

SUPERIOR COURT
(Class Action)

CANADA
PROVINCE OF QUEBEC
DISTRICT OF
CHICOUTIMI

No.: 150-06-000007-138

DATE: July 30, 2018

THE HONOURABLE CARL LACHANCE, J.S.C., PRESIDING

"All persons who have paid, as parents, tutors or assigns, for their children registered in one of the schools forming part of one of the educational institutions of the respondents, costs for educational services ... and for the purchase of textbooks or instructional materials, mandatory or optional, required for the teaching of programs of studies of elementary and secondary education, as well as costs for reference and reading material from the 2009-2010 school year, except for the ten (10) school boards listed at paragraph 20. i, ii, iii, iv, v, vi, x, xii, xiii and xv, from the 2008-2009 school year until the judgment date, that are not affected by the exception contemplated by section 7 of the Education Act (RSQ, c. I-13.3), subject to certain reservations with respect to the Commission scolaire des Samares for which the following clarifications should be made:

♦ With respect to the Commission scolaire des Samares, all of the matters that were the subject of the discontinuance recorded in the minutes of the hearing dated February 27, 2012 in the court record 705-06-000005-109 of the Superior Court of the district of Joliette will be excluded from the claim."

Class

-and-

DAISYE MARCIL

Representative Plaintiff

(Collectively referred to as the "Plaintiffs")

v.

COMMISSION SCOLAIRE DE LA JONQUIÈRE
-and-
COMMISSION SCOLAIRE DES AFFLUENTS
-and-
COMMISSION SCOLAIRE DES APPALACHES
-and-
COMMISSION SCOLAIRE DE LA BAIE-JAMES
-and-
COMMISSION SCOLAIRE DE LA BEAUCE-ETCHEMIN
-and-
COMMISSION SCOLAIRE DES BOIS-FRANCS
-and-
COMMISSION SCOLAIRE DE LA CAPITALE
-and-
COMMISSION SCOLAIRE CENTRAL QUÉBEC
-and-
COMMISSION SCOLAIRE DE CHARLEVOIX
-and-
COMMISSION SCOLAIRE DU CHEMIN-DU-ROY
-and-
COMMISSION SCOLAIRE DES CHÊNES
-and-
COMMISSION SCOLAIRE DES CHICS-CHOCS
-and-
COMMISSION SCOLAIRE AU CŒUR-DES-VALLÉES
-and-
COMMISSION SCOLAIRE DE LA CÔTE-DU-SUD
-and-
COMMISSION SCOLAIRE DES DÉCOUVREURS
-and-
COMMISSION SCOLAIRE DES DRAVEURS
-and-
COMMISSION SCOLAIRE EASTERN SHORES
-and-
COMMISSION SCOLAIRE EASTERN TOWNSHIPS
-and-
COMMISSION SCOLAIRE DE L'ÉNERGIE
-and-
COMMISSION SCOLAIRE ENGLISH-MONTRÉAL
-and-
COMMISSION SCOLAIRE DE L'ESTUAIRE
-and-
COMMISSION SCOLAIRE DU FER
-and-
COMMISSION SCOLAIRE DU FLEUVE-ET-DES-LACS

-and-
COMMISSION SCOLAIRE HARRICANA
-and-
COMMISSION SCOLAIRE DES HAUTES-RIVIÈRES
-and-
COMMISSION SCOLAIRE DES HAUTS-BOIS-DE-L'OUTAOUAIS
-and-
COMMISSION SCOLAIRE DES HAUTS-CANTONS
-and-
COMMISSION SCOLAIRE DES ÎLES
-and-
COMMISSION SCOLAIRE DE KAMOURASKA-RIVIÈRE-DU-LOUP
-and-
COMMISSION SCOLAIRE DU LAC-ABITIBI
-and-
COMMISSION SCOLAIRE DU LAC-SAINT-JEAN
-and-
COMMISSION SCOLAIRE DU LAC-TÉMISCAMINGUE
-and-
COMMISSION SCOLAIRE DES LAURENTIDES
-and-
COMMISSION SCOLAIRE DE LAVAL
-and-
COMMISSION SCOLAIRE LESTER-B.-PEARSON
-and-
COMMISSION SCOLAIRE MARGUERITE-BOURGEOYS
-and-
COMMISSION SCOLAIRE MARIE-VICTORIN
-and-
COMMISSION SCOLAIRE DE MONTRÉAL
-and-
COMMISSION SCOLAIRE DES MONTS-ET-MARÉES
-and-
COMMISSION SCOLAIRE DE LA MOYENNE-CÔTE-NORD
-and-
COMMISSION SCOLAIRE DES NAVIGATEURS
-and-
COMMISSION SCOLAIRE NEW FRONTIERS
-and-
COMMISSION SCOLAIRE DE L'OR-ET-DES-BOIS
-and-
COMMISSION SCOLAIRE DES PATRIOTES
-and-
COMMISSION DU PAYS-DES-BLEUETS
-and-
COMMISSION SCOLAIRE DES PHARES
-and-

COMMISSION SCOLAIRE PIERRE-NEVEU
-and-
COMMISSION SCOLAIRE DE LA POINTE-DE-L'ÎLE
-and-
COMMISSION SCOLAIRE DES PORTAGES-DE-L'OUTAOUAIS
-and-
COMMISSION SCOLAIRE DE PORTNEUF
-and-
COMMISSION SCOLAIRE DES PREMIÈRES-SEIGNEURIES
-and-
COMMISSION SCOLAIRE DE LA RÉGION-DE-SHERBROOKE
-and-
COMMISSION SCOLAIRE RENÉ-LÉVESQUE
-and-
COMMISSION SCOLAIRE DE LA RIVERAINE
-and-
COMMISSION SCOLAIRE RIVERSIDE
-and-
COMMISSION SCOLAIRE DES RIVES-DU-SAGUENAY
-and-
COMMISSION SCOLAIRE DE LA RIVIÈRE-DU-NORD
-and-
COMMISSION SCOLAIRE DE ROUYN-NORANDA
-and-
COMMISSION SCOLAIRE DE SAINT-HYACINTHE
-and-
COMMISSION SCOLAIRE DES SAMARES
-and-
COMMISSION SCOLAIRE DE LA SEIGNEURIE-DES-MILLE-ÎLES
-and-
COMMISSION SCOLAIRE SIR-WILFRID-LAURIER
-and-
COMMISSION SCOLAIRE DES SOMMETS
-and-
COMMISSION SCOLAIRE DE SOREL-TRACY
-and-
COMMISSION SCOLAIRE DES TROIS-LACS
-and-
COMMISSION SCOLAIRE DU VAL-DES-CERFS
-and-
COMMISSION SCOLAIRE DE LA VALLÉE-DES-TISSERANDS
-and-
COMMISSION SCOLAIRE WESTERN QUÉBEC

Defendants

**JUDGMENT ON AN APPLICATION FOR APPROVAL OF A TRANSACTION AND
APPROVAL OF ATTORNEYS' PROFESSIONAL FEES AND DISBURSEMENTS
(Articles 590 and 593 CCP)**

INTRODUCTION AND CONTEXT

[1] On December 6, 2016, by judgment confirmed on appeal on April 13, 2017, and rectified on May 24, 2017, the Court authorized the institution of a class action against the Defendants, and appointed Ms. Daisye Marcil as Representative Plaintiff of the members of the following class (the "**Class**"):

"All persons who have paid, as parents, tutors or assigns, for their children registered in one of the schools forming part of one of the educational institutions of the respondents, costs for educational services ... and for the purchase of textbooks or instructional materials, mandatory or optional, required for the teaching of programs of studies of elementary and secondary education, as well as costs for reference and reading material from the 2009-2010 school year, except for the ten (10) school boards listed at paragraph 20. i, ii, iii, iv, v, vi, x, xii, xiii and xv, from the 2008-2009 school year until the judgment date, that are not affected by the exception contemplated by section 7 of the *Education Act* (RSQ, c. I-13.3), subject to certain reservations with respect to the Commission scolaire des Samares for which the following clarifications should be made:

With respect to the Commission scolaire des Samares, all of the matters that were the subject of the discontinuance recorded in the minutes of the hearing dated February 27, 2012 in the court record 705-06-000005-109 of the Superior Court of the district of Joliette will be excluded from the claim."

[2] Prior to this authorization, the following steps had been taken:

- The filing on July 9, 2013 by Ms. Daisye Marcil of a [TRANSLATION] *Motion for authorization to institute a class action and to be the representative* (articles 1002 and following, CCP) (the "**Application for Authorization**") against the Defendants.
- The prior filing by the attorneys *ad litem* for the Plaintiffs of 15 other applications for authorization in related class actions alleging that various school boards had violated the principle of free education provided for in the *Education Act*¹ (the "**EA**") and the *Charter of Human Rights and Freedoms*² (the "**Charter**") (the "**Related Matters**").
- On October 9, 2014, ten (10) of the Related Matters were stayed because of the scope of this class action, the other five (5) Related Matters having previously been discontinued without costs for the same reason.

¹ CQLR, c. I-33.

² CQLR, c. C-12.

[3] On June 22, 2017, the Representative Plaintiff filed an [TRANSLATION] *Application to Institute a Class Action and Obtain an Order for the Disclosure of Documents* (the "**Originating Application**") alleging that the Defendants' schools invoiced the Class members or required them to pay fees for educational services and for the purchase of textbooks or instructional materials, mandatory or optional, required for the teaching of elementary and secondary programs of studies, as well as fees for reference and reading material (the "**Fees for Educational Services and Materials**"), the whole in violation of the principle of free education as provided for in the *EA* and in the *Charter*.

[4] On May 9, 2018, after lengthy negotiations, an agreement in principle was reached, followed on June 28, 2018, by a transaction between the Representative Plaintiff and all the Defendants entitled: [TRANSLATION] *Transaction in the Class Action for compensatory damages for fees for educational services and for the purchase of school materials* (the "**Agreement**").

[5] By judgment dated June 18, 2018, the Court approved the form, content and distribution protocol for the French version of a notice informing Class members of the hearing for the approval of the Agreement, in accordance with article 590 of the *Code of Civil Procedure* (the "**CCP**").

[6] The Attorneys for the Plaintiffs established to the Court's satisfaction that the French and English versions of the notice to members were both substantially distributed in accordance with the protocol approved by the Court on June 18, 2018.

THE FINAL SETTLEMENT AGREEMENT

[7] It provides as follows.

[8] The full and final settlement of any dispute arising directly or indirectly from the facts and costs mentioned in the proceedings instituted in this class action for the school years 2009-2010 to 2018-2019 (for the ten Defendants identified in paragraph 20 i, ii, iii, iv, v, vi, x, xii, xiii and xv of the Authorization Judgment (the "**Ten School Boards**", the other Defendants being referred to herein as the "**Other School Boards**") and school years 2010-2011 to 2018-2019 (for the Other School Boards).

[9] The Plaintiffs undertake to file discontinuances in the Related Matters that are currently stayed, and the Defendants undertake to accept such discontinuances without costs.

[10] The Class members will give full and final release, in principal, interest, costs and additional indemnity, to the Defendants, in respect of any dispute arising directly or indirectly from the facts and costs mentioned in the proceedings instituted in this class action, for school years 2008-2009 to 2018-2019 inclusively, without admission of liability.

[11] The Defendants shall pay, *pro rata* to the number of students each one represents for school years 2009-2010 to 2016-2017 (for the Ten School Boards) and school years 2010-2011 to 2016-2017 (for the Other School Boards) (the "**Compensated Years**") a total collective recovery amount of \$153,507,134 [the "**Global Settlement Fund**", divided into 68 separate settlement funds, i.e., one settlement fund for each of the Defendants ("**Individual Defendant's Settlement Fund**")].

[12] The Global Settlement Fund will pay to each Class member who has not opted out and has not waived individual compensation for all compensatory damages claimed in this class action the difference between (a) a lump sum of \$28.49 per student per school year, for each of the Compensated Years; and (b) the Class member's share of the professional fees and disbursements of the Plaintiffs' attorneys, to be approved by the Court (the "**Net Individual Compensation**").

[13] The Defendants shall pay in addition to, and separately from, the Global Settlement Fund, the costs of distributing Net Individual Compensation and the costs of publishing notices to members, which will not be deducted from members' individual compensation.

[14] Each Defendant may elect to (a) entrust the administration of the distribution of Net Individual Compensation for which it is responsible to an external administrator specializing in the distribution of individual compensation indemnities approved by the Representative Plaintiff; or (b) distribute the Net Individual Compensation itself (in each case, an "**Administrator**"); in the latter case, under the supervision and verification of an external auditor specializing in the distribution of individual compensation indemnities and conducting audits (the "**Auditor**").

[15] In all cases, Net Individual Compensation shall be distributed by mailing a cheque for an amount equal to the Net Individual Compensation relating to a particular student, calculated over all the Compensated Years in the case of that student, to the Class member(s) identified by the Defendants or their schools as the parent(s) or guardian(s) in the student's file (the "**Parents/Guardians**"), who will have 180 days to cash the cheque from the date of issuance thereof.

[16] Net Individual Compensation will be automatically distributed to the Parents/Guardians, who will be contacted, without any requirement for them to make a claim or to be proactive.

[17] The Class members may however indicate a change of address on a website created for them (the "**Notifications Site**") within 45 days of publication of the notice informing members of the Court's approval of the Agreement.

[18] Class members will have access both to information on the Agreement and the automatic distribution process through the Administrator, who will be responsible for responding to their requests for information in English and in French and through the Notifications Site and explanations accompanying the cheques distributed.

[19] The automatic distribution of Net Individual Compensation pursuant to the Agreement shall take place no later than 265 days after the date on which this judgment becomes *res judicata*, subject to the possibility of an additional period not exceeding 60 days should the parties to the Agreement consent thereto or should the Court authorize it upon presentation of serious grounds.

[20] For school years 2017-2018 and 2018-2019, that will not be the subject of Net Individual Compensation, the Class members have been compensated by the supplement of \$100 per child aged 4 to 16 on September 30 of each school year that the Quebec government undertook to pay automatically to parents in order to assist families with the purchase of school supplies (the "**School Supplies Supplement**").

[21] The tabling in the Quebec National Assembly on June 7, 2018, of a Minister of Education, Recreation and Sports (MERS) directive on free educational services, compulsory textbooks and instructional materials and financial contributions for school, day care and transportation services for students attending a school board school entitled "*Directive du ministre de l'Éducation, du Loisir et du Sport relativement à la gratuité des services éducatifs, des manuels scolaires et du matériel didactique requis et aux contributions financières exigibles pour des services de garde en milieu scolaire et des services de transport pour des élèves qui fréquentent une école d'une commission scolaire*" (the "**Directive on Free Educational Services**") [available in French only], which clarifies the application of the principle of free education that will benefit Class members for the future, provides, for example, the following:

[TRANSLATION]

WHEREAS the educational services referred to in section 3 of the *Education Act*, provided for in the school calendar for students established by the school board under section 238 of that Act, may include outings and educational activities that, as a result, are also covered by the right to free education.

WHEREAS educational activities organized by a school's governing board, pursuant to section 90 of the *Education Act*, do not constitute educational services, but rather community services for which the governing board may require a financial contribution from student users or their parents;

WHEREAS entitlement to free educational services extends to everything incidental thereto and hence should include admission to the school board, enrollment in the school or a particular program, registration for, and the administration of ministry, school board or

school examinations, including, as the case may be, the retaking of a ministry examination, the certification of studies and the issuance of a diploma, a certificate or an attestation prescribed in the *Education Act* or the *Basic school regulation for preschool, elementary and secondary education*;

...
WHEREAS the second and third paragraphs of section 7 [of the Act] are exceptions to the right to free use of textbooks and instructional materials provided for in the first paragraph of that section and, consequently, should be interpreted restrictively;

WHEREAS other items of the same nature as pencils and paper, which are not covered by the right to free use of textbooks and instructional materials provided for in the first paragraph of section 7 of the *Education Act*, should correspond to items currently used in a school that are inexpensive, such as rulers, erasers and tubes of glue;

WHEREAS specialized items, which are generally costly, required for the teaching of program studies should not be covered by any of the exceptions to the principle of free use of the instructional materials required for the teaching of program studies and, therefore, the costs thereof should not be claimed from students or their parents;

[22] Payment of the School Supplies Supplement for school years 2017-2018 and 2018-2019 by the Quebec government and issuance of the Directive on Free Educational Services by the Minister of Education, Recreation and Sports (the "MERS") were fundamental Agreement implementation considerations.

[23] The Defendants, who are now bound by the Directive on Free Educational Services, undertake not to substantially increase the fees charged to parents for the 2018-2019 school year, except in accordance with the Directive.

[24] The balance of an Individual Defendant's Settlement Fund will consist of Net Individual Compensation (a) the distribution of which has been deemed impracticable, inappropriate or too onerous, as the Class members concerned cannot be reached; or (b) not cashed within the prescribed time.

[25] After the distribution of part of the balance to the Fund, pursuant to the *Act respecting the Fonds d'aide aux actions collectives*,³ the remaining amounts will be allocated to a separate budgetary item to be established by each Defendant and will be used exclusively to assist students with financial needs, in accordance with criteria to be determined by the Defendants, which may include, for example, low family income, single parenting or parents with low parental academic achievement, all for the purpose of providing support to parents and improving the educational experience.

³ CQLR, c. F-3.2.0.1.1

ANALYSIS AND REASONS FOR DECISION

I – APPROVAL OF TRANSACTION

[26] Article 590 *CCP* states the following with respect to the approval of a transaction:

590. A transaction, acceptance of a tender, or an acquiescence is valid only if approved by the court. Such approval cannot be given unless notice has been given to the class members.

In the case of a transaction, the notice must state that the transaction will be submitted to the court for approval on the date and at the place indicated. It must specify the nature of the transaction, the method of execution chosen and the procedure to be followed by class members to prove their claim. The notice must also inform class members that they may assert their contentions before the court regarding the proposed transaction and the distribution of any remaining balance. The judgment approving the transaction determines, if necessary, the mechanics of its execution.

[27] In *Option Consommateurs*,⁴ the Court of Appeal highlights the seven criteria for analyzing an application for approval as follows:

- The likelihood that the action will succeed;
- The extent and nature of the evidence to be adduced;
- The anticipated cost and duration of the action;
- The nature and number of objections to the transaction;
- The recommendations of counsels and their degree of experience;
- The good faith of the parties and the absence of collusion;
- The modalities, terms and conditions of the transaction.

Note 22 [sic]: In some cases, where applicable (which is not the case here), the recommendations of a third party may also be relevant (for example: an accountant, an actuary, etc.).

[28] Let us now examine each of these criteria in relation to the case at hand.

A) THE LIKELIHOOD THAT THE ACTION WILL SUCCEED

[29] The Representative Plaintiff believes that this class action has a good probability of success in law, but submits to the Court that there is some uncertainty due to the fact that (a) there is no significant case law for the sections of the *EA* upon which the case is based; and (b) the Defendants have a solid defence.

⁴ *Option Consommateurs c. Banque Amex du Canada*, 2018 QCCA 305, at para. 25.

[30] According to the Plaintiffs' attorneys, there is a risk that this class action, which, due to its nature and magnitude, has attracted the attention of the Quebec government and has been discussed in the media by it, could be rendered moot by the adoption of special legislative measures which could, for example, exonerate the Defendants from any liability for their past practices.

[31] If this occurs, Class members will not be compensated for any of the Fees for Educational Services and Instructional Materials they paid.

[32] In addition, it must not be forgotten that a trial in this complex case would have required a great deal of evidence that would have been very long and difficult to adduce.

[33] In our opinion, the Agreement is a remarkable result considering the assessment of the lawyers of their respective chances of success.

[34] The Defendants' grounds of defence, as referred to by one of their lawyers, were solid. For example:

- The relative immunity of public bodies if they interpret the law in good faith;
- The items claimed are part of the parents' obligation to support their children;
- The accommodation measures taken by school boards to ensure free education for underprivileged children;
- The user pays principle.

[35] The Court believes that the outcome was hard to predict.

B) THE EXTENT AND NATURE OF THE EVIDENCE TO BE ADDUCED

[36] Holding a trial in this class action would have required the administration of voluminous and complex documentary and testimonial evidence, both for the Plaintiffs and the Defence, since the Representative Plaintiff is suing the Defendants for events that occurred in more than 2,240 schools with more than 720,000 elementary and secondary school students attending on average every school year.

[37] There are approximately 42,000 separate school lists for each of the school years covered by this class action, and the Defendants believe that each of them could be subject to debate regarding the application of the principle of free education.

[38] In all likelihood, the holding of a trial could require the examination of several dozens or even hundreds of witnesses, in addition to requiring the preparation of several complex,

expensive and prolonged expert reports, including one by PricewaterhouseCoopers LLP ("PwC"), to analyze the relevant data and calculate the quantum of damages suffered by Class members.

C) THE ANTICIPATED COST AND DURATION OF THE ACTION

[39] It seems very likely that a trial might not take place for many years, given the delays associated with the administration of the above-described evidence, as well as multiple incidental applications, preliminary hearings and appeals that are likely to arise as part of the case preparation.

[40] Although it is difficult to estimate the duration, this class action would likely require a trial lasting several months, the mere holding of which would lead to considerable costs for each of the parties and result in costs and delays for the administration of justice more generally.

[41] It is realistic to believe that the final judgment would be appealed, possibly to the Supreme Court of Canada, regardless of the decision rendered.

[42] The continuation of the proceedings would entail considerable delays and costs, whereas it would be in the interest of Class members to be compensated as soon as possible, and all parties have an interest in knowing the total amount of compensation to be paid to Class members as soon as possible.

D) THE NATURE AND NUMBER OF OBJECTIONS TO THE TRANSACTION

[43] On May 10, 2018, certain principles of the Agreement were disclosed to the public by the media.

[44] In addition, the Notice announcing to the members that a hearing to approve the Agreement would be held contained all the information necessary to allow any Class member wishing to oppose the approval of the Transaction to do so.

[45] No one submitted an objection to the Court.

[46] The *Fédération des comités de parents du Québec* (the Québec Federation of Parents' Committees) was favourable to the issuance of the Directive on Free Educational Services [and] the Agreement, considering that the latter was [TRANSLATION] "welcome" and that [TRANSLATION] "the parents' demands [had] been heard by those in charge of the education system".⁵

[47] On July 16, 2018, the *Fonds d'aide aux actions collectives* (class action assistance fund) (the "Fund"), duly notified, indicated to attorneys Manon Lechasseur and Yves Laperrière (the "Attorneys *ad litem* for the Plaintiffs") that it took note of the allegations in their application for approval and their undertaking to reimburse the Fund the \$92,179.61 in financial assistance that was granted to them, and that it had no further comments to make on the applications.⁶

E) THE RECOMMENDATIONS OF COUNSEL AND THEIR DEGREE OF EXPERIENCE

[48] The Court finds that the Plaintiffs' attorneys have a great deal of experience, which is amply demonstrated by their achievements in their respective careers.

[49] The Plaintiffs' attorneys have spent more than 11,295 hours in the past seven (7) years on this class action and the Related Matters, giving them a thorough knowledge of the issues raised and the risks associated with the continuation of the dispute.

[50] The Plaintiffs' attorneys recommend that the Court approve the Agreement, submitting that it provides significant benefits to the Class members and is fair, reasonable and in the best interests of Class members.

[51] We consider their recommendation fully acceptable.

F) THE GOOD FAITH OF THE PARTIES AND THE ABSENCE OF COLLUSION

[52] The good faith of the parties is presumed according to article 2805 CCQ:

2805. Good faith is always presumed, unless the law expressly requires that it be proved.

[53] There is no doubt of this in the present case.

[54] There is no sign of collusion between the parties.

⁵ Press releases by the *Fédération des comités de parents du Québec*, dated May 18, 2018 and June 7, 2018, Exhibits AT-19 and AT-7.

⁶ Letter dated July 16, 2018 from Frikia Belogbi, Fund Secretary, to the Attorneys *ad litem* for the Plaintiffs, Exhibit AH-10.

[55] It should also be noted that the Defendants are of the opinion that the Agreement is fair, reasonable and in the interest of the Class members, in addition to being desirable in order to resolve the entire dispute and to avoid inconvenience as well as the allocation by the Defendants' schools of significant administrative resources to continue with the dispute.

[56] We also note that the presence in this matter of the Defendants, legal persons established in the public interest, as parties to the Agreement "*provides significant reassurance that the terms and conditions of the Agreement correctly reflect reality and are justified in the circumstances*", as noted by the decision of the Superior Court in *Picard*.⁷

G) THE MODALITIES, TERMS AND CONDITIONS OF THE TRANSACTION

[57] The Agreement is advantageous for Class members in terms of the extent of their recovery, the logistics of allocating the recovered amounts and the simplicity and speed of distributing the compensation to Class members.

[58] According to the risk analysis carried out by the Defendants, they were exposed to an average risk of \$37.99, before taxes, per student per school year.

[59] The conformity of the results of the risk analysis conducted by the Defendants with the methodology they chose was validated by PwC, which arrives at a lower average risk than the Defendants for the sample it analyzed and the extrapolation of the detected deviation (indicative only) results in an average risk of \$34.81, before taxes, per student per school year.

[60] These analyses are based on a relatively inclusive interpretation of the principle of free education, and they do not take into account the significant difficulties and risks associated with the continuation of this class action and several factors, including depreciation factors that were not part of the above-mentioned analyses, which might suggest that their results are overestimated.

[61] The individual compensation of \$28.49 provided for in the Agreement corresponds to 0.75 times the amount of \$37.99 and 0.82 times the adjusted amount of \$34.81.

[62] The Defendants' acceptance of the payment of individual compensation only 18% to 25% less than their own evaluation (which did not take into account several depreciation factors) is, in the circumstances, an excellent result, since the Class members will recover a significant portion, if not all, of the Fees for Educational Services and Materials paid during the Compensated Years.

⁷ *Picard c. Québec (Attorney General)*, 2011 QCCS 7095, at para. 65.

[63] Class members with a number of children will receive several hundred dollars in net compensation.

[64] In addition, Class members obtain a significant advantage by quickly benefiting from uniform individual compensation distributed automatically during 2019, since comparable compensation which is as easily available would not have been assured if the class action had gone to trial.

[65] The compensation of the Class members is much more advantageous than that offered by the transaction approved by Justice Carole Julien, JSC, in the *Laferrière* class action,⁸ based on the violation of the principle of free education but involving the charging of more limited amounts.

[66] The School Supplies Supplement and the Directive on Free Educational Services are significant benefits for Class members even though their economic value cannot be accurately quantified.

[67] The method of distributing the recovered amounts seems logical and reflects reality, since (a) the Parents/Guardians are considered by the Defendants to be responsible for the payment of invoices issued by their schools for a student; and since (b) compensation of the Parents/Guardians varies in proportion to the number of children attending the Defendants' schools and the length of time they attended.

[68] The use of a portion of the balance of an Individual Defendant's Settlement Fund exclusively to assist students in financial need also makes sense and is in keeping with the spirit of this class action, as these students are likely to be particularly affected by the charging of Fees for Educational Services and Materials because of their social condition.

[69] The automatic distribution of the Net Individual Compensation is straightforward, does not require any action on the part of the members, unless they wish to report a change of address, and will be carried out quickly given the circumstances of such a complex class action.

[70] The vast majority of Class members should be compensated by automatic distribution only, since the Defendants have stated and assured the Representative Plaintiff that they have contact information for the vast majority of the Parents/Guardians and have committed to taking all reasonable steps necessary to find the contact details of the Class members that they do not currently have for the purpose of distributing the Net Individual Compensation for their children.

[71] The costs of setting up a subsidiary individual payment process would not be

⁸ *Laferrière c. Commission scolaire des Grandes-Seigneuries*, 2011 QCCS 4372.

proportional to the resulting benefits given the number of Class members, which is probably close to unprecedented in Quebec.

[72] On this subject, we share the opinion Justice Carole Julien expressed as follows in the Laferrière case:⁹

[TRANSLATION] [14] It should be noted that the Commission manages the public funds paid by taxpayer dollars, which includes several Class members. The parties have found a way to identify the claimants and ensure a fair distribution of the agreed amounts. Requiring the parties to agree on new arrangements for identifying excluded students is too onerous and the result is uncertain. The sending of letters to the students on the Commission's lists throughout the period in question has already resulted in a large amount of undeliverable mail.

[15] The parties estimate the cost of publishing new notices to be approximately \$15,000 to \$20,000 to identify a limited number of students who could obtain around \$34 each. These costs would be deducted from the sums available to all members.

[16] It is in the members' interest to apply and respect the proportionality of the means used compared to the benefit likely to result from those means. This equation favours the agreement as worded despite the disadvantages it involves.

[73] Each of the Defendants is offered the flexibility to choose between two modes of administering the distribution of individual compensation, which promotes efficiency and cost savings.

[74] The possibility of certain Defendants administering the distribution of Net Individual Compensation themselves appears appropriate in the circumstances, since it will be done under the supervision and verification of the Auditor, a neutral and disinterested third party.

II – CONCLUSIONS ON THE ANALYSIS OF CRITERIA

[75] The Court concludes that the seven criteria established under existing case law are satisfied to allow the approval of the Transaction.

III – APPROVAL OF FEES

[76] Let us now examine the Transaction from the perspective of the Plaintiffs' attorneys' fees.

[77] Article 593 *CCP* reads as follows:

593. The court may award the representative plaintiff an indemnity for disbursements and an amount to cover legal costs and the lawyer's professional fee. Both are payable out of the

⁹ See *supra* note 8, at paras. 14 to 16.

amount recovered collectively or before payment of individual claims.

In the interests of the class members, the court assesses whether the fee charged by the representative plaintiff's lawyer is reasonable; if the fee is not reasonable, the court may determine it.

Regardless of whether the Class Action Assistance Fund provided assistance to the representative plaintiff, the court hears the Fund before ruling on the legal costs and the fee. The court considers whether or not the Fund guaranteed payment of all or any portion of the legal costs or the fee.

[78] Case law clearly defines the criteria that must guide the Court in this exercise, which are described as follows by the Court of Appeal in *Banque Amex*:¹⁰

[60] In class actions, there is no doubt that the duty of reviewing the professional fees of counsel for the class representative rests with the court, which must assess whether the fees are fair and reasonable, justified by the circumstances and proportional to the services rendered ...

...

[64] The *Code of Civil Procedure* does not set out criteria or factors to be used in evaluating whether professional fees are fair and reasonable, but the *Professional Code*, the *Act respecting the Barreau du Québec* and the regulations adopted pursuant to these laws do.

[65] Sections 101 and 102 of the *Code of Professional Conduct of Lawyers* provide: ...

101. L'avocat demande et accepte des honoraires et des débours justes et raisonnables.

Il en est de même des avances demandées au client.

101. A lawyer must charge and accept fair and reasonable fees and disbursements.

The same applies to advances he asks the client to provide.

¹⁰

See *supra* note 4.

102. Les honoraires sont justes et raisonnables s'ils sont justifiés par les circonstances et proportionnés aux services professionnels rendus. L'avocat tient notamment compte des facteurs suivants pour la fixation de ses honoraires:

- 1° l'expérience;
- 2° le temps et l'effort requis et consacrés à l'affaire;
- 3° la difficulté de l'affaire;
- 4° l'importance de l'affaire pour le client;
- 5° la responsabilité assumée;
- 6° la prestation de services professionnels inhabituels ou exigeant une compétence particulière ou une célérité exceptionnelle;
- 7° le résultat obtenu;
- 8° les honoraires prévus par la loi ou les règlements;
- 9° les débours, honoraires, commissions, ristournes, frais ou autres avantages qui sont ou seront payés par un tiers relativement au mandat que lui a confié le client.

102. The fees are fair and reasonable if they are warranted by the circumstances and proportionate to the professional services rendered. In determining his fees, the lawyer must in particular take the following factors into account:

- (1) experience;
- (2) the time and effort required and devoted to the matter;
- (3) the difficulty of the matter;
- (4) the importance of the matter to the client;
- (5) the responsibility assumed;
- (6) the performance of unusual professional services or professional services requiring special skills or exceptional speed;
- (7) the result obtained;
- (8) the fees prescribed by statute or regulation; and
- (9) the disbursements, fees, commissions, rebates, costs or other benefits that are or will be paid by a third party with respect to the mandate the client gave him.

[66] The general principles and analytical framework relevant to whether professional fees are fair and reasonable flows from the consideration of these factors. In this context, fee agreements enjoy a presumption of validity and will only be set aside if applying them would not be fair and reasonable for the class members in the context of the transaction being reviewed. As for the multiplier model, it is a tool for evaluating whether fees are reasonable.

[79] The fee agreement between the Representative Plaintiff and the Attorneys *ad litem* for the Plaintiffs provides for the payment by the Representative Plaintiff of [TRANSLATION] "extrajudicial fees on the following basis, plus taxes in all cases":

[TRANSLATION] **twenty-five** per cent (25%) of the total sums received for or by [the Representative Plaintiff] in any form, less the reimbursement of extrajudicial disbursements and regardless of the legal fees paid by the opposing party.¹¹

¹¹ Terms of reference and fee agreement dated July 9, 2013 between Daisye Marcil and attorneys Manon Lechasseur and Yves Laperrière, Exhibit AH-1.

[80] This percentage is in the range of between 20% and 25% of the result obtained, which is generally accepted by the courts, as pointed out by Justice André Prévost in *Pellemans*,¹² so that the fee agreement benefits from the presumption of validity recognized by the Court of Appeal in a recent judgment.¹³

[81] The Attorneys for the Plaintiffs, however, proposed, on their own initiative and without being requested to do so by the Representative Plaintiff or the Defendants, to reduce their fees by more than half and to seek approval of fees amounting to \$18,675,356.70, in addition to reimbursement of disbursements incurred and applicable taxes.

[82] These fees result from application to the Global Settlement Fund of the following decreasing percentages: (a) 25% for the portion between \$0 and \$10,000,000; (b) 15% for the portion between \$10,000,001 and \$100,000,000; and (c) 5% for the portion greater than \$100,000,001.

[83] The disbursements incurred by the Attorneys for the Plaintiffs amount to \$2,217,870.27 and include a financing charge for this class action of \$2,100,000, incurred through IMF Bentham Ltd.

[84] The Representative Plaintiff agreed to this financing, without which the Attorneys *ad litem* for the Plaintiffs submit to the Court that they could never have conducted this class action.

[85] Justice Claudine Roy, in *Marcotte*,¹⁴ said that such financing fees are reimbursed by the members out of the amounts collectively recovered, over and above the lawyers' fees.

[86] We share the view of Justice Roy, which applies in this case. Financing had to be obtained in order to continue moving forward.

A. FACTORS UNDER THE *CODE OF PROFESSIONAL CONDUCT OF LAWYERS*

[87] Let us now examine the factors listed in the *Code of Professional Conduct of Lawyers*.

I. THE RESULT OBTAINED

[88] The lawyers for the Class believe that the Agreement, of which the terms and conditions are described above, is an excellent result for the Class members. The Court

¹² *Pellemans c. Lacroix*, 2011 QCCS 1345, at paras. 53, 55 and 57.

¹³ See *supra* note 4, at para. 66.

¹⁴ *Marcotte c. Banque de Montréal*, 2015 QCCS 1915.

shares this view for the reasons set forth below.

[89] The Plaintiffs' attorneys have been commendably effective in achieving these significant results less than 19 months after the Authorization Judgment and less than 15 months after the Appeal Judgment.

ii. **EXPERIENCE**

[90] The Plaintiffs' attorneys have several decades of experience in the practice of law.

[91] The Attorneys *ad litem* for the Plaintiffs, through their involvement in the class action and in the Related Matters since 2011, have likely developed a high level of expertise in the area of education law.

[92] The Court recognizes the experience of Davies Ward Phillips & Vineberg LLP (the "**Of Counsel to the Plaintiffs**"), and in particular the considerable legal and political experience of Mtre Lucien Bouchard, an able and experienced negotiator, and the particular expertise in class actions and public and regulatory law of Mtre Jean-Philippe Groleau, who has given several conferences on these areas of law.

iii. **THE TIME AND EFFORT REQUIRED AND DEVOTED TO THE MATTER**

[93] The Plaintiffs' attorneys spent considerable time and effort conducting this case, and between 2011 and 2014, they worked on the Related Matters, and collectively spent more than 11,295 hours since 2011 (see Exhibits AH-3 and AH-5 [TRANSLATION] "Records of hours worked").

[94] This amount of work appears reasonable, particularly in that (a) the Agreement was reached after authorization of this class action, which was the subject of a strongly contested debate both in Superior Court and the Court of Appeal; (b) the Plaintiffs' attorneys collected and analyzed a significant amount of evidence in support of the Application for Authorization, applications for authorization in the Related Matters, and the Originating Application (including thousands of school lists); (c) they continued their fact-finding after the Authorization Judgment and spent many hours working with PwC in connection with the preparation of the Expert's Report; (d) several incidental proceedings and applications were filed as the case proceeded both before and after the Authorization Judgment; (e) a significant amount of time was spent in preparing notices and communication with Class members, especially to answer their questions; (f) the Plaintiffs' attorneys conducted major legal research on a number of legal issues raised or likely to arise in connection with this class action; and (g) the negotiations leading to the conclusion of the agreement in principle and the Agreement and the drafting of the Agreement also required significant time and effort.

[95] The Attorneys *ad litem* for the Plaintiffs devoted the essential part of their professional practice on a daily basis over the past seven years to this class action and the Related Matters (see Exhibit AH-6 [TRANSLATION] "Sworn Statement").

[96] In addition to the work already performed, the Plaintiffs' attorneys submitted that they must spend significant time and effort to complete the additional work that will be required in connection with the implementation of the Agreement, for which a fee of \$500,000, representing 1,000 hours at an average hourly rate of \$500, is included in the fees and disbursements for which they are seeking approval.

[97] The Plaintiffs' attorneys also submit that it is fair and reasonable, since they are asking, on their own initiative, for substantially less than the fees agreed upon in the fee agreement, to reserve their right to request, within 30 days of receiving the Interim Report provided for in the Agreement, the approval of additional fees and disbursements if they are required to devote more than \$500,000 to the implementation of the Agreement.

[98] The Court, faced with these requests for additional fees in the amount of \$500,000 and a possible reserve for a higher amount, in its capacity as guardian of the interests of the Class members, believes it should require the Attorneys for the Plaintiffs to justify such fees as they did when demonstrating the time spent on this matter in the past.

[99] In the circumstances, the lawyers' fees for the past seem reasonable. For the future, they may be subject to providing the Court with their detailed statements of account setting out the time required for the additional work needed to ensure the Agreement is implemented.

[100] The Court will review the detailed accounts that will be provided and will then decide whether to approve them if it considers them reasonable.

[101] If the time required to finalize the case does not reach the total of \$500,000 assessed by the lawyers, the remaining monies could be given to underprivileged children at the Defendants' schools.

IV. THE DIFFICULTY OF THE MATTER

[102] In several respects, this class action presented considerable difficulties due to (a) the complexity of the legal issues raised, requiring *inter alia* an interpretation of sections of the *EA* and of the *Charter* for which there is no significant case law; (b) the Defendants' defence; (c) the complexity of the evidence to be adduced; (d) the number of Defendants involved, many of whom sometimes have very distinct realities, priorities and strategies which, according to the Plaintiffs' attorneys, made it more difficult to negotiate the Agreement; and (e) the fact that the Defendants are legal persons established in the public interest, which created an unequal balance of power between the parties and reduced the chances of settlement because, according to the ruling by Justice B nard,¹⁵

¹⁵ *Association pour l'acc s   l'avortement c. Qu bec (Procureur g n ral)*, 2007 QCCS 1796, at

[TRANSLATION] "*the government rarely agrees to pay such sums without a court judgment.*"

v. THE IMPORTANCE OF THE MATTER TO THE CLIENT

[103] The Plaintiffs' attorneys submit that this class action is one of the most important class actions instituted in Quebec, since it aims to have the Court recognize that the Defendants ignored the principle of free education, one of the foundations of the public education system in Quebec.

[104] The Plaintiffs' attorneys submit that there is reason to believe that the practices alleged against the Defendants have persisted for several decades and that there would probably have been no change in this regard in the absence of this class action.

[105] The Court finds these claims justified.

vi. THE PERFORMANCE OF UNUSUAL PROFESSIONAL SERVICES OR PROFESSIONAL SERVICES REQUIRING SPECIAL SKILLS OR EXCEPTIONAL SPEED

[106] According to the *Adams*¹⁶ case, [TRANSLATION] "*A class action is a procedural vehicle that requires, in itself, special expertise on the part of lawyers.*"

[107] The Court shares this view and is of the opinion that the particular circumstances of this class action, including its complexity, the number of Defendants involved and its media coverage, required the services of professionals with special expertise.

vii. THE RESPONSIBILITY ASSUMED

[108] The responsibility and the risk assumed by the Plaintiffs' attorneys must be assessed, taking into account the situation as it was when they agreed to take on this case.

[109] The Plaintiffs' attorneys undertook this case despite the inherently long time it would take to conduct such a large and complex class action, despite the amounts involved and despite the particular risk of special legislative measures that the Court mentioned above.

[110] The Plaintiffs' attorneys agreed to be paid on the basis of a percentage fee

para. 42.

¹⁶ *Adams c. Banque Amex du Canada*, 2015 QCCS 1917, at para. 34; see also *Pellemans*, at paras. 104-107.

agreement, assuming the risk of not being paid if they were unsuccessful.

[111] In particular, they made extraordinary sacrifices by assuming the risks of this class action and the Related Matters since 2011, i.e. more than seven years, taking on much of the required work and devoting the main part of their practice to it.

[112] As mentioned in the affidavit by attorney Manon Lechasseur, the time and effort invested had a significant impact on their personal and professional lives and the failure of this class action would have resulted in considerable financial loss, the impact of which would have been much more important and could have jeopardized the survival of their professional practice and their retirement plans.

[113] The Attorneys *ad litem* for the Plaintiffs and their Of Counsel incurred a significant opportunity cost by not devoting their time to developing their client base or to other cases offering more stable compensation with less risk.

[114] The Plaintiffs' attorneys submit that the liability and risks assumed in this class action were very significant and that the Court shares this view, in light of the foregoing.

[115] In the circumstances, we believe that the fees must be commensurate with the risks that the Plaintiffs' attorneys agreed to assume in representing the interests of the Class members since, to use a colloquialism, they were "betting the farm".

B. THE PURPOSE OF A CLASS ACTION

[116] A class action allows for judicial economy, promotes access to justice and has a more dissuasive effect than individual lawsuits.¹⁷

[117] The Plaintiffs' attorneys submit that this class action achieved the general purposes of a class action. The Court shares this view, in particular because of (a) the considerable judicial economies it has achieved, while mitigating the risks of conflicting judgments, being based on the flexible approach of the sufficient interest of the representative plaintiff advocated by the Supreme Court of Canada;¹⁸ (b) the access to justice it provided to the parents of close to 720,000 students per school year, who would likely never have commenced individual actions in the Small Claims Division given the small amounts at stake; (c) the change in the behaviour of the Defendants that is likely to ensue, particularly as a result of the Directive on Free Educational Services and the disincentive associated with the size of the Global Settlement Fund.

[118] In this respect, this class action is a precedent that will have a considerable impact,

¹⁷ *Western Canadian Shopping Centres Inc. v. Dutton*, [2001] 2 S.C.R. 534, at paras. 27-29.

¹⁸ *Bank of Montreal v. Marcotte*, [2014] 2 S.C.R. 725, at paras. 32 and 46.

benefiting both the Class members and future parents of school-age children.

[119] In order for such class actions to continue to be instituted, it is essential that the compensation of plaintiffs' class action lawyers be sufficiently high and foreseeable to provide an incentive to undertake such actions despite the risks they entail.

[120] Moreover, according to *Sibiga*,¹⁹ legal entrepreneurship can represent a social benefit in the area of class actions.

C. VERIFICATION OF THE REQUESTED FEES AND DISBURSEMENTS USING QUANTITATIVE METHODS

[121] To be satisfied that the requested fees and disbursements are fair and reasonable, the Court may calculate the percentage of benefits to members, the multiplier of fees payable on an hourly basis or their impact on each of the members.

[122] The \$18,675,356.70 in fees charged effectively represents 12.17% of the Global Settlement Fund, which is consistent with, or even lower than, the percentages generally accepted by the courts in applying percentage fee agreements.²⁰

[123] This percentage would be significantly lower if the values of the School Supplies Supplement for the 2017-2018 and 2018-2019 school years and the issuance of the Directive on Free Educational Services were taken into account, even though these values cannot be precisely quantified.

[124] As the Attorneys for the Plaintiffs spent 11,295 hours on this class action and the Related Matters, it is reasonable, in the circumstances of this class action, to allow an average hourly rate of \$500²¹ for their professional services and that the fees payable on an hourly basis thus amount to \$5,647,500, or \$6,147,500, taking into account the additional work required in connection with the implementation of the Agreement.

[125] The \$18,675,356.70 in fees corresponds respectively to multipliers of 3.31 or 3.04,

¹⁹ *Sibiga c. Fido Solutions inc.*, 2016 QCCA 1299, at para. 102.

²⁰ See, for example, *Surprenant c. Société canadienne de la Croix-Rouge*, [2001] AZ-50667013 (S.C.), at paras. 8-9 (10%); *Pellemans*, at paras. 33 and 122 (20%); *Marcotte*, at paras. 13 and 53 (25%); *Adams*, at para. 29 (33.3%); *Montreal, Maine & Atlantic Canada Co. (Montreal, Maine & Atlantique Canada Cie)(Arrangement relatif à)*, 2015 QCCS 5604, at para. 5 (25%).

²¹ *Brown v. Canada (Attorney General)*, 2018 ONSC 3429, note 55; *Hotte c. Servier Canada inc.*, 2006 QCCS 4007, at para. 104; *Petit c. New Balance Athletic Shoe Inc.*, 2013 QCCS 3569, at para. 46; *Krantz c. Procureure générale du Québec*, 2017 QCCS 5115, at para. 70.

which fall well within the multipliers granted by Quebec and federal case law.²²

[126] Full payment of Plaintiffs' attorney fees and disbursements and applicable taxes require that an amount of \$4.40 per student per school year be deducted from each of the individual compensation amounts, which means that the Parents/Guardians will receive Net Individual Compensation of \$24.09 per student per school year.

[127] The Attorneys for the Plaintiffs submit that such a deduction cannot be considered unfair or unreasonable for any Class member. The Court agrees.

[128] On the contrary, it seems likely that Class members would agree to pay this sum in order to gain access to the benefits provided for in the Agreement, as it appears in particular from the fact that no one objected to the application by the Plaintiffs' attorneys.

[129] Moreover, the impact of the fees and disbursements of the Plaintiffs' attorneys on the compensation of the Class members is less in this class action than in *Laferrière*,²³ where the results were comparatively less advantageous, as mentioned above.

[130] It should also be kept in mind that, if the members of the Class had decided to file a motion to institute proceedings with the Small Claims Division of the Court of Quebec to recover the Fees for Educational Services and Materials they paid for, they would have had to pay \$101 in court costs, as provided in section 1 of the *Tariff of judicial fees applicable to the recovery of small claims*.²⁴

²² See, for example, *Surprenant c. Société canadienne de la Croix-Rouge*, [2001] AZ-50667013 (S.C.), at para. 3 (multiplier of 3.4); *Desjardins c. Canada (Procureur général)*, 2007 QCCS 2797, at para. 93 (multiplier 3.75); *Pellemans*, at para. 121 (multiplier 4.5); *Adams*, at paras. 29 and 33 (implied multiplier 6.15); *Brown*, at para. 71 (multiplier 4); *Parsons v. Canadian Red Cross Society*, 2000 CanLII 22836 (ON SC), at para. 66 (appeal dismissed on motion: *Parsons v. Canadian Red Cross Society*, 2001 CanLII 24094 (ON CA); (leave to appeal to the Supreme Court of Canada denied) (multipliers from 3.07 to 4.29).

²³ See *supra* note 8.

²⁴ CQLR c. C-25.01, r. 13.

[131] Upon verification of the fees and disbursements applied for by the Plaintiffs' attorneys, the Court is satisfied that they are fair and reasonable.

D. CONCLUSION

[132] The Defendants acknowledge in the Agreement that several of the factors considered above by the Court apply to this class action for the purpose of approving the professional fees and disbursements requested by the Plaintiffs' attorneys, and they defer to the Court's discretion in that regard.

[133] The Representative Plaintiff is herself of the opinion that the professional fees and disbursements requested by the Plaintiffs' attorneys are fair and reasonable.

[134] There is no objection to the *Application for Approval of Professional Fees and Disbursements of Plaintiffs' Attorneys (article 593 CCP)*, including on the part of the Fund, which had the requisite legal interest to make representations in this regard pursuant to the third paragraph of article 593 CCP.

[135] Given all the circumstances, the Court is of the view that the professional fees and disbursements requested by the Plaintiffs' attorneys are fair and reasonable in light of the factors set out in the *Code of Professional Conduct of Lawyers*,²⁵ and that approval thereof will contribute to achieving the purposes of the class action as a procedural vehicle and that verification thereof by quantitative methods confirms that they are fair and reasonable.

FOR THESE REASONS, THE COURT:

[136] **ALLOWS** the *Application for Approval of a Transaction (article 590 CCP)*.

[137] **DECLARES** that the Agreement is valid, fair, reasonable and in the best interest of the members and that it constitutes a transaction within the meaning of articles 2631 and following of the *Civil Code of Québec*, CQLR c. CCQ-1991, which is binding on all the parties and all the Class members who have not opted out pursuant to the Authorization Judgment.

[138] **APPROVES** and **HOMOLOGATES** the Agreement in accordance with article 590 of the *Code of Civil Procedure*, CQLR c. C-25.01.

[139] **DECLARES** that the Agreement shall form an integral part of the judgment, and specifically, that the definitions set out in the Agreement shall apply to the judgment and be incorporated by reference therein, unless otherwise indicated in the judgment or modified thereby.

²⁵ CQLR, c. B-1, r. 3.1.

[140] **DECLARES** that the Agreement constitutes a full and final settlement of any dispute arising directly or indirectly from the facts and the costs mentioned in the proceedings instituted in this class action, for school years 2009-2010 to 2018-2019 (for the Ten School Boards) and school years 2010-2011 to 2018-2019 (for the Other School Boards).

[141] **DECLARES** that the claims of the Class members who have not opted out pursuant to the Authorization Judgment shall be recovered collectively.

[142] **DECLARES** that the Agreement shall be implemented in accordance with the terms and conditions set forth therein regarding the distribution of Net Individual Compensation.

[143] **AUTHORIZES** the Representative Plaintiff, in her capacity as representative of the Class members, to give full and final release, in principal, interest, costs and additional indemnity, to the Defendants, in respect of any dispute arising directly or indirectly from facts and costs mentioned in the proceedings instituted in this class action, for school years 2008-2009 to 2018-2019 inclusively, without admission of liability.

[144] **ORDERS** the parties and Class members who have not opted out pursuant to the Authorization Judgment to comply with the terms and conditions of the Agreement.

[145] **CONVENES** the parties to attend a hearing by conference call on Thursday, September 13, 2018, at 8:45 a.m., on a date no later than forty-five (45) days after the date on which the judgment approving the Agreement has become *res judicata*, for the purpose of ratifying the designation of the Webmaster, Auditor and Administrator referred to in clause 4.1.2 of the Agreement.

[146] **ORDERS** the Webmaster, the Auditor to be designated pursuant to the Agreement and the Administrator referred to in clause 4.1.2 of the Agreement to comply with the terms and conditions of the Agreement.

[147] **DECLARES** that the Court shall remain seized of the matter until Closing Judgment and that it may decide on any issue that may be raised by the Representative Plaintiff or by one of the Defendants in the application of the Agreement and on any problem relating to the administration of the distribution by an Administrator that may be referred by the Auditor.

[148] **ALLOWS** the *Application for Approval of Professional Fees and Disbursements of the Plaintiffs' Attorneys (article 593 C.C.P.)* subject to the filing with the Court of the detailed accounts for additional work required for the implementation of the Agreement for the Court's review and decision as to whether the fees and disbursements are reasonable and should be approved by the Court.

[149] **APPROVES**, subject to the preceding paragraph, payment to the Plaintiffs' attorneys of eighteen million six hundred and seventy-five thousand, three hundred and fifty-six dollars and seventy cents (\$18,675,356.70) in professional fees and of disbursements, including the financing costs of IMF Bentham Ltd. of two million two hundred and seventeen thousand eight hundred and seventy dollars and twenty seven cents (\$2,217,870.27) plus applicable taxes, payable out of the amounts recovered collectively (namely the Global Settlement Fund, as that term is defined in the Agreement).

[150] **NOTES** the undertaking given by Mtre Lechasseur and Mtre Laperrière to reimburse the Class Action Assistance Fund for financial assistance granted by it in the amount of ninety-two thousand one hundred and seventy-nine dollars and sixty-one cents (\$92,179.61), payable out of their professional fees and disbursements.

[151] **NOTES** the undertaking given by Mtre Lechasseur and Mtre Laperrière to repay to IMF Bentham Ltd. a total amount of two million seven hundred thousand dollars (\$2,700,000) [including principal of six hundred thousand dollars (\$600,000)].

[152] **NOTES** the undertaking given by the Plaintiffs' attorneys to take the necessary measures to ensure that the provisions of clause 6.6 of the Transaction are explained to Class members in the settlement cheque transmittal letter.

[153] **DECLARES** that the professional fees and disbursements of the Plaintiffs' attorneys shall be paid in accordance with the terms and conditions of the Agreement.

[154] **THE WHOLE** without legal costs.

CARL LACHANCE, J.S.C.

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Attorneys for the Defendants (the Montreal Island school boards)

Date of hearing: July 18, 2018