

SOLVING THE NATIONAL CLASS PROBLEM

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I. THE PROBLEM

This winter, a traveling road show of lawyers trundled across nine separate jurisdictions seeking court approval of the Indian Residential Schools settlement.¹ Tonnes of boxes were shipped in their wake. The lawyers made essentially the same submissions to different courts in different jurisdictions day after day after day.²

Why did this happen?

Basically the parties did not have the confidence to seek one settlement approval in one court applicable to a national settlement. This decision was driven by two factors.

First, applicable legislation varied too much across the jurisdictions to settle on one regime for court approval. Specifically (1) some legislation only allows opt in classes from class members resident in jurisdictions other than their own; (2) other legislation is silent on the issue of national classes; and (3) some jurisdictions lacked any class proceeding legislation.

Second, the case law was in disarray. It was not at all clear that courts in certain jurisdictions (particularly Quebec and Saskatchewan), would respect and enforce a settlement approved issued by only one jurisdiction.

In order to have the comfort that the settlement would “stick”, the parties deemed it necessary to maximize coverage by seeking separate approvals in nine jurisdictions, each of which had some level of ongoing individual litigation regarding the Indian Residential Schools problem.

¹ *Baxter v. Canada*, 2006 OJ 4968, *Quatell v. Canada*, 2006 BCJ 3231, *Kuptana v. Canada (Attorney General)*, 2007 NWTJ 1, *Amaq v. Canada*, 2006 Nu. J. No. 26, *Semple v. Attorney General of Canada*, 2006 MBQB 285, *Bosum v. Attorney General of Canada*, 2006 QCCS 5794, *Sparvier v. Attorney General of Canada*, 2006 SKQB 533, *Northwest v. Canada (Attorney General)* 2006 ABQB 902, *Fontaine v. Canada*, 2006 YKSC 63

² After day after day after day after day after day after day.

But even a highly cooperative effort amongst the parties and the judges could not avoid difficulties. Not all of the judges agreed on the approach to the settlement. One group determined that an additional level of independent court monitoring was required, along with a few other details. The rest of the judges disagreed, stating that the courts should not interfere or jeopardize the settlement by requiring any changes to an agreement that was generally fair and reasonable. There was further delay while extraordinary efforts were made to have joint hearings and meeting to achieve consensus, which was eventually (and thankfully) achieved.

However, the difficulties will not end there. As with any settlement of this size, further issues will continue to arise. From which of the multitude of courts should directions or modifications be sought? The courts have developed an imaginative plan to address these concerns, but the plan remains complex.³

There must be a better way.

II. THE SOLUTION

In 1996, the Uniform Law Conference of Canada (“ULCC”) produced model class proceedings legislation.⁴ Model matching legislation is obviously one way of avoiding interjurisdictional confusion or chaos. However, there were two problems.

First, the model legislation was only proposed after Quebec and Ontario had already introduced their own legislation. These two provinces had legislation that failed to address the national class issue at all, leaving it up to the courts to settle on the approach.

Second, the model legislation took a very respectful Canadian approach, only “encroaching” on another province’s control over the property and civil rights of another province’s resident if that resident specifically attorned to the jurisdiction. In particular, the model legislation provided that class members from outside the provincial jurisdiction

³ See Appendix A.

⁴ http://www.ulcc.ca/en/us/Class_Proceedings_En.pdf

would only be able to participate in a class proceeding if they specifically opted into the foreign class proceeding.⁵

In 2005, the ULCC saw from the case law that there was a problem. It was a problem that was coming to the attention of lawyers⁶, academics⁷ and judges.⁸ There were calls for reform, and the ULCC boldly stepped into that breach.

A ULCC Committee was created to prepare a report. The report reviewed the various possible solutions to the problem including: (1) use of the Federal Court, and (2) creation of a U.S.-style Multi-District Litigation (“MDL”) Panel⁹. Both solutions were rejected because of constitutional limitations. The Federal Court could only consider issues within federal jurisdiction, which forms a small subset of the areas in which class actions are pursued. There was no way to create a binding MDL panel, as there is no way to allow a judge or group of judges in one jurisdiction to mandate that a court in another jurisdiction “stand down” or transfer a case before him or her.

Hence the search for the “next best thing”.

The Committee started with the assumption that, generally, one national action is the most efficient litigation structure, and is the one which has the best prospect of achieving access to justice. The Committee did generally review the “watertight compartment” legal arguments against national opt-out classes, but concluded that recent Supreme Court of Canada judgments on jurisdiction suggested that the law was moving away from such an approach and instead favouring “full faith and credit” principles applicable across jurisdictions.¹⁰ It was precisely these principles that grounded the U.S. Supreme Court’s decision that national opt-out class actions should be accepted.¹¹

⁵ See Section 16 of the Model Act.

⁶ See: The author’s article “Chaos or Consistency” at http://www.branmac.com/go/download/chaos_consistency.pdf,

⁷ Craig Jones, “The Case for the National Class”, (2004) 1 Can. Class Act. Rev.29

⁸ *Walls v. Bayer Inc.*, 2005 MBCA 93 at para.89.

⁹ http://www.branmac.com/go/download/ULCC_Report.pdf

¹⁰ *Ibid.*, at pp.9, 20

¹¹ *Phillips Petroleum v. Shutts*, 472 U.S. 797 (1985)

From the perspective of the class member, if you ask a “class member on the street” what they want out of a class action, the author projects the following response: “Give me the best lawyer who is bringing the case in the best jurisdiction that will achieve the cheapest and quickest result”.

From the perspective of the class counsel, a larger action creates a more effective “carrot” to motivate that counsel to take on the work of the class on a contingency fee basis. Conversely, having the same case subdivided into 13 jurisdictions may water down each potential fee award to the extent that it no longer makes economic sense to pursue the case at all, creating a real blow to access to justice.

From the perspective of defendants, now that class proceedings are available in all 13 jurisdictions, it is difficult to perceive an advantage to having to fight the same case in 13 different jurisdictions. All that is achieved is increased cost, and the risk of inconsistent verdicts or orders.¹²

In order to maximize the prospect for single national actions, which still respect the constitutional integrity of Canada’s federal structure, the following proposal was made:

An on-line Canadian Class Proceedings Registry of all class action filings in each Canadian jurisdiction should be created and maintained for use by the public, counsel and courts. All current or proposed class proceedings legislation in all Canadian jurisdictions should require that all class action filings be directed to this registry. In addition or alternatively, courts in each jurisdiction should issue practice directions setting out the details of such filings.

All current or proposed class proceedings legislation in all Canadian jurisdictions should:

- (a) expressly permit the court to certify, on an opt-out basis, a class that includes class members residing or located outside the jurisdiction;
- (b) require that a plaintiff seeking to certify a class proceeding give notice of such an application to plaintiffs in any class proceeding in Canada with the same or similar subject matter;

¹² See *Pardy v. Bayer*, 2003 NFSC TD 109 where the defendant sought to stay the Newfoundland action given that there was already a Manitoba action. See also *Englund v. Pfizer Canada Inc.*, [2006] S.J. No. 9, where the defendant sought to stay the Saskatchewan action in favour of a proposed Ontario action. Notably, neither court agreed to stay the overlapping cases.

- (c) permit plaintiffs from other jurisdictions served with such notice to make submissions at or before the certification application, including submissions that their action is the preferable procedure for all or part of the overlapping class;
- (d) require the court, in certifying any class proceeding, to consider whether there are one or more class proceedings relating to the same or similar subject matter that have been commenced in one or more other Canadian jurisdictions and to consider whether such class proceedings may be a preferable procedure for the resolution of the claims of all or some of the class members;
- (e) require the court, in assessing whether related class actions in other jurisdictions may be a preferable procedure for the resolution of the claims of all or some of the class members, to consider all relevant factors including:
 - (i) the nature and the scope of the causes of actions advanced, including any variation in the cause of actions available in the various jurisdictions;
 - (ii) the theories offered by counsel in support of the claims;
 - (iii) the state of preparation of the various class actions;
 - (iv) the number and extent of involvement of the proposed representative plaintiffs;
 - (v) the order in which the class actions were commenced;
 - (vi) the resources and experience of counsel;
 - (vii) the location of class members, defendants and witnesses;
 - (viii) the location of any act underlying the cause of action;
- (f) permit the court to make any order it deems just, including:
 - (i) certifying a national or multijurisdictional opt-out class proceeding, if (1) all statutory criteria for certification have been met, and (2) the court determines that it is the appropriate venue for a national or multijurisdictional class proceeding;

- (ii) refusing to certify an action on the basis that it should proceed in another jurisdiction as a national or multijurisdictional class proceeding;
- (iii) refusing to certify that portion of the proposed class that includes class members who may be included within a pending or proposed class proceedings in another jurisdiction;
- (iv) requiring that a subclass with separate counsel be certified within the certified class proceeding;

In the event that multiple class actions are certified in relation to the same issues, the courts hearing the action should adopt the *Guidelines Applicable to Court-to-Court Communications in Cross Border Cases* that have been promulgated in the insolvency area by the American Law Institute and have been adopted by some Canadian courts.

The author has dubbed this proposal the “national carriage motion”. It adopts much of the structure used to determine the preferable action and counsel when there are competing actions within a single jurisdiction. It also contains the key elements of the “*forum non conveniens*” test, since the question across jurisdictions is not simply who has the best action, but where the action is most appropriately determined. Finally, it respects the integrity of provincial court jurisdiction. It does not mandate that subsequent cases stand down. However, it creates an environment in which each counsel has a full opportunity to present their case to the first court, thereby maximizing the prospects that any subsequent court will respect the decision of that first court.

At its 2005 meetings, the ULCC indicated general support for the report, but had a few specific concerns.¹³ These were addressed in a follow up report.¹⁴ Pursuant to this report, the recommendations were modified as follows:

An on-line Canadian Class Proceedings Registry of all class action filings in each Canadian jurisdiction should be created and maintained for use by the public, counsel and courts. *[Each province would be encouraged to amend their rules of court to require that all class action filings be directed to this registry.]* In addition, courts in each jurisdiction should issue practice directions setting out the details of such filings.

¹³ See <http://www.ulcc.ca/en/civil/index.cfm?sec=2>

¹⁴ http://www.ulcc.ca/en/poam2/National_Class_Actions_Supplementary_Report_En.pdf

All current or proposed class proceedings legislation in all Canadian jurisdictions should:

- (a) expressly permit the court to certify, on an opt-out basis, a class that includes class members residing or located outside the jurisdiction;
- (b) [require that a plaintiff seeking to certify a class proceeding give notice of such an application to plaintiffs in any class proceeding in Canada with the same or similar subject matter;]
- (c) permit plaintiffs from other jurisdictions served with a notice of class proceedings to make submissions at or before the certification application;
- (d) require the court, in considering whether, and to what extent, to certify any class proceeding, to determine whether there are one or more related class proceedings involving the same or similar subject matter that have been commenced in one or more other jurisdictions:
- (e) *require the court to determine whether a related class proceeding is the most suitable forum for resolution of the claims of all or some of the class members, based on the interests of all the parties, the ends of justice, the risk of irreconcilable judgments and judicial economy, by considering all relevant factors, including:*
 - (i) the basis of alleged liability, including the applicable laws:*
 - (ii) the stage of proceeding of the class action and the plan for the proceeding, including the resources and experience of counsel, as well as the method of advancing the proceeding on behalf of the class:*
 - (iii) the location of class members and of class representatives including the latter's ability to participate in the litigation and to represent the interests of the class members; and.*
 - (iv) the location of evidence, including witnesses;*
- (f) The court may make any order it deems just, including:

(i) certifying a multi-jurisdictional opt-out class proceeding, if (1) all statutory criteria for certification have been met. and (2) the court determines that it is the appropriate venue for a multi-jurisdictional class proceeding;

(ii) refusing to certify an action on the basis that it should proceed in another jurisdiction as a multi-jurisdictional class proceeding;

(iii) refusing to certify that portion of the proposed class that includes class members who may be included within a pending or proposed class proceeding in another jurisdiction; and.

(iv) requiring that a subclass with separate counsel be certified within the class proceeding;

In the event that multiple class actions are certified in relation to the same issues, the courts hearing the action should adopt the *Guidelines Applicable to Court-to-Court Communications in Cross Border Cases* that have been promulgated in the insolvency area by the American Law Institute and have been adopted by some courts.

Essentially, there were two major changes:

1. The competence of counsel was de-emphasized;
2. The recommendation that the registry be mandatory was softened.

The author did bless this supplementary report, in his eternal quest for consensus and forward momentum. However, in the authors' view, neither of these changes was strictly required:

1. The Canadian discomfort with excellence may be the genesis for the first change. However, returning to the "class member on the street", the author is sure they would not be shy about expressing a preference for having the best lawyer in the country advance their action (particularly when they are not paying counsel's hourly rate).
2. The mandatory nature of the Registry is essential, since the Registry creates the framework to ensure that all competing class counsel are invited to the "national

carriage motion”. This national invitation maximizes the odds that the decision on such a motion will be respected across other jurisdictions.

The revised recommendations were approved at the 2006 proceedings of the ULCC.¹⁵

III. IMPLEMENTING THE SOLUTION: PHASE 1 - THE NATIONAL CLASS ACTION DATABASE

There was momentum towards implementation of the ULCC Solution. In particular the CBA indicated an interest in serving as the repository of the proposed National Class Action Database (the “Database”). Further, judges in the key jurisdictions of Toronto, B.C. and Quebec indicated an interest in moving forward with this portion of the initiative, which did not require legislative amendment. This centralized registry has received the endorsement of the Canadian Judicial Council.¹⁶ Three jurisdictions have already passed Practice Directions¹⁷ making registration mandatory (to the extent that Practice Directions can carry such weight): British Columbia,¹⁸ Quebec¹⁹ and the Toronto Judicial Region.²⁰

The Database is “designed to give lawyers and the public easy access to court documents submitted with regard to class action lawsuits currently underway across the country.”²¹ The Database is available for viewing and use on the CBA website.²²

The CBA explains on its website that the Database aims to address concerns for the administration of justice and effective management of judicial resources that arise from multi-jurisdictional class actions.

Such a Database serves a general public good by allowing citizens to know when and if there are proposed class actions that may impact their rights. Given that the filing of a class action generally stops the limitation clock from running, this will ensure that

¹⁵ See <http://www.ulcc.ca/en/poam2/index.cfm?sec=2006&sub=2006f>

¹⁶ See www.tribunaux.qc.ca/mjq_en/c-superieure/avis/MTL_chambre_recours_collectifs2006-12-05.html

¹⁷ The form of the Directive is based on a recommended model version proposed by the CBA.

¹⁸ www.courts.gov.bc.ca/sc/

¹⁹ www.tribunaux.qc.ca/mjq_en/c-superieure/avis/MTL_chambre_recours_collectifs2006-12-05.html and http://www.cba.org/classactions/main/gate/pdf/direction_quebecsuperior.pdf

²⁰ http://www.ontariocourts.on.ca/superior_court_justice/notices/ccpd.htm

²¹ www.cba.org/classactions/main/gate/index/

²² www.cba.org/classactions/main/gate/index/

individual proceedings are not filed needlessly. Further, prospective class members can voluntarily provide information to either the plaintiff or the defendant, which may assist in the certification process. Finally, prospective class counsel in the same or other jurisdictions may not file overlapping actions if they see that the prospective class is already being “taken care of” by competent counsel (although there is no bar to such filing).

Once the proposed legislative changes are put in place, registration also provides the trigger for notice to counsel of any certification motion covering the same proposed class. All counsel who have filed actions are given an invitation to come forward and make submissions to the first court to consider certification. This means that the court should receive complete submissions in relation to the proper structure and scope of the action. In the absence of registration, not all class counsel will be invited, and the quality of presentation and evidence will be diminished.

In terms of any subsequent consideration of the national class in other jurisdictions, there is a greater likelihood that subsequent courts will respect and follow the decision of the first court given that any counsel challenging the initial decision was presented with notice and had an opportunity to make submissions to the first court. Mandatory registration and subsequent notice is the vehicle through which competing class counsel can be given “due process” prior to any decision being made about the scope of any particular action.

To meet its objectives, the Database is a freely available repository of information about the existence and status of class actions across Canada. By way of example, the Database currently contains the following list of class actions filed in January 2007:²³

- Québec - 500-06-000384-079 - Philip Goodall c. NSB Informatique Inc. (Le 29 janvier 2007)

²³ Note that the Registry allows the viewer to determine some early trends (to a limited extent). Although the information should be used with caution, so far 76% of the proceedings filed in January 2007 included in the proposed class non-residents other than from the province of origin. - 77% for the rest of Canada, and 75% for Québec. Quebec appears to be a plaintiff’s class action paradise. The Ontario filings are skewed downward because they presently only Toronto, and not other Toronto hotbeds of class action activity such as London and Windsor. The Saskatchewan filings are voluntary at this stage.

- [Québec - Option consommateurs –et- Premium Concept Inc. représentée par MICHEL LABRECQUE c. DELL COMPUTER CORPORATION \(Le 26 janvier 2007\)](#)
- [Quebec - George Deyannis and Line Larouche and Julie Howick v. The TJX Companies Inc.and Winners Merchants International LP and HomeSense Inc.and Winners Apparel Inc. \(Le 26 janvier 2007\)](#)
- [Quebec - Gloria Bordoff vs. Gestions D'actifs CIBC Inc./CIBC Asset Management Inc. \(Le 23 janvier 2007\)](#)
- [Saskatchewan - Elizabeth Copithorn v. The TJX Companies Inc. and Winners Apparel Inc. and HomeSense Inc. \(Le 22 janvier 2007\)](#)
- [Quebec - Julie Howick v. The TJX Companies Inc and Winners Merchants International LP and HomeSense Inc. \(Le 19 janvier 2007\)](#)
- [British Columbia - Kim Ryley v. The TJX Companies Inc. and Winners Apparel Inc. and HomeSense Inc. \(Le 19 janvier 2007\)](#)
- [Quebec - Catherine Savoie c. Compagnie Pétrolière Impériale Ltée, Pétro-Canada, Shell Canada et Ultramar Ltée \(Le 10 janvier 2007\)](#)
- [Quebec - Bertin Potvin c. Transat Tours Canada inc. \(Le 10 janvier 2007\)](#)
- [Quebec - Patrick Chevalier c. Vacances Tours Mont-Royal inc. et Club Voyages Dumoulin \(Le 5 janvier 2007\)](#)
- [British Columbia - Jose Bartolome v. Cashnow Solutions Inc. \(Le 4 janvier 2007\)](#)
- [Ontario - GLENN WILKINS and LORETTA WILKINS vs. ROGERS COMMUNICATIONS INC., ROGERS CABLE, ROGERS TELECOM and ROGERS MEDIA \(Le 2 janvier 2007\)](#)

Each of the listed class actions is hyperlinked to additional information. For example, by clicking on the British Columbia “Jose Barolome v. Cashnow Solutions Inc.” action, the following information is displayed:

Date	Subject/Sujet	Title/Titre	Class Group/Définition du groupe	Document
01/04/07 Status/état: Not yet certified	Consumer Protection/Protection du consommateur	Jose Bartolome v. Cashnow Solutions Inc.	The Class shall be comprised of all residents of British Columbia who have borrowed money as a “Payday Loan” from Cashnow Solutions Inc. and have repaid the loan and Cashnow Solutions Inc.’s standard “Administration Fee” either on the due date of the loan or within 108 days of the loan advance.	Statement of Claim: <u>PDF</u> Notice of Motion: <u>PDF</u>

Note the “Document” column, which allows viewers to click on a hyperlink “pdf” which displays the Statement of Claim and Notice of Motion filed in the Action.

To be effective, counsel must post the necessary information. The CBA specifically notes this limitation on its website:

While there are a number of jurisdictions that have issued or are contemplating practice directions requiring counsel to complete the Database Registration Form and provide relevant documents to the CBA, providing this information remains primarily a voluntary commitment on the part of class action counsel.²⁴

The Practice Directions explain the requirements necessary to comply with the object of the Database: “Within 10 days of service or filing, whichever is earlier, a copy of any originating process; Notice of Motion for certification (not including affidavits in support); or amendments to the foregoing, must be sent electronically by plaintiff’s counsel to the National Class Action Database of the Canadian Bar Association. . . .” The Directions note that a “registration form” must be used when submitting the documents. A copy of the registration form is hyperlinked *via* the Practice Directions. A copy is attached as Appendix “B” to this paper.

The Practice Directions noted above state that:

It is anticipated that similar procedures will be implemented across the country and that lawyers and members of the public will be able to search the Database to obtain information about class action proceedings that have been commenced in any jurisdiction in Canada

While only the largest jurisdictions have issued Practice Directions to date, it is open to all lawyers in Canada to voluntarily include their actions on the Database. Note, for example, that the January 2007 list set out above includes a Saskatchewan action: “Copithorn v. The TJX Companies Inc.” Nonetheless, it is obviously preferable to require that all class actions are registered in order to achieve the objects of the Database. Hopefully the remaining jurisdictions will be coming on stream shortly.

²⁴ www.cba.org/classactions/main/gate/index/about.aspx

As a practice pointer, counsel may want to keep tabs on the Database. This can be done by checking the CBA website daily. A more efficient method to track additions to the Database is to use web-based programs such as www.watchthatpage.com.

In short, once the Database has been implemented in all Canadian jurisdictions, it should prove to be a useful tool for the general public, lawyers, and for the courts. It will assist in avoiding public confusion over presumptive inclusion in more than one class action; the potential to subject individuals to conflicting court judgments; uncertainty amongst counsel concerning the size and composition of class membership in any particular class action; and judicial uncertainty as to the class members that are bound by their decisions.²⁵ Achieving these goals will benefit the class action regime in Canada. As such, lawyers should act proactively to ‘spread the word’, and ensure that the Database is used to its fullest potential.

IV. IMPLEMENTING THE CHANGE: PHASE 2: LEGISLATIVE CHANGE

Phase Two requires each of the jurisdictions to amend their class proceedings legislation to:

1. Create the requirement for a “national carriage motion” where there are overlapping actions in different jurisdictions;
2. Create the ability for each province to certify national “opt out” class actions.

While consensus about the advisability of moving in this directions seems to be developing amongst lawyers and judges, securing the attention of legislators is obviously a different matter. Class proceedings reform is not a hot political issue likely to garner many votes. For those jurisdictions that have only recently passed legislation, they may be reluctant to revisit their statutes so soon. But it is the right thing to do. It will improve access to justice for plaintiffs, and reduce inefficiencies for defendants and the courts. Hopefully there will be movement in this direction over the coming months and years.

²⁵ www.cba.org/classactions/main/gate/index/about.aspx

APPENDIX A

INDIAN RESIDENTIAL SCHOOLS

COURT ADMINISTRATION PROTOCOL

In order to ensure the efficient and expeditious administration of the Agreement, the courts have determined that a streamlined process for addressing all matters that require court orders, directions or consideration during the course of the administration is desirable. Accordingly, the procedure set out below will be followed in respect of all such matters.

1. The courts will designate two Administrative Judges from among the 9 (nine) judges who heard the motions for approval of the Agreement, or their successors as supervising judges. There will be one Eastern Administrative Judge and one Western Administrative Judge.
2. All matters that require court orders, directions or consideration. will be brought to the attention of the Administrative Judges at first instance by the filing of a Request For Direction. The Request will identify the party, counsel or other entity with standing in respect of the Agreement who is bringing the matter forward, the matter(s) in issue, the relief requested, whether it is on consent, or if opposed, the various positions of those in favour and those opposed. It is expected that all parties, counsel and entities with standing will cooperate to the extent that a single Request that fairly and accurately sets out the issue(s) and their positions in brief form is filed. The Judges do not expect to receive initial Requests that exceed 3 pages in length.
3. Upon receipt of a Request, the Administrative Judges will determine whether a case management conference is required or whether the matter should be directed to a hearing.
4. In the event that a case management conference is required, the conference will be conducted by one or both of the Administrative Judges.
5. Should a hearing be required, the Administrative Judges will make such direction and determine the jurisdiction in which the hearing should be held. In making this determination the Administrative Judges will be guided by the following principles:
 - (a) Where the issue(s) involve relief for a particular class member or particular class, the hearing will be directed to the supervising court with jurisdiction over the class member or class pursuant to the terms of the Agreement and the Approval Orders.
 - (b) Where the issue(s) affect more than one jurisdiction, but not all, the hearing will be directed to a supervising court in one of the affected jurisdictions.
 - (c) Where the issue(s) will affect all jurisdictions, the hearing may be

directed to any court supervising the Agreement.

- (d) If the issue(s) raised are such that the relief requested may result in an order that would constitute an amendment of the Agreement or the Approval Orders, the Administrative Judges will direct that a full record be delivered to each of the supervising courts and direct that the matter be heard by at least one of the supervising courts. Upon communication with all the supervising courts, the Administrative Judges will advise the parties further how many additional hearings will be held, if any. A supervising court that has received a copy of the full record may choose to adopt the reasons of any other supervising court hearing the matter without holding a formal hearing of its own. but no order amending the Agreement or the Approval Orders shall be effective unless it is approved by all 9 (nine) supervising courts.
 - (e) On purely procedural matters, the Administrative Judges may direct that any hearing shall be in writing only. On substantive matters, the court to which the hearing is directed, shall in its discretion, determine the manner in which the matter will be heard, whether in writing or by appearance, or both.
 - (f) In applying these principles, the Administrative Judges may also be guided by any other consideration that he or she deems to be appropriate in the circumstances.
6. Any task designated to be carried out by the Administrative Judges, may be carried out by either one of them acting alone or both acting together.
 7. Nothing in this protocol shall be construed as derogating from the authority of the Administrative Judge in his or her capacity as a supervising judge under this Agreement, and for greater clarity, neither Administrative Judge shall be precluded from referring any matter to be determined to him or herself or to the other Administrative Judge.
 8. During the course of the administration of the Agreement, the judges of the supervising courts will continue to communicate with one another in the same manner and on the same basis that was the case with respect to the motions for approval of the Agreement.

APPENDIX B

NATIONAL CLASS ACTION DATABASE
REGISTRATION FORM

RÉPERTOIRE NATIONAL DES RECOURS COLLECTIFS
FORMULAIRE D'ENREGISTREMENT

Jurisdiction/Jurisdiction:

Filing Date/ Date de dépôt :

- (a) **Originating Process/ Demande introductive d'instance:**
(b) **Certification Application/ Requête en autorisation²⁶ :**

Class Action Style of Cause/ Intitulé de la cause²⁷:

Description of the Proposed Class/Description du groupe proposé:

Subject Matter of Class Action/ Objet du recours collectif:

(Check all that apply by double clicking on the box and clicking « check » under « Default Value » /Cochez tout ce qui s'applique en double-cliquant sur la case et choisir l'option Case activée sous le champ valeur par défaut)

- Negligence/Responsabilité extra-contractuelle :**
 Product Liability/Responsabilité du fabricant :
 Environment/Environnement :
 Securities/Valeurs mobilières :
 Consumer Protection/Protection du consommateur:
 Competition/Concurrence :
 Crown Liability/Responsabilité de l'État:
 Other/Autre

Has the class action been certified? Yes No
Le recours collectif a-t-il été autorisé? Oui Non

²⁶ In Quebec, only the date of filing of the motion for authorization need be filed. Au Québec, seule la date de dépôt de la requête en autorisation doit être communiquée.

²⁷ Include the names of all parties in this description. Inscrive le nom de toutes les parties à la procédure.

Is this an update of a previous submission
to the Registry? Yes No

La présente demande d'enregistrement est-elle
une mise à jour d'une demande précédente? Oui Non

Class Counsel /Procureur en demande:

Name/Nom:

Telephone Number/Numéro de téléphone:

Address/Adresse:

Email/Courriel:

**Please send this form to/
S.V.P. Faire parvenir ce formulaire à:**

**National Class Action Database/
Répertoire national des recours collectifs
Canadian Bar Association
Association du Barreau canadien
Attn /À l'attention de: Kerri Froc
Email/Courriel: classaction@cba.org**

Please attach original pleadings and certification motion in PDF (preferred) or Word to this Registration Form. Do not send any exhibits attached to these documents. Please verify the accuracy of the information once it has been posted to the CBA website (CBA.ORG). We encourage you to advise us of any changes to information in this form, such as whether the matter has been certified.

Prière de transmettre ce formulaire avec la requête en autorisation et, le cas échéant, la demande introductive d'instance, en format PDF (de préférence) ou Word. Veuillez ne pas envoyer les pièces jointes à ces procédures. Nous vous conseillons de vérifier l'exactitude des informations une fois disponibles sur le site de l'ABC (CBA.ORG). Nous vous prions de nous communiquer tout changement aux informations contenues dans le formulaire d'enregistrement, notamment si le recours est autorisé ou non.