Superior Court
[Class Actions]

CANADA
PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

N° : 500-06-001027-198

DATE : February 9, 2021

BY THE HONORABLE SYLAIN LUSSIER, J.C.S.

DANIELLE DALLAIRE
Applicant
c.
KOBE STEEL, LTD.
and
NIPPON KOSHUHA STEEL CO. LTD.
and
SHINKO ALUMINUM WIRE CO. LTD.
and
SHINKO WIRE STAINLESS COMPANY, LTD.
Defendants

JUDGMENT

OUTLINE

[1] On November 12, 2019, the Applicant filed an Application for Authorization to Institute a Class Action and to Obtain the Status of Representative ("**Québec Action**").

[2] Parallel actions were previously filed in British Columbia in *Kett et al. v. Kobe Steel, Ltd. et al.,* S-1710805[1] and in Ontario in *Curran v. Kobe Steel, Ltd. et al.*, CV-17-586942-00CP[2] in November 2017. The three actions are being managed cooperatively.

[3] A national settlement agreement was reached by the parties on June 7, 2019[3]. The Settlement Agreement is subject to Court approval. This judgment deals with the *Application to Approve the Settlement Agreement and Class Counsel Fees*.[4]

[4] The BC, Ontario and Québec Actions were brought against Kobe Steel, Ltd. and some of its subsidiaries and related companies alleging that the Defendants had fraudulently misrepresented to major automobile manufacturers that their metal products met technical and materials standards, when they did not.

[5] The Defendants denied the allegations. They filed a Response to Civil Claim in the BC Action denying liability. The BC Action was the file actively advanced by the parties.

[6] In British Columbia, a mediation was held in advance of the scheduled certification hearing, after the matter had been fully briefed and the parties were ready to proceed with the contested certification application. Simon Margolis QC, acted as the mediator.

[7] On June 7, 2019, a settlement was reached at the mediation and subsequently reduced to a written agreement, the Settlement Agreement.

On December 5, 2019, the BC Action was certified by consent for settlement purposes.

[8] On April 23, 2020, the undersigned made a parallel order, authorizing the Applicant to undertake her class action on behalf of the following class, for settlement purposes only:

> *« All Québec residents who (1) purchased or leased a new or used vehicle manufactured by Toyota (including Lexus), Honda (including Acura), Subaru, Mazda, Mitsubishi, Nissan (including Infiniti), Kia, Hyundai, Tesla or GM, or (2) purchased parts or replacement parts containing automotive metal manufactured by the Defendants, between 2002 and 2018.*

[9] Publication of the Notice of Settlement Approval Hearing began on October 3, 2020, once the COVID-19 suspensions were lifted, and dates were set for the settlement approval hearings in the Québec Action as well as in the BC Action.

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1 The « BC Action ».
2 The « Ontario Action ».
3 The « Settlement Agreement », Exhibit P-1.
4 The « Application ».

[10] The settlement approval hearing took place on November 20, 2020 in British Columbia and judgment was reserved.

[11] The Quebec hearing was held on December 11, 2020.

[12] On, December 14, 2020, the honorable Justice Diane MacDonald approved the settlement[5]. However, she reduced class counsel fees to 28% of the amount awarded to the class in the Settlement Agreement, payable to class counsel as a first charge on the settlement funds.

[13] For the reasons that follow, adopting the reasoning of Justice MacDonald, this Court reaches the same conclusions.

QUESTIONS AT ISSUE

[14] Is the Settlement fair and reasonable?

[15] Should the Court approve class counsel fees according to the terms of the Settlement Agreement?

ANALYSIS

A. The terms of the Settlement Agreement

[16] Under the Settlement Agreement, Kobe Steel, Ltd. has agreed to pay a Settlement Amount of CAD $1,950,000 to resolve the litigation, without admission of liability. The parties have proposed that the settlement amount, after deduction for class counsel fees, disbursements (including costs of notice) and applicable taxes, and any payments to representative plaintiffs in the BC Action and the *Fonds d'aide aux actions collectives* in respect of Québec's share, be distributed by way of cy près award[6] to the Law Foundation of British Columbia (77.4%) and Éducaloi in Québec (22.6%).

[17] The settlement funds have been held in trust by counsel for the Defendants since June 2019. At the time that approval materials were prepared in the BC Action, the amount of the settlement funds, with accrued interest, was $1,987,412.28.

[18] The Settlement Agreement entails the settlement of the BC Action, the Ontario Action and the present proceedings and the release of the Defendants by the National Class, excluding Québec members, and the Québec Class.

[19] Following the decision of this Court, a recognition and enforcement order will be sought in Ontario. Upon entry of the last order in Québec or Ontario, the Settlement

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5 *Kett* v. *Kobe Steel Ltd.*, 2020 BCSC 1977.

6 The equivalent of the « balance » (reliquat) referred to in article 597 C.C.P.

Agreement will become final. Within 10 days of that date, the settlement funds will be paid to Class Counsel in trust for distribution in accordance with the Settlement Agreement.

[20] Under the terms of the retainer agreement with the Plaintiffs, Class Counsel in BC have sought approval of a fee of up to 33 1/3% of the settlement amount, plus disbursements and applicable taxes. Class Counsel fees and disbursements are subject to approval by the BC and Québec Courts.

B. Is the Settlement Agreement fair and reasonable?

[21] The criteria guiding the Court in approving a settlement are well known and can be enumerated as follows[7] :

a) les probabilités de succès du recours ;

b) l'importance et la nature de la preuve administrée ;

c) les termes et les conditions de la transaction ;

d) la recommandation des avocats ad litem et leur expérience ;

e) le coût des dépenses futures et la durée probable du litige ;

f) la recommandation d'une tierce personne neutre, le cas échéant ;

g) le nombre et la nature des objections à la transaction ;

h) la bonne foi des parties ;

i) l'absence de collusion.

[22] These criteria are not cumulative and do not need to be present in all cases. As Justice Suzanne Courchesne wrote in *Takata* :

> [19] Ces divers critères doivent être pondérés en fonction des circonstances propres à chaque cas d'espèce. Dans plusieurs cas, ils ne s'appliquent pas tous en même temps au cas sous étude.
>
> [20] Au moment de récapituler au sujet de leur application, le Tribunal doit pouvoir conclure que la transaction s'avère dans l'intérêt général des membres, que les avantages pour eux l'emportent sur les inconvénients.

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7 *Vitoratos* c. *Takata Corporation*, 20210 QCCS 231; *Chetrit* c. *Société en commandite Touram*, 2020 QCCS 51.

> [21] Le Tribunal doit encourager le règlement à l'amiable en donnant effet à la volonté des parties contractuelles, à moins d'atteinte à l'ordre public. (References omitted)

[23] Generally, the Court may only approve or refuse the settlement, without the possibility of amending it[8]. However, if the settlement agreement provides that certain elements of the deal may be revisited by the Court, this rule does not apply. Such is often the case with class counsel fees[9]. The Settlement Agreement in this proceeding provides that refusal of the proposed class counsel fees by the Court does not prevent its approval:

> 5.4 The approval of class counsel fees is not a material term of this Settlement Agreement and this Settlement Agreement shall not be contingent upon Court approval of Class Counsel Fees. A separate order will be taken out dealing with Class Counsel Fees, disbursements, and any honoraria for the Plaintiffs.

[24] The criteria for approval of settlements in class action proceedings are similar in British Columbia and it would be inelegant to simply paraphrase the judgment of Justice MacDonald. Her reasons are better served by their integral reproduction:

> [30] The question before me is whether the proposed settlement is fair and reasonable and in the best interests of the class. The approval of the settlement is not contingent on the court's approval of the fees: CPA, s. 38.
>
> [31] The action alleges that the defendants fraudulently misrepresented to major automobile manufacturers that their metal products met technical and materials standards. At the outset, the plaintiff indicated to me that they had a strong case. However, at this hearing they conceded the case has significant risks.
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> [32] The major difficulty, as I understand it, is that certification and liability would turn on what constitutes a breach of the Business Practices and Consumer Protection Act, S.B.C. 2004, c. 2 [BPCPA] and whether any losses could be traced through multi-layered global supply chains, in the context of modern automotive manufacturing. Because they were indirect purchasers, it would be daunting to establish the pass-through of the overcharges to the class members. The expert economists confirmed there was virtually no way to trace the product to any individual vehicles. In addition, there was little to no evidence establishing there were safety or performance issues. Finally, the defendants' expert challenged the plaintiff's lack of a credible methodology with respect to loss.

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8 *Vitoratos* c. *Takata Corporation*, 2021 QCCS 231, paragr. 22; *Options consommateurs* c. *Banque Amex du Canada*, 2017 QCCS 200, confirmé par 2018 QCCA 305.

9 *Mahmoud* c. *Société des casinos du Québec inc.*, 2018 QCCS 4526; *Jacques* c.*189346 Canada inc. (Pétroles Therrien inc.)*, 2017 QCCS 4020.

[33] I accept there were strong and significant reasons to settle this claim. This finding is bolstered by the recent decision of Justice Branch in Kett v. Mitsubishi Materials Corporation, 2020 BCSC 1879, a similar case to the one before me. That case also involved Japanese auto parts suppliers who were alleged to have overcharged manufacturers for substandard product because of their failure to carry out proper parts testing. Justice Branch, describing the class action as "too large and too fragmented", ultimately refused certification because the plaintiff's action failed to meet the requirements of s. 4(1) of the CPA. The evidence showed that the evaluation of both liability and damages would require a prohibitive "shipment-by-shipment" analysis to show which products had been overcharged or not: at para. 172. Justice Branch also found the plaintiff's claim under the BPCPA did not disclose a cause of action as the defendants could not be considered suppliers in a "consumer transaction" as defined in s. 1 (with the exception of direct part purchases): at paras. 81-82.

[34] A class action settlement is not required to be perfect. However, the settlement must "fall within a range or zone of reasonableness to be approved": Bodnar at para. 17.

[35] A primary consideration for me is how the parties determined the value of the claim. In terms of how the parties came to the settlement sum of $1,950,000, the plaintiffs state :

Using expert evidence from Messrs. Steve Rodgers and Dennis DesRosiers, and pulling data from publicly-available sources, and matching that information against the defendants' affidavit evidence and public disclosure regarding the underlying facts, the plaintiffs compiled a list of likely affected vehicle makes and models in Canada during the class period 2002-2018. In the plaintiffs' estimation, the maximum number of affected makes and models was 2,531,171. Although the fact of the wrongdoing was never seriously in doubt, the evidence from the defendants was that not every vehicle in a particular model or time period would have been affected, so a discount factor for that reality is reasonable. In these circumstances, the settlement amount of $1,950,000 is congruent with the approximate maximum number of vehicles that may have been affected by the alleged wrongdoing, with a discount of close to 25% for uncertainty about whether each and every car was directly affected.

In cases that involve cartel-like price effects (i.e. an impact at one part of the supply chain that is then passed through further levels to the ultimate consumer), one way of valuing losses is to use a nominal figure multiplied by the total number of affected customers or products. Here, the maximum number of affected vehicles was 2,531,171. Applying a discount factor of close to 25% to reflect the reality that not every vehicle would have been directly impacted, the settlement figure of $1,950,000 can be interpreted as valuing each claim at $1.00. That is not out of line with the economic evidence of the experts Drs. Allen and Israel, which indicated that price

> effects for individual consumers could be small, especially when the impacts of pass-through were considered.
>
> [36] I accept that the parties arrived at the settlement sum through a fair and reasonable process. As already stated, there is a strong presumption of fairness where a settlement is negotiated at arm's length. Courts have held that experienced class counsel are in a unique position to assess the risks and rewards of the litigation. Their recommendation is given considerable weight by the reviewing court: Jones at para. 36.
>
> [37] Klein Lawyers LLP and Mathew P Good Law Corporation are experienced in the specialised area of class action litigation. They have weighed the risks and benefits of continued litigation against the certainty of timely recovery established in the proposed Settlement Agreement. Their assessment is to be given significant weight and is germane to the settlement approval hearing.
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> [38] In addition to the uncertainties described above, the ultimate amount of compensation per individual class member anticipated after a full trial would be very low.
>
> [39] The settlement is structured on a lump sum basis and will be distributed, after class fees, disbursements, and honouraria, by way of cy-près. The precedent for cy-près distribution is well established and is contemplated by s. 34(1) of the CPA as it existed at the time the present action was commenced: Sun-Rype Products Ltd. v. Archer Daniels Midland Co., 2013 SCC 58 at para. 25. Cy-près is appropriate where, as here, the pass-through to the indirect purchasers would be difficult to establish and the individual claim is modest. The calculated amount would be approximately $1 per class member. At this small amount per class member, the cost of administration of a class member distribution could easily exceed the amount to be distributed.
>
> [40] I agree with the parties that the BC Law Foundation and Éducaloi in Quebec are appropriate recipients of the donation. The plaintiffs advised me that while they considered more targeted charities, they did not find a suitable one within, or associated with, the automobile supply industry.

[25] The settlement was concluded through mediation, with the help of a seasoned mediator.

[26] No objections to the transaction were received.

[27] It appears that the litigation, in both venues, could have been protracted and costly, for all parties.

[28] Needless to say that the parties were in good faith and that there was no collusion, so as to satisfy the last criteria of the list, above.

[29] The Court is of the opinion that the Settlement is fair and reasonable.

C. Should the Court approve Class Counsel Fees according to the terms of the settlement?

[30] Plaintiffs' counsel in the BC Action requested approval of $662,404.51 plus applicable taxes in fees, $76,008.89 (inclusive of applicable interest and taxes) in disbursements, which include the disbursements in the Quebec Action, and $1,000 plus tax in further disbursements with any funds not used to be distributed with the balance of the cy-près funds.

[31] The Applicant's attorneys incurred disbursements in the amount of $2,129.19 before taxes in the Quebec Action[10].

[32] No financial aid was obtained from the Fonds d'aide aux actions collectives. The Fonds d'aide noted the conditions of the Settlement Agreement and indicated it had no representations to make to the Court[11].

[33] The majority of the work required in this litigation was carried out in the context of the BC Action. Nevertheless, Applicant's counsel submit that because Court approval of Class Counsel's fees is provided for in the Settlement Agreement, they need this Court's approval.

[34] It is not the Settlement Agreement that confers jurisdiction on this Court to approve Class Counsel Fees , but rather article 593 *CCP* which provides :

> 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 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.

[35] As mentioned above, approval of the Settlement Agreement is not contingent on the Court approving the fees agreed upon between the parties.

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10 Exhibit P-5.

11 Letter dated December 3rd, 2020, from Me Frikia Belogbi.

[36] In confirming the judgment of Justice Claudine Roy , in *Banque Amex*, the Court of Appeal reiterated that the Court should have regards to the criteria enumerated in the *Code of Professional Conduct of Lawyers*[12] when assessing the reasonableness of counsel fees[13] :

> [61] Le législateur confie au juge un rôle de gardien et de protecteur des droits des membres. Ainsi, bien que pertinente à l'examen de la question, aucune convention d'honoraires intervenue entre le représentant et son avocat ni aucune entente d'honoraires conclue entre le représentant, son avocat et les parties adverses dans le cadre d'une transaction présentée pour approbation ne lient le juge.
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> [62] Le tribunal ne doit pas hésiter, au besoin, « à réviser ces honoraires en fonction de leur valeur réelle, à les arbitrer et à les réduire s'ils sont inutiles, exagérés, ou hors de proportion au regard de ce que le groupe retire du recours ».
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> [63] L'exercice de cette fonction de contrôle des honoraires des avocats du représentant constitue la mise en œuvre d'un pouvoir discrétionnaire qui mérite retenue de la part de la Cour d'appel.
>
> [64] Le Code de procédure civile n'indique ni critères ni facteurs d'évaluation du caractère juste et raisonnable de ces honoraires, mais le Code des professions, la Loi sur le Barreau et la réglementation adoptée sous ces législations le font.
>
> [65] Les articles 101 et 102 du *Code de déontologie* des avocats énoncent :

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.
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;	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;

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12 CQLR c. B-1, R 3.1.

13 *Option consommateurs* c. *Banque Amex du Canada*, 2018 QCCA 305.

3° la difficulté de l'affaire;	(3) the difficulty of the matter;
4° l'importance de l'affaire pour le client;	(4) the importance of the matter to the client;
5° la responsabilité assumée;	(5) the responsibility assumed;
6° la prestation de services professionnels inhabituels ou exigeant une compétence particulière ou une célérité exceptionnelle;	6) the performance of unusual professional services or professional (services requiring special skills or exceptional speed;
7° le résultat obtenu;	(7) the result obtained;
8° les honoraires prévus par la loi ou les règlements;	(8) the fees prescribed by statute or regulation; and
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.	(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.

[Soulignements ajoutés]

> [66] Les principes généraux et les méthodes d'évaluation pertinentes à l'analyse du caractère juste et raisonnable des honoraires résultent de la prise en compte de ces facteurs. Dans ce contexte, les conventions d'honoraires bénéficient d'une présomption de validité et ne sont écartées que si leur application n'est pas juste et raisonnable pour les membres dans les circonstances de la transaction examinée; quant au modèle du facteur multiplicateur, il constitue un outil de mesure ou de contrôle du caractère raisonnable des honoraires.
>
> [67] Lorsqu'il analyse les honoraires proposés, si le juge doit faire preuve de flexibilité dans son examen et accorder du poids à l'expression de la volonté des parties, il n'en demeure pas moins qu'il doit s'assurer que ceux-ci sont effectivement justes et raisonnables.[14]

[37] Justice Claudine Roy , then in Superior Court, had ruled :

> [89] Malheureusement, le Tribunal note une inflation certaine dans les conventions d'honoraires. Alors qu'antérieurement plusieurs des conventions prévoyaient des pourcentages de 15 ou 20 %, les conventions semblent maintenant atteindre plus souvent la limite supérieure de ce qui a déjà été accordé par les tribunaux (25, 30 ou même 33 %), sans tenir compte du contexte particulier à chaque affaire et de l'exercice d'appréciation auquel

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[14] See also, *Marcil* c. *Commission scolaire de la Jonquière*, 2018 QCCS 3836.

> les tribunaux se livrent pour conclure que les honoraires réclamés sont raisonnables.
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> [90] Les conventions d'honoraires prévoient soit un pourcentage unique ou un pourcentage progressif, généralement fonction du stade d'avancement du dossier (entente conclue avant ou après l'autorisation d'exercice du recours, avant ou après un appel...). Pourtant, l'exercice que le Tribunal doit compléter ne tient pas seulement compte de l'avancement des dossiers. Le Code de déontologie des avocats énumère neuf autres critères pertinents. Les conventions gagneraient à être beaucoup plus détaillées[15].

[38] In that particular case, she found that class counsel fees of 5% of the amounts distributed would have been reasonable[16].

[39] In *Mahmoud* c. *Société des casinos du Québec inc.*[17], Justice Thomas Davis wrote :

> [26] Applying these principles to the present matter gives the Court reason for pause.
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> [27] Firstly, the settlement will not benefit the class members alone, but potentially a much larger group of the general public.
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> [28] Secondly, given the settlement achieved, the Court questions whether the fees requested are proportional.
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> [29] The issue raised by the action is not complex. If Mr. Mahmoud's loss of $3.96 is representative of the typical class member, the importance of the matter to each class member is not particularly significant.
>
> [32] The Court will therefore reduce the fees claimed by $7,500 to $42,500, not a precise calculation based on an evaluation of the hours spent, but rather a symbolic reduction. In class actions, as in any other matter, the time spent and the fees charged must be proportional.

[40] In *Jacques*[18], Justice Bernard Godbout similarly reduced the amount of fees payable, notwithstanding a convention with class representative.

[41] In the British Columbia Action, Justice MacDonald found that the fees had to be reduced in light of the stage at which the litigation was settled and the result obtained. She wrote:

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15 *Options consommateurs* c *Banque Amex du Canada*, 2017 QCCS 200.
16 At paragr. 124.
17 2018 QCCS 4526.
18 Above, footnote 9.

[51] Counsel advised me that they put significant hours into the action, approximately 173 hours in each firm.

[52] In approving class fees, the court recognizes the meritorious efforts of counsel and the risks they undertake.

[54] It is not unusual for counsel to have a contingency fee of 33.33% approved. However, this amount is at the high end of the generally accepted range of court approved fees. The typical range for contingency fees is 15% to 33% of the award or settlement: Cardoso v. Canada Dry Mott's Inc., 2020 BCSC 1569 at para. 35. Lower fees may not provide the proper incentives for counsel to litigate risky class actions in the future; higher fees may incentivize counsel to settle at earlier stages of the proceeding which may not be in the best interest of the class.

[55] I appreciate that there were no objections from class members in this case and none opted out of the settlement. I also appreciate that the litigation was complicated and counsel expended a considerable amount of time and resources toward prosecuting it. This included a number of appearances and procedural steps in the litigation, as well as obtaining expert reports. However, the matter settled at a relatively early stage, prior to certification. Preparation for trial was in its infancy. This was not protracted litigation.

[57] As stated above, a consideration in approving fees is to encourage class counsel to pursue difficult and risky litigation. I was advised that class counsel incurred added financial risk by not seeking third-party litigation financing. However, in BC such funding is not as important as in other jurisdictions because BC is a no cost jurisdiction. The risks to counsel, at the early stages, is not as significant.

[58] The integrity of the profession is a consideration when approving legal fees in the class action context: Plimmer v. Google, Inc., 2013 BCSC 681; Endean v. The Canadian Red Cross Society, 2000 BCSC 971, aff'd 2000 BCCA 638, leave to appeal dismissed, [2001] S.C.C.A. No. 27. Counsel often receive a handsome reward for undertaking the above-stated risks. This can create the perception that the ultimate beneficiaries are class counsel, rather than the class. As articulated by Justice Myers in Pro-Sys Consultants Ltd. v. Microsoft Corporation, 2018 BCSC 2091 at para. 53, "the court should ensure that counsel have not commenced an action that uses the class action legislation and judicial system to obtain a result in which they are the only or major beneficiaries." As Justice Douglas recently stated: "The ultimate purpose of the class action vehicle is to benefit the class, not their lawyers. The payment to the lawyers is simply a way to achieve the benefits for the class, not the other way around": Cardoso at para. 37.

[59] Fees must not appear to the public that the litigation solely benefits counsel. Where, as here, the settlement amount is modest, the individual class members are not compensated, and the administrative costs are low, there could be such a perception.

> [60] In these circumstances, I find the fee to be disproportionate to the amount of effort, risk, and resources involved. I reduce class counsel fees to 28%.

[42] This reasoning echoes that of Quebec judges in similar situations.

[43] This Court is not bound by the finding on fees in a parallel class action[19]. However, if the Court is in agreement with the reasoning, a consistent result should be sought.

[44] The undersigned, following the precedents referred to above, agrees with Justice MacDonald that class counsel fees should be reduced to 28 % of the amount of the settlement.

POUR CES MOTIFS, LE TRIBUNAL :

[45] **ACCUEILLE** la demande d'approbation du Règlement intervenu en l'instance;

[46] **DISPOSE** que, sauf indication contraire dans le présent jugement ou tel que modifié par celui-ci, les termes commençant par une majuscule utilisée dans les présentes ont le sens défini dans l'Entente de règlement;

[47] **DÉCLARE** que l'Entente de Règlement (y compris son Préambule et ses Annexes) :

a) est juste, raisonnable et dans le meilleur intérêt des membres du groupe;

b) est par les présentes approuvée conformément aux articles 590 et 593 *C.p.c.*; et

c) doit être mise en œuvre conformément à toutes ses conditions;

FOR THESE REASONS, THE COURT :

[45] **GRANTS** the Application to Approve the Settlement Agreement;

[46] **STATES** that, except as otherwise specified in, or as modified by this Judgment, capitalized terms used herein shall have the meaning ascribed in the Settlement Agreement;

[47] **DECLARES** that the Settlement Agreement (including its Preamble and its Schedules) :

a) is fair, reasonable and in the best interests of the Class Members;

b) is hereby approved pursuant to articles 590 and 593 C.C.P.; and

c) shall be implemented in accordance with all of its terms;

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19 *Brown* v. *Canada (Attorney General)*, 2018 ONSC 3429, at paragr. 32.

À l'exception de la question des honoraires des avocats des demandeurs, dont il sera disposé de la façon édictée par le jugement de Colombie-Britannique en date du 14 décembre 2020.

[48] **DÉCLARE** que le montant du règlement énoncé dans l'Entente de Règlement remplit les obligations des Défendeurs en vertu de l'Entente de Règlement;

[49] **DÉCLARE** que l'Entente de Règlement constitue une transaction conforme à l'article 2631 du Code civil du Québec qui lie toutes les parties et tous les Membres du Groupe qui ne se sont pas exclus en temps opportun;

[50] **DÉCLARE** que tous les Membres du Groupe, à moins qu'ils ne se soient retirés avant la date limite de retrait, seront réputés avoir choisi de participer au Règlement et seront liés par l'Entente de Règlement et le présent jugement;

[51] **DISPENSE** les parties de tout autre avis aux membres suite à l'approbation de la transaction;

[52] **ORDONNE** que les prélèvements pour le Fonds d'aide aux actions collectives prévus à l'Entente de Règlement soient remis conformément à la Loi sur le Fonds d'aide aux actions collectives[20] et au Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives;[21]

Save and except with respect to Class Counsel Fees, which shall be dealt with in the way provided for in the British Columbia judgment dated December 14, 2020.

[48] **DECLARES** that the Settlement Amount set forth in the Settlement Agreement in fully satisfies the obligations of the Defendants under the Settlement Agreement;

[49] **DECLARES** that the Settlement Agreement constitutes a transaction in conformity with article 2631 of the Civil Code of Quebec which is binding upon all parties and all Class Members who have not excluded themselves in a timely manner;

[50] **DECLARES** that all Class Members, unless they opted out prior to the Opt-Out Deadline, shall be deemed to have elected to participate in the Settlement and shall be bound by the Settlement Agreement and this Judgment;

[51] **EXEMPTS** the parties from any further notice to members following approval of the transaction;

[52] **ORDERS** that the levies for the *Fonds d'aide aux actions collectives* as provided for in the Settlement Agreement be remitted according to *the Act respecting the Fonds d'aide aux actions collectives* and the *Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives*;

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20 RLRQ c. F-3.2.0.1.1.

21 RLRQ c.F-3.2.0.1.1. r.2.

[53] **ORDONNE** la distribution du reliquat à Éducaloi et The Law Foundation of British Columbia tel que prévu à l'Entente de Règlement.

[54] **ORDONNE** qu'une copie du présent jugement soit affichée sur le site Web des procureurs des membres et sur le Registre des actions collectives;r

[55] **PREND ACTE** de l'engagement des procureurs de la demanderesse de produire un rapport d'administration quant à la distribution du montant du règlement, conformément à l'article 59 du *Règlement de la Cour supérieure en matières civiles*[22], et d'en notifier le Tribunal et le Fond d'aide.

SANS FRAIS.

[53] **ORDERS** the *cy pres (balance)* distribution to Éducaloi and to The Law Foundation of British Columbia as provided for in the Settlement Agreement.

[54] **ORDERS** that a copy of this Judgment shall be posted on Class Counsel's website as well as the Québec Class Action Register;

[55] **TAKES NOTICE** of the Applicant's counsels' undertaking to produce a report on administration of the settlement funds, pursuant to Sec. 59 of the *Regulation of the Superior Court of Québec in civil matters*, and to give notice thereof to the Court and the Fonds d'aide. ;

WITHOUT COSTS.

SYLVAIN LUSSIER, J.S.C.

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KLEIN AVOCATS PLAIDEURS INC.
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Mtre Kloé Sévigny
FONDS D'AIDE AUX ACTIONS COLLECTIVES

Hearing Date : December 11, 2020

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22 RLRQ c C-25, r 0.2.1.