SUPREME COURT OF YUKON

Citation: *GX v Yukon (Government of)*, 2026 YKSC 5

Date: 20260127
S.C. No.: 22-A0097
Registry: Whitehorse

BETWEEN:

GX, by their Guardian ad litem, YY and TA by their Guardian ad litem BB in a representative capacity on behalf of all students and former students of Jack Hulland Elementary School who were subject to hold and restraints and/or who were locked in a room and/or placed in seclusion between January 1, 2007 and June 30, 2022

PLAINTIFFS

AND

Government of Yukon, Department of Education

DEFENDANT

Corrected Decision: The style of cause of the decision and the text of the decision, at pages 6 and 19, were corrected and changes were made on February 11, 2026.

Before Chief Justice S.M. Duncan

Counsel for the Plaintiffs — James R. Tucker and Naomi Kovak

Counsel for the Defendant — I.H. Fraser and Stuart Leary

REASONS FOR DECISION

OVERVIEW

[1] This representative action alleging improper use of holds, restraints and isolation or seclusion on students at Jack Hulland Elementary School (JHES) between January 1, 2007, and June 30, 2022, has raised a spectrum of concerns in the

community. The plaintiffs seek damages from the Yukon government for the harms caused to them by their conduct. Initiated in 2022, the action was scheduled for trial in August and continuing in October 2025. After extensive negotiations between the parties, beginning in January 2024 and aided by an expert mediator, a settlement agreement was reached on August 15, 2025, subject to the approval of the Executive Council of the Yukon government, which was received.

[2] This is an application for court approval of that settlement, and for approval of counsels legal fees and honoraria for the representative plaintiffs. Unlike regular civil actions, where a settlement between the parties does not normally require court approval, legislation governing representative or class action settlements requires court approval of settlements. The practice in jurisdictions like the Yukon where there is no class action legislation has been to require court approval. The purposes of court approval include protecting the absent class members who will be bound by the settlement negotiated through the representative plaintiffs, and to address any objections to the proposed settlement by the class members.

[3] In general, the settlement agreement in this case provides for a claims adjudication process paid for by the Yukon government, conducted by an independent Claims Officer. It allows class members to claim compensation under one of three tiers, each to address a different level of harm and each with a different compensation cap: $35,000 for Tier 1, $300,000 for Tier 2, and $1,000,000 for Tier 3. A counselling fund for class members is established, with a cap of $5,000 per claimant. The Yukon government will issue a public acknowledgement of the harms experienced by the class members. The Yukon government will pay the reasonable costs and disbursements

incurred by the plaintiffs to the date of the approval of the settlement and will pay each of the two representative plaintiffs an honorarium of $10,000. The plaintiffs' lawyers are entitled to a contingency fee of 25% for Tier 1 claimants and 30% for Tiers 2 and 3 claimants, excluding any amount awarded for costs and disbursements.

[4] At the hearing on November 14, 2025, one class member objected to the settlement agreement, on the basis of a failure of the Yukon government to acknowledge the disproportionate impact of the conduct at issue on Indigenous children, the lack of information from the Yukon government about changes made as a result of the litigation, the inability of claimants who choose to do so to have their experiences recorded and publicly accessible, an inability to correct erroneous public perceptions about the use of holds, restraints, and seclusion, the absence of culturally appropriate counselling options, and a concern about the ability of class members to participate fully in the litigation and settlement process.

[5] At the hearing, I approved the settlement with brief oral reasons. I found it met the legal test of fairness, adequacy, and reasonableness, and fulfilled the best interests of the class as a whole. I addressed the objection and raised questions on three matters. I requested the parties return to provide answers to the questions asked. I advised I would provide more comprehensive written reasons to follow. These are my reasons.

ALLEGATIONS AND PROCEDURAL HISTORY

[6] The plaintiffs say that since 2002, holds, restraints, and involuntary seclusion were regularly used at JHES in circumstances where there was no risk of imminent

danger to the student or someone else. In or around 2008, a JHES classroom was modified to include several small enclosed (except for the top) cubicles, with enough room for a desk and chair, and a glass door. The classroom was called the "Study Hall" or the "Nest". Students were sent to the cubicles in the Nest for varying periods of time and often without direct supervision.

[7] The defendant, Yukon government (through the Department of Education and the Minister of Education), is responsible for the operation and management of any school where there is a school council or committee in place, under the *Education Act*, RSY 2002, c 61.

[8] The second Amended Statement of Claim (Statement of Claim) alleges the following causes of action – negligence, breach of fiduciary duty, liability for the torts of assault, battery, and false imprisonment, and vicarious liability for acts and omissions of the staff and teachers of JHES. The plaintiffs originally included the School Council as a defendant, but they reached an early settlement, and the action was dismissed against them.

[9] The plaintiffs allege the Yukon government owed a duty of care to students of JHES to provide and ensure a safe learning environment free of assault, battery, forcible confinement, false imprisonment and corporal punishment, and to minimize the risk of physical and mental harm to students. The Yukon government knew or ought to have known about the existence and implementation of the "forcible confinement policy" or any policies at JHES that directed and permitted the use of holds and restraints on and seclusion of students, including the construction and use of the Nest. The Statement of Claim also alleges the Yukon government failed to provide adequate

measures to supervise and oversee the implementation of these policies at JHES and failed to protect students from physical and emotional harm as a result. The plaintiffs allege the Yukon government – specifically the Department of Education and the Minister of Education – is in a special relationship with students of JHES and the proposed class members were a vulnerable group because they are minors. The plaintiffs say the Yukon government breached its fiduciary obligation to the students because it failed to provide a learning environment free of corporal punishment and failed to prevent the use of holds and restraints on and seclusion of the students.

[10] Certification of this action as a class action occurred on September 6, 2023. The class was defined as:

> All students and former students of Jack Hulland who were subject to holds and restraints and/or who were locked in a room and/or placed in seclusion between January 1, 2007 and June 30, 2022.

(*GX v Yukon (Government of)*, Order of 6 September 2023)

[11] The common issues were:

i. Did the defendant owe a duty of care to the plaintiffs?

ii. Did the defendant breach the duty of care owed to the plaintiffs?

iii. Did the defendant owe fiduciary obligations to the plaintiffs?

iv. Did the defendant breach its fiduciary obligations to the plaintiffs?

v. Is the defendant vicariously liable for the conduct of the staff of JHES?

vi. Does the conduct of the defendant merit an award of punitive damages?

(*GX v Yukon (Government of)*, 2023 YKSC 51 (*GX*) at para. 101)

[12] The common issues trial was set for August 12, 2025, for nine days, with a continuation on October 27, 2025, for five days.

[13] Yukon government conceded they owed a duty of care and fiduciary duty to the students of JHES. They also accepted vicarious liability for the staff and teachers. They accepted liability in their Statement of Defence for harms once the torts are proved. Shortly before the trial date, the Yukon government admitted they failed to meet the standard of care required by the duty of care and the fiduciary duty owed, in their supervision of staff at JHES in relation to the monitoring of and compliance with the Department of Education policies about the use of holds, restraints, and seclusion, and related reporting requirements.

[14] What remained to be litigated at the common issues trial was whether the duty of care and the fiduciary duty were breached by the Yukon government, and whether they would be entitled to punitive damages.

[15] After certification, document and oral discovery occurred. The Deputy Minister of Education was examined for discovery on September 17 and 18, 2024. One hundred and seventy one outstanding requests from the plaintiffs at the end of the discovery were answered over time. Eleven pre-trial applications were brought, and ten case management conferences occurred. The plaintiffs' case against the School Council was dismissed without costs, in exchange for their cooperation in providing documentary discovery to the plaintiffs. The plaintiffs retained five experts, with expertise in the areas of neuropsychology; special education and behaviour support and management including the use of physical restraint and seclusion in schools; child development;

teaching and school administration; and trauma-informed interviewing. Three expert reports were served on the defendants by the plaintiffs.

[16] Settlement discussions began in January 2024, with the exchange of positions. The parties agreed to engage a mediator, Geoffrey Cowper, K.C., in March 2025. He is an internationally respected litigator with experience in class actions, as well as a successful mediator. Mediation began by telephone in March and a two day in-person mediation was held on May 28-29, 2025. Although the gap between the parties was narrowed, settlement was not achieved. The parties continued to engage in discussions with the help of the mediator over the summer, without resolution. The approach of the trial dates in August led to renewed efforts and during the week the trial was to begin, the parties continued their discussions. Settlement was ultimately reached on August 15, 2025, subject to the approval of Executive Council, which was obtained, and subject to court approval.

[17] A court order approving the form, content, and distribution of the Notice of Hearing for settlement approval was issued on September 10, 2025. The hearing was scheduled for October 29, 2025, but on that day was adjourned by the Court due to the unavailability of the judge. It was rescheduled for November 14, 2025. Plaintiffs' counsel advised they put the new date on their website and telephoned all those class members who had contacted them to advise of the new hearing date.

[18] Plaintiffs' counsel stated it is difficult to estimate the number of claimants but advised they have been contacted by approximately 250 individuals out of a total 1,257 students who attended JHES at the operative time.

SETTLEMENT AGREEMENT

[19] The settlement agreement terms are as follows.

Claims adjudication process

[20] A claims protocol was established to provide a mechanism to determine the compensation owing to the class members. There are three tiers of claims, each of which has different levels of maximum compensation, and different procedural requirements. The claims process is designed to be simple, expeditious and trauma-informed with the intent of reducing the procedural and psychological burden on class members while ensuring all claims are appropriately evaluated and assessed. The parties will agree on up to three individuals with adjudicative experience in assessing personal injury claims to be Claims Officers.

[21] Tier 1 is to compensate those who can establish they were subjected to one or more incidents of holds, restraints, or seclusion (an Event). No harm need be shown. Compensation payments are limited to $3,500 per day of the occurred Event, with a minimum payment of $10,000 and a maximum payment of $35,000.

[22] The Tier 1 process is paper based only, with a proof of claim to be submitted directly to the Yukon government. The Yukon government may contest the claim on the basis that the claimant was not a student at JHES or was absent from school at the operative time; the school was not in session at the time of the Event; or none of the teachers or staff alleged to have participated in the Event was at JHES at the operative time. The Claims Officer makes the final determination on the validity of the claim on the balance of probabilities.

[23] Tier 2 is to compensate those who establish they have suffered harm from one or more Events. Compensation may be awarded up to $300,000, inclusive of all damages, interest, costs and disbursements. If harm cannot be established, the Claims Officer may still award compensation in an amount that may have been awarded as nominal damages for assault, battery or false imprisonment, to a maximum of $20,000.

[24] The Tier 2 process requires a proof of claim to be submitted directly to the Claims Officer along with any supporting documents and documentary response from the Yukon government. Claimants may rely on a maximum of two expert reports. At the Yukon government's request, a person skilled in conducting trauma-informed interviews and agreed upon by the parties shall conduct a trauma-informed interview of the claimant to assess the information or obtain further information.

[25] The Yukon government may contest the claim on the same basis as under Tier 1 and may also file up to two expert reports or other documentary evidence in response to the facts alleged in the record from the claimant or through the interview process.

[26] Tier 3 is to compensate those who have been harmed as a result of negligence or other fault by the Yukon government or by someone for whom they have vicarious liability, in an amount up to $1,000,000, inclusive of damages, interest, costs, and disbursements.

[27] Tier 3 claimants must submit a proof of claim directly to the Claims Officer and must prove the usual elements to establish liability for negligence or intentional tort. They may rely on expert reports – no maximum number. As with Tier 2 claims, the Yukon government may request a trauma-informed interview be conducted. A claimant may substitute an interview transcript for an affidavit. The Claims Officer must have

regard to and apply the following principles in assessing the reasonableness of conduct by teacher, staff or other personnel at JHES:

> 18. …
>
> (a) Physical holds, restraints and seclusion are to be used as a last resort in situations that present imminent danger of physical harm to the student or to others;
> (b) Physical holds, restraints and seclusion should only be used where less restrictive options have been tried but were ineffective in ending the imminent danger; and
> (c) Imminent danger is when a student is about to inflict significant physical harm to themselves or others.
>
> 19. Yukon reserves the right to argue that in exceptional circumstances;
>
> (a) the use of holds, restraints, or seclusion may be reasonable or justified even where imminent danger was not present;
> (b) holds, restraints, or seclusion may be used to prevent significant damage to property or significant disruption of the classroom or teaching environment.
>
> 20. Yukon reserves the right to argue that the standard of acceptable conduct has changed over time.

[28] The Yukon government may contest a Tier 3 claim on the basis of the claimant's failure to prove their claim, in the context of the principles set out above. The Yukon government may also file evidence that may be permitted in a summary trial process under the Supreme Court of Yukon *Rules of Court* (the *Rules*). No discoveries or examination by an expert of the claimant are permitted.

[29] For Tier 2 and 3 claims, the legal principles applicable to claims for damages, including punitive damages, in a Supreme Court of Yukon civil action, as well as the circumstances set out in the record will guide the Claims Officer's determination.

[30] Claims must be submitted within two years of the date of publication of the notice of the claims process. The processing steps under each Tier have time limits. The burden of proof is the same as that applicable in Supreme Court of Yukon civil proceedings. Further, evidence that is credible and reliable, even if not otherwise admissible in a court, may be considered by the Claims Officer. Accommodations to the claims evaluation procedure to reduce the psychological burden on a claimant may be made upon agreement or through the case management justice.

[31] A Claims Officer must issue supporting reasons for every claim determination. A determination may be appealed to the case management justice within 30 days of the receipt of the claim determination and if successful, the justice shall render the decision based on the record before the Claims Officer.

[32] All proofs of claim and submitted documentation for the purpose of claim determination shall remain confidential and not disclosed except on consent of the claimant or by court order. The Claims Officer shall destroy all information and documentation in their possession related to the claim or claim administration within 90 days of the final determination of the claim, including legal challenges.

[33] Claimants who submit claims for evaluation will execute a release of their claims against the Yukon government to be held in trust by class counsel until payment is received or appeal rights have been exhausted. Payments are to be made by the Yukon government to class counsel in trust within 60 days of the determination becoming final.

Once all claim determinations are final, the plaintiffs shall obtain an order dismissing the action, within 30 days.

Costs, disbursements and honoraria

[34] The Yukon government is responsible for all costs of implementing and administering the claims process, as well as for the reasonable costs and disbursements of the plaintiffs incurred to the date of the settlement agreement within 30 days of agreement on the amount or being fixed by assessment under the *Rules*.

[35] The Yukon government shall also pay each representative plaintiff an honorarium of $10,000.

Special Counselling Fund

[36] In addition to the claims adjudication process, the settlement agreement provides for a special counselling fund of $250,000 to assist class members and their families with the costs of counselling and related treatment where such costs are not eligible for payment or reimbursement from any other insurance plan or government program. Benefits are capped at $5,000 per claimant for services up to March 31, 2028, with an agreement between the parties to review the use, sufficiency, efficacy of the counselling fund before March 31, 2027, and consider whether changes are necessary.

Public Acknowledgement by the Yukon government

[37] The Yukon government will issue a public statement acknowledging the harm suffered by class members, in a form attached to the settlement agreement.

Legal Fees

[38] The legal fees of class counsel will be paid in accordance with the contingency fee arrangement of 25% of the claim payments to Tier 1 claimants and 30% of the claim

payments (excluding any amount awarded for costs and disbursements) to Tier 2 and Tier 3 claimants.

Minors

[39] The nature of this class action means that many of the class members are minors. The settlement agreement seeks to bind all class members, including minors. To ensure any significant damages awarded to a minor will be of benefit to the minor, the plaintiffs seek a court order that requires court approval of the trustee and terms of the trust before the distribution to a minor of any payment in excess of $75,000, after legal fees and case expenses are deducted.

LEGAL PRINCIPLES APPLICABLE TO SETTLEMENTS

[40] As noted above, class action statutes usually contain a provision requiring court approval in order for a settlement agreement to be binding on class members. This Court has adopted this principle and practice in the Yukon, where there is no class action legislation (*Fontaine et al v Canada et al*, 2006 YKSC 63 (*Fontaine*)).

[41] The test for court approval is whether the settlement is adequate, reasonable, fair, and in the best interests of the class as a whole. Court approval of a settlement should not be a rubber stamp, and in fact, the court should scrutinize class action settlements carefully because of their effect on a number of people who are not before the court. But the court should neither require a re-opening of the settlement agreement to rewrite or modify its terms, nor examine the merits of the case (*Fontaine* at paras. 43-44; *Dabbs v Sun Life Assurance Company of Canada* (1998), 40 OR (3d) 429 (Ont Gen Div) (*Dabbs*); *Gariepy v Shell Oil Co*. (2002), 21 CLR (3d) 98 (*Gariepy*)). The court can only accept or reject the settlement as a whole; it cannot amend it or accept some parts

and reject others. The court must be wary of second-guessing the parties and the settlement they have reached. Any settlement is the result of compromise, and only where the settlement shows the compromise is unreasonable, unfair, or inadequate should the court intervene. Fairness is not a standard of perfection. Reasonableness allows for a range of possible resolutions (*Dabbs* at 7).

[42] These principles are consistent with the principles applicable to settlements in general. As observed by Justice Callaghan in *Sparling v Southam*, [1988] 66 OR (2d) 225 (at 230-231) relied on by Justice Nordheimer in *Gariepy* (at para. 43) "... courts consistently favour the settlement of lawsuits in general … there is an overriding public interest in favour of settlement. This policy promotes the interests of litigants generally by saving them the expense of trial of disputed issues, and it reduces the strain upon an already overburdened provincial court system." This has been reinforced in recent cases in the class action context:

> Where settlement has been reached through arm's length negotiations and is being presented for approval by experienced class counsel, the court is entitled to assume, in the absence of evidence to the contrary, that it is being presented with the best reasonably achievable settlement: *Wein v Roger Cable Communications Inc.*, 2011 ONSC 7290, at para 20; *Pryzbylska v Gatos Silver, Inc.*, 2024 ONSC 2196, at para. 10.

(*Rabbat v Nadon*, 2025 ONSC 5187 (*Rabbat*) at para. 42)

[43] Factors that have been considered in the determination of whether to approve a settlement agreement in the class action context include:

(a) likelihood of recovery or likelihood of success;

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

(c) settlement terms and conditions;

(d) recommendation and experience of counsel;

(e) future expense and likely duration of litigation;

(f) number of objectors and nature of objections;

(g) presence of good faith and absence of collusion;

(h) the degree and nature of communications by counsel and the representative plaintiff;

(i) conveying to the court the dynamics of and the positions taken by the parties during the negotiations.

(*Rabbat* at para. 39)

[44] These factors are guidelines, not rigid criteria. Some may have greater significance than others, depending on the circumstances. Some may be disregarded or combined with others. The factors are considered by the court to assist in its assessment of the likely success at trial in relation to the settlement terms and conditions.

[45] Generally, the court must be satisfied that the concerns of the class have been adequately addressed by the settlement. The court will consider what benefits have accrued to or been lost by the parties as a result of the settlement.

DISCUSSION

Application of the guiding factors and benefits and losses resulting from the settlement

[46] In this case, by the time of the settlement, the plaintiffs had a significant amount of information about the case from various sources, including a comprehensive discovery of the defendant's representative; five expert reports; interviews of dozens of witnesses; the review of a high volume of documents; and a comprehensive

investigation into the matter. All of this contributed to an informed assessment of the strengths and weaknesses of their case, especially given the timing of the settlement during the first scheduled week of trial. Negotiations had occurred over a number of months and were conducted in good faith and without collusion, evidenced in part by the timing of the settlement during the dates set for trial. Certain counsel for the plaintiffs were experienced in class actions and others were familiar with the *Rules* and practices in the Supreme Court of Yukon as well as the local context. Their recommendation of the settlement, especially in the context of the stage of the litigation reached and the protracted negotiation process, carries significant weight.

[47] The Court was advised during the hearing and through the filed affidavit materials of some of the dynamics of the negotiation process and the positions of the parties. Issues of disagreement during the process included the amount of compensation; what each claimant needed to establish during the claims adjudication process; the nature of the claims adjudication process; whether the standard of care applicable to the use of holds, restraints and seclusion was a common issue or part of the individual issues assessment; and the requirement of accountability for the harms by the Yukon government.

[48] As noted above, the Yukon government admitted owing a duty of care and fiduciary duty to the class members; admitted vicarious liability for the actions of staff and teachers at JHES, specifically their use of holds, restraints and seclusion on class members; and admitted they failed to meet the standard of care in monitoring and ensuring staff compliance with the policies of the Department of Education on the use of holds, restraints and seclusion and related reporting requirements. These admissions

contributed to the plaintiffs' positive assessment of their likelihood of success on establishing systemic liability on the part of the Yukon government. Despite these admissions however, risks of pursuing litigation remained.

[49] The plaintiffs identified several risks. The first was the Yukon government's position that the determination of the appropriate applicable standard of care may not have been able to be done exclusively at a common issues trial. The plaintiffs' counsels view was that standard of care was part of the common issues determination but acknowledged it would require legal argument. If the Yukon government were successful and the standard of care determination were added to the individual issues determination, which by agreement already included causation and damages, a large number of individual issues were expected to remain after the common issues trial.

[50] Two procedural concerns arose from this. First, without class action legislation in the Yukon, the availability of simplified and expeditious processes to determine individual issues was unclear. This could result in lengthier proceedings, and the imposition of a heavier burden of time and psychological pressure on claimants and their counsel.

[51] The second related concern was that without a settlement, the class members were likely to be subjected to an adversarial process to establish the causation and damages aspects of their claims, as well as in some cases, the applicable standard of care. This was a significant concern of plaintiffs' counsel on behalf of the class members, who they feared might forgo pursuing their claims, or experience psychological harm as a result of the adversarial process.

[52] Another risk of litigation appropriately identified by plaintiffs' counsel was the amount of time the pursuit of a remedy through the litigation process would take. The common issues trial, although scheduled for 14 days, was likely to take longer, considering the number of witnesses, including experts. There were likely to be appeals from the common issues trial, especially given the divergent views on whether the applicable standard of care was a common issue. The timing of these steps would likely take the parties into 2027, before beginning the determination of the individual issues. As noted above, the individual issues determination was likely to be lengthy and difficult for class members.

[53] As the case developed, plaintiffs' counsel also recognized the challenge of successfully obtaining an aggregate award of punitive damages before compensatory damages had been determined.

[54] What has been negotiated in this settlement agreement fairly, adequately and reasonably addresses these real risks identified by plaintiffs' counsel. The avoidance of a common issues trial and the subsequent need to determine individual issues in some kind of trial or quasi-trial process is of benefit to class members. It will result in much earlier resolutions of their claims, especially with the built in time limits and expedited procedures of the claims protocol.

[55] The trauma-informed claims adjudication process will reduce the risk of re-traumatizing claimants. The parties have demonstrated their understanding of the potential negative effects on claimants of a more traditional legal process such as adversarial cross-examination of claimants and no alternative to in-person, in-court public testimony. The claims protocol requires that any additional information from a

claimant desired by the Yukon government for Tier 2 or Tier 3 claims be obtained through a trauma-informed interview of the claimant, conducted by a trauma-informed interviewer, who decides the form and manner of the questioning, after receiving questions or topics from the Yukon government. The interview will be recorded and a transcript provided to counsel for the claimant and the Yukon government. The privacy of the claimants is assured in this process.

[56] The settlement also addresses the risk of delay caused by prolonged argument and appeals over the issue of whether the applicable standard of care is a common issue or must be determined with the individual issues. For the majority of claimants, in Tiers 1 and 2, only proof of an Event (Tier 1) and an Event and harm (Tier 2) is necessary – standard of care is not part of the determination. The claims protocol makes the standard of care determination relevant for Tier 3 claimants, who are obliged to prove the usual elements of negligence or intentional tort. Tier 3 claimants are likely to be the smallest group, estimated by the plaintiffs at 12-15. Counsel for the Yukon government noted at the hearing that counsel anticipated using the Claims Officer's decision in the first Tier 3 claim as guidance for the rest. In assessing the reasonableness of the conduct of JHES staff and teachers for Tier 3 claimants, the Claims Officer must apply the principles set out above. These parameters around the standard of care argument also serve to streamline and simplify the process.

[57] The settlement agreement eliminates the risk of the requirement of the plaintiffs to prove punitive damages on an aggregate basis.

Objection

[58] It remains to address the objection raised by a parent of several class members who made submissions at the hearing. I summarized her concerns, the response of counsel, and my views in the oral reasons delivered the day of the hearing. For consistency, I will reproduce those reasons here, edited for clarity. I will then add some further considerations.

> The first concern expressed by the objector was that there is a public perception expressed on social media and elsewhere that the holds, restraints, and isolation occurred in this case because the children were, for want of a better word, bad.
>
> Without a public trial, there is no good way of addressing these public perceptions, which in her view and the view of many other class members are incorrect.
>
> Secondly, she lamented the fact that there is no funding for a culturally appropriate remedy such as a healing circle, and that the access to the Special Counselling Fund and what it covers is confusing.
>
> Next, she said that the apology expected to be made public by the Yukon government (and in fact in some ways already public because it is in the Court record), is insufficient with respect to accountability because it does not address the disproportionate number of Indigenous children who were affected by the harms that occurred and did not take into account inter-generational trauma and similarities to what occurred in Residential schools. She also said [the apology letter] does not use the word “abuse”.
>
> Next, she said that there is no opportunity for those claimants who choose to do so, to have their statements, affidavits or interviews recorded and publicly accessible as a memorializing of what occurred and to address the erroneous public perceptions.
>
> She also expressed concerns about the impenetrable aspects of the class action process, requiring a lot of effort by class members to find out what was happening.

> Finally, she said no information has been provided about changes made by the Yukon government as a result of this litigation.
>
> …
>
> In response to the first concern about the public perception, counsel for the Yukon government noted that it is difficult to change the perception of some people. He gave the example of public meetings where the Minister and other government officials acknowledged that the practices at issue in this litigation were inappropriate, yet the perception of some people as described by the objector persisted.
>
> Neither counsel objected to the process of claimants recording facts from their claims form, setting out the basis of their claim, and the harms that they experienced for public accessibility if they so choose. Class counsel offered their website for that purpose. On review of the claims protocol, it appears to be worded broadly enough for this to be an option for those who choose to do so.
>
> With respect to the Special Counselling Fund and the culturally appropriate remedy, both counsel acknowledged that the details of the Special Counselling Fund have not been fully discussed, but that it was intended to be flexible. I note that the claims protocol states that the parties are to confer before March 31, 2027, to review the use, sufficiency, and efficacy of the Special Counselling Fund and consider whether changes are required. I would encourage that conversation to occur sooner rather than later and that counsel provide assurance that the flexibility that they acknowledge today exists, and that the fund may be used for such activities as referred to by the objector, such as an elder-led healing camp on the land.
>
> With respect to the culturally appropriate healing circle, I note that Class counsel stated that this may occur at any time outside of the settlement agreement. As stated in their written and oral submissions, with vicarious liability having been admitted by the Yukon government, it is not appropriate for a healing circle involving individual staff members and teachers to be a term and condition of the settlement.

But as I said, that does not preclude the availability or the occurrence of a healing circle at any time outside of the agreement with respect to the disproportionate impact on Indigenous students.

Before addressing the Indigenous children accountability concerns, it is helpful to look at the apology that was drafted by the representative plaintiffs' and accepted by the Yukon government, who have committed to making it public.

I am not going to read the whole thing, but I will read a couple of select paragraphs:

> From about January 2007 until in or about June 2022, the teachers and staff at JHES routinely and repeatedly employed holds, restraints, and seclusion on students at JHES when there was no risk of the student harming themselves or someone else. During that time, holds, restraints, and seclusion were used at JHES and in the Grove Street Program to, among other things, discipline students and modify their behavior. Additionally, during that time, holds, restraints, and seclusion were used excessively and for much longer periods of time, than what was necessary.
>
> …
>
> The Government of Yukon acknowledges the ongoing harm imposed on the children and their families through the failure to be honest, transparent, and accept responsibility for what occurred at JHES. This lack of communication and accountability created barriers to healing and recovery, burdening the children and their families for far too long. The Government of Yukon recognizes the courage and resiliency of all individuals who have worked to bring meaningful change and justice for those affected.
>
> The Government of Yukon, and specifically the Department of Education, accepts full responsibility and offers a sincere apology to the affected children and their families. The Government of Yukon asks for their forgiveness for having failed to protect those children from the improper use of holds, restraints,

> and seclusion while in the care of the Government of Yukon at JHES.

It is unfortunate that particular harm to Indigenous children was not addressed in this apology, but this is clearly an aspect that can be considered in the individual assessment of damages. This, combined with a mechanism for recording the facts and the harm experienced by Indigenous children in particular, may go some way to addressing the concerns of the objector.

With respect to the impenetrable nature of the process, that is not something that relates specifically to the approval or not of the settlement. I do note that Class counsel acknowledged that this process does require initiative to be taken by class members and that she has heard the concerns expressed by the objector.

With respect to behaviour modification, counsel for the Yukon government submitted that the Department of Education policies have changed since this action was initiated and that has been stated publicly by the Minister. Counsel said public statements were made at meetings with parents at JHES and changes have been made to the student handbook, which is available on the Yukon government website. It appears clear from the part of the apology I just read that holds, restraints, and isolation are now considered only to be used as a last resort where there is an imminent risk of harm.

Counsel for the Yukon government also stated that the training that was misused in the past by perhaps being offered too broadly, and misunderstood, has now been limited to those who are expected to understand it and make proper use of it.

While I appreciate that the objections raised by the objector are valid and were compellingly articulated, in the context of the role of the Court in this process, as well as the consideration of all the other factors raised and submitted by counsel in their written and oral submissions today, the objections are not sufficient to prevent my approval of this settlement.

[59] In these written reasons, I wish to elaborate on the concerns expressed by the objector in relation to the disproportionate impact of the Events on Indigenous children, the “normalization” of these Events, her desire for increased accountability especially for future conduct, and the desire for greater participation in the process.

[60] First, the objector, who is Indigenous and the first generation in her family in the last four generations not to have attended residential school, made a powerful argument with examples, of how the improper use of holds, restraints and seclusion replicated some of the treatment experienced by Indigenous children in residential schools. The interruption of the healing process of families from residential school experiences that these events have caused, and the inter-generational trauma of Indigenous children that is exacerbated by these events are factors that may be considered by the Claims Officer in the assessment of damages.

[61] Secondly, and related to the residential school experiences because of the similarities of the impact, the three children of this parent objector all stated that they assumed the uses of holds, restraints and seclusion for disciplinary purposes were normal. At least one of her children was very reluctant to speak about what happened to him. As a parent, the objector had no idea that these Events were occurring. According to plaintiffs’ counsel, this assumption of normality and reluctance to speak about it were common among many of the class members.

[62] I spoke in my oral reasons about the desire by the objector for greater accountability of the Yukon government. Many of the objector’s requests relate to this desire for accountability: the memorializing, publicizing and retention by government of the stories of those who choose to share them; the request to distribute and publicize

the apology letter widely, including in newspapers, social media, First Nation Education Commission, First Nation Chiefs and Councils; the request to include in the apology letter the word ‘abuse’; an acknowledgement in the letter of the disproportionate impact of these events on Indigenous children; a clear commitment to change future conduct, policies, and processes, including oversight processes.

[63] As part of the Court’s supervisory function, at the end of the hearing, I requested counsel for the parties to return to court within a reasonable time to address three matters: first, the details of where the acknowledgement letter will be distributed and published; second, the details of the Special Counselling Fund and whether it covers culturally appropriate healing initiatives; and third, confirmation of the process for allowing those claimants who want their statements recorded and made publicly accessible to do so.

[64] While this may not address fully all the accountability issues raised by the objector, I return to the principles underlying settlement. It is not the court’s role to re-open or second-guess the settlement, unless it is unreasonable, unfair or inadequate, or not in the best interests of the class. Reasonableness has a range of solutions, and fairness is not perfection. The settlement must be assessed against the risks and costs of litigation. This settlement’s ability for claimants to receive acknowledgement of and compensation for harms they have experienced from the Yukon government in a timely and trauma-informed way, is in the best interests of the class as a whole.

[65] As I said in my oral reasons, this dispute mechanism of a class action is different from a public inquiry, and different from a criminal trial, both of which are more public processes. A criminal trial may focus more on the details of what occurred and on

accountability; and a public inquiry also focuses on the details of what occurred, as well as on how things should be done better in future. The primary purpose of the civil litigation process is to provide financial compensation to those who have experienced harm, providing a form of accountability. The class action mechanism provides more efficient access to justice for a greater number of people, who may be financially prohibited from seeking legal remedies on their own. The volume of claimants and scope of conduct resulting in harm may assist with behaviour modification or greater accountability of the defendant in future. In this case, the settlement agreement achieves these goals.

[66] A final comment about the process - the objector was of the view that class members were not empowered to make decisions within the process or even to have a role in selecting a class action proceeding as a dispute resolution mechanism. This perceived shortcoming, combined with her complaint that it was hard to get information about the proceeding, as most of it came from social media or newspapers, and the plaintiffs' counsel's office when she called them, led her to state that the Court should not assume she is the only objector. Instead, she suggested there are many barriers for affected individuals to have their voices heard.

[67] What the objector describes is the reality of class actions. Class actions are brought in circumstances where there are a significant number of people affected by the same acts or omissions of a defendant. The representative plaintiff(s) take on the responsibility of instructing counsel on behalf of the class members. While this process by necessity means the class members do not have their own personal relationship with the class legal counsel, they are also able to reap the benefits of the hard work of the

representative plaintiffs and counsel without expending any effort themselves. Media and plaintiffs' counsel's websites are the usual communication tools for class members, to provide the basic information for all class members. More information can always be provided to interested class members, as it was in this case, by plaintiffs' counsel or the representative plaintiff(s). With all its acknowledged trade-offs, this is the process that has developed to ensure efficiency, accessibility and workability in the advancement of claims that affect large numbers of people.

[68] Having considered all the risks and benefits of settlement, including the points made by the objector, against the risks and benefits of continued litigation, I am satisfied that this settlement is adequate, fair, reasonable, and in the best interests of the class as a whole.

Legal fees

[69] Plaintiffs' counsel seeks an order approving their legal fees. The purpose of an order is to ensure the legal fees charged to class members are fair and reasonable, and that class counsel are appropriately compensated (*Reid v Ford Motor Company et al*, 2006 BCSC 1454 (*Reid*) at para. 28). Normally, a fee agreement is not enforceable until it is approved by the court, in part to ensure the non-representative plaintiff class members are protected.

[70] Factors relevant in assessing reasonableness of fees of class action counsel include:

(a) the factual and legal complexities of the matters dealt with;

(b) the risk undertaken, including the risk that the matter might not be certified;

(c) the degree of responsibility assumed by the lawyers;

(d) the monetary value of the matters in issue;

(e) the importance of the matter to the class;

(f) the degree of skill and competence demonstrated by the lawyers;

(g) the results achieved;

(h) the ability of the class to pay;

(i) the expectations of the class as to the amount of the fees; and

(j) the opportunity cost to the class action lawyers in the expenditure of time in pursuit of the litigation and settlement.

(*Redublo v CarePartners*, 2022 ONSC 1398 (*Redublo*) at para. 83, citing *Smith Estate v. National Money Mart Co.,* 2011 ONCA 233 at para. 80).

[71] A contingency fee arrangement is, however, presumptively to be given effect to unless:

(a) the representative plaintiffs did not fully understand or accept the agreement;

(b) the contingency amount is excessive; or

(c) the award would be so large as to be unseemly or otherwise unreasonable

(*Rabbat* at paras. 45-46)

[72] In this case, as in many class actions, the representative plaintiffs entered into a contingency fee arrangement with class counsels firms. Here the original agreement was:

(a) to a contingency fee of:

(i) 25% of the Amount Recovered if the matter resolved 60 days prior to the certification hearing; and

(ii) 33.33% of the Amount Recovered if the matter resolved thereafter.

(b) that class counsel would accrue the expenses necessary to prosecute the case ("case expenses") and that the representative plaintiffs would not be responsible for paying case expenses if there was no recovery;

(c) to pay interest accruing on case expenses at the rate of 10% per year from the date when the expense is paid by class counsel; and

(d) to authorize Class Counsel to receive any recovery in its trust account, and to apply such money to pay class counsel's contingency fee and case expenses.

Both representative plaintiffs have confirmed their understanding and acceptance of these amounts.

[73] Now, class counsel is seeking less than what was agreed with the representative plaintiffs. They are requesting:

(a) a contingency fee of:

(i) 25% of the claim payment for claims made under Tier 1; and
(ii) 30% of the claim payment (excluding any amount awarded for costs and disbursements) for claims made under Tiers 2 and 3;

(b) that all claims payments be received by class counsel in their trust account on the Class Member's behalf, with class counsel authorized to apply the claims payment to pay the contingency fee and case expenses incurred on behalf of the Class Member in making a claim further to the Claims Protocol.

[74] The contingency fee is not applicable to the counselling fund and the claims and administration costs.

[75] These percentages are consistent with those charged in other personal injury class actions (*Gariepy*; *Rabbat*; *Redublo*; *Reid; RPC1 et al v the Attorney General of Canada et al*, 2025 NUCJ 09 (*RPC1*)). In the circumstances, they are not excessive, or unreasonable.

[76] More specifically, the litigation was factually and legally complex, considering the time period, the number of individuals, the incomplete or missing records, the duty and standard of care issues and the roles and responsibilities of the school administration, the school councils and the Yukon government. Class counsel assumed the costs of initiating this file in a jurisdiction where there is no class action legislation and therefore some uncertainty of process. The lawyers assumed full responsibility for the prosecution of the action. The monetary value of the claims spans a broad range, but as noted by the maximum amounts in the tiers, could be significant. It goes without saying that these matters are of great importance to the class members. The class counsel demonstrated skills and competence in personal injury and class action legal principles and processes, as well as local knowledge and context. The settlement will result in benefits to the class members by acknowledging the harms they have experienced and providing them with compensation commensurate with the degree of those harms.

[77] I approve the contingency fee arrangement set out by the lawyers.

Honoraria

[78] The settlement agreement includes payment of honoraria for the two representative plaintiffs of $10,000 each. Honoraria have been approved where a representative plaintiff, or other involved class member, has provided competent service

coupled with positive results to the class. In the present litigation the representative plaintiffs:

(a) were actively involved in the commencement of the litigation and retainer of counsel; (*Redublo* at para. 95)

(b) were not exposed to a risk of costs as they were indemnified by class counsel; (*Redublo* at para. 95)

(c) were actively participants in the litigation, and were highly engaged in instructing counsel; (*Redublo* at para. 95)

(d) faced an emotional toll given the subject matter of the litigation and the need to support their children through the process; (*Redublo* at para. 95) and

(e) have succeeded in obtaining a good result on behalf of the class. (*Redublo* at para. 103)

[79] While there are conflicting views in the payment of honoraria, the general trend of courts appears to be to approve them (*Rabbat*; *Redublo; RPC1).* The amount sought here appears to be consistent with amounts awarded in other cases.

[80] I note in this case in particular the psychological and emotional pressure felt by the representative plaintiffs, described in their affidavits, in addressing for more than three years these serious incidents affecting vulnerable children, including their own. Not everyone affected even indirectly by these events would be willing or have the capacity to assume the responsibilities undertaken by the representative plaintiffs. The honoraria represents a small recognition of the work done by the representative plaintiffs in advancing the litigation and providing valuable instruction to counsel, on

behalf of the class members who all benefit from their dedicated work, including attending the mediation sessions, and helping to achieve a good result for the class.

CONCLUSION

[81] For all of these reasons, the settlement is approved and the Order submitted by counsel is approved.

[82] While no court process can undo harmful conduct that has caused damage to vulnerable children, a resolution such as this can hopefully help the healing process for those who have suffered and continue to suffer: through public acknowledgement of the harms, the provision of monetary compensation by those ultimately responsible, and the modification of the systemic approach that contributed to the harms. The ability of those affected to resolve their claims through an expeditious, trauma-informed, streamlined process, instead of through a lengthy, adversarial, expensive court process may assist them in moving forward with their lives.

[83] My thanks to all counsel for their significant efforts in bringing this case to this stage of resolution. The professionalism, thoroughness, civility and respectful approach of all counsel in litigating this difficult case is much appreciated.

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DUNCAN C.J.