

CANADA
PROVINCE OF QUEBEC
DISTRICT OF LONGUEUIL

SUPERIOR COURT
(Class action)

No: 505-06-000024-203

JOHN CORMIER

Plaintiff

c.

CITY OF LONGUEUIL

-and-

**THE ESTATE OF THE LATE FRANÇOIS
LAMARRE**

Defendants, solidarily

-and-

**AGENCE DE REVENU DU QUÉBEC
(REVENU QUÉBEC)**

Mise en cause

No.: 505-17-013648-235

CITY OF LONGUEUIL

Plaintiff in warranty

c.

**THE OPTIMIST CLUB OF GREENFIELD
PARK INC.**

-and-

**THE GREENFIELD PARK LIONS CLUB
INC.**

-and-

**MONTREAL SOUTH SHORE KINSMEN
CLUB INC.**

-and-

**THE ROYAL CANADIAN LEGION
BRANCH 94, GREENFIELD PARK**

Defendants in warranty

-and-

**GENERAL STAR INDEMNITY
COMPANY**

Intervenor

**MOTION TO APPROVE A CLASS ACTION SETTLEMENT AND
CLASS COUNSEL FEES**

(art. 590, 591 and 593 of the *Code of Civil Procedure*)

**TO THE HONOURABLE JUDGE SUZANNE COURCHESNE, J.S.C., ACTING AS
MANAGING JUDGE OF THIS CLASS ACTION, SITTING IN AND FOR THE DISTRICT
OF LONGUEUIL, THE PLAINTIFF RESPECTFULLY SUBMITS THE FOLLOWING:**

A. Introduction

1. The Plaintiff seeks the Court's approval of the out-of-court settlement reached in a class action filed for the benefit of persons who were sexually assaulted as children by the late François Lamarre, which group is more specifically described as follows:

“All persons who were sexually abused by the late François Lamarre while he acted as coach of the municipal hockey program in the City of Greenfield Park, as well as the estate of any such persons if deceased since September 1, 2017”

(hereinafter the “**Class**” or the “**Members**”);

2. The Plaintiff submits that the settlement reached will enable these victims, whose lives were tragically affected by the sexual assaults they suffered as children, to finally have access to the justice they deserve;
3. This settlement comes after more than four (4) years of sustained litigation and on the eve of the trial on the merits scheduled to begin in September 2024 for a duration of nearly three (3) months, and during which more than fifty (50) witnesses would be called to testify, notably eleven (11) Class Members, including the Plaintiff;
4. The settlement was reached following a lengthy mediation process presided over by the Honourable retired judge Me Claudette Picard;
5. The settlement is more fully described in the Transaction and Release, a copy of which is filed in support hereof as **Exhibit R-1** (hereinafter the “Transaction”);
6. Pursuant to articles 590 and 591 of the *Code of Civil Procedure* (“**C.C.P.**”), the parties request that the Tribunal approve the Transaction and render a judgment to that effect;
7. Under the terms of the Transaction, the Defendant, Ville de Longueuil (hereinafter the “**City**”), having assumed the rights and obligations of the City of Greenfield Park, and the Respondent, Agence de Revenu du Québec (hereinafter “**Revenu**”

Québec”), in its capacity as liquidator of the Estate of the late François Lamarre, will pay a global amount ranging from \$3,600,000.00 to \$10,250,000.00 for the benefit of the Members, depending on the number of claims eligible, the whole as collective recovery (hereinafter the “**Global Settlement Fund**”);

8. Members shall be compensated in accordance with the Adjudication Process set forth in Schedule 1 to the Transaction (hereinafter the “**Adjudication Process**”);
9. The Adjudication Process has been prepared exclusively by Counsel for the Class Members, Kugler Kandestin, LLP (hereinafter “**Class Counsel**”), and does not allow for any right of objection or review on the part of the Defendants;
10. The Adjudication Process has been designed by Class Counsel with the primary objective of avoiding retraumatizing victims or discouraging them from coming forward, while ensuring that they meet with a retired judge who will act as claims adjudicator (hereinafter “**Adjudicator**”), and who will have the necessary experience to evaluate testimony in order to ensure the integrity of the process for and between Members;
11. In this respect, the Adjudication Process provides that:
 - a. Persons claiming compensation by completing the Form set forth in Schedule 2 to the Transaction (hereinafter the “**Claimants**”) shall be entitled to confidentiality; their identity shall not be disclosed to the Defendants or the released Defendants in warranty (hereinafter the “**Released Parties**”¹) and their meeting with the Adjudicator shall be strictly confidential;
 - b. Claimants will benefit from the assistance of Class Counsel, who will answer their questions and help them file their claim form, without additional compensation;
 - c. The Released Parties shall have no oversight, no right to challenge, no right to cross-examine the Claimants, and no right to call witnesses to challenge their testimony;
 - d. Claimants will be under no obligation to produce medical, pharmaceutical, prison, psychological or other records;
 - e. Claimants may be accompanied by a resource person at the meeting with the Adjudicator (excluding the Claimant and the Parties’ attorneys);

¹ The "Released Defendants in warranty" are described as follows under the terms of the Settlement Agreement: the Greenfield Park Lions Club Inc. the Royal Canadian Legion Branch 94, Greenfield Park, the intervener General Star Indemnity Company, as insurer of the Greenfield Park Optimist Club Inc. from March 1, 1987 to April 1, 1991, and the Greenfield Park Optimist Club Inc. itself, for damages only that may have been sustained during the period from March 1, 1987 to April 8, 1991.

B. Procedural history of the class action

12. The present file began in September 2020 with the filing of an application for authorization to institute a class action. This motion was amended on two occasions and was heard before the Honourable Justice Pierre-C. Gagnon, j.s.c., who authorized the class action by judgment dated May 6, 2021;
13. Preliminary exceptions were made by the parties, including a request by the City to obtain access to François Lamarre’s criminal investigation file, considering that several criminal complaints had led to criminal proceedings against him for sexual assaults while he was a coach with the municipal hockey program of the City of Greenfield Park;
14. This request required a rigorous analysis of the criminal investigation file containing several hundred pages, including the obligation to redact several passages in order to respect the confidentiality and anonymity orders granted in favour of Members;
15. Other preliminary exceptions also had to be debated, including the forced intervention of the Defendants in warranty, which was, following a request to this effect, separated from the principal action (only to be joined shortly before the trial);
16. In short, several incidental applications explain why this class action has lasted for more than four (4) years. Meanwhile, the City has consistently contested this class action and has always denied its responsibility, which it still does to this day;
17. The Transaction fully, finally and definitely resolves the principal class action, the action in warranty of the City, as well as the voluntary and conservatory intervention of General Star Indemnity Company, in the action in warranty;

C. Summary of the terms of the Transaction

18. The Transaction provides, notably, as follows:
 - a. The Defendants will pay a global sum as a Global Settlement Fund, the amount of which will increase according to the number of claims that are deemed eligible by the Adjudicator, in the following increments:

1 to 11 Eligible members	3 600 000,00\$
12 to 16 Eligible members	4 600 000,00\$
17 to 21 Eligible members	5 600 000,00\$
22 to 26 Eligible members	6 550 000,00\$

27 to 31 Eligible members	7 175 000,00\$
32 to 36 Eligible members	7 800 000,00\$
37 to 41 Eligible members	8 425 000,00\$
42 to 46 Eligible members	9 050 000,00\$
47 to 51 Eligible members	9 675 000,00\$
52 to 56 Eligible members	10 250 000,00\$
56 Eligible Members and more	10 250 000,00\$

- b. The Parties agree that the Plaintiff's claim, having already been the subject of psychological and actuarial expert evidence, is approved and liquidated in the amount of \$600,000.00, which amount represents the maximum amount a member may be awarded under the Adjudication Process;
- c. In the event that the claims of more than 56 victims are deemed eligible by the Adjudicator at the conclusion of the Adjudication Process, the Plaintiff shall have the option, on behalf of the Class, of retaining the Global Settlement Fund and distributing it among the total number of Members whose claims are accepted, of renegotiating the Transaction in good faith or, failing a new negotiated settlement, resolving the Transaction;
- d. In the event that more than 56 claims are deemed eligible by the Adjudicator at the end of the Adjudication Process, the parties will have to apply to the Court for approval of an amendment to the Transaction, if applicable;
- e. The City shall pay, *in addition to* the Global Settlement Fund, legal costs and disbursements, including Plaintiff's expert fees (hereinafter the "**Legal Costs**"), pre- and post-approval notices of the Transaction to Members, as well as the Adjudicator's fees and disbursements incurred in connection with the Adjudication Process, which are non-refundable, even in the event that the Transaction is renegotiated or resolved, the whole pursuant to paragraph 12 of the Transaction;
- f. As a result, Eligible Members will not be required to pay Legal Costs, the fees associated with the Adjudication Process and the publication of notices, which will be borne by the City in addition to the Global Settlement Fund;
- g. The Global Settlement Fund, deducted from **Class Counsel Fees**, as defined in Section F below and as approved by the Court, shall constitute the **Net Settlement Fund**;

- h. The Net Settlement Fund will be used to compensate Members whose claims have been deemed eligible at the end of the Adjudication Process (hereinafter the “**Eligible Member(s)**”);
- i. The Global Settlement Fund and the Legal Costs shall be payable within **one (1) month** following the **End of the Adjudication Process**, as such term is defined in paragraphs 18 and 36 of the Settlement Agreement;
- j. The Adjudication Process, including the manner of making a claim, the determination of the categories of damages and the distribution of the Net Settlement Fund, developed by Class Counsel, is set out in **Schedule 1** of the Transaction, while the Claim Form is set out in **Schedule 2** of the Transaction;
- k. The proposed Adjudicator, subject to the approval of the Tribunal, is the Honourable retired Judge of the Superior Court of Quebec, Me Claudette Picard, who has already expressed his agreement;
- l. The Adjudicator shall be solely responsible for the admissibility of Claimants’ claims and the determination of their category of damages, all in accordance with the Adjudication Process;
- m. Only the Adjudicator and Class Counsel will know the identity of Claimants who file a claim, in compliance with Members’ right to anonymity and confidentiality;
- n. At the close of the Adjudication Process, the Adjudicator shall transmit to the Court the Closing Report pursuant to paragraph 42 of the Transaction, detailing the manner in which the Net Settlement Fund has been distributed and including the information set out in that paragraph, but without any information which would identify, directly or indirectly, Claimants and Eligible Members;
- o. If there is a balance remaining in the Net Settlement Fund (the “**Reliquat**”), the Fonds d’aide aux actions collectives may deduct from this Reliquat the percentage provided for in the *Act respecting the Fonds d’aide aux actions collectives* and the *Regulation respecting the percentage deducted by the Fonds d’aide aux actions collectives*;
- p. Any remaining balance of the Reliquat will be distributed to a charity to be determined at a later date, subject to the approval of the Tribunal;

D. Summary of the terms and conditions of the Adjudication Process

19. The Adjudication Process provides for the following:

- a. Claimants must submit, within six (6) months of the date of publication of the notice provided for in article 591 C.p.c. (the “**Deadline to submit a Claim**”), a Claim Form, which is attached as Schedule 2 to the Transaction, together with the required documentation, if any;
- b. The Adjudication Process must be completed no later than two (2) months following the Deadline to submit a Claim (“**End of Adjudication Process**”);
- c. Once the Adjudicator has received the completed Claim Form and supporting documentation, if applicable, the Adjudicator will contact the Claimant to arrange a meeting. The Adjudicator will take sworn testimony from the Claimant regarding the sexual assaults the Claimant suffered at the hands of François Lamarre, the context in which they took place, and the damages the Claimant believes he suffered as a result of these assaults;
- d. The meeting with the Adjudicator will take place by videoconference or in person, at the choice of the Claimant;
- e. A victim’s claim will be deemed eligible, under the vicarious liability regime, according to the criteria set out in paragraph 31 of the Transaction, which are taken directly from *Tremblay v. Lavoie*, 2014 QCCS 3185, the only sexual assault class action in Quebec to have gone to trial and been decided on its merits;
- f. The Adjudicator shall exercise discretion in determining the category of sequelae to be assigned to each Eligible Member, either :
 - i) Level 1 damages; or
 - ii) Level 2 damages; or
 - iii) Level 3 damages;
- g. The amount corresponding to each category of damages will be calculated as follows:
 - i) The “Level 1 Damages” category will be used as the basis for calculation (i.e. **X**);
 - ii) The “Level 2 Damages” category will receive compensation equivalent to double the compensation granted to the “Level 1 Damages” category (i.e. **2(X)**);
 - iii) The “Level 3 Damages” category will receive compensation equivalent to four times the compensation granted to the “Level 1 Damages” category (i.e. **4(X)**);

- iv) In the case of a Member's estate, it will be entitled to an amount representing half of the indemnity granted to the "Level 1 Damages" category (i.e. **0.5(X)**).
- h. The amounts associated with each category of damages will be known once all claims have been adjudicated by the Adjudicator, based on the number of Eligible Members in each category;
- i. In determining the category of damages, the Adjudicator may consider a number of factors arising from the Claimant's sworn testimony, Claim Form and supporting documentation, including but not limited to the indicators listed in paragraph 17 of the Adjudication Process;
- j. The Adjudicator's decision is final, binding and not subject to appeal;
- k. The maximum amount a Member may receive is \$600,000.00. This amount may be lower depending on the number of Eligible Members.

E. Criteria applicable to the approval of a Transaction in a class action

20. Article 590 of the *C.C.P.* provides that any transaction reached in a class action must be submitted to the Tribunal for approval, to ensure that the settlement is fair and reasonable for the members of the group;
21. In the landmark decision in the case of *A.B. v. Clercs de Saint-Viateur du Canada*² (hereinafter "**A.B.**"), the Quebec Court of Appeal confirmed the analysis applicable to an application under article 590 of the *C.C.P.* as follows:

[34] Before approving a transaction, the judge must be convinced that it is [TRANSLATION] "fair, reasonable and in the best interest of the class members". As part of the analysis, he or she must [TRANSLATION] "bear in mind the main principles and objectives underlying class actions and weigh the advantages and disadvantages of the settlement, as well as the reciprocal concessions, risks of a trial, and costs to be incurred". In practice, the assessment of the fairness and reasonableness of the transaction revolves around the following criteria imported from U.S. law

- The likelihood that the action will succeed;
- The extent and nature of the evidence to be adduced;
- The terms and conditions of the transaction;
- The recommendations of counsel and their degree of experience;
- The anticipated cost and duration of litigation;

² 2023 QCCA 527.

- The recommendation of neutral third parties, if any;
- The nature and number of objections to the transaction; and
- The good faith of the parties and the absence of collusion.

[Unofficial translation by the Court of Appeal.];

22. In this case, although the Plaintiff believes that the success of the class action was probable, the City has always denied liability, both on the basis of direct civil liability and on the basis of vicarious liability;
23. The joint declaration filed with the Court, announcing a three (3) month trial, with over fifty (50) witnesses, including eleven (11) victims of the late François Lamarre, as well as several experts, eloquently illustrates the extent and nature of the evidence to be administered, as well as the anticipated cost and probable duration of the litigation. In short, the trial promised to be long and costly, and the evidence to be administered was monumental and complex;
24. The Transaction offers considerable advantages to Members:
 - a. Eligible Members will benefit from a significant sum, regardless of how many claims are deemed eligible by the Adjudicator;
 - b. Indeed, the average compensation to be awarded to represent some of the highest amounts obtained in class actions brought in Quebec on behalf of victims of childhood abuse;³
 - c. The Transaction provides that the amount awarded to Eligible Members will vary according to the severity of their injuries;
 - d. Had it not been for the Transaction, eleven (11) Members would have had to testify before the Court about the abuse they suffered as children – most of whom have kept their abuse secret throughout their lives – and thus would have been subject to cross-examination by counsel for the Released Parties. If successful, several other Members would have had to testify and possibly be cross-examined as part of a possible individual recovery;
 - e. The Transaction and the Adjudication Process set out therein nullify the City's ability to subject Claimants to medical and psychological assessments, which, in addition to being a lengthy, cumbersome, painful and costly process, would have been a significant barrier to access to justice for Members;

³ By way of illustration, recently, in *A.B. v. Corporation archiépiscopale catholique romaine de Montréal* 2023 QCCS 2529 ["**Corporation archiépiscopale**"], the Honourable Donald Bisson j.s.c., approved an agreement providing for the payment of a global sum of \$14,808,280.00 in capital, interest, additional indemnity, legal and adjudication fees and applicable taxes for the liquidation of claims up to 123 Members whose claims will be deemed eligible.

- f. The Transaction avoids a debate on a number of complex and contested issues that would otherwise have had to be debated at trial, on subjects as varied as psychology, actuarial science, the vicarious liability of a volunteer coach and his status as an employee of a municipality, the possible award of punitive damages against the City, and the possibility of obtaining a floor amount of compensation for Members, for both pecuniary and non-pecuniary damages;
 - g. In addition, the amount of this compensation was more difficult to predict, notably because of the causal link between the damages and the sexual assaults suffered by the Members at the hands of François Lamarre;
 - h. The Settlement provides for a simplified Adjudication Process that will enable speedy compensation, whereas in the absence of a settlement and given the very high legal and monetary stakes involved, either party would very likely have appealed the judgment rendered after the trial, including a possible appeal to the Supreme Court of Canada, followed by a difficult and lengthy adversarial individual recovery process;
 - i. As such, even in the event of a favorable ruling, Members would have had to wait several more years before being compensated;
 - j. Considering that the assaults took place several decades ago, many of the victims are of advanced age;
 - k. Since the assaults were perpetrated during the Members' childhood, several decades ago, it is essential for them to obtain swift justice, which the Transaction makes possible;
 - l. The Transaction provides for a maximum number of Eligible Members beyond which the Transaction may, at the option of the Plaintiff, be renegotiated and submitted to the Court for approval, if necessary. This sensible modality provides flexibility in that it enables the Plaintiff to ensure that if the number of Members is much higher than anticipated, the Members will not be caught with a ceiling that would unduly reduce the indemnity awarded to each of them.⁴
25. With regard to the third-party recommendation, it is important to highlight the significant and sustained efforts of the Honourable retired judge Me Claudette Picard, who oversaw the mediation and several subsequent meetings leading to the Transaction;

⁴ Other similar agreements, providing for the need to renegotiate them if the number of accepted claims exceeded the maximum number provided for in the agreements, were approved by the courts. This was the case, for example, in *Corporation archiépiscopale, supra* note 3, at para. 68, *Sebastian v. The English Montreal School Board et al.* court no. 500-06-000352-068 and *Bissonnette v. City of Westmount*, court no. 500-06-000743-159.

26. Moreover, the Transaction was agreed without any collusion and after intense negotiations between the Parties;
27. The Transaction satisfies the primary objective pursued by the procedural vehicle of collective action, namely to promote access to justice, particularly for vulnerable persons who would otherwise be deprived of it;
28. For all these reasons, Class Counsel, who have been acting on behalf of plaintiffs for over twenty years in large-scale class actions and are recognized as pioneers in class actions for victims of childhood abuse, have no hesitation in recommending the Transaction;

F. Class Counsel Fees

29. Article 593 of the *C.C.P.* provides that the Court must ensure, taking into account the interests of the members of the group, that the fees of class counsel are reasonable; otherwise, it may fix the amount thereof;
30. Class Counsel are therefore asking the Court to approve the amount of fees payable under the Transaction, to be paid out of the Global Settlement Fund;
31. These fees are based on the **Fee Agreement** entered into with the Claimant on August 31, 2020, a copy of which is filed as **Exhibit R-2** and which provides that these fees will be equivalent to 33 ⅓% of the global amount payable to the Plaintiff and the Eligible Members at the End of the Adjudication Process;
32. In *A.B.*, the Court of Appeal confirmed that “[t]he fee agreement reached by the representative binds the members of the class action”(Unofficial translation by the Cour of Appeal);⁵
33. Moreover, “[t]he professional fee agreement enjoys a presumption of validity and can be set aside only if applying it would not be fair and reasonable for the class members [TRANSLATION] ‘in the context of the transaction being reviewed.’”(Unofficial translation by the Cour of Appeal);⁶
34. In this case, the percentage provided for in the Fee Agreement R-2 falls within the range of fees generally approved by the courts, as the Court of Appeal pointed out in *A.B.*: “The appellant and the *amicus curiae* are also correct in asserting that the “range” of percentages deemed reasonable by the courts is normally between 15% and 33% (or even 20% to 33.33%) of the settlement fund.”(Unofficial translation by the Cour of Appeal);⁷

⁵ *A.B.*, *supra* note 2, para. 50.

⁶ *A.B.*, *supra* note 2, para. 51.

⁷ *A.B.*, *supra* note 2, at para. 58. See also *Archiepiscopal Corporation*, *supra* note 3, at para. 78, 5^e al.

35. In practice, it is common practice for plaintiffs to agree to pay fees equivalent to 33 $\frac{1}{3}$ % for *individual* claims in personal injury cases;
36. Not only is such a percentage-based agreement perfectly valid under Quebec law, but the courts have also recognized that such an agreement is *necessary* to provide access to justice for most litigants who do not have the financial means to pay fees regularly on an hourly basis for several years, regardless of the success of the action;
37. Under the Fee Agreement (Exhibit R-2) entered into with the Plaintiff, no Class Member would have been required to pay any amount in the event the class action was unsuccessful. Moreover, each Member could communicate with Class Counsel at any time and as often as he or she wished to discuss the abuse, obtain updates on the progress of the case, discuss strategies and any other matter. This is exactly what happened in this case;
38. Such percentage-based agreements entail significant risks for the plaintiff law firm, including the possibility of not being compensated for work performed in the event of dismissal of the class action and, even in the event of success, of not being compensated for several years while the case proceeds to trial on the common issues and thereafter on appeal(s), the individual claims procedure and other possible appeals;
39. As the Court of Appeal recognized in *A.B.*, given the significant risks for attorneys advancing such cases, which are otherwise socially meritorious, they are entitled to expect that the fee agreement will be respected:

[57] Percentage agreements are very common in class actions. This type of agreement has considerable advantages, namely in that it promotes [translation] "access to justice for citizens who would not otherwise be able to afford it". There is no question here of reviewing the validity and usefulness of this method of remuneration. Lawyers must be encouraged to accept class action mandates with the knowledge that any risk they accept will be compensated. In this regard, lawyers are entitled to expect that their fee agreements will be respected.

[...]

[65] Simply counting the number of hours spent on the case multiplied by the applicable hourly rates and applying a multiplier of 2, 3, 4, or even 5 is, in my opinion, arbitrary, at least to some degree. The risk assumed at the outset of the case is not neatly translated into a number, namely the multiplier. The factors do not take into account the interest rates a lawyer may have to pay while financing the class action. Although the method measures opportunity cost, it does not assess the risk the lawyer accepts in other class actions paid on a percentage basis. In other words, sound risk management means accepting several mandates knowing that some cases will probably be lost, leaving the lawyer without any remuneration. Moreover, the time devoted to the case in these types of matters is often

secondary in the analysis of the reasonableness of professional fees. The risk assumed and the result obtained should normally take precedence, bearing in mind that the weight to be given to each factor may vary from case to case, depending on the circumstances.”⁸

[Unofficial translation by the Court of Appeal. Emphasis added];

40. When Class Counsel agreed to institute this class action, they were prepared to go all the way by investing all the time, effort, financial and professional resources necessary to obtain a final judgment on the common issues and on the individual claims of each of the Members, with the aim of obtaining justice and compensation for each of them;
41. Class Counsel have accepted significant risks, believing it necessary to assume them in order to provide access to those Members who deserve justice;
42. As noted by Justice Immer j.s.c., when approving the settlement in *F. v. Frères du Sacré-Cœur*,⁹ which bears similarities to the present case:

[156] On a human level, lawyers have to deal with the effects of recalling painful events, and provide ongoing support to members. The lawyers' role goes far beyond the traditional one. The stenographic notes of the examinations of A. and F. and the examinations of members G and #5, which the court witnessed, were certainly immeasurably trying for the witnesses, although they were conducted with respect and moderation by the defendants' attorneys. The firm was required to provide a great deal of assistance and ongoing support before and after the examinations.

[157] It is therefore difficult to conceive of applications where the extent of the problem submitted, the importance of the case and the responsibility assumed by class counsel are more considerable.

[Unofficial translation by the undersigned. Emphasis added]

43. Class counsel respectfully submit that the Fees claimed are fair and reasonable in the circumstances to the Members and are justified in light of the risks involved, the great complexity of the case, the importance of the class action to the Members, the result obtained, as well as the sustained efforts and determination that Class Counsel have continually given to bring this class action to a successful conclusion, while it was bitterly contested by the City until the eve of the trial on the merits;

⁸ See also *Corporation archiépiscopale*, *supra* note 3, paras. 99 to 108 and 153 to 155 and *Y. v. Les Servites de Marie et al*, 2021 QCCS 2712, para. 78, citing *Schneider (Succession de Schneider) v. Centre d'hébergement et de soins de longue durée Herron inc.* 2021 QCCS 1808.

⁹ 2021 QCCS 3621. See also *Archiepiscopal Corporation*, *supra* note 3, paras. 118-119.

44. Class Counsel submit that it is thus reasonable to believe that any Member would have accepted the Fee Agreement concluded with the Plaintiff had they had to make the decision in the same circumstances;
45. In addition to the risks assumed, the Court of Appeal in *A.B.* confirmed that it is relevant to consider the factors found in art. 102 of the *Code of Ethics of Lawyers*, namely :
- “102. The fees are fair and reasonable if they are warranted by the circumstances and proportionate to the professional services rendered. In determining his fees, the lawyer must in particular take the following factors into account:*
- (1) *experience;*
- (2) *the time and effort required and devoted to the matter;*
- (3) *the difficulty of the matter;*
- (4) *the importance of the case for the client;*
- (5) *the responsibility assumed;*
- (6) *the performance of unusual professional services or professional services requiring special skill and exceptional speed;*
- (7) *the result obtained;*
- (8) *the fees prescribed by statute or regulation, and;*
- (9) *the disbursements, fees, commissions, rebates, costs or other benefits that are or will be paid by a third party with respect to the mandate the client gave him.”;*
46. In addition, the Court of Appeal explains that instead of considering the time spent on the case, “the analysis should start with an assessment of all the other criteria set out in the *Code of Professional Conduct* and of the risk assumed by counsel.” (Unofficial translation by the Court of Appeal);¹⁰
47. In this case, analysis of all the criteria should lead to the conclusion that the fees payable at the End of the Claims Process are fair and reasonable in the circumstances, regardless of the number of Eligible Members;¹¹

¹⁰ *A.B.*, supra note 2, para. 64.

¹¹ Fee agreements have similarly been approved in so-called “scale transactions” in class actions, which could be resolved if the number of approved claims exceeded a predetermined number of members. See, among others, the decisions cited in note 4.

i. The difficulty of the problem submitted, the importance of the case and the responsibility assumed by Class Counsel

48. First and foremost, class actions are a legal vehicle with a social vocation, aimed principally at giving vulnerable people access to justice;
49. Although this procedural vehicle was initially used more for consumer groups, Class Counsel have used it to advance the rights of victims of childhood abuse, who had no other options for gaining real access to justice;
50. However, the financial stakes involved in class actions, including child abuse cases, are high for firms acting on behalf of plaintiffs. What's more, these class actions constitute colossal files with complex causes of action;
51. It is at the time of signing the Fee Agreement that the risks assumed by Class Counsel must be assessed, and at that time they were very significant;
52. Class Counsel also expected to have to take this case to trial, considered that an appeal was likely and that the case would take several years to advance to the merit stage. Indeed, even with effective case management, the case has been going on for over four (4) years, and it was only at the dawn of the trial on the merits of the common issues that the Settlement was reached;
53. All the while, it is Class Counsel who must finance the action, accepting the risk of not being remunerated for their time and effort should the class action be dismissed;
54. Class Counsel understood that, given its highly sensitive nature, this class action was extremely important for Members who were trying to access justice for abuses that took place decades ago and have resulted in significant damages. For obvious reasons, these Members placed a great deal of hope in the hands of Class Counsel;
55. Class Counsel also understood that the services of specialized and qualified experts would be required, and that the City would also retain specialized experts;
56. Class Counsel expected the City to vigorously contest the class action, which it did.
57. The claim in this case posed particular challenges that only amplified the level of risk, responsibility and pressure assumed by Class Counsel, from a human, legal and financial point of view:
 - a. Most members alleged abuses that had taken place decades earlier;
 - b. Members have done their utmost to try and *forget* the horrific acts they suffered as children, so a major challenge presented itself to Class Counsel in terms of the evidence to be collected and, eventually, administered at trial;

- c. The difficulties associated with the more human aspects of these types of class actions far exceed those experienced in other class actions;
- d. In addition, most Members live with a sense of guilt or helplessness about the abuse they suffered. This is a known sequelae for individuals who were abused as children, which further increases the risks and the level of difficulty for Class Members in administering the evidence required for the class action to succeed on the merits;
- e. In the present case, access to justice for the Members had been historically fraught with obstacles. In the past, the Plaintiff and at least one other member of the Class had, unsuccessfully, turned to police authorities to denounce the sexual assaults they had suffered at the hands of François Lamarre, a full-time SPVM police officer at the time. However, it was only more than 10 years later that the authorities, having received several other complaints, agreed to lay criminal charges against François Lamarre;
- f. Without the trust of the Plaintiff and these Members, which was all the more difficult to obtain in this case, it would have been difficult for Class Counsel to administer the evidence required on the merits in order to win the case, thus preventing the class action from achieving its fundamental objective of providing access to justice;
- g. For some Members, Class Counsel were the first people to whom they revealed what they had kept secret for decades, illustrating the commitment of Class Counsel and the trust they earned from Members;
- h. Given the nature of this class action, it would have been inappropriate for Members to simply *register* on a website or fill out a simple form. Rather, Class Members needed and had the right to speak, at length and on several occasions, with Class Counsel to establish the trust and rapport necessary to recount these tragic events of their past;
- i. Class Counsel have held lengthy discussions with the Members, ensuring that they are listened to, believed and have confidence in the proceedings undertaken on their behalf;
- j. Class actions for victims of childhood abuse require Class Counsel to communicate constantly with Members, in particular to gather their stories, inform them of their rights, keep them informed of developments throughout the case, reassure them when decisions are rendered, ask for their patience in the event of delays, and so on;
- k. These communications are not trivial, they are often emotionally charged and require a high level of trust between Members and Class Counsel;¹²

¹² *Archiepiscopal Corporation*, *supra* note 3, para. 118.

58. Class Counsel humbly submit that they have conducted the class action professionally, with commitment to the Members, and expeditiously, doing everything in their power to advance it efficiently;

ii. *The result for Class Members*

59. The result is excellent, for the reasons already discussed above;

60. The Defendants will pay an amount ranging from \$3,600,000.00 to \$10,250,000.00 depending on the number of Eligible Members. In these circumstances, the average amounts of compensation per Member represent some of the highest amounts ever obtained in class actions brought in Quebec on behalf of victims of childhood abuse;

61. Moreover, these amounts will be awarded to Eligible Members further to a simplified Adjudication Process, which removes many of the obstacles hindering access to justice for victims of childhood abuse;

62. The sum obtained will ensure that even in the event of a large number of Members making a claim, each Eligible Member will receive significant monetary compensation, and failing that, the Transaction will be renegotiated;

iii. *The performance of professional services requiring special skills and experience by Members' Attorneys and Attorneys' experience*

63. Although class action has existed in Quebec for over 40 years, relatively few firms agree to act on behalf of plaintiffs, given the complexity and significant risks associated with this procedure;

64. For the reasons set out above, firms acting on behalf of class members must accept significant risks, must be convinced that it will be able to win the class action, and must have the resources and patience to pursue the case for several years, with no remuneration and no guarantee of success. For most firms, these risks are simply too high;

65. As a result, firms that accept mandates to bring class actions for victims of abuse are rare, and for victims of sexual abuse, even rarer;

66. Despite the risks associated with such mandates, it is vital that serious, competent firms continue to accept them in order to fulfill the social objectives of this procedural vehicle, including access to justice for the most vulnerable;

67. Access to justice therefore requires not only that firms take the risk of bringing class actions, but also that the lawyers working in these firms have the same skills and resources as those defending them, generally from the most reputable national firms;

68. Class Counsel have led and are leading several important class actions on behalf of victims of childhood abuse. Kugler Kandestin successfully represented victims in the only class action to proceed on the merits in Quebec for victims of sexual assault in the case against the Redemptorists;¹³
69. The Honorable Donald Bisson, j.s.c., recently wrote in a judgment approving a Settlement reached in a class action led by this firm¹⁴ that “Kugler Kandestin is widely recognized as a pioneer in class actions and is one of the leaders in the field. The firm has won and settled major class actions in the areas of sexual assault, dangerous or defective products, consumer law and financial services that have lasted many years, including *Imperial Tobacco Canada Ltd. v. Conseil québécois sur le tabac et la santé*” (Unofficial translation by the undersigned);
70. In the present case, the lawyers assigned to the case as it progressed were M^e Pierre Boivin (partner, Barreau 1989), M^e Robert Kugler (partner, Barreau 2001), M^e David Stolow (partner, Barreau 2001), M^e Jérémie Longpré (Barreau 2016) and M^e Emily Painter (Barreau 2020);
71. Over the past 10 years, these lawyers have represented and helped several hundred victims of abuse;¹⁵
72. Class Counsel used their experience in this area to conduct the case effectively, to protect the best interests and rights of all Members, to gain the trust of the Members (eleven (11) of whom were prepared to testify at trial on the common issues), to build their confidence during many emotional and difficult meetings, to ensure the widest possible dissemination of information about the class action, and to negotiate an important Transaction with an Adjudication Process that is to the advantage of the Members;

iv. The time and effort devoted

73. In *A.B.*, the Court of Appeal stated that it is inappropriate to use a rigid mathematical analysis of the hours spent on the case and the standard hourly rates of the lawyers in a group to determine the reasonableness of the fees due under a percentage agreement;¹⁶
74. With this said, Class Counsel inform the Tribunal that they have already spent over 2,325 hours on the file and estimate that they will spend a further 250 hours speaking to Members who wish to file a claim, to those who fear filing a claim and to assist them with the Adjudication Process, as well as speaking to other victims who may come forward once the settlement is approved, if any;

¹³ *Tremblay v. Lavoie*, 2014 QCCS 3185.

¹⁴ *Schneider*, *supra* note 8.

¹⁵ *D.L. v. Soeurs de la Charité de Québec*, 2024 QCCS 2711, at para. 59 xiii).

¹⁶ *A.B.*, *supra* note 2, para. 63. See also *F. v. Frères du Sacré-Cœur*, *supra* note 9, para. 108.

75. The hours already spent to date, not counting those to come, represent a value of over \$1,260,000.00, applying the hourly rates that the Class Counsel charge in the hourly-rate-files they are currently accepting. Simply taking into account the time already devoted to the file, not to mention the additional hours that Class Counsel will have to devote during the Adjudication Process, the fees therefore represent a “multiplier” varying between less than one (i.e. 0.95 of the value of the time spent on this file if the Global Settlement Fund is \$3,600,000.00 based on the first tier of compensation) to 2.7 (if the Global Settlement Fund is \$10,250,000.00, depending on the tier of compensation), which is well within the low range of multipliers accepted by the Courts, especially in class actions of the nature of the present case;
76. Class Counsel will remain available to Members, as they have been since the beginning of the class action, as well as to the Court and the Adjudicator, until the judgment closing the present class action;
77. For this type of case, the present case included, Class Counsel do not work on the basis of an hourly rate and they use a much lower hourly rate for their timekeeping;
78. In *F. v. Frères du Sacré-cœur*,¹⁷ the Honourable Christian Immer j.s.c. recognized that for attorneys at Kugler Kandestin working on class action cases, “the rates used by the lawyers are not high, given the significant, if not unparalleled, experience of the firm, the extent of the resources it devotes and the success it has had in the past. If they were to enter their time at a higher rate, the multiple would be considerably reduced.” (Unofficial translation by the undersigned);¹⁸
79. For all these reasons, Class Counsel respectfully submit that it is reasonable to believe that each Member would have agreed to pay fees equal to 33⅓% of the amount recovered for him or her, and that the Fee Agreement (Exhibit R-2), is fair and reasonable and that there are no grounds for setting aside the presumption of validity attached thereto;
80. In addition to their fees, Class Counsel also incurred Legal Costs in the amount of \$28,595.61 including applicable taxes, as appears from a copy of the Statement of account filed as Exhibit **R-3**;
81. Pursuant to paragraphs 12 and 18 of the Transaction, these Legal Costs of \$28,595.61 are payable by the City at the End of the Adjudication Process, in addition to the Global Settlement Fund;
82. Class Counsel also incurred extrajudicial fees and disbursements in the amount of \$15,487.73 including applicable taxes, all also appears from a copy of the Statement of Account filed as Exhibit **R-4**;

¹⁷ *Supra*, note 9.

¹⁸ *Supra*, note 9, para. 167.

83. The extrajudicial fees and disbursements, in the amount of \$15,487.73 (Exhibit R-4), including applicable taxes, are also fair, reasonable and proportionate and accordingly, Class Counsel request that they be approved by the Tribunal and payable from the Global Settlement Fund;
84. Upon payment of their Fees, Class Counsel undertake to reimburse in full the amounts of assistance received from the Fonds d'aide aux actions collectives in the amount of \$20,021.94.

FOR THESE REASONS, THE COURT :

As for Transaction:

APPROVE the Transaction in its entirety, Exhibit **R-1**, including the Adjudication Process set forth in Schedule 1 and the Claim Form set forth in Schedule 2 of the Transaction;

DECLARE that the Transaction is reasonable, fair, adequate and in the best interests of the Members of the Group;

DECLARE that upon payment of the Settlement Fund by the Defendants, the Settlement shall be binding upon all Members who have not opted out of the Class Action (including Members who do not submit a claim and those whose claims are rejected by the Adjudicator) and their successors, heirs and assigns;

ORDER the parties to comply with the terms of the Transaction;

ORDER the collective recovery of Eligible Members' claims in accordance with the terms of the Transaction;

DECLARE that the Parties released under the terms of the Transaction are the following: Ville de Longueuil, Agence de revenu du Québec, Club Lions de Greenfield Park inc, the Royal Canadian Legion Branch 94, Greenfield Park, General Star Indemnity Company, in its capacity as insurer of the Club Optimiste de Greenfield Park inc. from March 1, 1987 to April 1, 1991, the Club Optimiste de Greenfield Park inc. itself, only for damages which may have been sustained during the period from March 1, 1987 to April 8, 1991, as well as their respective insurers, members, mandataries, representatives, agents, directors, officers, employees, servants, heirs, successors and assigns, at all relevant times;

DECLARE, pursuant to paragraph 48 of the Transaction, that in consideration of the performance of the undertakings contained in the Transaction, Plaintiff personally gives on behalf of the Members who have not opted out of the class action (including those Members who will not file a claim and those whose claims will be rejected by the Adjudicator) and their successors, heirs and beneficiaries:

- a. a full, final and definitive release of the Released Parties and waives all rights, rights of action, remedies, claims, demands, contributions, indemnities or damages of any nature whatsoever relating directly or indirectly to the facts and circumstances set forth in the class description or giving rise to this litigation, the exhibits communicated and the allegations contained in the proceedings filed in Court Files 505-06-000024-203 and 505-17-013648-235;
- b. a waiver of solidary liability (and of any obligation in solidum, if applicable) and an express release in respect of the Released Parties. Thus, if the Plaintiff and the Members who have not opted out of the class action subsequently claim damages against persons other than the Released Parties, they may only claim damages up to the amount of the share of liability (solidary or in solidum) of such persons, to the exclusion of the shares of liability of the Released Parties, which shall be assumed by the Plaintiff and the Members who have not opted out of the class action. These shares of liability may be determined by a court of competent jurisdiction, whether or not the Released Parties appear in the proceedings (the “Release”).

APPOINT the Honourable Claudette Picard as the Adjudicator with all the powers, duties and obligations set forth in the Transaction, including the Adjudication Process set forth in Schedule 1;

DECLARE that the decisions rendered by the Adjudicator in the Adjudication Process are final and without appeal;

GRANT the Adjudicator full immunity under public law in the performance of his duties as Adjudicator and, as such, **DECLARE** that the Adjudicator, having acted in good faith, shall in no circumstances be subject to legal action by any person in connection with his role as Adjudicator;

FIX the Adjudicator’s remuneration at \$500 per hour;

DECLARE that Claimants who wish to file a claim must do so in accordance with the modalities of the Adjudication Process as set forth in Schedule 1 of the Transaction and by completing the Claim Form set forth in Schedule 2 of the Transaction;

DECLARE that all Claimants’ claims must mandatorily be submitted to the Adjudicator no later than six (6) months after the date of publication of the notice informing the Members of the judgment approving the Settlement, a draft of which is submitted for the Court’s approval with this application;

APPROVE the notice to members and its method of publication;

DECLARE that the Tribunal will remain seized of the matter for any question that may be raised by the parties or the Adjudicator with respect to the implementation of the Transaction;

AUTHORIZE the Adjudicator to make payment of claims approved by the Adjudicator in accordance with the terms of the Transaction, including the Adjudication Process;

RESERVE to the Fonds d'aide aux actions collectives the right to deduct from any remaining balance the percentage provided for in the *Règlement sur le pourcentage prélevé par le Fonds d'aide aux actions collectives*;

ORDER the Plaintiff to diligently report to the Court within the time limits set out in the Settlement Agreement on the execution of this judgment and **INDICATE** that the Court remains seized of the execution of the Settlement Agreement until it has rendered a closing judgment;

As for the Class Counsel Fees :

APPROVE the percentage of fees agreed between Class Counsel and the Plaintiff, in accordance with the Fee Agreement, Exhibit **R-2**;

AUTHORIZE Class Counsel, in accordance with Paragraph 16 of the Transaction, to deduct from the Global Settlement Fund, at the End of the Adjudication Process, the percentage of fees agreed to in Exhibit R-2, namely 33 $\frac{1}{3}$ % of the Global Settlement Fund, together with applicable taxes;

APPROVE the Legal Costs of Class Counsel, as per the Statement of Account submitted as Exhibit **R-3**;

ORDER the City to pay to Class Counsel the sum of \$28,595.61 as Legal Costs within one (1) month following the End of the Adjudication Process;

APPROVE Class Counsel's extrajudicial fees and disbursements as per the Statement of Account submitted as Exhibit **R-4**;

AUTHORIZE Class Counsel to deduct from the Global Settlement Fund, at the End of the Adjudication Process, the said sum of \$15,487.73 as extrajudicial fees and disbursements;

ACKNOWLEDGE the commitment of Class Counsel to reimburse in full the amounts of assistance received from the Fonds d'aide aux actions collectives, namely the sum of \$20,021.97 from the amount of Fees received;

THE WHOLE, without costs.

Montreal, this 24 day of October 2024

KUGLER KANDESTIN, LLP
Counsel for Plaintiff and Class Members

AFFIDAVIT

I, John Cormier, residing at _____ in Sarnia, Province of Ontario, _____, do solemnly declare the following:

1. I am the Plaintiff and representative of the Class members in this case.
2. I have read the *Motion to Approve a Class Action Settlement and Class Counsel Fees* and declare that all facts alleged therein are true and/or appear from the Court record;

AND I HAVE SIGNED:

JOHN CORMIER

Solemnly declared before me
at Quebec City this 24 day of October 2024.

AFFIDAVIT

I, Pierre Boivin, lawyer, exercising my profession at the offices of Kugler Kandestin LLP _____, province of Quebec, district of Montreal, _____, solemnly declare the following:

1. I am one of the attorneys for the Plaintiff and the class members in this case.
2. I have read the *Motion to Approve a Class Action Settlement and Class Counsel Fees* and declare that all facts alleged therein are true and/or appear from the Court record;

AND I HAVE SIGNED:

PIERRE BOIVIN

Solemnly declared before me
at Quebec City this 24 day of October 2024.

NOTICE OF PRESENTATION

TO : Me Raphaël Lescop
Me Alexandre Thibault
Me Mouna Aber
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Me Jennifer Lemarquis
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TAKE NOTICE that the *Motion to Approve a Class Action Settlement and Class Counsel Fees* will be presented before the Honourable Suzanne Courchesne, j.s.c., **on December 3, 2024 in Room 1.19** of the **Longueuil Courthouse**, located at 1111 Jacques-Cartier Boulevard East, Longueuil, Province of Quebec, **at 9:30 a.m.** or as soon thereafter as counsel may be heard.

Do govern yourselves accordingly.

Montreal, this 24 day of October 2024

KUGLER KANDESTIN, LLP
Plaintiff's Counsel and Class Members