

Federal Court



Cour fédérale

Date: 20250624

Docket: T-143-18

Citation: 2025 FC 1140

Ottawa, Ontario, June 24, 2025

PRESENT: The Honourable Mr. Justice Favel

CERTIFIED CLASS PROCEEDING

BETWEEN:

ANN CECILE HARDY AND CECIL HARDY

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

ORDER AND REASONS

I. Introduction

[1] This is a motion pursuant to Rule 334.29(1) of the *Federal Courts Rules*, SOR/98-106 [Rule(s)] to approve the February 28, 2025 Settlement Agreement [Settlement or Settlement Agreement] reached between the Plaintiffs and the Defendant.

[2] This Settlement is an historic agreement which compensates individuals who suffered mistreatment, including, but not limited to, physical and sexual abuse while admitted as patients at a Federal Indian Hospital [Indian Hospital]. The Settlement Agreement also provides non-compensatory benefits intended to raise awareness about the legacy of Indian Hospitals, as well as programming to directly support the health and wellbeing of individuals impacted by the harms of Indian Hospitals. It is the first settlement to address the abuses of Indigenous patients at Indian Hospitals.

[3] The Settlement Agreement is not intended to cover claims involving any hospitals or medical facilities other than the thirty-three (33) Indian Hospitals that the parties have agreed to. Nor is it intended to address claims connected to medical treatment received at an Indian Hospital [Medical Claims].

[4] The Plaintiffs now bring a motion for an Order:

- A. That the proposed Settlement Agreement be approved, and its terms given effect;
- B. Appointing Castlemain as provider of notice to the Class of Settlement Agreement approval and the Claims Process;
- C. Appointing Deloitte LLP as administrator of the Claims Process;
- D. Appointing Michael D. DeGagné to head the engagement process and develop a Foundation Plan pursuant to Section 2.02 of the Settlement Agreement; and
- E. Such further and other relief as counsel may request and this Honourable Court may deem just.

[5] For all the reasons outlined below, the Court finds the Settlement Agreement to be fair, reasonable, and in the best interests of the Class. The Court approves the Settlement Agreement.

II. Background

[6] The following is a brief summary of the historical and procedural background of this action.

A. *The Purpose and Structure of Indian Hospitals*

[7] In the 1920s and 1930s, the tuberculosis disease [TB] spread rapidly among Indigenous persons at a rate significantly exceeding that of non-Indigenous persons. The Indian Hospitals program was established under Canada's jurisdiction to isolate Indigenous patients diagnosed with TB to reduce its spread among non-Indigenous persons. Indian Hospitals were established as racially segregated TB facilities for the treatment of Indigenous people. They eventually operated as racially segregated general hospitals, admitting Indigenous patients suffering from all conditions. At all material times, admission to Indian Hospitals was exclusively based on Indigenous status.

[8] Between 1936 and 1981, Canada managed and controlled numerous Indian Hospitals throughout Canada. Indigenous patients experienced physical and sexual abuse while at these Indian Hospitals.

[9] In the 1920s and 1930s, Canada delivered healthcare to Indigenous people through the bureaucracy of the Indian Health Services, responsibility for which fell under the Department of

Indian Affairs. Though aspects of responsibility over Indigenous people's health changed hands within the Federal Government, Canada retained control and management of Indian Hospitals. This is what set the Indian Hospitals apart from similar healthcare institutions for Indigenous people and other Canadians.

[10] As part of the Settlement Agreement, the Parties finalized a list of thirty-three (33) Indian Hospitals with corresponding dates during which Canada exercised central control and management over each Indian Hospital.

B. *Brief Procedural History of the Action*

[11] On January 25, 2018, Ann Cecile Hardy [Ms. Hardy] filed a Statement of Claim in the Federal Court [Action], which was amended on January 14, 2019, and further amended on March 10, 2020, to include Cecil Hardy [Mr. Hardy] as a co-Plaintiff [together, the Plaintiffs]. The Plaintiffs also filed a Fresh as Amended Statement of Claim further particularizing the claims.

[12] Soon after the Action was commenced, three parallel actions advancing similar claims were commenced in Saskatchewan, Alberta and British Columbia. Given the national jurisdiction of the Federal Court, and to effectively advance the issues on behalf of a national class, counsel in these proceedings agreed to form a consortium to jointly advance these claims against Canada in the Federal Court. Koskie Minsky LLP [Koskie Minsky], Cooper Regel LLP [Cooper Regel], Merchant Law Group LLP [Merchant Law], and Klein Lawyers LLP [Klein] are class counsel [Class Counsel].

[13] On February 21, 2018, the Plaintiffs brought a motion to certify the Action as a class proceeding on consent; however, the Parties agreed to explore the possibility of a potential resolution, so the motion did not proceed. The Parties jointly developed a timetable for the completion of steps leading to a certification motion, and jointly amended the timetable to allow for discussions through processes of conference, and mediation.

[14] Ultimately, the Parties advised the Court that certification would be proceeding on consent. On December 10, 2019, the Plaintiffs filed a fresh certification record. The Court certified the Action as a class proceeding on January 17, 2020 [Certification Order], in respect of the following classes:

- A. Primary Class means all persons who were admitted to an Indian Hospital the Class Period (January 1, 1936 to December 31, 1981) [Primary Class Member];
and
- B. Family Class means all persons who are a spouse or former spouse, child, grandchild or sibling of the Primary Class and the spouse of a child, grandchild or sibling of a member of the Primary Class [Family Class Member].
[collectively, Class Members]

[15] The Court also certified the following common issues:

- A. Did Canada owe duties to Class Members in respect of Indian Hospitals?
- B. If the answer to A.) is yes, did Canada breach any of those issues?

[16] After the Action was certified, the Court appointed Ms. Hardy as representative Plaintiff of the Primary Class and Mr. Hardy as representative Plaintiff of the Family Class [collectively, Representative Plaintiffs].

[17] Over the course of several years, the Parties agreed to modify the steps in the proceedings in order to explore a possible resolution with the assistance of now retired Justices of the Ontario Court of Appeal and the Federal Court.

[18] The Action was successfully mediated by retired Federal Court Justice Michael Phelan. On December 13, 2024, the Parties reached an Agreement in Principle. The Parties finalized the Settlement Agreement on February 28, 2025. On March 6, 2025, the Minister of Crown Indigenous Relations and Northern Affairs [Minister] and Ms. Hardy jointly announced that a Settlement Agreement had been reached. The Parties also commenced negotiations concerning the legal fees to be paid to Class Counsel, reaching a fee settlement agreement on June 2, 2025 [Fee Agreement].

[19] Subsequent to reaching the Settlement Agreement, and before the Settlement Agreement was publicly announced, Class Counsel brought a motion to approve the Short and Long Form Notices of the Settlement Approval Hearing on June 10-11, 2025 [Notices], as well as a plan for the distribution of these Notices [Distribution Plan]. On March 6, 2025, after the Minister and Ms. Hardy's joint announcement, the Court approved the Notices and the Distribution Plan. Castlemain was appointed as administrator [Notice Administrator] to distribute the Notices, and it did so in accordance with the Court's orders. The Notices contemplated an opt-out period ending sixty (60) days after the Court's Order approving the Settlement Agreement.

C. *Experiences of Representative Plaintiff and Class Members*

[20] In the Action, the Representative Plaintiffs submit that Canada failed to provide the Primary Class Members with adequate care at Indian Hospitals. They submit that the Primary Class Members: suffered consistent physical and sexual abuse; were forcibly restrained to their hospital beds without any medical reason; were confined to unsanitary and dangerous facilities; and were treated by staff who were not adequately trained to provide the necessary health care services. Accordingly, they sought orders and declarations that Canada: breached its duty of care and acted negligently; breached its fiduciary duties; and is vicariously liable for the physical, sexual and psychological abuse inflicted on the Primary Class Members.

[21] Ms. Hardy filed affidavits in support of the certification and Settlement Approval, outlining the mistreatment she and the Primary Class suffered as patients at an Indian Hospital, including, but not limited, to psychological, verbal, physical and sexual abuse. These abuses were committed against Indigenous people by agents of the Defendant in Indian Hospitals that operated at a lower standard than hospitals providing care to the rest of the Canadian population. To say the system of Indian Hospitals caused individual, class-wide and intergenerational harm is an understatement.

[22] At the Settlement Approval Hearing, the Court heard from Ms. Hardy in-person, and Danita Bilazoze via Zoom. For brevity, and without minimizing the horrendous impact the Indian Hospitals system had on them personally, as well as their families, both explained the personal impacts and lasting trauma affecting them and their families as a result of the Indian

Hospitals. Both were courageous in telling their stories and expressed their support for the Settlement Agreement.

[23] The Plaintiffs submit that Canada was always responsible for the establishment, funding, oversight, operation, supervision, control, maintenance and support of Indian Hospitals. They maintain that Canada knew, or ought to have known, that in its fundamental role of facilitating Indian Hospitals, that its negligence would result in compensable physical and emotional harm to Primary Class Members.

[24] The Defendant did not file a Statement of Defence.

D. *Settlement Agreement: Key Provisions*

(1) General Overview

[25] Generally, the Settlement Agreement provides compensation to survivors of abuse at Indian Hospitals. It also provides non-compensatory remedies to Class Members, delivering increased and additional supports throughout the implementation of the Settlement Agreement, and honouring reconciliation regarding the legacy of the Indian Hospitals system. The Settlement Agreement provides non-compensatory benefits through a Foundation that will support healing, wellness, reconciliation, protection of languages, education and commemoration, as well as increased federal program funding.

[26] The stated intention of the Parties provided in the Settlement Agreement, demonstrates their shared commitment to “a fair, comprehensive and lasting settlement of abuse claims related

to [Indian Hospitals] and they further desire the promotion of healing, education, commemoration, and reconciliation” (Preamble, Article H).

[27] The key terms and provisions are set out below.

(a) *Class & Class Period*

[28] The Class includes (a) Primary Class Members and (b) Family Class Members [collectively, Class Members]. The Class Period runs from January 1, 1936, to the earlier of the following: the closure date of an Indian Hospital; the date on which management of an Indian Hospital was effectively transferred from Canada; or December 31, 1981.

[29] Individual compensation is only available to Primary Class Members. In order to be eligible, the Primary Class Member must have: (1) been admitted to an Indian Hospital during the Class Period; and (2) suffered abuse, including psychological, verbal, physical and/or sexual abuse, during their period of admission.

[30] As stated above, Medical Claims fall outside the Settlement Agreement and are not covered by its terms.

(b) *Class Member Support*

[31] Class Members will have access to existing Indigenous Services Canada [ISC] programming, information, and other supports (including trauma supports) for the duration of the Claims Process. Canada has also agreed to provide a \$150 million funding increase to ISC under

its existing programming, to support Class Members' health and wellness throughout the implementation of the Settlement Agreement (Section 11.01).

(c) *Prospective Relief*

[32] A Foundation will be established to support the Class Members, and their descendants, in an effort to promote healing, wellness, truth, reconciliation, protection of languages, cultures, commemoration and research, and to preserve the history of Indian Hospitals (Section 2.01(1)).

[33] The structure, activities, design and establishment of the Foundation will be informed by an Indigenous-led engagement process for consultation with external Indigenous stakeholders, including Class Members and Indigenous communities (Sections 2.02(1-2)). Canada will support this work and pay any reasonable expenses for the engagement, as well as the costs for developing the Foundation Plan (Sections 2.02(3-4)). The Foundation Plan shall be approved by the Court prior to the Foundation being established (2.02(7)).

[34] Oversight of the Foundation will be undertaken by a Board of Directors, not yet selected, who shall supervise the activities and affairs of the Foundation, including the management and disbursement of the Foundation's monies. Once established, the Foundation's expenses will be paid from its capital and investment income (Section 2.03).

[35] The Foundation will be supported through two distinct funds (Section 2.04):

- 1) The Healing Fund shall be used to support the healing, wellness, reconciliation, protection of languages, education, and commemoration activities of the Foundation (Section 2.04(1)(a)); and

- 2) The Research and Commemoration Fund shall be used to support the activities of the Foundation concerning research and education regarding Indian Hospitals, the preservation of the history of Indian Hospitals, and the locating of burial sites associated with Indian Hospitals (Section 2.04(1)(b)).

[36] Within 30-days of the Foundation's establishment, Canada has agreed to transfer \$150 million to the Foundation's trust account for the Healing Fund and \$235.5 million for the Research and Commemoration Fund (Sections 2.04(2-3)).

(d) *Retrospective Compensation*

[37] Damages for Primary Class Members will be subject to the specific circumstances of their claims. Five levels of compensation are set out in the Compensation Grid appended as a Schedule to the Settlement Agreement. For each claim, the incident(s) must have occurred while admitted at an Indian Hospital. Approved Claimants under Level 1 will receive \$10,000, Level 2 will receive \$50,000, Level 3 will receive \$100,000, Level 4 will receive \$150,000, and Level 5 will receive \$200,000.

(2) Claims Process

[38] The Claims Process is intended to be trauma informed, culturally sensitive, expeditious, cost-effective, user-friendly, and confidential. The Parties shall develop a trauma-informed, culturally safe process to aid Class Members during the Claims Process. Further to the goal of preventing re-traumatization of Class Members, the honesty and good faith of Claimants are assumed by the Settlement Agreement and the Parties (Section 3.02).

(a) *Class Member Damages*

[39] Claimants are required to establish, on a balance of probabilities, that they, or the individual on whose behalf the application was submitted, were admitted to an Indian Hospital during the Class Period. Once established, the Claimant's application for compensation under the Compensation Grid is eligible to be determined by the Claims Administrator [Eligible Claimant]. A Claims Protocol, to be developed by the Parties and approved by the Court, will set out the application requirements for a Claimant to be determined to be an Eligible Claimant (Section 3.03).

[40] Eligible Claimants shall have the balance of their application assessed by the Claims Administrator for compensation. Canada will not be involved in this stage of the process. Compensation will be paid to Eligible Claimants who have established verbal, psychological, physical and/or sexual abuse at an Indian Hospital, in accordance with the Compensation Grid, based on information received from the Eligible Claimant [Approved Claimant]. There is no limit or cap on Canada's total obligation to pay compensation to Approved Claimants. All compensation payable to Approved Claimants will be fully paid by Canada (Section 3.04).

[41] Claimants are expected to file their applications before the Claims Deadline, which is thirty (30) months after the Implementation Date (see the Interpretation section). In extraordinary circumstances, a Claimant may receive relief from the strict application of the Claims Deadline (Section 3.05).

[42] Canada will make its best efforts to obtain agreement of the provincial and territorial governments, as well as the necessary Departments of the federal government, that any payments

received under the Claims Process will not affect social benefits or social assistance benefits to an Approved Claimant (Section 3.09).

(b) *The Claims Administrator*

[43] The Claims Administrator's duties and responsibilities include:

- a) Developing, installing, and implementing systems, forms, information, guidelines, and procedures for processing and determining applications in accordance with the Settlement Agreement;
- b) Developing, installing, and implementing systems and procedures for making compensation payments in accordance with the Settlement Agreement;
- c) Providing, training, and instructing personnel in such reasonable numbers as are required for the performance of its duties;
- d) Keeping, or causing to be kept, accurate accounts of its activities and administration, preparing such financial statements, reports, and records as are required by the Court;
- e) Reporting to the Exceptions Committee and the Parties on a regular basis respecting:
 - i. Applications received and determined; and
 - ii. Applications qualified outside the class period.
- f) Responding to enquiries respecting applications; reviewing applications; making decisions in respect of applications; giving notice of decisions; and giving notice of deficiencies in an application, in accordance with the Settlement Agreement;

- g) Communicating with Claimants in English and French, as the Claimant elects, and if a Claimant expresses the desire to communicate in a language other than English or French, making best efforts to accommodate the Claimant; and
- h) Such other duties and responsibilities as the Court may from time to time direct.

[44] The Claims Administrator will be appointed by the Court on the recommendation of the Parties. Canada will pay all costs of the Claims Process, including those of the Claims Administrator and the Independent Reviewer (Sections 7.02-7.03).

(c) *Opting Out*

[45] Class Members have the right to opt out of the Action, in accordance with the procedures stipulated by the Court in the Approval Order and in accordance with the Settlement Agreement (Section 5.01).

[46] If the number of Primary Class Members opting out of the Action exceeds 10,000 individuals, this Settlement Agreement shall be void, and the Approval Order will be set aside in its entirety, subject only to the right of Canada, in its sole discretion, to waive compliance with this Section. Canada has the right to waive compliance with this provision at any time, but within no more than thirty (30) days after the end of the Opt-Out Period. The Opt-Out Threshold does not include opt outs filed by Family Class Members (Section 5.02).

(d) *Payments to Estate or Personal Representative*

[47] Where an Approved Claimant died on or after January 25, 2016, and an application had been submitted to the Claims Administrator prior to their death, or by their Estate Representative after their death, the Estate Representative shall be paid the compensation to which the deceased Approved Claimant would have been entitled under this Settlement Agreement as if the Approved Claimant had not died, even if they did not have a will (Section 6.01(1)).

[48] Individuals who may act as the Estate Representative of a deceased Primary Class Member will be set out in the Estate Protocol to be developed by the Parties in consultation with the Claims Administrator and approved by the Court (Section 6.01(2)).

[49] Primary Class Members who died before January 25, 2016, are not eligible for compensation under the Settlement Agreement (Section 6.01(3)).

[50] If a Primary Class Member who submitted an application is or becomes a Person Under Disability prior to their receipt of compensation, the Personal Representative of the Primary Class Member will be paid the compensation an Approved Claimant would have been entitled under this Settlement Agreement (Section 6.02).

[51] Canada, the Claims Administrator, the named Representative Plaintiffs, Class Counsel, the Independent Reviewer, the Exceptions Committee, and its members shall be held harmless from any and all claims, suits, actions, causes of action, or demands whatsoever by reason of or resulting from a payment to a Personal Representative or Estate Representative pursuant to this Settlement Agreement (Section 6.03).

(3) Reconsideration of Compensation Decisions

[52] An Eligible Claimant may seek reconsideration of their application by the Independent Reviewer (Section 3.06).

(a) *Independent Reviewer*

[53] The Independent Reviewer can refer an application to the Exceptions Committee if: 1) they require additional guidance or clarification to determine if an individual is an Eligible Claimant; 2) the harm described in the application is not contemplated in the Compensation Grid; or, 3) they are unable to determine that an Eligible Claimant is entitled to compensation, but the circumstances are such that they should receive compensation. The Independent Reviewer will write a written explanation for the referral to attach to the application being referred. A decision of the Independent Reviewer is final and binding upon all Parties, without any review, recourse, or appeal (Sections 3.07 – 3.08).

(b) *Exceptions Committee*

[54] The Exceptions Committee will be a monitoring body responsible for: monitoring the work of the Claims Administrator and Claims Process; receiving and considering reports from the Claims Administrator; giving guidance and clarification to the Claims Administrator; determining any disputes between the Parties in relation to implementation of the Settlement Agreement; considering any applications referred to it by the Independent Reviewer; and dealing with any other matter referred to the Exceptions Committee by the Court or Independent Reviewer (Section 8.01(6)).

[55] The Exceptions Committee will consist of four members appointed by the Court: 1) an individual that is a representative of the Class Members; 2) one member of Class Counsel who participated in the Settlement negotiations; 3) one of Canada's legal counsel who participated in the Settlement negotiations; and, 4) a former jurist, agreed to by the parties, who will sit as chair. If the Exceptions Committee is unable to reach an agreement, the former jurist shall cast the deciding vote (Sections 8.01(1-2)).

[56] Canada will pay the costs of the Class Members representative, as well as the former jurist appointed to the Exceptions Committee. Class Counsel are responsible for the costs of their own representative appointed to the Exceptions Committee (Sections 8.01(3-5)).

[57] The parties agree that any dispute in relation to the implementation of this Agreement will be determined by the Exceptions Committee. The decisions of the Exceptions Committee are final and binding (Sections 8.02-8.03).

[58] The Exceptions Committee will have no authority to determine matters other than as specifically set out in this Agreement and Claims Protocol. Subject to the Claims Protocol, the Exceptions Committee is not a further level of review, and has no jurisdiction to determine motions or applications of any kind from a Claimant or their counsel (Section 8.04).

(4) Supervisory Role of the Courts

[59] The Court retains jurisdiction over the Settlement Agreement. The parties agree that this Court is required to issue an Approval Order substantially in the form agreed to by the parties

(Section 4.01). The Court will also be required to approve certain matters during the implementation phase of the Settlement Agreement.

(5) Releases

[60] Class Members have not released, and are not deemed to have released, any Medical Claims. Class Members' Medical Claims are discontinued on a without prejudice basis as a term of the Settlement Agreement. The limitation periods for Medical Claims are suspended from the date the Action was filed, January 25, 2018, to the date on which the last of the proceedings listed in Section 9.05 of the Settlement are discontinued (Section 9.01).

[61] Respecting Primary Class Member Releases [Primary Class Releasor], the Court's Approval Order will declare that:

- a) Each Primary Class Releasor has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, equity, Quebec civil law and statutory liabilities, contracts, claims, and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses, and interest which any such Primary Class Releasor ever had, now has, or may hereafter have, directly or indirectly, arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the abuse claims relating to Hardy, and this release includes any such claim made or that could have been made in any proceeding, whether asserted directly by the Primary Class Releasor or by any

other person, group, or legal entity on behalf of or as representative for the Primary Class Releasor, with the exception of the Medical Claims which are discontinued and not released.

- b) For greater certainty, Primary Class Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute or the common law, equity, Quebec civil law in relation to the abuse claims in Hardy, the Primary Class Releasor will expressly limit those claims so as to exclude any portion of Canada's responsibility.
- c) Upon a final determination of an Application made under and in accordance with the Claims Process, Primary Class Releasors are also deemed to agree to release the parties, Class Counsel, Canada, the Claims Administrator, members of the Exceptions Committee and the Independent Reviewer with respect to any claims that arise or could arise out of the application of the Claims Process, including but not limited to the sufficiency of the compensation received. Primary Class Releasors are not deemed to release any claim arising from the preparation of their individual Applications as against the lawyer or lawyers retained to assist them in the preparation of the Application (Section 9.02).

[62] Respecting Family Class Member Releases [Family Class Releasor], the Court's Approval Order will declare that:

- a) Each Family Class Releasor has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of

action, common law, equity, Quebec civil law and statutory liabilities, contracts, claims, and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses, and interest which any such Family Class Releasor ever had, now has, or may hereafter have, directly or indirectly, arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the abuse claims in Hardy, and this release includes any such claim made or that could have been made in any proceeding, whether asserted directly by the Family Class Releasor or by any other person, group, or legal entity on behalf of or as representative for the Family Class Releasor, with the exception of the Medical Claims which are discontinued and not released.

- b) For greater certainty, Family Class Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute, common law, equity, or Quebec civil law, in relation to the abuse claims in Hardy, the Family Class Releasor will expressly limit those claims so as to exclude any portion of Canada's responsibility (Section 9.03).

[63] Within ninety (90) days of the Implementation Date, the Plaintiffs and Class Counsel in the following related proposed class proceedings will move to discontinue, or file a notice of discontinuance, as against Canada in the following actions:

- a) *Azak and Louie v. Attorney General of Canada* (Supreme Court of British Columbia, CFN: VLC-S-S-186736);
- b) *Pambrun v. Attorney General of Canada* (Court of King's Bench for Saskatchewan, CFN: QBG 1359/18);
- c) *Bull v. Attorney General of Canada* (Court of King's Bench of Alberta, CFN: QBG 1903.03109); and
- d) Any other existing related class actions concerning Indian Hospitals filed by one or more of the law firms comprising Class Counsel.

(Section 9.05)

[64] Importantly, in exchange for everything discussed above and as set forth in the Settlement Agreement, Class Members agree to release Canada in respect of any liability for abuse suffered at Indian Hospitals, except for Medical Claims (Section 1.12).

[65] At the Settlement Approval Hearing, no objections were submitted as to the approval of the Settlement Agreement.

(6) Legal Fees

[66] Subsequent to finalizing the Settlement Agreement, the Parties entered into a separate agreement for the legal fees, disbursements, and related taxes payable to Class Counsel for their past and future work in relation to the common issues on behalf of the class as a whole [Class Counsel Fees], and honoraria for the Representative Plaintiffs and the named Plaintiffs in the proceedings listed in Section 9.05 of the Settlement Agreement (Sections 10.01(1-2)).

[67] Class Counsel Fees will be paid by Canada. Class Counsel Fees will not be paid through the Settlement Agreement, the Healing Fund, nor the Research and Commemoration Fund.

[68] Approval of the Settlement Agreement is not contingent on approval of Class Counsel Fees. If the Court approves this Settlement, its provisions will come into effect on the Implementation Date regardless of the proceedings regarding Class Counsel Fees (Section 10.01(3)).

[69] If an Approved Claimant was assisted by a practising lawyer in good standing in any Canadian jurisdiction, and were approved by the Claims Administrator in accordance with a yet to be prepared Individual Legal Fees Protocol, Canada will pay the Approved Claimant's lawyer an amount of up to 5% of the Approved Claimant's award, inclusive of disbursements, plus applicable taxes, without additional Court approval (Section 10.02(1)). The Individual Legal Fees Protocol will include provisions for the Claims Administrator to conduct appropriate due diligence prior to issuing any such payment (Section 10.02(2)).

[70] In exceptional circumstances, Canada will pay up to an additional 5% of the Approved Claimant's award, inclusive of disbursements, plus applicable taxes for legal fees and/or disbursements provided such amount is approved by the Federal Court in accordance with Rule 334.4 and the Individual Legal Fees Protocol (Section 10.02(3)).

(7) Termination and Other Conditions

[71] This Settlement Agreement will continue in full force and effect until all obligations contained therein are fulfilled. Except as expressly provided in the Settlement, no amendment may be made to the Settlement unless agreed to by the Parties in writing and approved by the Court. The Court's approval is not required for non-substantive changes (Sections 12.01-12.02).

[72] No amount payable under the Settlement Agreement can be assigned, and any such assignment is null and void, except as expressly provided in the Settlement (Section 12.03(1)).

[73] Payment will be made to each Approved Claimant, or where an Approved Claimant is deceased or under a disability, to their Estate Representative or Personal Representative, by direct deposit or by cheque mailed to their provided address (Section 12.03(2)).

(8) Confidentiality

[74] Any information provided, created or obtained in the course of the Settlement Agreement will be kept confidential by the Parties, Class Counsel, the Claims Administrator, the Independent Reviewer, and the Exceptions Committee, except as required to be disclosed by law, and will not be used for any purpose other than as set out in the Settlement Agreement unless otherwise agreed by the Parties (Section 13.01(1)).

[75] Except as may otherwise be agreed between the Parties, the undertaking of confidentiality as to the discussions and all communications made in and surrounding the negotiations leading to the Agreement in Principle and the Settlement Agreement continues in force (Section 13.01(2)).

[76] The Claims Administrator will destroy all Claimants' information and documentation in its possession on a schedule beginning no sooner than two years after completing the compensation payments, in accordance with the Data Disposition Protocol to be developed by the Parties in consultation with the Claims Administrator and approved by the Court (Section 13.02).

(9) Cooperation

[77] Upon execution of this Settlement Agreement, the Representative Plaintiffs and Class Counsel will cooperate with Canada and make best efforts to obtain approval of this Settlement and to obtain the support and participation of Primary Class Members and Family Class Members in all aspects of this Settlement (Section 14.01).

[78] At the time agreed upon, the Parties will make public announcements in support of the Settlement Agreement and continue to speak publicly in favour of the Settlement Agreement (Section 14.02).

(10) Appeal Period

[79] Following approval of the Settlement, a Class Member may appeal the Order of the Court within thirty days. Under *Rule* 334.31(2), there is an additional thirty days for a Class Member to apply for leave to appeal to exercise the representative Plaintiff's right of appeal if no Representative Plaintiff commences an appeal within the first thirty days. This means that the earliest Implementation Date, as defined in the Settlement, is sixty (60) days from the Court's Order. Thereafter, the Settlement Agreement will become binding on all Class Members who have not opted out of the Action.

III. Issue

[80] The sole issue on this motion is whether the Settlement Agreement is fair and reasonable and in the best interests of the Class.

IV. Analysis

(1) Legal Framework

[81] *Rule 334.29* states that class proceedings may only be settled with the approval of a judge. The relevant test for settlement approval considers whether the Settlement is “fair and reasonable and in the best interests of the class as a whole” (*Merlo v Canada*, 2017 FC 533 at para 16; *Toth v Canada*, 2019 FC 125 at para 37; *Tk’emlúps te Secwépemc First Nation v Canada*, 2021 FC 988 at para 36 [*Tk’emlúps*]; *McLean v Canada*, 2019 FC 1075 at para 65 [*McLean*]). The appropriate approach that should inform a court’s application of the governing legal test was summarized in *Tk’emlúps*:

[37] The Court considers whether the settlement is reasonable, not whether it is perfect (*Châteauneuf v Canada*, 2006 FC 286 at para 7; *Merlo*, at para 18). Likewise, the Court only has the power to approve or to reject the settlement; it cannot modify or alter the settlement (*Merlo*, at para 17; *Manuge v Canada*, 2013 FC 341 at para 5).

...

[39] ...as noted in *McLean* (para 68), the proposed settlement must be considered as a whole and it is not open to the Court to rewrite the substantive terms of the settlement or assess the interests of individual class members in isolation from the whole class.

[82] Settlement rejection, however, requires the Court to conclude that the settlement does not fall within a zone or range of reasonable outcomes (*Dabbs v Sun Life Assurance Co of Canada*, 1998 CanLII 14855 (ONSC) at 440-44; *Haney Iron Works Ltd v Manufacturers Life Insurance Co*, 1998 CanLII 3085 (BCSC) at para 44). A zone of reasonable outcomes reflects the fact that settlements are a result of compromise, which “rarely give all parties exactly what they want” (*Nunes v Air Transat AT Inc*, 2005 CanLII 21681 (ONSC) at para 7 [*Nunes*]; *McLean* at para 9).

(2) Factors

[83] The Court should consider the following non-exhaustive factors when assessing whether a settlement is fair, reasonable, and in the best interests of the class (*Condon v Canada*, 2018 FC 522 at para 19; *Tataskweyak Cree Nation v Canada (Attorney General)*, 2021 FC 1415 at para 64 [*Tataskweyak*]; *McLean* at para 66; *Tk'emlúps* at para 38):

- a. The likelihood of recovery, or likelihood of success;
- b. The amount and nature of discovery, evidence, or investigation;
- c. The terms and conditions of the Settlement;
- d. The number of objectors and nature of objections;
- e. The presence of arm's length bargaining and the absence of collusion;
- f. The information conveying to the court the dynamics of, and the positions taken by, the parties during the negotiations;
- g. Communications with Class Members during litigation; and,
- h. The recommendation and experience of counsel.

[84] These factors are to be given varying weight depending on the circumstances (*McLean* at para 67). Not all factors need be considered, and no one factor is determinative, therefore I will combine factors (e) and (f). As above, the list of factors is also non-exhaustive, therefore, I add the following factors to my consideration: future expense and likely duration of litigation; and, recommendations of neutral third parties. The respective factors are addressed below.

(a) *The likelihood of recovery, or likelihood of success*

[85] Class Counsel outlined the risks associated with litigating the Action that created a high degree of uncertainty, particularly at the beginning of the proceeding. Those risks included, but are not limited to: the novelty of the claims; delays due to appeals; possible defences raised against Canada; limitation periods; and evidentiary issues associated with proving semi-historical wrongs where documentation is lacking.

[86] I agree with Class Counsel. It is fair to say the likelihood of success was uncertain. As pointed to by Class Counsel, there were gaps in documentation that would have made it difficult to process individual claims. If Class Counsel successfully established the first common issue, there would be significant evidentiary hurdles to establish that Canada breached its duties. Furthermore, Class Members would be required to testify, and would be subject to cross-examination, which could be highly re-traumatizing. Significant and ongoing human costs are associated with litigation of this kind. Additionally, novel claims pose significant challenges for litigants (*Tk'emlups* at para 41).

[87] Overall, I am of the view that, as in *McLean*, this is a “case which cries out for settlement” (*McLean* at para 79). The Settlement Agreement eliminates the risks associated with evidentiary burdens required for these claims, and greatly reduces delay for Approved Claimants to receive the damages owing. Plainly, this Settlement Agreement simplifies the compensation process, enhances access to justice, and most importantly, provides funding to Class Members who have been harmed by the Indian Hospital system. This factor weighs heavily in favour of approving the Settlement Agreement.

(b) *The amount and nature of discovery, evidence, or investigation*

[88] Over the entire course of the Action, Class Counsel consulted with one another, with the Class, and engaged the Defendant in extensive mediation. Unlike other Indigenous Class Actions, such as Indian Residential Schools or Day Schools, there were no enrolment records retained by Canada. With the assistance of experts, conference topics canvassed throughout this process included determination of Class size, and development of the Indian Hospitals list. The conference process and discussions on these issues necessitated adjusting and modifying the timetables previously established by the Court and the Parties.

[89] The conferencing and mediation undertaken by the Parties with the assistance of experts, also: enabled Class Members to serve extensive affidavit evidence for the initial certification motion; facilitated the filing of a fresh certification record in December 2019, leading to the Certification Order in January 2020; and, subsequent to the Certification Order, facilitated the production and investigation of extensive archival documents, helping the experts to determine Class size.

[90] When discussions stalled, the Court set a timetable for the delivery of Canada's Statement of Defence and the motion for an approval of notice of certification hearing. The Court granted Canada's motion to extend the filing of Canada's Statement of Defence and rescheduled the certification hearing. After protracted discussions, the date for delivery of the Statement of Defence was extended several times, and further mediations occurred. Ultimately, this process led to the Agreement in Principle, followed by the Settlement Agreement.

[91] This Court is satisfied that Class Counsel made great efforts to gather relevant facts, assess liability and damages, and obtain a clear understanding of the strengths and weaknesses of the Action. This factor weighs in favour of approving the Settlement Agreement.

(c) *The Terms and conditions of the Settlement*

[92] It is this Court's view that this Settlement Agreement contains significant features that "underpin its fairness[.]" including:

- The relief contemplated is not just compensatory in nature;
- Prospective relief is facilitated within a timeline;
- Compensation for Class Members is relative to the abuse(s) and/or harm(s) suffered in an Indian Hospital;
- With respect to individual Claimants,
 - The paper-based claims process will be simple;
 - The burden of proof is low;
 - Claims are assessed through a harms grid;
 - There is a presumption of the Claimants truthfulness and good faith;
 - All reasonable inferences must be drawn in favour of Claimants; and
 - Given these features, there is a lower likelihood of re-traumatization.

(*McLean* at para 107; *Tk'emlups* at para 49; *Riddle v Canada*, 2018 FC 641 at para 36).

- The Claims Administrator is "experienced and renowned" (*McLean* at para 107);

- Legal fees are not payable from the settlement funds, meaning that Class Counsel is not reducing or removing any of the Class Members financial remedies (*Tk'emlups* at para 51);
- Legal fees were negotiated after the Settlement was reached, ensuring that “the issue of legal fees did not inform or influence” the terms of Settlement (*Tk'emlups* at para 51); and,
- The release is proportionate to the claims being resolved in this Action.

[93] On balance, the benefits of the Settlement Agreement outweigh the concessions made by Class Members. The Court agrees with Class Counsel, these concessions are tough compromises. The Settlement Agreement offers significant benefits for the Class Members and certainly falls within the zone of reasonableness. This factor weighs in favour of approving the Settlement Agreement.

(d) *The future expense and likely duration of litigation*

[94] Absent a settlement and considering the novel nature of the claims advanced in the Action, it is reasonable to expect a long, involved, and expensive litigation course. The issues presented in this case are likely questions of significant and general public importance as a whole. It is not outside the realm of possibility that certain issues in this claim would have been appealed, further protracting litigation.

[95] The expected future expenses and likely duration of the litigation weigh in favour of approving the Settlement Agreement.

(e) *The recommendations of neutral third parties*

[96] For the purposes of Settlement approval, the Parties retained two actuarial experts to determine the Class size: Peter Gorman for Canada, and Jill Wagman for the Plaintiffs. This assisted the mediation process and ultimately assisted the Parties in reaching the Settlement. This factor weighs in favour of approving the Settlement Agreement.

(f) *The number of objectors and nature of objections*

[97] At the point of the Settlement Agreement approval hearing, no objections have been raised. This demonstrates the suitability of the Settlement Agreement to the Class, and weighs in favour of its approval.

(g) *The presence of arm's length bargaining, absence of collusion, and the positions taken by the parties during the negotiation*

[98] In this case, it is appropriate to address these factors together. The positions taken by the Parties during the negotiation establishes the presence of arm's length bargaining and absence of collusion. The fact that it has taken seven years, and many mediation and conference sessions, to reach an Agreement in Principle, followed by a Settlement Agreement, confirms the presence of arm's length bargaining and absence of collusion. This factor weighs in favour of approving the Settlement Agreement.

(h) *Communication with Class Members*

[99] The Court approved the Settlement Notices and Distribution Plan on March 6, 2025. The Notice Administrator distributed the Notices as set out in the Distribution Plan. Class Counsel

provided evidence that they communicate regularly with the Class through the Class Counsel database.

[100] Ms. Hardy confirmed in her statement to the Court that she was in regular contact with Class Counsel, stating they consulted her at every step of the proceeding.

[101] Overall, the Court is satisfied that Class Counsel provided a “robust, clear and accessible” notice of the Settlement to potential Class Members (*Tk’emlups* at para 72). This factor weighs in favour of approving the Settlement Agreement.

(i) *The recommendations and experience of counsel*

[102] Overall, Class Counsel submit that the Settlement Agreement addressed the Representative Plaintiffs’ litigation objectives (*Tk’emlups* at para 73). The Court was provided with the extensive class action experience of each member of the Class Counsel consortium. The Court is satisfied that the Class is well represented, and has been well advised throughout the process leading to the Settlement Agreement. Ms. Hardy’s evidence in this regard was also indicative of her positive views about the experience of Class Counsel. This factor weighs in favour of approving the Settlement Agreement.

V. Conclusion

[103] For the above reasons, this Court concludes that the Settlement Agreement is fair, reasonable, and in the best interests of the Class. Accordingly, the Settlement Agreement is approved.

ORDER in T-143-18

THIS COURT ORDERS that:

1. The Settlement, including the schedules thereto, is hereby incorporated into this Order in its entirety;
2. The definitions set out in the Settlement apply in this Order;
3. The Settlement is fair, reasonable, in the best interests of the Class Members, and is hereby approved;
4. This Order is binding on all Primary Class Members and Family Class Members, including Persons Under Disability, unless they have opted out on or before the expiry of the Opt-Out Period;
5. The Opt-Out Period shall expire on August 23, 2025, being the date which is sixty (60) days from the date of this Order;
6. On the expiry of the Opt-Out Period no Class Members, save and except those who have opted out on or before expiry of the Opt-Out Period, may commence proceedings against Canada seeking compensation or other relief arising from the claims released by Sections 9.02-9.03 of the Settlement;
7. The plaintiffs and their counsel in the proceedings listed in Section 9.05 of the Settlement Agreement will obtain (or seek approval of) discontinuances as against Canada forthwith;
8. The Class Members' Medical Claims are hereby discontinued on a without prejudice basis as a term of the Settlement Agreement, and that the limitation periods for such claims are suspended from the date the action was filed, January

25, 2018, to the date on which the last of the proceedings listed in Section 9.05 of the Settlement Agreement is discontinued;

9. Each Primary Class Releasor has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, equity, Quebec civil law and statutory liabilities, contracts, claims, and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses, and interest which any such Primary Class Releasor ever had, now has, or may hereafter have, directly or indirectly, arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the abuse claims relating to Ms. Hardy, and this release includes any such claim made or that could have been made in any proceeding, whether asserted directly by the Primary Class Releasor or by any other person, group, or legal entity on behalf of or as representative for the Primary Class Releasor, with the exception of the Medical Claims which are discontinued and not released;
10. For greater certainty, Primary Class Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute or the common law, equity, Quebec civil law in relation to the abuse claims relating to Ms. Hardy, the Primary Class Releasor will expressly limit those claims so as to exclude any portion of Canada's responsibility;

11. Upon a final determination of an Application made under and in accordance with the Claims Process, Primary Class Releasors are also deemed to agree to release the Parties, Class Counsel, Canada, the Claims Administrator, members of the Exceptions Committee and the Independent Reviewer with respect to any claims that arise or could arise out of the application of the Claims Process, including but not limited to the sufficiency of the compensation received. Primary Class Releasors are not deemed to release any claim arising from the preparation of their individual Applications as against the lawyer or lawyers retained to assist them in the preparation of the Application;
12. Each Family Class Releasor has fully, finally and forever released Canada, her servants, agents, officers and employees, from any and all actions, causes of action, common law, equity, Quebec civil law and statutory liabilities, contracts, claims, and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses, and interest which any such Family Class Releasor ever had, now has, or may hereafter have, directly or indirectly, arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to the abuse claims relating to Mr. Hardy, and this release includes any such claim made or that could have been made in any proceeding, whether asserted directly by the Family Class Releasor or by any other person, group, or legal entity on behalf of or as representative for the Family Class Releasor, with the exception of the Medical Claims which are discontinued and not released;

13. For greater certainty, Family Class Releasors are deemed to agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against Canada for damages or contribution or indemnity and/or other relief over, whether by statute, common law, equity, or Quebec civil law, in relation to the abuse claims relating to Mr. Hardy, the Family Class Releasor will expressly limit those claims so as to exclude any portion of Canada's responsibility;
14. Castlemain (the "Notice Provider") is hereby appointed to administer Notice in accordance with the terms outlined in the Settlement Agreement;
15. Deloitte LLP (the "Claims Administrator") is hereby appointed to administer the Claims Process in accordance with the duties as outlined in the Settlement Agreement; and
16. Michael D. DeGagne is hereby appointed to lead the engagement process and develop a Foundation Plan pursuant to Section 2.02 of the Settlement Agreement. Pursuant to Section 2.02(3), Canada will support the work of the Engagement Facilitators by paying reasonable expenses, in accordance with Treasury Board policies, for the costs of the engagement.

"Paul Favel"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-143-18

STYLE OF CAUSE: ANN CECILE HARDY AND CECIL HARDY v THE
ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JUNE 10 AND JUNE 11, 2025

ORDER AND REASONS: FAVEL J.

DATED: JUNE 24, 2025

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