinement (based on certain time frames) is \$7,500. Compensation for serious physical injury (a defined term in the compensation plan) is \$25,000.

[27] With respect to damages for sexual assault, Track 2 provides for compensation of either \$15,000, \$50,000 or \$100,000 depending on the type and severity.

[28] Ontario will issue a public acknowledgement of harm experienced by class members at the Training Schools, including the following statement:

These schools operated in the 1950s, 60s, 70s and 80s. Any abuse that kids suffered at these schools was wrong. It was wrong then. It is wrong now. We acknowledge and regret the harm that kids experienced in these institutions. One goal of this settlement is to assist former Training Schools residents to move forward with their lives. This settlement is similar to other settlements regarding historical harms at other institutions. While we cannot change the past, we can compensate victims today and hopefully help them as they heal. Moving forward, we must remain vigilant to ensure that these harms become a relic of the past.

Support of the mediator and Class Counsel

[29] Class Counsel recommends that the Settlement Agreement is fair and reasonable and in the best interests of the class members. That support is echoed by Justice Archibald, who described the mediation as "extremely hard fought" and summarized the resulting agreement as "an exceptional and principled resolution of an important case".

Approval of notice of the settlement approval hearing

[30] On January 30, 2026, this court approved the contents and manner of notice of the settlement approval hearing, and the appointment of Epiq as notice administrator. Notice of the settlement approval hearing was widely disseminated, including by email and mail, posting online and in correctional institutions, through probation and parole offices, and through digital advertising and press release.

Objections to the Settlement Agreement

[31] The deadline for class members to object to the settlement passed on March 31, 2026. By that date, over 300 class members contacted the administrator or Class Counsel and advised of their express support for the settlement and/or an intention to make a claim. To date, ten class members have filed substantive objections.

[32] The written objections fall into four main categories: (i) the individual compensation available under the compensation plan, (ii) the compensation available for claims predating September 1, 1963 due to Crown immunity at common law, (iii) certain terms of the Settlement Agreement, and (iv) the deduction of Class Counsel's requested legal fees from the settlement fund.

[33] Further objections were made (either in writing or at the hearing) regarding the scope of the public acknowledgment, the alleged lack of compensation for psychological harm, and a concern that any compensation would be subject to a "claw-back" for income tax purposes.

Evidence relevant to the approval of the claims administrator

[34] Epiq is an experienced claims administrator with particular expertise in trauma-informed claims arising from institutional abuse. They have acted as claims administrator in over 175 settlements and in more than 20 institutional abuse settlements, as well as in numerous matters addressing “federal government” institutional claims and “[I]ndigenous” matters, all of which provide experience in a trauma-informed claims process.

Evidence related to the proposed notice plan

[35] The proposed distribution of the “Phase 2” notice of settlement approval (including an opt-out notice and claims form) is almost identical to the notice plan approved by the court for the Phase 1 notice of the settlement hearing and the Settlement Agreement.

[36] The Phase 2 notice shall be disseminated as follows:

- (i) The claims administrator and Class Counsel shall post the Phase 2 notice, the opt-out form, the claim form, and the settlement approval order on their websites.
- (ii) The claims administrator and Class Counsel shall maintain toll-free support lines to provide assistance to class members and other persons who make inquiries on the class members’ behalf.
- (iii) Class Counsel shall provide a copy of the short-form and long-form Phase 2 notice, the opt-out form, and/or the claim form, by email or regular mail, to any class member who requests a copy of such document(s) from Class Counsel.
- (iv) The claims administrator shall provide a copy of the short-form and long-form Phase 2 notice, the opt-out form, and/or the claim form, by email or regular mail, to any class member who requests a copy of such document(s) from the claims administrator.
- (v) The claims administrator shall send a copy of the claim form and long-form Phase 2 notice by email or regular mail directly to any class member who has provided a valid email address or mailing address to Class Counsel.
- (vi) The claims administrator shall arrange for the publication of digital media advertisements, for a duration of 90 days, optimizing the advertisements to increase the number of views by class members. These advertisements shall be in the form agreed upon by the parties. The expenditure on such publication shall not exceed \$60,000. These advertisements will link to the claims administrator’s website for further information.

[37] The claims administrator shall send the short-form Phase 2 notice to the following organizations, with a request that they disseminate it to their membership: (i) all Ontario offices

of the Elizabeth Fry Society, (ii) all Ontario offices of the John Howard Society, (iii) the Office of the Public Guardian and Trustee, (iv) the Criminal Lawyers' Association, (v) Canadian Defence Lawyers, (vi) Canadian Council of Criminal Defence Lawyers, (vii) Aboriginal Legal Services, (viii) The Ontario Federation of Indigenous Friendship Centres, and (ix) the Chiefs of Ontario.

[38] The defendant shall: (i) cause the short-form Phase 2 notice to be posted in a conspicuous place within each correctional institution as defined in the *Ministry of Correctional Services Act*, R.S.O 1990, c. M.22, making it possible for inmates to see it and replacing it with a fresh copy as needed until the claims deadline, and (ii) direct that the short-form Phase 2 notice be posted in all adult probation and parole offices throughout Ontario.

[39] Class Counsel will provide the short-form and long-form Phase 2 notice to the Canadian Bar Association National Class Action Database with a request that they be posted online.

[40] The claims administrator shall issue the short-form Phase 2 notice as a press release via Canadian Newswire.

Facts relevant to the motion for court approval of fees and disbursements and honorarium

Fees and disbursements

[41] I set out the relevant facts as follows:

- (i) The retainer agreement between Brown and Class Counsel provided for fees based on 33% of recovery less the fee portion of any costs already paid to Class Counsel, plus HST, plus disbursement not already paid to Class Counsel by the defendant.
- (ii) Class Counsel seeks fees based on 28.5% of recovery, with an initial payment of 28.5% of \$54 million (as up to \$6 million may be deducted based on future opt outs) and a second payment of 28.5% based on the remaining balance from the \$6 million once all subsequent opt outs are determined.
- (iii) Class Counsel have incurred over 6,700 hours on this action, with a total value of \$3,144,322,45 in fees.
- (iv) Class Counsel anticipate a further \$2 million of legal fees will be incurred to implement the settlement.
- (v) Brown agreed to the contingency fee rates in the retainer agreement, is aware of the fees Class Counsel seeks, and believes the fees sought to be fair in the circumstances. Brown believes that if Class Counsel had not taken on this action, the class members would not have been able to advance their claims individually and never would have received the compensation and benefits to which they would be entitled under the Settlement Agreement.

Evidence relevant to the honorarium request

[42] Brown was required to share highly sensitive personal information and experiences, not only with Class Counsel, but publicly. Brown was cross-examined on his certification affidavit and examined for discovery, requiring him to explain personal details of the abuse he endured. He essentially had to re-live that trauma.

Evidence relevant to the *PIPEDA* motion

[43] The OPGT and the PGT BC are public bodies which act as substitute decision makers, trustees, and estate administrators of last resort for adults who have been found mentally incapable ("PGT Clients").

[44] In legal proceedings, including in class actions, the OPGT acts as the litigation guardian of last resort: *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 7.03.1(13)(b)(ii). Presently, the OPGT acts for approximately 13,000 people in this capacity.

[45] The mandate of the PGT BC includes protecting the legal, financial, and, in some cases, personal and healthcare interests of adults who require assistance in decision-making. Administrative counsel to the PGT BC is responsible for assessing class action claims on behalf of PGT Clients in British Columbia. The PGT BC also acts as litigation guardian for incapable adults when it has been appointed the committee of that person under the *Patients Property Act*, RSBC 1996, c. 349, s. 6 and *Supreme Court Civil Rules*, B.C. Reg. 168/2009, r. 20-2(6).

[46] Subject to this court's approval, this class action will provide compensation of up to \$100,000 based on the nature of the harm that a class member experienced. Yet, without a representative such as the OPGT or the PGT BC, incapable class members will not be able to access this compensation. Due to the size and nature of the Class, there are likely many incapable class members who are PGT Clients.

[47] It is often challenging to identify PGT Clients who are eligible to make a claim under a class action settlement. Not all eligible incapable class members identify themselves as class members. OPGT and PGT BC resources are limited. The biographical information the OPGT and PGT BC have about PGT Clients is also often limited.

[48] Moreover, capacity can fluctuate and some incapable individuals or their families may be in contact with Class Counsel but not the OPGT or PGT BC. As it currently stands, the OPGT and PGT BC are practically unable to identify many of the people they are statutorily required to represent and/or assist.

[49] A list of class members was not produced by the defendant in the course of this litigation. Accordingly, it is not possible to follow the same practice as was followed in other class actions, whereby a class list was shared under an information-sharing agreement between the OPGT and one of the class action parties.

[50] The Class Counsel Contact List includes contact information for individuals who have contacted Class Counsel regarding this class action. Subject to the court's approval, Class Counsel, the OPGT, and the PGT BC have agreed to disclose the Class Counsel Contact List so the OPGT and PGT BC can identify which class members they are responsible for protecting.

[51] The agreement provides for various privacy and security protections. The Class Counsel Contact List will also be kept secure and confidential.

[52] Pursuant to an Information Sharing Agreement with Class Counsel, the OPGT and PGT BC will store the Class Counsel Contact List securely, maintain it in compliance with the various privacy statutes and policies applicable to it, use it only for the purpose of fulfilling their duties as the PGT Clients' legal representatives of last resort, and will destroy it, equally securely, two years after the agreement takes effect.

[53] All parties will do their utmost to preserve the information they have and will promptly alert the others of any unauthorized use or collection.

Evidence relevant to the Opt-In Motion

[54] Feeney did not attend at the hearing. Class Counsel made submissions on his behalf.

[55] Feeney provided the following affidavit evidence:

- (i) Due to “significant medical conditions” and “multiple medications”, “I experienced ... difficulty concentrating , and cognitive slowing.”
- (ii) “Due to my medical and cognitive state [when he received information regarding the opt-out deadline which he had to address on an urgent basis], I was not able to properly understand the materials or the consequences of opting out of the class action.”
- (iii) “I completed and signed the opt-out form during that period, but I did not realize that I was giving up my right to participate in the class action.”
- (iv) “I would not have opted out had I properly understood the nature and consequences of that decision.”
- (v) “Looking back, my decision to opt out does not make sense to me, which reflects that I did not properly understand the nature and consequences of that decision at the time.”

[56] Feeney also attached a medical note from his family physician, Dr. Brian Adno, confirming that Feeney suffered from “some degree of cognitive slowing” and that his health conditions “impacted his ability to manage personal and administrative matters”. Dr Adno concluded that: “[i]n my medical opinion, these ongoing health concerns, particularly over the past several years,

would reasonably have affected Mr. Feeney's ability to manage complex matters and respond to important issues within strict timelines.”

ANALYSIS

Settlement approval motion

[57] I first review the relevant law and then apply the law to the present case.

The applicable law

[58] I summarize the relevant law as follows:

- (i) The court must be satisfied that the proposed settlement is fair, reasonable, and in the best interests of the class: *Mancinelli v. Royal Bank of Canada*, 2017 ONSC 2324, at para. 36.
- (ii) In any class action, there are a range of reasonable outcomes. The court's function is not to substitute its judgment for that of the parties or to rubber-stamp a settlement. It is to determine whether the settlement falls within a range or zone of reasonableness: *Loewenthal v. Sirius XM Holdings, Inc. et al.*, 2021 ONSC 4482, at paras. 11-12.
- (iii) Determining whether a settlement is reasonable requires an assessment of the risks and challenges in the case. In this assessment, "[c]onsiderable deference must be shown to the process underlying the negotiated settlement", recognizing that "[t]he parties are...best placed to assess the risks and costs (financial and human) associated with taking complex class litigation to its conclusion": *Fontaine v. Canada (Attorney General)*, 2006 NUCJ 24, at para. 38; *Manuge v. Canada*, 2013 FC 341, at para. 6.
- (iv) Courts have relied on the following factors in conducting this assessment: (a) the likelihood of recovery or likelihood of success, (b) the amount and nature of discovery, evidence or investigation, (c) the settlement agreement's terms and conditions, (d) the recommendation and experience of counsel, (e) the future expense and likely duration of the litigation, (f) the number of objectors and nature of objections, (g) the presence of good faith, arm's length bargaining and the absence of collusion, (h) the information conveying to the court the dynamics of, and the positions taken by, the parties during the negotiations, and (i) the nature of communications by counsel and the representative plaintiff with class members during the litigation: *Parsons v. Canadian Red Cross Society* (1999), 40 C.P.C. (4th) 151, at paras. 71-72.
- (v) The settlement approval exercise is not merely a mechanical application of each of the factors listed above. These factors are, and should be, a guide in the process and

no more. In a particular case, it is likely that one or more of the factors will have greater significance than others and should accordingly be attributed greater weight in the overall approval process: *Parsons*, at para. 73.

Application of the law to the facts of the present case

[59] In the present case, there are numerous factors supporting court approval of the Settlement Agreement. I review these factors below.

(i) *The results achieved*

[60] At the hearing, Class Counsel provided the court with a schedule setting out ten other institutional abuse cases. Based on those cases, I am satisfied that the Settlement Agreement provides for the following significant benefits:

- (i) The available compensation of up to \$100,000 is more than twice the amount ever available in an institutional abuse case against Ontario.
- (ii) In other institutional abuse cases (including cases from outside Ontario), the process to obtain the highest level of compensation required a litigation-based process, including examinations for discovery, individual causation analysis, document production, defence medical examinations, and potentially trial testimony.

In the present case, the ability to claim the grid amounts does not require any proof except checking off a box for harm (under Track 1) or providing a witnessed declaration (under Track 2). No cross-examination is available. There is no requirement to provide supporting documentation from a doctor, psychologist, social worker, counsellor or therapist corroborating the claimant's alleged harms.

Ontario cannot file responding submissions and is limited to filing responding documentation in the Track 2 process.

- (iii) The settlement contains a presumption of honesty and good faith on behalf of claimants, which is not available in the litigation process.
- (iv) There is no requirement for a commissioned affidavit. A witnessed declaration should improve the accessibility of the claims process under the Settlement Agreement.
- (v) Any class member who believes that the \$100,000 cap is insufficient has the right to opt out of the settlement (which is an additional opt-out right from the initial opt-out right on certification).

- (vi) Track 1 compensation is available to those class members who attended a Training School prior to September 1, 1963, even though the *Proceedings Against the Crown Act*, S.O. 1962-63, c. 109, (“*PACA 1963*”) did not come into effect until that date.
- (vii) A claim can be made for general harm under Track 1 without having to establish any physical or sexual assault or placement in solitary confinement.
- (viii) Each class member can access up to \$1,500 in funds to pay counselling costs that may be needed to address anxiety or re-traumatization caused by participating in the compensation plan.
- (ix) Class members have a longer claims period (15 months versus 9 months for several prior Ontario settlements). A claims process involving historic abuse should provide claimants with sufficient opportunity not only to learn about the claims process through adequate notice but also provide them with enough time to seek assistance and process the harm they have endured before making a claim: *Rabbat v. Nadon*, 2025 ONSC 5187, at paras. 56-58.
- (x) Each class member will receive, included in the claim form, a trauma-informed resource package with support networks to access emotional and mental health resources.
- (xi) Ontario will issue a public statement, which will include the sentence, “[w]e acknowledge and regret the harm that kids experienced in these institutions”. This statement is of importance to the class members.
- (xii) The settlement will provide recovery in a timely manner for class members who experienced serious childhood abuse at the Training Schools, which continues to impact their lives many years later. The value of being able to access the benefits achieved under the settlement now, instead of many years into the future, is particularly important since a significant proportion of the class members are elderly and/or have serious health issues. Given the class period (1953-1984) and the age range upon admission (between 10 to 16 years old), the surviving class members are generally between 55 and 86 years old.

Considering the monetary amounts for comparator class actions, the trauma-informed process which avoids an adversarial compensation system, the public acknowledgement of harm, and the second opt-out process for class members to participate in their own litigation, the results achieved by the Settlement Agreement in the present case are particularly strong.

(ii) *Litigation risk at trial and beyond*

[61] I find that there were significant litigation risks if this matter had proceeded to trial and beyond. I summarize those risks as follows:

- (i) The plaintiff would have been required to establish, through expert and other evidence, that Ontario breached the applicable standard of care across all Training Schools for the entire 31-year class period.
- (ii) At trial, the defendant would argue that its historic acts and omissions should not be judged in hindsight based on contemporary standards and lead expert evidence that Ontario met the minimum standards applicable to the operation of Training Schools as they evolved throughout the class period.
- (iii) The defendant was expected to rely on evidence from Ms. Patricia Meade, who served as director of several youth facilities across Canada during the class period, that (a) Ontario was an early adopter of many modern policies and procedures implemented in the Training Schools, and (b) standards in other provinces such as British Columbia and Alberta lagged far behind Ontario.
- (iv) As in any historical action brought on behalf of marginalized class members, the plaintiff would have to address the significant risk of key witnesses passing away or being incapable of testifying, memories fading, evidence being lost to time, and credibility issues due to past criminal records.
- (v) In *B.G. et al. v. HMTQ*, 2003 BCSC 1890, a joinder action was brought against British Columbia by 11 former residents of Brannan Lake Training School between 1955 and 1972. Over the course of a 101-day trial, the plaintiffs led evidence from over twenty fact witnesses and two psychological experts regarding similar physical and sexual abuses as alleged in this action. Similar risks and defences defeated the plaintiffs' claims in that action.

In dismissing the plaintiffs' claims for negligence, vicarious liability and fiduciary duty, the trial judge in *B.G.* found the plaintiffs' evidence to be "wanting in either veracity or reliability": at para. 377, and noted that some residents had a "positive learning experience": at para. 387.

The trial judge framed his negligence analysis through a contemporaneous lens, noting that there were "gradual improvements to the operations of Brannan Lake School": at para. 386 and emphasizing that the institution was founded "at a time when the rehabilitation treatment model for young offenders was still evolving": at para. 379.

- (vi) Even if the plaintiff succeeded in establishing liability, there was a real risk that it would be established for only part of the class period, or only residents of certain Training Schools. The purpose, population, capacity, and programming of each Training School varied widely, ranging from maximum-security institutions for juvenile offenders (Hillcrest School) to outdoor education camps (Project DARE) to vocational programs (Sprucedale School). The defendant was expected to argue

that each of the thirteen Training Schools attracted a unique standard of care, and that the applicable standard in the 1950s differed vastly from the 1980s.

- (vii) In addition, the defendant was expected to argue that it could not be held liable for (a) policy decisions for which the Crown is immune from liability both through statute and common law, and (b) claims predating September 1, 1963, which are statute-barred by operation of *PACA 1963*.
- (viii) Success on any common issue at trial would likely have resulted in appeals, given the complexity and importance of the issues discussed above.
- (ix) Significant challenges would also have remained in proving damages, particularly in causation of psychological harm from abuse that occurred between 40 and 70 years ago – and in a context where most, if not all, class members would be expected to have suffered both pre-existing and post-event trauma.
- (x) There was also significant risk that the trial judge would find that proof of individual harm was required in each instance, thus foreclosing aggregate damages. This could have led to adversarial individual hearings, which required significant participation from class members, and limited recovery to those who could establish causation and damages, as well as overcome potential credibility issues related to mental health or any criminal convictions.
- (xi) Given the time required to complete the trial, receive a judgment, litigate appeals, and arrive at a negotiated or court-ordered distribution or individual issues process, any non-mediated resolution would have taken many years to trickle down to class members' pockets. This form of delay is particularly problematic where, as here, many class members are "socioeconomically disadvantaged [or] marginalized" and may "pass away before the final determination of their awards": *Johnson et al. v. Ontario*, 2023 ONSC 5250, at para. 19.

[62] Consequently, the litigation risks were significant.

[63] In *Yeo v. Ontario*, 2021 ONSC 4534, Justice Belobaba relied on similar concerns in approving the settlement in an institutional abuse claim: at para. 15. He concluded that the compensation range of up to \$45,000 was within the zone of reasonableness: at para. 18.

[64] As Justice Belobaba noted, while compensation of up to \$45,000 might seem “modest” or “almost insulting”, the settlement was “decidedly more than would have been achieved had the case gone to trial” due to the “many legal obstacles” which included “the unavailability of aggregate damages, the need for individual assessments ... and the difficulty of proving decades-old injuries”: at para. 23, citing his earlier decision in *Welsh v. HMQ Ontario*, 2019 ONSC 4204 (“*Welsh*, 2019”), at paras. 14-15.

[65] In *Yeo*, Justice Belobaba concluded, at paras. 24, 25, and 32:

Here, as I have already noted, the legal obstacles facing the class members were even more significant than in the four previous cases. This was a class action alleging systemic institutional failings over some five decades of operation. Any class action alleging system-wide failings (of policy or practices, staffing or training etc.) must first establish these systemic deficiencies. Individual instances of physical or sexual assault that cannot be connected to system-wide failings do not advance the class proceeding.

The defendant was ready to go to trial with several expert reports refuting the allegations of systemic negligence. They were also prepared with an array of evidentiary attacks and legal submissions that in a court of law would have made it increasingly difficult for class counsel to establish the defendant's liability — particularly when the vast majority of the incidents in question involved other young residents and not CPRI staff. As already noted, the litigation risks that confronted class counsel when this settlement was achieved were, to say the least, formidable. While success was certainly possible, it was equally possible, perhaps even likely in the context of a class action alleging “systemic” negligence, that the entire litigation could collapse with no compensation for anyone.

””

Again, if one of the determining legal standards for settlement approval is “zone of reasonableness”, and if the zone of reasonableness that applies herein has been explicitly established and approved by this court in the four (and arguably six) previous and analogous class action settlements, then it must follow that this settlement should be approved as well.

[66] I rely on the factors discussed above as well as the analysis of Justice Belobaba in *Yeo* to conclude that there were significant litigation risks in the present matter that support the settlement reached between the parties.

(iii) *Recommendation of the arm's length settlement by Class Counsel*

[67] A strong presumption of fairness applies when a settlement, negotiated at arm's length, is presented for court approval on the recommendation of experienced class counsel: *Loewenthal*, at para. 11.

[68] The representation of the class by "highly reputable counsel with expertise in class action litigation" entitles the court to assume "in the absence of evidence to the contrary, that it is being presented with the best reasonably achievable settlement and that class counsel is staking his or her reputation and experience on the recommendation": *Serhan v. Johnson & Johnson*, 2011 ONSC 128, at para. 55.

[69] Class Counsel is a leader in class action litigation in Canada and has significant expertise in litigating class actions against government actors arising from allegations of historical institutional abuse.

[70] Class Counsel unequivocally recommends the approval of the settlement. In the view of Class Counsel, it is an excellent settlement given the specific risks of proving the actions at trial, the potential delay in proceeding through trial, the monetary and non-monetary benefits the settlement provides, and the simple and trauma-informed process for advancing these claims, without any cross-examination or documentary proof.

[71] This view is informed by Class Counsel's review of enormous documentary production, examinations, and the exchange of expert reports. Mediation took place amidst preparations for trial. The proposed settlement was negotiated after certification, production, and discovery. Class Counsel's positions in the mediation were informed by a trial-ready level of investigation, discovery and review of evidence.

[72] It is well established that “[i]n a late stage settlement, the supervising class action judge will be justified in assuming that class counsel had a complete or almost complete understanding of the risks and rewards of further litigation and the court will be more comfortable relying on class counsel’s recommendation that the settlement is indeed in the best interests of the class”: *Cannon v. Funds for Canada Foundation*, 2017 ONSC 2670, at para. 5 (see also *Jost v. Canada (Attorney General)*, 2025 FC 1193, at para. 29).

[73] This factor strongly supports settlement approval.

(iv) *Mediator’s comments*

[74] Class Counsel's recommendation is echoed by The Honourable Todd Archibald, who described the mediation as "extremely hard fought" and summarized the resulting agreement as "an exceptional and principled resolution of an important case."

(v) *Response to objections*

[75] I set out the objections at paras. 31-33 above. Those objections relate to (i) the individual compensation available under the compensation plan, (ii) the compensation available for claims predating September 1, 1963 due to Crown immunity at common law, (iii) certain terms of the Settlement Agreement, (iv) the deduction of Class Counsel's requested legal fees from the settlement fund, (v) the scope of the public acknowledgment, (vi) the lack of a “psychological harm” category of compensation, and (vii) a concern that any compensation would be subject to a “claw-back” for income tax purposes.

[76] I first consider the applicable law and then address each of the objections.

1. The applicable law

[77] In *McLean v. Canada*, 2019 FC 1075, the court received approximately 3,360 statements of support and 2,485 objections to a proposed class action settlement: at para. 56. Justice Phelan set out the general principle that the court must consider the settlement as a whole, even if an objection is reasonable: at paras. 122-26. He held, at para. 125:

In a case involving so many over such a long period, over such a vast area, objection is to be expected. Settlements are not perfect; compromise is not easy. Objections may be reasonable but may be reasonably counterbalanced by other elements of the Settlement.

[78] I apply this test when considering the various objections.

[79] As noted above, prior to the hearing, over 300 class members contacted the administrator or Class Counsel and advised of their express support for the settlement and/or an intention to make a claim. Only ten class members have filed substantive objections.

[80] Further, at the hearing, many class members spoke to the court about their experience at the Training Schools, but either supported the settlement or made no specific objection. Those class members wanted the opportunity to describe to the court their experiences at the Training Schools and the effect it had on them at that time and throughout their lifetimes.

[81] The issue before the court is whether any objections to the Settlement Agreement justify the court to refuse approval of the settlement. For the following reasons, I do not accept that the objections support such a finding. I set out my response to each of the objections below.

2. The objections as to individual compensation under the Settlement Agreement

[82] Class members refer to the settlement under the Indian Residential Schools Settlement Agreement (“IRSSA”) to submit that the compensation is not sufficient. However, claimants under the IRSSA who sought higher compensation were required to prove causation or damages through testimony or other evidence demonstrating that the abuse they experienced resulted in a diagnosed mental disorder or pecuniary losses.

[83] Consequently, while the range of individual compensation available under the IRSSA was higher, the claims process was far more onerous. Under the IRSSA, to qualify for higher-end compensation, claimants were required to undergo a complex in-person hearing in which their abuser could participate.

[84] In the present case, the proposed grid is more than double the previous maximum for compensation by Ontario for institutional abuse cases. Further, requiring a claims process such as under the IRSSA would risk re-traumatizing class members. It would also risk having the compensation of some class members reduced or eliminated if they were unable to meet the thresholds required under the IRSSA, or were unwilling to participate in the adversarial process.

[85] In contrast, all class members will benefit from a presumption that the abuse described in their claim form occurred.

[86] Further, the IRSSA was also a national settlement reached in the context of a national reconciliation project. It was far broader in both scale and scope, including claims for loss of culture and discrimination based on Indigenous identity.

[87] Other class members objected to compensation based on settlements or damages awarded after trial in individual sexual assault claims. However, such amounts are not helpful comparators to "class actions alleging system-wide deficiencies": *Yeo*, at para. 27.

[88] Damage awards in individual actions are made after a full adjudication on the merits, after a trial, and which required plaintiffs to endure the rigours of the litigation process. Here, the Settlement Agreement compensates those class members who might not meet the rigorous causation requirements of an individual trial and spares the claimants from undergoing potential re-traumatization through the litigation process.

[89] Some of the objectors pointed to the amounts pleaded in the statement of claim and suggested that the settlement amount was improperly discounted from that. However, the statement of claim was prepared at the outset, without the evidence obtained through the course of the litigation relating to class size, litigation risk and likely outcomes at trial. The aggregate settlement amount was reached following nine years of hard-fought litigation, including extensive discoveries, exchange of expert reports, witness statements, three years of extensive arm's-length negotiations and five full days of mediation.

[90] While the above responses would have been sufficient to reject the compensation objection, I also note that in the present case, a class member is not required to accept the compensation under the Settlement Agreement since a second opt-out right is provided.

3. The objections that the Track 2 process is limited to class members who attended a Training School as of September 1, 1963

[91] Two class members object to the fact that class members who attended a Training School prior to September 1, 1963 will only be eligible to make claims for compensation under Track 1 for claims arising during that period. While this concern is understandable, the restriction on the compensation available to such class members arises from operation of well-settled law. Their claims would likely have failed if brought as individual actions.

[92] The *PACA 1963*, which came into force on September 1, 1963, abrogated Crown immunity for tort claims prospectively. The defendant is generally immune from class members' claims in negligence based on acts or omissions occurring before September 1, 1963.

[93] Consequently, there is a significant concern that no compensation could be claimed based on a negligence cause of action for acts prior to September 1, 1963.

[94] With respect to claims for breach of fiduciary duty, such claims can be brought against the Crown for acts prior to September 1, 1963: *Restoule v Canada (Attorney General)*, 2020 ONSC 3932, 452 D.L.R. (4th) 604, at para. 79. However, in the present case, the breach of fiduciary duty claim has considerable weaknesses.

[95] In particular, “the law of fiduciary relations has been held not to be engaged in cases where, without dishonesty or intentional disloyalty, harm is done to persons in the legal care of the Crown”: *B.G.*, at para. 22, citing *K.L.B. v. British Columbia*, 2003 SCC 51, [2003] 2 S.C.R. 403, at paras. 48-50.

[96] Consequently, the claim for negligence is much stronger than the fiduciary duty claim. Ontario would have vigorously argued that “there is no evidence that the government put its own interests ahead of those of the children or committed acts that harmed the children in a way that amounted to betrayal of trust or disloyalty”: *K.L.B.*, at para. 50.

[97] For this reason, several other class actions in institutional abuse cases have recognized the weaknesses of fiduciary duty claims, and as such addressed claims for harms suffered before September 1, 1963 by either (i) excluding pre-September 1, 1963 claims from the class definition, (ii) settling a class action which includes pre-September 1, 1963 claims but excludes compensation for such claims, or (iii) settling a class action which includes pre-September 1, 1963 claims by awarding 50% of compensation for such claims.

[98] The proposed settlement in the present case provides compensation for pre-September 1, 1963 claims under Track I in the amount of \$5,000, simply by completing the necessary form. Such a result is clearly an improvement over the first two categories discussed at paragraph 97 above, in which no compensation was provided.

[99] I now briefly review the “50% compensation” cases, in which both negligence and fiduciary duty claims were made:

- (i) In *Dolmage v HMQ*, 2014 ONSC 1283, pre-September 1, 1963 claims were compensated by either a “Schedule A” payment (similar to the Track 1 in the present case) of \$2,000 or a 50% compensation of a “Schedule B” payment, which was capped at \$42,000 so pre-September 1, 1963 claims were limited to up to \$21,000.
- (ii) In *Seed v. Ontario*, 2017 ONSC 3534 and in *Welsh v. Ontario*, 2018 ONSC 3217 (“*Welsh* 2018”), there was no equivalent to the Track 1 claims in the present case. In both cases, pre-September 1, 1963 claims were compensated by a 50% compensation of a “Schedule B” payment, which was capped at \$45,000 so pre-September 1, 1963 claims were limited to up to \$22,500.

[100] In the present case, Ontario took a strong position that no fiduciary claims could be brought for pre-September 1, 1963 harm, given the case law cited above. Negligence claims for such time period would have been precluded under *PACA* 1963. It was reasonable for Ontario to take a strong

position that negligence claims pre-September 1, 1963 were statute-barred, and that the required elements to establish fiduciary duty would not be established, particularly given the claim based on systemic failure of policies and practice.

[101] Consequently, the settlement of pre-September 1, 1963 claims by payment of \$5,000 for a claim under Track 1 (by checking a box on a form) is within the zone of reasonableness of the exclusion of such claims on the one hand and 50% compensation of full claims on the other hand. The court could well have dismissed all claims of class members who had pre-September 1, 1963 claims, and the settlement reflects those risks as well as any risks Ontario may have considered with respect to the strength of their positions on the pre-September 1, 1963 claims.

4. Objections to Other Terms of the Settlement

[102] Two class members object to specific terms of the settlement, namely (i) the limited reductions to the settlement fund for "second" opt-outs, and (ii) the aggregate cap on the settlement amount.

a. Reductions to the settlement fund for second opt-outs

[103] The potential reductions to the settlement fund for opt-outs are required to offset Ontario's increased exposure to individual actions that may be commenced by class members who opt out following settlement approval. A reduction from the settlement fund of \$60,000 for each class member who opts out of the class action during the second opt-out period is reasonable, since the grid already allows for claims of up to \$100,000, and the damages available under an opt-out claim are not limited. Finally, there is a maximum reduction of \$6 million, regardless of how many class members opt out, which further protects the class members under the Settlement Agreement.

b. Capped settlement

[104] Capped settlements (with the potential for *pro rata* distribution) are the norm in Crown liability cases, particularly against Ontario: see *Yeo, Dolmage, Seed, and Welsh*. The alternative "claims-made" settlement model – where the defendant agrees to pay an uncapped amount to however many class members make successful claims – does not provide the necessary certainty Crown defendants generally require in allocating public funds. Ontario has never agreed to settle a class action on a claims-made basis for this reason.

5. The deduction of Class Counsel's requested legal fees from the settlement fund

[105] Two class members state Class Counsel's requested fee is unreasonable considering the result achieved, the risks faced, and the lengthy duration of the litigation. I address the reasonableness of Class Counsel fees below.

[106] One class member objects to Class Counsel's fee being deducted from the settlement fund, instead of being paid by Ontario over and above the settlement fund. While Class Counsel would

prefer to maximize compensation to the class, there is no legal basis for Class Counsel to negotiate for all legal fees being borne by the defendant, especially in a mediated outcome.

[107] This objection would ultimately undermine access to justice. Without contingency fee arrangements, which are the norm in class actions and personal injury litigation, important cases such as this one would not be brought: *Gallant v. The Roman Catholic Episcopal Corporation of Halifax*, 2022 NSSC 347, at para. 63.

6. The scope of the public acknowledgment

[108] Some class members objected to the scope of the proposed public acknowledgement by Ontario, including the sentence: “[w]e acknowledge and regret the harm that kids experienced in these institutions”. Those class members believe that Ontario should be required to admit legal liability for any damages suffered by the class members.

[109] Under s. 28 of the Settlement Agreement:

- (i) “[N]either the fact of, nor any provision contained in this Settlement Agreement or its Schedules, or any action taken hereunder, shall be construed as, offered in evidence as, and/or deemed to be evidence of a presumption, concession or admission of any kind by the parties of the truth of any fact alleged or the validity of any claim or defence that has been, could have been or in the future might be asserted in any litigation, Court of law or equity, proceeding, arbitration, tribunal, government action, administrative forum, or any other forum, or of any liability, responsibility, fault, wrongdoing or otherwise of any parties except as may be required to enforce or give effect to the Settlement and this Settlement Agreement”; and
- (ii) “For greater clarity, HMKO denies the truth of the allegations in the Action and denies any liability whatsoever.”

[110] In a settlement, it is a standard term that there is no admission of liability. If parties agree to resolve the claims, both parties are choosing to settle rather than having a court determine liability or damages.

[111] In the present case, an admission of liability would be inconsistent with the second opt-out right negotiated for class members. Ontario could not admit liability and then be required to face additional litigation without any ability to defend the second opt-out actions.

[112] Further, it is not reasonable to require an admission of liability as a term of settlement. There were significant risks in the present action to find liability and damages, and the parties should be commended for a hard-fought, arm’s length process that resulted in a settlement without lengthy litigation and appeals, avoiding the assessment of the merits of the parties’ positions.

[113] Finally, I find that the public acknowledgement is a strong statement. While not an admission of legal liability, the Ontario statement provides an explicit acknowledgement that “any abuse” is “wrong” and that Ontario “regret[s] the harm that kids experienced in these institutions”. The public acknowledgement is an important step towards moving forward and provides relief that could not be ordered by a court that would be limited to issues of liability, damages, and causation.

7. No “psychological harm” category of compensation

[114] A class member objected to the settlement on the basis that there is no compensation grid for psychological harm, such that either physical or sexual assault must be established.

[115] However, compensation for psychological harm is incorporated into the claims for physical and sexual assault under Track 2. Any class member who was the victim of such an assault can claim damages under those grids for the psychological harm arising from the impugned conduct.

[116] Further, under Track 1, there is no need to establish either physical or sexual assault. Any psychological harm suffered which does not meet the tests for physical or sexual assault can be compensated. A class member who suffered psychological harm but does not want to participate in the witnessed declaration process under Track 2 can claim under Track 1.

[117] All of the class members who spoke at the hearing provided the court with examples of physical and/or sexual abuse they suffered while at the Training Schools, which resulted in psychological harm. Those class members can receive compensation for their psychological harm as set out above.

[118] However, to the extent a class member believes that they suffered psychological harm without any physical or sexual assault, and seeks more than \$5,000 in compensation, such class member has the right to opt out of the settlement and bring a separate action.

8. The “claw back” objection

[119] One class member requests that individual settlement awards be exempt from taxation and “claw-backs” of pension benefits some class members may be receiving. However, s. 15 of the Settlement Agreement expressly characterizes individual settlement awards as compensation for general damages.

[120] General damages are not taxable and are not included in the calculation of income for the purposes of determining entitlement to Old Age Security and/or the Guaranteed Income Supplement: *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp), ss. 81(1)(g.1) and (g.2). See also Canada Revenue Agency Interpretation Bulletin IT-365R2.

9. Conclusion on objections

[121] For the above reasons, I do not accept that the objections support rejection of the Settlement Agreement when considered in the context of the Settlement Agreement as a whole and the benefits it provides to class members.

(vi) Conclusion on the settlement approval motion

[122] For the above reasons, I find that the Settlement Agreement is fair and reasonable and in the best interests of the class members.

Ancillary matters

[123] I approve the proposed notice plan, as it is a comprehensive approach to provide notice to the class members.

[124] I approve the appointment of Epiq as claims administrator given its significant experience, particularly in institutional abuse cases with trauma-informed claims processes.

Approval of Class Counsel fees and disbursements

[125] Class Counsel seeks the approval of a fee of 28.5% of the total settlement fund, to be deducted from the settlement fund and paid in two stages:

- (i) “Initial Counsel Fees” in the amount of \$17,376,833.38, inclusive of legal fees, taxes, and disbursements and calculated as \$15,354,910.06 (based on 28.5% of the fixed settlement amount (\$54 million) less costs already paid to Class Counsel, plus HST of \$1,996,138.31, plus disbursements of \$25,785.01, to be paid by the defendant to Class Counsel within thirty (30) days of the court approval date or within fourteen (14) days of the court's approval of the Initial Counsel Fees, whichever is later;
- (ii) “Second Counsel Fees” calculated as 28.5% of the sum total of the funds the defendant must pay above the fixed settlement amount (\$54 million), to be calculated in accordance with paragraph 7 of the Settlement Agreement following the expiry of the second opt-out deadline, plus HST, to be paid by the defendant to Class Counsel within forty-five (45) days of the second opt-out deadline.

[126] In addition to the fees and the unpaid disbursements of \$25,785.01, Class Counsel seek approval of the payment of the 10% levy to the Class Proceedings Fund (the “Fund”) as well as \$639,881.27 for disbursements made by the Fund that have not been repaid to it.

[127] I first review the relevant law and then apply the law to the present case.

The applicable law

[128] To determine if the class counsel fee is fair and reasonable, a court may consider (i) the factual and legal complexities of the matters dealt with, (ii) the risk undertaken, including the risk that the matter might not be certified, (iii) the degree of responsibility assumed by class counsel, (iv) the monetary value of the matters in issue, (v) the importance of the matter to the class, (vi) the degree of skill and competence demonstrated by class counsel, (vii) the results achieved, (viii) the ability of the class to pay, (ix) the expectations of the class as to the amount of the fees, and (x) the opportunity cost to class counsel in the expenditure of time in pursuit of the litigation and settlement: *Smith Estate v. National Money Mart Co.*, 2011 ONCA 233, 106 O.R. (3d) 37, at para. 80.

[129] For class proceedings legislation to achieve access to justice, behaviour modification and judicial economy, there must be counsel prepared to bring class actions and litigate them well: *Ford v. F. Hoffmann-La Roche Ltd.*, 2005 CanLII 8689 (Ont. S.C.), at paras. 59, 106.

[130] Courts have accepted that "a robust contingency fee system," which rewards class counsel "for the wins and losses over many files and many years of litigation" ensures that "the class action will continue to remain viable as a meaningful vehicle for access to justice": *Middlemiss v. Penn West Petroleum*, 2016 ONSC 3537, at para. 19.

[131] A contingency fee of up to 33% is presumptively valid: *Cannon v. Funds for Canada Foundation*, 2013 ONSC 7686, at para. 8.

[132] While a presumptive validity approach may lead to excess compensation in a "mega fund" case, the court must still consider the *Smith* factors, an appropriate multiplier, and any other relevant factors to assess the appropriate fee: *Fresco v. Canadian Imperial Bank of Commerce*, 2024 ONCA 628.

Application of the law to the present case

[133] I rely on the following factors to approve the fees and disbursements as reasonable:

- (i) The results achieved for the class members are excellent, considering the settlement amounts in similar institutional abuse cases and the trauma-informed claims process.
- (ii) The litigation risks faced by Class Counsel were significant, as discussed above.
- (iii) Class Counsel pursued the litigation to the doorstep of trial with a high level of skill and with no guarantee of receiving any payment.
- (iv) Over almost a decade, Class Counsel devoted 6,702.2 hours to this action, with a total value of \$3,144,322.43 to date. Based on extensive prior experience

implementing other institutional abuse settlements, it is estimated that a further \$2 million of legal fees will be incurred by Class Counsel to implement the settlement.

- (v) Class Counsel will continue to work on this case for years to implement the settlement, including communicating with class members and assisting them with their claims, overseeing the claims process, and providing direction to the claims administrator with the defendant.
- (vi) Including future time, Class Counsel will incur over \$5 million in fees, representing a multiplier of between 2.99 and 3.32. Either multiplier is well within the judicially accepted range, and reasonable given the work and risks undertaken, and success achieved.
- (vii) A review of the multiplier on Class Counsel's docketed time confirms there would be no windfall in approving Class Counsel's request. Cross-checking the percentage fee against a multiplier of counsel's docketed time can be a useful exercise in evaluating the reasonableness of the fee request: *Westwood v. TD Asset Management Inc.*, 2024 ONSC 6872, at para. 71.
- (viii) Courts have regularly endorsed multipliers between 2 to 4, and even greater than 5 in some cases: see *Cassano v. Toronto-Dominion Bank*, 2009 CanLII 35732 (Ont. S.C.), at para. 59; *Westwood*, at para. 71.
- (ix) The multiplier must not be so high "as to be unseemly so as to impact the integrity of the profession", but it "must also allow class counsel an incentive to obtain a multiple of their base fee": *David v. Loblaw*, 2025 ONSC 2792, at para. 46.
- (x) Only two class members have objected to the fee request.
- (xi) The retainer in this case provides Class Counsel will be paid 33% of any recovery in the event of judgment or a settlement. These terms are consistent with other retainer agreements approved by this court in institutional abuse cases, have presumptive validity, and are in line with the percentage typically charged in personal injury litigation.
- (xii) Even if considered a "mega fund" case (a settlement of \$60 million is on the edge of mega fund status), the proposed fee is reasonable; the hours and amount incurred were reasonable, as is the multiplier of approximately three.
- (xiii) Class Counsel's fee request of 28.5% represents a substantial reduction from the fee percentage provided for in the retainer. The lowered fee request represents a reduction of up to \$2,696,995.95 from the fee of 33% Class Counsel could have sought, which will inure to the benefit of the class.

- (xiv) Brown agreed to the contingency fee rates in the retainer agreement; is aware of the fees Class Counsel seeks; and believes the fee sought to be fair in the circumstances, based on Class Counsel's work, the risk Class Counsel took on in representing the class, and the results achieved for the class. Brown also believes that, had Class Counsel not taken on this action, class members would not have been able to advance their claims individually and never would have received the compensation and benefits to which they would be entitled under the Settlement Agreement.

[134] In its factum, Class Counsel provided a chart of almost 20 cases involving fee approval decisions. I accept counsel's summary of those cases in its factum:

A chart of relevant class action fee decisions is included as Schedule "D". As demonstrated by the cases included in the chart:

- (a) Fees greater than the 28.5% sought by Class Counsel here are commonly awarded in "late-stage" settlements, like this one.
- (b) The 28.5% contingency fee sought in this case is comparable to other class proceedings regarding institutional abuse, and other class proceedings that settled close to trial (see in particular *F. c. Frères du Sacré-Coeur*, 2021 QCCS 3621; *Martell v. Nova Scotia (Attorney General)*, 2026 NSSC 36; *Tidd v. New Brunswick*, 2023 NBKB 185; *Dadzie v. Ontario*, 2025 ONSC 6342; *Seed*; and *McKay v. Rowe et al.*, 2024 ONSC 1378.
- (c) Courts generally account for time that class counsel will spend implementing the settlement or concluding the common issues stage, including in calculating the multiplier. See in particular *Johnson* at para. 45; *C.S. v Ontario*, 2021 ONSC 6851, at para. 57; *Francis v. Ontario*, 2021 ONSC 4861, at para. 25; and *Redublo v. CarePartners*, 2022 ONSC 1398, at para. 90.

[135] I also agree with Class Counsel's submission that they should be awarded the requested contingency fee calculated on the full amount of the settlement fund (in two stages, as set out above), despite a possible reversion of some of the funds.

[136] In similar cases against government defendants (where class size estimates exist, adequate amounts are available through a simple claims process, and class counsel is committed to supporting class members in accessing those amounts), contingency fees have been awarded on the entire settlement fund, despite the possibility of reversion: see *Dadzie* (fees awarded on entire reversionary settlement fund of \$59 million); *Tidd* (\$17 million); *Weremy v. Manitoba*, 2023 MBKB 122 (\$17 million); *C.S.* (\$15 million); and *Welsh*, 2018 (\$15 million).

[137] Reversion provisions are the norm in class action settlements involving government defendants.

[138] In *Welsh* 2019, legal fees were approved on the entire reversionary settlement of \$15 million. Due to the idiosyncratic procedural history of that action, the fee approval hearing was heard after the claims process was complete. As such, it was already known when the fees were approved that there would be a significant reversion. Nonetheless, Justice Belobaba held that the correct approach is to apply the contingency percentage to the entire settlement fund.

[139] In institutional abuse cases against the government, settlement funds come from the public purse. Concerns about the overpayment of funds that could otherwise be allocated to other public services are central in settlement negotiations. Reversionary settlements balance the need to ensure sufficient funds are available to pay class members against the legitimate interest in preserving public funds for governmental functions: *Weremy* at para. 25.

[140] The fact that this "late stage" settlement was only achieved after nine years of hard fought litigation is also relevant. In *Gallant*, in approving a contingency fee on a reversionary settlement, the court referred specifically to "the significant contribution of professional time and disbursements by the Plaintiff's counsel and their demonstrated commitment to the interests of [the] class": at para. 70.

[141] Approving Class Counsel's fee calculated based on the entire settlement fund is fair and reasonable in the circumstances of this case. It is also consistent with the manner in which the Fund's statutory levy is calculated (based on the entire amount made available to the class members, rather than the amount distributed to them): see *Welsh*, 2019, at para. 35.

[142] Class Counsel devoted extensive time and resources to refining class size and claim rate estimates in negotiating the proposed settlement, and preparing a notice plan and compensation plan which would be accessible to the class. While some reversion may arise if the claims rate is lower than anticipated, this should not prejudice Class Counsel, who have achieved an excellent settlement with high claim values and an easy-to-access claims process. From a policy perspective, requiring that fees in reversionary settlements be tied to eventual claimants (which is an unknown factor that can only be estimated prior to settlement approval), may disincentivize counsel from taking on challenging cases against government actors.

[143] Finally, the disbursements in the amount of \$639,881.27 to be paid back to the Fund and the amount of \$25,785.01 for unpaid disbursements of Class Counsel are very reasonable for such lengthy litigation, mediation, and negotiation, particularly given the number of experts involved and the late stage settlement.

Conclusion

[144] For the above reasons, I find that the fees and disbursements sought by Class Counsel are fair and reasonable.

Honorarium approval

[145] I first review the applicable law and then apply that law to the present case.

The applicable law

[146] I summarize the relevant principles as follows:

- (i) "[H]onoraria should be reserved for exceptional cases where such an award will serve access to justice": *Fresco*, at para. 106.
- (ii) While honoraria are "not justified in all cases based upon access to justice...in some cases, the prospect of this additional payment may serve the purposes of class proceedings": *Doucet v. The Royal Winnipeg Ballet*, 2023 ONSC 2323, at para. 64.
- (iii) The following factors are relevant in determining whether to award an honorarium:
 - (a) The nature of the case, including whether the representative plaintiff brings forward a claim in which they expose themselves to re-traumatization for the benefit of the class.
 - (b) The nature of the remedies available for the cause of action asserted, particularly cases where even complete success would lead to only a tiny monetary remedy for each class member or none at all.
 - (c) The steps taken by the representative plaintiff, who must do more than taking an active role and fulfilling the normal steps required in class proceedings, [in] achieving a settlement. Exceptional circumstances include enduring significant additional personal or financial hardship in connection with the prosecution of the class proceeding.
 - (d) The rationale for the requested payment, which must not be added compensation for losses or damages that fall within the potential remedies available for the causes of action asserted in the claim itself or for the necessary steps to fulfill the responsibilities of a representative plaintiff.
 - (e) The exposure to a real risk of an adverse costs award.
 - (f) The quantum of the requested payment, which must be modest both in general terms and in relation to the remedies available to the class members in the settlement: *Doucet*, at para. 92.

Application of the law to the present case

[147] The nature of this action, and Brown's exposure to cross-examination and examination for discovery on the traumatic issues described above, justify an honorarium. Brown is to be commended for participating in a process which required him to re-live his traumatic experiences, while saving the other class members from having to do so. Under the *Doucet* test, an honorarium is appropriate.

[148] The quantum sought is consistent with the range considered by the court in *Doucet* (at para. 116), and comparable to honoraria approved in other actions, including cases decided after *Doucet*: *McKay* at paras. 64, 71 (\$15,000 honorarium in \$13.25 million abuse settlement); *Bonnick v. Krimker et al.*, 2025 ONSC 1151, at para. 90 (\$10,000 honorarium in \$17 million consumer protection settlement); *Vecchio Longo v. Aphria Inc.*, 2025 ONSC 1923, at paras. 23-25 (\$15,000 honorarium in \$30 million securities settlement); *Dufault v. The Toronto-Dominion Bank*, 2024 ONSC 961, at paras. 49-51 (\$10,000 honorarium in \$15.9 million consumer protection settlement); and *Westwood* at para. 97 (\$10,000 honorarium in \$70.25 million securities settlement).

[149] For the above reasons, I approve the honorarium request for Brown in the amount of \$15,000.

PIPEDA Motion

[150] The only issue in this motion is whether the court should exercise its authority to order that Class Counsel, as the holders of class members' private information, may disclose the Class Counsel Contact List to the OPGT and the PGT BC. I first review the applicable law and then apply it to the present case.

The applicable law

[151] One of the exceptions to the prohibition against disclosure in s. 7 of *PIPEDA* is contained in s. 7(3)(c). This provision allows for organizations to disclose personal information without knowledge or consent where that is "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".

[152] Section 12 of the *CPA* allows a court, whether on its own initiative or on a party's motion, to "make any order it considers appropriate respecting the conduct of a proceeding under this Act to ensure its fair and expeditious determination and, for the purpose, may impose such terms on the parties as it considers appropriate".

[153] Where justified in accordance with the objectives of the *CPA*, s. 12 empowers the court to make orders for the disclosure of personal information, satisfying the requirements of the exception in s. 7(3)(c) of *PIPEDA*. In *Airia Brands v. Air Canada*, 2016 ONSC 1371, the plaintiffs entered into a settlement with some of the defendant airlines but not others. The plaintiffs sought an order requiring the non-settling defendants to produce customer information, including names, contact information, and purchase amounts for intra-Canada air freight shipping services to the administrator, for "the limited purpose of providing notice and facilitating the claims administration process pursuant to the proposed distribution protocol": at para. 15.

[154] The court agreed, emphasizing "the production of this information is to fulfil the goals of a class proceeding and ensure access to justice to the class members and to ensure they benefit from the settlements": *Airia Brands*, at para. 26.

[155] Courts faced similar circumstances, issued similar orders, and provided similar rationales in *Nardi v. Sorin Group Deutschland GMBH*, 2022 ONSC 4126; *Sheridan Chevrolet v. Denso*, 2021 ONSC 3648; and *McDowell v. Fortress Real Capital Inc.*, 2024 ONSC 4780.

[156] These rationales are all based on ensuring that all class members can equally share in the access to justice gains of class proceedings. Access to justice, alongside behaviour modification and judicial economy, are the central goals animating the *CPA: Hollick v. Toronto (City)*, 2001 SCC 68, [2001] 3 S.C.R. 158, at paras. 27-28.

[157] To balance the privacy interests reflected in *PIPEDA*, courts have often insisted on requirements that personal information be kept secure and confidential. For instance, the order in *Nardi* forbade class counsel from disclosing the mailing lists or any information therein to anyone except for a court-appointed administrator. Class counsel was also forbidden from disclosing any class member's name or contact information in the court record without their consent: at para. 3

[158] In *Sheridan Chevrolet*, the defendants were ordered to produce customer information to an administrator—which had "signed a confidentiality agreement" and would imminently "implement security measures to safeguard this information"—for the limited purpose of providing class members with notice and access to the claims protocol: at para. 20.

[159] In *Airia Brands*, the administrator was ordered to maintain confidentiality of the information. The administrator was forbidden from disclosing any of it "except to the specific settlement class member to whom it relate[d]". Moreover, the administrator was required to delete the information and the report it prepared once the litigation concluded: at paras. 27-28.

Application of the law to the present facts

[160] Disclosing the Class Counsel Contact List requires court approval because the list contains personal information that Class Counsel collected in the course of their business and operations. Section 7 of *PIPEDA* provides that private organizations (such as law firms) who possess individuals' personal information may not disclose that information to others without those individuals' knowledge and consent, subject to certain exceptions.

[161] In the absence of any such list prepared by the defendant, the Class Counsel Contact List is the most comprehensive existing source of information as to who may be eligible for compensation under the settlement. Disclosure of the Class Counsel Contact List to the OPGT and the PGT BC would enable them to identify mentally incapable persons they represent and to submit claims on their behalf.

[162] Section 12 of the *CPA* exists to provide judges with sufficient flexibility to allow them to exercise their jurisdiction in ways that give effect to the central goals of class proceedings. If the OPGT and PGT BC cannot identify potentially eligible PGT Clients, those class members will not be able to access the justice this settlement promises.

[163] For the above reasons, I grant the order as sought.

Opt-in motion

[164] The evidence in paras. 55 and 56 above is uncontested. Due to medical difficulties, Feeney did not understand the consequences of his decision to opt out of the present class action. Feeney wishes to participate in the proposed settlement of the class action.

[165] In *Cannon v. Funds for Canada Foundation*, 2014 ONSC 2259 (“*Cannon*, 2014”), Justice Belobaba reviewed the applicable law to permit a person to opt in after a decision to opt out. He dismissed the request because there was “no suggestion that they did not see, read or understand the certification notice and the opt-out procedure”: at para. 14.

[166] Justice Belobaba adopted the analysis of the Court of Appeal in *11250264 Ontario Inc. v. Pet Valu Canada Inc.*, 2013 ONCA 279, 115 O.R. (3d) 653, at para. 41, that the decision to opt out must be informed and voluntary: *Cannon*, 2014, at para. 12.

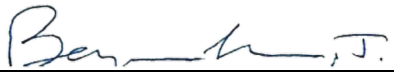
[167] In *Cannon* 2014, Justice Belobaba found no evidence of misinformation, misconduct, or undue influence: at para. 13. Further, a failure to obtain legal advice was not sufficient to support a finding that the opt out was made on an uninformed basis since the class members were distributors and financial advisors and as such “were not unsophisticated business people”: at para. 17. Therefore, the class members had an “individual responsibility to raise these concerns with class counsel, or obtain independent legal advice, or, at the very least, do some legal research whether at a library or on Google”: at para. 17.

[168] However, in the present case, there is no dispute that Feeney was misinformed about the consequences of the opt-out due to his medical condition. Consequently, he can rescind his opt out choice and opt back into the class. There is no effect on the integrity of the opt-out process if a class member legitimately does not understand the opt-out due to medical conditions and later seeks to be a member of the class. The class member in that case is not seeking to circumvent the opt-out process (by waiting to see the results of any settlement or judgment). Instead, he is seeking to participate as a class member as he was unable to make an informed decision at an earlier time.

[169] For the above reasons, I grant the motion.

ORDER AND COSTS

[170] For the above reasons, I grant the motions sought. Counsel has provided the court with draft orders which reflect the above reasons. Orders to go as per attached.



 GLUSTEIN J.

Date: 20260521

CITATION: Brown v. His Majesty the King in Right of the Province of
Ontario, 2026 ONSC 2880

COURT FILE NO.: CV-23-00704166-00CP

DATE: 20260521

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

WARRICK BROWN

Plaintiff

AND:

HIS MAJESTY THE KING IN RIGHT OF THE
PROVINCE OF ONTARIO

Defendant

REASONS FOR DECISION

Glustein J.

Released: May 21, 2026