Date: 20140604
Docket: CI 05-01-43585
(Winnipeg Centre)
Indexed as: *Fontaine et al. v. Canada (Attorney General) et al*.
Cited as: 2014 MBQB 113

COURT OF QUEEN'S BENCH OF MANITOBA

B E T W E E N:

LARRY PHILIP FONTAINE in his personal capacity and in his capacity as the Executor of the estate of Agnes Mary Fontaine, deceased, MICHELLINE AMMAQ, PERCY ARCHIE, CHARLES BAXTER SR., ELIJAH BAXTER, EVELYN BAXTER, DONALD BELCOURT, NORA BERNARD, JOHN BOSUM, JANET BREWSTER, RHONDA BUFFALO, ERNESTINE CAIBAIOSAI-GIDMARK, MICHAEL CARPAN, BRENDA CYR, DEANNA CYR, MALCOLM DAWSON, ANN DENE, BENNY DOCTOR, LUCY DOCTOR, JAMES FONTAINE in his personal capacity and in his capacity as the Executor of the Estate of Agnes Mary Fontaine, deceased, VINCENT BRADLEY FONTAINE, DANA EVA MARIE FRANCEY, PEGGY GOOD, FRED KELLY, ROSEMARIE KUPTANA, ELIZABETH KUSIAK, THERESA LAROCQUE, JANE McCULLUM, CORNELIUS McCOMBER, VERONICA MARTEN, STANLEY THOMAS NEPETAYPO, FLORA NORTHWEST, NORMAN PAUCHEY, CAMBLE QUATELL, ALVIN BARNEY SAULTEAUX, CHRISTINE SEMPLE, DENNIS SMOKEYDAY, KENNETH SPARVIER, EDWARD TAPIATIC, HELEN WINDERMAN and ADRIAN YELLOWKNEE,	)	**COUNSEL:**
plaintiffs,	)	**For the Chief Adjudicator:** Charles V. Hofley Leanne Fisher **For the Court Monitor:** Louis Zivot Howard Drabinsky **For the Attorney General of Canada:** Alethea LeBlanc **For Independent Counsel:** Karenna Williams **For the Assembly of First Nations:** Stuart Wuttke Valerie Richer

- and -

THE ATTORNEY GENERAL OF CANADA, THE PRESBYTERIAN CHURCH IN CANADA, THE GENERAL SYNOD OF THE ANGLICAN CHURCH OF CANADA, THE UNITED CHURCH OF CANADA, THE BOARD OF HOME MISSIONS OF THE UNITED CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE PRESBYTERIAN CHURCH, THE BAPTIST CHURCH IN CANADA, BOARD OF HOME MISSIONS AND SOCIAL SERVICES OF THE PRESBYTERIAN CHURCH IN BAY, THE CANADA IMPACT NORTH MINISTRIES OF THE COMPANY FOR THE PROPAGATION OF THE GOSPEL IN NEW ENGLAND (also known as THE NEW ENGLAND COMPANY), THE DIOCESE OF SASKATCHEWAN, THE DIOCESE OF THE SYNOD OF CARIBOO, THE FOREIGN MISSION OF THE PRESBYTERIAN CHURCH IN CANADA, THE INCORPORATED SYNOD OF THE DIOCESE OF HURON, THE METHODIST CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE ANGLICAN CHURCH OF CANADA, THE MISSIONARY SOCIETY OF THE METHODIST CHURCH OF CANADA (ALSO KNOWN AS THE METHODIST MISSIONARY SOCIETY OF CANADA), THE INCORPORATED SYNOD OF THE DIOCESE OF ALGOMA, THE SYNOD OF THE ANGLICAN CHURCH OF THE DIOCESE OF QUEBEC, THE SYNOD OF THE DIOCESE OF ATHBASCA, THE SYNOD OF THE DIOCESE OF BRANDON, THE ANGLICAN SYNOD OF THE DIOCESE OF BRITISH COLUMBIA, THE SYNOD OF THE DIOCESE OF CALGARY, THE SYNOD OF THE DIOCESE OF KEEWATIN, THE SYNOD OF THE DIOCESE OF QU'APPELLE, THE SYNOD OF THE DIOCESE OF NEW WESTMINISTER, THE

For John Michaels:

A. Blair Graham, Q.C.

For the Merchant Law Group:

E.F. Anthony Merchant, Q.C.
(written submissions only)

For the respondent, Kenneth Carroll:

Stephen Vincent

SYNOD OF THE DIOCESE OF YUKON, THE TRUSTEE BOARD OF THE PRESBYTERIAN CHURCH IN CANADA, THE BOARD OF HOME MISSIONS AND SOCIAL SERVICE OF THE PRESBYTERIAN CHURCH OF CANADA, THE WOMEN'S MISSIONARY SOCIETY OF THE UNITED CHURCH OF CANADA, SISTERS OF CHARITY, A BODY CORPORATE ALSO KNOWN AS SISTERS OF CHARITY OF ST. VINCENT DE PAUL, HALIFAX, ALSO KNOWN AS SISTERS OF CHARITY HALIFAX, ROMAN CATHOLIC EPISCOPAL CORPORATION OF HALIFAX, LES SOEURS DE NOTRE DAME-AUXILIATRICE, LES SOEURS DE ST. FRANCOIS D'ASSISE, INSITUT DES SOEURS DU BON CONSEIL, LES SOEURS DE SAINT-JOSEPH DE SAINT-HYANCITHE, LES SOEURS DE JESUS-MARIE, LES SOEURS DE L'ASSOMPTION DE LA SAINTE VIERGE, LES SOEURS DE L'ASSOMPTION DE LA SAINT VIERGE DE L'ALBERTA, LES SOEURS DE LA CHARITE DE ST.-HYACINTHE, LES OEUVRES OBLATES DE L'ONTARIO, LES RESIDENCES OBLATES DU QUEBEC, LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE JAMES (THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF JAMES BAY), THE CATHOLIC DIOCESE OF MOOSONEE, SOEURS GRISES DE MONTRÉAL/GREY NUNS OF MONTREAL, SISTERS OF CHARITY (GREY NUNS) OF ALBERTA, LES SOEURS DE LA CHARITÉ DES T.N.O., HOTEL-DIEU DE NICOLET, THE GREY NUNS OF MANITOBA INC.-LES SOEURS GRISES DU MANITOBA INC., LA CORPORATION EPISCOPALE CATHOLIQUE ROMAINE DE LA BAIE D'HUDSON – THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF HUDSON'S BAY, MISSIONARY OBLATES

– GRANDIN PROVINCE, LES OBLATS DE)
MARIE IMMACULEE DU MANITOBA, THE)
ARCHIEPISCOPAL CORPORATION OF)
REGINA, THE SISTERS OF THE)
PRESENTATION, THE SISTERS OF ST.)
JOSEPH OF SAULT ST. MARIE, SISTERS)
OF CHARITY OF OTTAWA, OBLATES OF)
MARY IMMACULATE – ST. PETER'S)
PROVINCE, THE SISTERS OF SAINT)
ANN, SISTERS OF INSTRUCTION OF THE)
CHILD JESUS, THE BENEDICTINE)
SISTERS OF MT. ANGEL OREGON, LES)
PERES MONTFORTAINS, THE ROMAN)
CATHOLIC BISHOP OF KAMLOOPS)
CORPORATION SOLE, THE BISHOP OF)
VICTORIA, CORPORATION SOLE, THE)
ROMAN CATHOLIC BISHOP OF NELSON,)
CORPORATION SOLE, ORDER OF THE)
OBLATES OF MARY IMMACULATE IN)
THE PROVINCE OF BRITISH COLUMBIA,)
THE SISTERS OF CHARITY OF)
PROVIDENCE OF WESTERN CANADA, LA)
CORPORATION EPISCOPALE)
CATHOLIQUE ROMAINE DE GROUARD,)
ROMAN CATHOLIC EPISCOPAL)
CORPORATION OF KEEWATIN, LA)
CORPORATION ARCHIÉPISCOPALE)
CATHOLIQUE ROMAINE DE ST.)
BONIFACE, LES MISSIONNAIRES)
OBLATES SISTERS DE ST. BONIFACE-)
THE MISSIONARY OBLATES SISTERS OF)
ST. BONIFACE, ROMAN CATHOLIC)
ARCHIEPISCOPAL CORPORATION OF)
WINNIPEG, LA CORPORATION)
EPISCOPALE CATHOLIQUE ROMAINE DE)
PRINCE ALBERT, THE ROMAN)
CATHOLIC BISHOP OF THUNDER BAY,)
IMMACULATE HEART COMMUNITY OF)
LOS ANGELES CA, ARCHDIOCESE OF)
VANCOUVER – THE ROMAN CATHOLIC)
ARCHBISHOP OF VANCOUVER, ROMAN)
CATHOLIC DIOCESE OF WHITEHORSE,)
THE CATHOLIC EPISCOPALE)
CORPORATION OF MACKENZIE-FORT)

SMITH, THE ROMAN CATHOLIC EPISCOPAL CORPORATION OF PRINCE RUPERT, EPISCOPAL CORPORATION OF SASKATOON, OMI LACOMBE CANADA INC. and MT. ANGEL ABBEY INC.,	)
Defendants.	)
	) Direction:
	) June 4, 2014

SCHULMAN J.

Introduction

[1] These reasons address the legality of contingency arrangements signed by claimants under the Indian Residential Schools Settlement Agreement with non-lawyer agents who have come to be known as Form Fillers.

Background

[2] On December 15, 2006, superior courts in nine provinces and territories concurrently issued reasons approving a historic national settlement. The settlement concluded various class actions related to the harms caused to Aboriginal children through their forced participation in the Indian Residential Schools program throughout Canada ("Settlement Agreement"). The Settlement Agreement allows claimants to obtain compensation through what is termed a "Common Experience Payment", available to all class members who attended an Indian Residential School. Under the Settlement Agreement, class members who suffered serious physical abuse, sexual abuse, or serious psychological harm while residing at an Indian Residential School are entitled to further compensation through the Independent Assessment Process ("IAP"), an

inquisitorial process whereby adjudicators assess the appropriate level of additional compensation to be awarded to claimants based on the particular harms suffered.[1]

[3] On March 8, 2007, the nine courts issued orders incorporating the terms of the Settlement Agreement and otherwise addressing its implementation and administration ("Implementation Orders"). The Court Administration Protocol, appended as Schedule "A" to the Implementation Orders, provides for ongoing curial supervision of the administration of the Settlement Agreement. Pursuant to that Protocol, it is the role of two supervising judges designated as "Administrative Judges" to respond to Requests for Direction in relation to the Settlement Agreement's administration. On June 28, 2013, the Western Administrative Judge, the Honourable Madam Justice Brown of the British Columbia Supreme Court, directed that the Request for Direction that is the subject matter of this proceeding ("RFD") be determined by me as the Settlement Agreement's Supervising Judge for Manitoba.

[4] The RFD in question was filed by the Chief Adjudicator of the IAP on November 8, 2012 and concerns activities of counsel and other individuals or entities (these others dubbed "Form Fillers", also referred to in this Direction as "Form Filling Agencies") who have assisted claimants in Manitoba in the processing of IAP claims. It is alleged that certain Form Fillers, often in

[1] The IAP also includes a "Negotiated Settlement Process" which involves an interview of the claimant without an adjudication.

conjunction with claimants' counsel, have exercised inappropriate – sometimes coercive – tactics in collecting form filling fees charged to IAP claimants. It is further alleged that such fees are, in any event, illegal, as legal fees (in the sense of lawyers' fees) are the only type of fee permitted to be charged to claimants in the processing of IAP claims under the Settlement Agreement. In the RFD, the Chief Adjudicator seeks imposition of a number of prospective and retrospective measures.[2]

[2] The portion of the RFD setting out these measures is excerpted below:

> **V. CONCLUSION AND ORDERS REQUESTED**
>
> 14. The Chief Adjudicator submits that immediate steps must be taken to ensure that IAP Claimants are receiving the full benefits of the IRSSA. To this end, the Chief Adjudicator seeks the following Orders:
>
> (a) An Order confirming that Claimants have no obligation to pay any fees in relation to the processing of their IAP Claims, other than legal fees approved by Adjudicators as fair and reasonable following their IAP hearing, and that any and all "Assignment Agreements", "Directions to Pay" or any other agreement or contract to pay Form Filler fees are null and void;
>
> (b) An Order confirming that the Chief Adjudicator/IAP Secretariat may advise Claimants that they are not obligated to pay any fees related to the processing of their Claim, beyond legal fees approved by Adjudicators as fair and reasonable;
>
> (c) An Order declaring that all Legal Counsel representing Claimants must, at the end of their IAP hearing, disclose to Adjudicators:
>
> (i) whether Form Fillers have performed work on the Claimant's file and, if so, the extent of such work;
>
> (ii) any and all "Assignment Agreements", "Directions to Pay", fee agreements and/or other financial arrangements which exist between Claimants and Form Fillers of which Legal Counsel are aware or could reasonably make themselves aware;
>
> (iii) all financial arrangements between Legal Counsel and Form Fillers with respect to legal fees charged to Claimants.
>
> (d) An Order declaring that Adjudicators shall, at the end of every hearing at which a Claimant has not been represented by Legal Counsel, inquire into any and all financial arrangements between the unrepresented Claimant and Form Fillers.
>
> (e) An Order declaring that the Chief Adjudicator shall, where he is aware of <u>improper practices</u> by Legal Counsel in relation to Form Filler fees, request that Canada pay out Claimant settlement funds (including Canada's 15% contribution to legal fees) to the Court Monitor for appropriate distribution and that Canada must honour such request.
>
> 15. The Chief Adjudicator further submits that it may be appropriate to take certain additional steps to ascertain the quantum of Form Filler fees paid out directly by Claimants, to date, and to ensure that such fees are restored to them. In this regard, the Chief Adjudicator seeks this Honourable Court's Directions on the following:
>
> (a) whether measures should be taken, and if so, what measures should be taken to ascertain fees that Claimants have paid out directly to Form Fillers to date, whether by way of "Assignments" "Directions to Pay" or otherwise;
>
> (b) whether measures should be taken and, if so, what measures should be taken to restore, to Claimants, fees paid out directly to Form Fillers, in any fashion;
>
> (c) whether measures should be taken and, if so, what measures should be taken, to limit or prohibit participation, in the IAP, by certain Form Fillers and/or Legal Counsel who have engaged in <u>inappropriate conduct</u> to date, in relation to the charging of fees to and the collection of fees from Claimants. [emphasis added]

[5] Consequently, the main question before this court is whether fees charged by Form Fillers are contrary to the Settlement Agreement and, if so, what measures should be taken – retrospectively or prospectively – to address agreements requiring their payment.

[6] The RFD was served broadly, upon more than 30 Form Fillers and legal counsel who appeared to be engaged in some or all of the impugned practices being considered by this court. The Chief Adjudicator was directed by Madam Justice Brown to file evidence in support of the relief requested in this RFD. It was determined that, for the sake of efficiency, a record would be filed in respect of only one Form Filling Agency, First Nations Residential School Solution Inc. ("FNRSSI"), and its relationship with the law firm of Mr. Kenneth Carroll ("Carroll Firm").

[7] While the evidentiary record filed in relation to this RFD relates only to FNRSSI, its principals and the Carroll Firm, all served parties were again advised of the proceedings (in December 2013 and again in early April 2014) and offered an opportunity to obtain the record for it and participate in the hearing. This was in recognition of the fact that the decision in this "test case" has the potential to impact the rights of other Form Fillers and claimants' counsel working with them. No Form Filling Agency, including FNRSSI and its principals, participated in the hearing.[3] Some of the Form Fillers who were served with the

[3]The court was informed that Mr. David Spence passed away on January 26, 2014. Neither Mr. Russell Knight nor Mr. Syed Bokhari participated in the hearing.

RFD and repeatedly advised of the proceedings[4] did, however, choose to monitor the progress of the RFD as it related to the Carroll Firm, FNRSSI and its principals. In addition to Mr. Carroll and the Carroll Firm, six other lawyers or law firms were served with the RFD and repeatedly advised of the proceedings in relation to Mr. Carroll, the Carroll Firm, FNRSSI and its principals.[5] One of them, Mr. John Michaels, a lawyer and respondent in relation to the Chief Adjudicator's RFD, participated in the hearing before me.

[8] Based on the proper interpretation of the Settlement Agreement and other governing law, and their application to the evidentiary record before this court, I find that any agreements requiring claimants to pay Form Fillers on a contingency fee basis or for services properly characterized as legal services are contrary to public policy and therefore *void ab initio*. Agreements purporting to be assignments or directions to pay are also illegal and therefore void and

[4] These Form Fillers and Form Filling Agencies are identified below:

a. Achimoo Inc., c/o Aikins & Co. LLP
b. Allan Aitken, Director, Ininew Atoskwin Partnership Inc.
c. William Aitken, Director, Ininew Atoskwin Partnership Inc.
d. William Aitken, Director, Sakastew Inc.
e. Darren Audy, Director, Sakastew Inc.
f. Christopher Fultz, Director, Peacemaker Resolution Management Inc.
g. Charles Harper, Director, Sakastew Inc.
h. Ininew Atoskwin Partnership Inc.
i. Kandice Leonard, Director, Achimoo Inc.
j. Rod McGrath, Director, Tapwewin Inc.
k. Peacemaker Resolution Management Inc.
l. Sakastew Inc.
m. Les Spence, Director, Achimoo Inc.
n. Belinda VandenBroeck and Minaw Yaa-Win-Win c/o Belinda VandenBroek (Director)

[5] These law firms and counsel are as follows:

a. Alghoul and Associates Law Firm (notice provided to Louay Alghoul)
b. Ginnell Bauman Watt (notice provided to Greg Bauman, Trevor Watt subsequently responded)
c. D'Arcy and Deacon (notice provided to Christopher Fultz, Ken Mandzuik, Andrew Marshall and Uzma Saeed)
d. REO Law Firm (notice provided to Richard Olschewski and Moses Okimaw)
e. Michaels and Stern (notice provided to John Michaels)
f. Nadeau Law Office (notice provided to Ron Nadeau)

unenforceable. I further find that apart from considerations of illegality, agreements to pay Form Fillers in circumstances of unequal bargaining power and where an improvident deal was made, such as the two examples in the record before this court, are unconscionable and therefore voidable at the instance of the claimants who entered into them.

[9] Given my view of the correct legal characterization of agreements between Form Fillers and IAP claimants, I have concluded that those agreements are presumptively void and unenforceable. To protect other IAP claimants who have been represented by the Carroll Firm from the actions of unscrupulous Form Fillers, I have ordered that their settlement proceeds be paid through the Court Monitor rather than the Carroll Firm. In order to protect their IAP claimant clients I have also imposed obligations on the lawyers and law firms served with the Chief Adjudicator's RFD. These obligations include a requirement to provide information to the Court Monitor concerning arrangements with Form Fillers and Form Filling Agencies. Failure to live up to these obligations may result in those lawyers or law firms being suspended from further participation in the IAP. I have also ordered the Court Monitor to investigate the extent of the problem illustrated by the evidence in this case, and to propose a means by which IAP claimants can appropriately recover monies paid to Form Fillers and/or Form Filling Agencies.

[10] Moving forward, all information relating to arrangements between IAP claimants and counsel and Form Fillers assisting them should be provided to adjudicators before IAP hearings take place.

Record in this Case

[11] As previously mentioned, the specific facts arising from the record before me relate to a Form Filler organization called FNRSSI and its relationship with the Carroll Firm. The record discloses that as of November 2013, 507 IAP claimants were represented by the Carroll Firm, of which 484 were represented by Mr. Carroll himself.[6] In late 2013, the Chief Adjudicator's office reviewed a random sampling of 85 files submitted by the Carroll Firm to the Indian Residential Adjudication Secretariat ("Adjudication Secretariat") on behalf of IAP claimants from between March 12, 2011 and February 15, 2013. Eighty-three of the 85 applications listed FNRSSI as an organization which assisted in preparing the application. In all 85 files, the cover letter from the Carroll Firm to the Adjudication Secretariat submitting the IAP application copied FNRSSI.

[12] In terms of the relationship between the Carroll Firm and FNRSSI, Mr. Carroll explained that he agreed to work with FNRSSI in providing services to IAP claimants. In doing so, Mr. Carroll agreed to restrict his legal fees to 15% so that FNRSSI could charge a further 15%, resulting in a total fee of 30% being charged on IAP awards; 15% was paid by Canada and did not come out of the

[6] Mr. Carroll deposed that as of March 14, 2014, the Carroll Firm has resolved 97 IAP files and had received payment in relation to 63 of them.

claimants' awards, but the 15% that was paid to FNRSSI did come out of individual awards. This was in compliance with the 30% cap established in paragraph 17 of the Implementation Orders.[7] In consideration for limiting his fees to 15%, Mr. Carroll became a 25% shareholder of FNRSSI. The FNRSSI office was also set up in the same building as the Carroll Firm, with Mr. Carroll as the landlord.

[13] As Mr. Carroll describes it, the services contemplated and engaged in by FNRSSI were to act in a type of liaison role – contacting and communicating with prospective and actual clients in their communities. These services included holding information sessions, taking preliminary information from prospective claimants, interpreting as required, following up to locate and update clients, and generally acting as a cultural liaison between the Carroll Firm, Aboriginal communities, and claimants.

[14] Mr. Carroll's interest in FNRSSI was disclosed to the claimants in the Carroll Firm's standard engagement letter.[8] However, there is no evidence that

[7] Paragraph 17 of the Manitoba Implementation Order provides as follows:

> 17. THIS COURT ORDERS that all legal fees charged by legal counsel to claimants pursuing claims through the IAP shall not exceed 30% of the compensation awarded to the claimant. This 30% cap shall be inclusive of and not in addition to Canada's 15% contribution to legal fees, but exclusive of GST and any other applicable taxes. The 30% cap shall also be inclusive of Canada's contribution to disbursements. Upon the conclusion of an IAP hearing, legal counsel shall provide the presiding Adjudicator (the "Adjudicator") with a copy of their retainer agreement and the Adjudicator shall make such order or direction as may be required to ensure compliance with the said limit on legal fees.

[8] The relevant paragraph of the engagement letter is set out below:

> The Client also acknowledges that Ken Carroll has a direct or indirect interest in First Nations Residential School Solutions Inc., which the Client is also engaging for facilitating the Client's claim and assisting the Client with non-legal aspects of the process and the Client confirms that he/she has no objection to Ken Carroll also having such an interest and that there is no conflict of interest with First Nations Residential School Solutions Inc. [emphasis added].

they were encouraged to obtain independent legal advice before disclaiming any conflict of interest on Mr. Carroll's part.

[15] Affidavits were filed in support of the Chief Adjudicator's RFD by two claimants who were represented by Mr. Carroll with the involvement of FNRSSI. The first of those claimants is D.B., who contacted FNRSSI at the suggestion of a friend. D.B. did not meet with anyone from FNRSSI or the Carroll Firm in person until the day of her hearing – she only had contact with them over the phone a few times and sent them her application by mail. FNRSSI obtained other records that were required for D.B.'s hearing. D.B. also mailed to FNRSSI a "Service Contract" which reflected her agreement to pay FNRSSI 15% of any compensation awarded to her.[9] D.B.'s evidence was that no one spoke with her about this agreement or explained it to her, and that she thought she was agreeing to pay for the work of the lawyer with whom FNRSSI was working.

[16] It was the evidence of Mr. Jose Casares, a paralegal employed by the Carroll Firm, that he was unable to locate D.B. prior to the hearing. The firm was only able to reach her with the assistance of one of FNRSSI's principals, Mr. David Spence, who was able to locate D.B.'s brother.

[17] On the day of her hearing, D.B. met with Mr. Spence for the first time. He asked her to sign some papers which she now knows comprised another agreement to pay 15% of her compensation to the Carroll Firm. As was the case with the first contract with FNRSSI, D.B. does not recall this agreement being explained to her. She was not given a copy of the agreement. The day of the

[9] The "Service Contract" between D.B. and FNRSSI is attached as Appendix "A".

hearing was also the first time D.B. met Mr. Carroll. D.B.'s evidence is that she was very uncomfortable at her hearing as she felt her lawyer was a stranger.

[18] There is conflicting evidence as to whether when D.B. was told that she had to attend at the Carroll Firm personally in order to collect her cheque when her compensation money arrived after the hearing. Given her health, the distance (D.B. lives north of Sioux Lookout, Ontario), and cost, D.B. would have preferred to have her cheque sent to her. However, the evidence of Mr. Casares was that he advises claimants of several options for obtaining their cheque, only one of which involves attending personally. In any event, D.B. understood that she had to make the long trip from her community to Mr. Carroll's office in Winnipeg to collect her cheque. Because D.B. has a terminal illness and was not feeling well at the time, her grandson travelled with her.

[19] D.B. collected the cheque from Mr. Carroll's office. D.B. does not recall whether she was told that she would have to pay Mr. Spence or, conversely, that she was not obligated to do so. Mr. Carroll's evidence was that he informed D.B. that she did not have to pay FNRSSI.

[20] Earlier that year, Mr. Carroll was informed by the Chief Adjudicator at the time, Mr. Daniel Ish, of the Chief Adjudicator's opinion that it was inappropriate for the Carroll Firm to be charging a 15% fee plus FNRSSI charging an additional 15%. Mr. Carroll understood the Chief Adjudicator's position to be that in order to engage the services of FNRSSI, Mr. Carroll could either absorb the cost as an operating expense and account for it in his legal fees, or submit invoices to the adjudicator as an exceptional disbursement. Mr. Ish expressed the view that

aside from legal fees, taxes, and approved disbursements, all settlement monies must be paid to claimants.

[21] Mr. Carroll's evidence was that after learning the Chief Adjudicator's position, he spoke with FNRSSI's principals many times in an effort to restructure the relationship. Mr. Carroll indicated that FNRSSI should invoice the Carroll Firm, and gave FNRSSI a sample invoice. He also surrendered his shares in FNRSSI and says he told claimants that they did not have to pay FNRSSI out of their settlement funds.

[22] After D.B. received her settlement cheque from the Carroll Firm, Mr. Spence and another man (whom we now know was Mr. Syed Bokhari, also of FNRSSI) followed her when she left Mr. Carroll's office. They told her they would take her to the bank to cash her cheque and that she had to pay them for helping on her IAP file. This was a surprise to D.B. and she did not want to pay them, but felt she had no choice.

[23] At the bank, Mr. Bokhari stood next to D.B. while she was at the teller and told the teller to take money from the cheque to pay him for fees D.B. owed him. D.B. was not sure what was going on and was too afraid to complain or object. After obtaining the money, D.B. and her grandson were dropped off at a mall, where Mr. Spence was supposed to come back to pick them up and give them a cheque for bus fare. Finally, after waiting a very long time, D.B. called Mr. Spence, who turned out to be at a bingo game. D.B. and her grandson took a taxi to Mr. Spence's home, where a young boy gave them a cheque to cover taxi fare for part of their journey home.

[24] D.B. was contacted later by the adjudicator of her hearing, for the purpose of a fee review. Adjudicators conduct fee reviews pursuant to paragraph 18 of the Implementation Orders, either at the claimant's request or their own initiative. During the fee review, which took place over the telephone, D.B. became very upset because she felt Mr. Carroll was saying things that were not true. Mr. Carroll's evidence was that he was not aware of what happened to D.B. after she received her compensation cheque.

[25] The second claimant whose evidence is before the court is K.M., who remembers signing forms when he completed his IAP application and being told he would have to pay 15% of his claim for assistance with the application process. K.M. was not given a copy of any of the forms he signed. The letter of engagement with the Carroll Firm indeed charges K.M. 15%. There is, however, a "Service Contract" with FNRSSI, which indicates he will be charged an additional 25% fee.[10]

[26] As with the case of D.B., there is conflicting evidence as to whether K.M. was told he had to attend Mr. Carroll's office personally in order to collect his compensation cheque after his hearing. K.M.'s community is only accessible by aircraft or ice road, and so he would have preferred not to attend Mr. Carroll's office. Mr. Casares' evidence was that he did not insist that K.M. attend. In any event, K.M. borrowed money from his band in north-western Ontario in order to

[10] The "Service Contract" between K.M. and FNRSSI is substantially identical to the "Service Contract" between D.B. and FNRSSI (Appendix "A"), except for providing that K.M. would be charged the additional fee of 25% of the award. Note that the aggregate of fees paid to the Carroll Firm (15%) and FNRSSI (25%) exceeds the 30% cap established by paragraph 17 of the Implementation Order (excerpted above at note 7).

fly into Winnipeg and stay in a hotel so that he could collect his cheque. He later reimbursed the band with his own money.

[27] Upon leaving the Carroll Firm with his compensation cheque, Mr. Bokhari confronted K.M. with an invoice saying K.M. had to pay FNRSSI money from his compensation. Mr. Bokhari followed K.M. into two banks as he tried to cash his cheque, but the banks did not have sufficient funds on hand. K.M. took a cab to the airport with the intention of cashing it there, and Mr. Bokhari insisted on going with him. Mr. Bokhari stood next to the teller and showed the invoice to the teller and bank manager, insisting that K.M. owed him money. It was K.M.'s evidence that he felt he had no choice but to pay Mr. Bokhari, as everyone was telling him he had to do it.

[28] An adjudicator also held a fee review hearing in the case of K.M. and decided to reduce Mr. Carroll's fees by 50% of the claimed amount. The adjudicator noted that the combined amount in the contracts with FNRSSI and the Carroll Firm with K.M. exceeded the 30% cap on legal fees permitted under the IAP, but that FNRSSI had only collected 15% rather than the 25% provided for in the written agreement. The adjudicator further commented that while she had no authority to order that funds received by a third party agency be returned to K.M., she encouraged K.M. to take whatever additional steps may be necessary or possible to retrieve that money.

[29] Upon learning of the experiences of K.M. and D.B. with FNRSSI, Mr. Carroll voluntarily repaid to the claimants the money they had paid to FNRSSI. He terminated FNRSSI's lease and evicted it from the building.

Mr. Carroll also informed FNRSSI that the Carroll Firm would be advising its clients that the fee agreements with FNRSSI were unenforceable.

Parties' Positions

Chief Adjudicator

[30] Broadly speaking, the Chief Adjudicator submits that only legal fees may be charged to IAP claimants, as they are the only fees contemplated in the Settlement Agreement and other related documents. The fairness of legal fees was explicitly made subject to the discretion and supervision of the Adjudicators of IAP hearings to ensure that IAP claimants receive the full benefit of the Settlement Agreement. According to the Chief Adjudicator, other fees should not be allowed as they would prevent claimants from receiving what they are entitled to under the IAP, and are contrary to the intent and proper administration of the Settlement Agreement. The Chief Adjudicator is therefore seeking orders directed at stopping the practice of charging fees for form filling. The Chief Adjudicator takes no position as to whether retrospective measures are appropriate, and submits that measures which would limit the participation of certain lawyers and Form Fillers require further investigation.

[31] On the morning of the hearing, the Chief Adjudicator's counsel circulated a draft order that became a focus of submissions. The draft order is attached as Appendix "B".

The Court Monitor

[32] The Court Monitor agrees with the Chief Adjudicator that the proper administration of the Settlement Agreement requires that claimants receive the

full amount of their IAP settlement funds. There is no provision in the Settlement Agreement for a non-lawyer third party agency to charge claimants for legal fees or legal services.

[33] Furthermore, the Settlement Agreement (at section 18.01)[11] and the ***Financial Administration Act***, R.S.C., 1985, c F-11 (at s. 67)[12] both explicitly prohibit assignment or a direction to pay IAP settlement funds to a party other than the claimant. The courts have held that an assignment or direction to pay IAP settlement funds to a party other than a claimant is contrary to both of these provisions: ***Fontaine v. A.G. Canada***, 2007 BCSC 1841, aff'd 2008 BCCA 329.

[34] The Court Monitor makes several submissions regarding the authority and jurisdiction of the Chief Adjudicator and the court. Firstly, adjudicators have no authority to inquire into contracts for non-legal services provided to claimants by third parties, as the authority of the adjudicators is connected to concerns with legal fees charged. For example, if a Form Filler was not engaged by a law firm, it may be outside the authority of an adjudicator to inquire into the contract. In its submission, adjudicators certainly lack authority to order that Form Fillers return money to claimants. The court, however, does have such authority.

[11] Section 18.01 of the Settlement Agreement bears the heading "No Assignment" and reads as follows:

> No amount payable under this Agreement can be assigned and such assignment is null and void except as expressly provided for in this Agreement.

[12] Section 67 of the *Financial Administration Act* provides as follows:

> 67. Except as provided in this Act or any other Act of Parliament,
> (a) a Crown debt is not assignable; and
> (b) no transaction purporting to be an assignment of a Crown debt is effective so as to confer on any person any rights or remedies in respect of that debt.

[35] The Court Monitor also submits that clarification is needed as to the definition of "improper practices" and "inappropriate conduct" as those phrases are used in the order requested by the Chief Adjudicator,[13] and that no process has been suggested as to how inappropriate conduct may be established in a given case. This raises the concerns previously mentioned regarding the authority of adjudicators. If the Court Monitor is to play a large role in supervising the distribution of legal fees or settlement funds (for example, in the event that misconduct is alleged), it seeks compensation from Canada for doing so. A possible process for recovering fees already paid to Form Fillers, should the court decide to order their return, is one similar to the procedure established by Madam Justice Brown in her order regarding recovering money from third party lenders.[14]

[36] It was the Court Monitor's submission that the facts of this case are troubling and need to be addressed.

Canada

[37] Canada submits that those who do not respect the rules or processes established by the Settlement Agreement should be sanctioned. However, Canada respects the rights of competent class members to enter into contracts establishing relationships with agents in aid of their IAP claims. Part III

[13] See note 2, above.
[14] See *Fontaine v. Canada (Attorney General)*, 2012 BCSC 1671, paragraph 62, where Brown J. commented that full hearings with a proper record are necessary in order to determine whether a loan was secured contrary to the terms of the Settlement Agreement and to resolve questions regarding the recovery of loan proceeds that were allegedly not received or recovery based on charging allegedly excessive interest.

("Assessment Process Outline") of Schedule D of the Settlement Agreement provides that "Agents, whether paid by the Claimant or not, may not discharge the roles specifically established for counsel in this IAP."[15] There is, however, nothing preventing claimants from entering into contacts for other services, though assignment is explicitly prohibited by the Settlement Agreement.

[38] The court has the jurisdiction to deny participation of non-claimants in the IAP to ensure the proper implementation of the Settlement Agreement. This could occur, for example, if legal counsel breaches one of the Settlement Agreement's provisions.

[39] Canada supports the concerns raised by the Court Monitor with respect to the jurisdiction of adjudicators. Canada submits that only the court can determine the legality of Form Filler contracts independent of legal fees. Adjudicators could inquire into contractual relationships where necessary in the context of a specific IAP hearing; for example, if issues of credibility were raised due to an inconsistency between a claimant's IAP application form and his or her oral testimony. However, neither the Chief Adjudicator nor the Adjudication Secretariat has authority to review contracts independent of legal fees, and the broad delegation of such powers would be contrary to the terms of the Settlement Agreement.

[40] Canada submits that there is no basis for a broad review of all Form Filler fees paid by claimants to date, as such contracts for form filling services are legally permissible. A full hearing with individual testimony would be required to

[15] See heading (q) (Representation of Claimants by Agents"), at p. 15 of Schedule D.

determine whether any given agreement is illegal, and removal of an individual from the IAP would be an extraordinary remedy, appropriate only after a full record is considered in the appropriate forum. Canada raises the example of Mr. Blott and certain loans given, for which the proper forum was a normal court process outside the IRSSA.

Independent Counsel

[41] Independent Counsel support the Chief Adjudicator's position that legal fees are the only type of fees that should be charged to claimants for processing their IAP claims, and repeat that assignments are prohibited. Independent Counsel do not oppose the requirement that claimants' counsel disclose the nature of any relationship with Form Fillers to adjudicators in order to ensure that there are no indirect payments to third parties above legal fees permissible under the Settlement Agreement. However, Independent Counsel point out that there is no clear process regarding the discovery and recovery of fees already paid to Form Fillers. It is suggested that if appointed, an independent special advisor could work with the Court Monitor to undertake that task.

Assembly of First Nations ("AFN")

[42] The AFN acknowledges that IAP claimants are at liberty to engage the services of individuals, Form Fillers, or private agencies to assist them in the IAP. The AFN further acknowledges that such entities are entitled to be compensated for their services, but not on a contingency fee basis. An hourly or flat fee, the AFN submits, would be more appropriate. Contingency fees, including for the IAP, are only billable by legal counsel. Only members of law societies can bill in

that manner based on their own professional regulation and court supervision under class proceedings legislation.

[43] The work of form filling could be charged as a legitimate disbursement by a law firm, and if part of the legal services of that firm, it should come out of the contribution to legal fees paid by Canada. Otherwise, legal counsel and Form Fillers are sharing the work, but are both collecting fees. If the services of Form Fillers are engaged independently of legal services, the AFN submits that those fees should be examined through a different lens, but remain subject to review.

[44] The AFN repeats the submissions of others that directions to pay or assignments are illegal, and believes that Form Fillers engaging in inappropriate conduct should be subject to appropriate measures, which may include prohibition from further participation, a reduction in fees, or other remedies as determined by the court.

John Michaels

[45] Mr. Michaels, a lawyer who represents IAP claimants and has worked with Form Fillers, points out that the Chief Adjudicator's request to declare all agreements or contracts with Form Fillers void does not distinguish between types of services provided by or agreements with Form Fillers. While he submits that some of the prospective orders sought may be appropriate, retrospective orders could be unfair, as the nature of the relationships between claimants, Form Fillers, and counsel has evolved since the inception of the Settlement Agreement.

[46] Mr. Michaels submits that the court should be cautious about making a broad order for repayment to claimants without an evidentiary basis for so doing. Any order must be fair and reasonable in the circumstances of each case. Finally, Mr. Michaels repeats the submission of others that as used by the Chief Adjudicator, the phrase "improper practices" requires clarification.

Merchant Law Group ("MLG")

[47] Merchant Law Group, a signatory to the Settlement Agreement, provided written submissions expressing concern over the intrusion into claimants' solicitor-client privilege. In MLG's submission, the orders sought in the Chief Adjudicator's RFD were too broad and not appropriately tailored to individual circumstances. MLG submits that there is insufficient evidence to grant the sweeping orders sought. MLG also warns of taking an overly paternalistic approach, and submits that the Chief Adjudicator does not have authority to "police" lawyers and Form Fillers.

[48] MLG ultimately submits that the court should decline jurisdiction to adjudicate what is essentially a private dispute between claimants and their lawyers.

Mr. Kenneth Carroll

[49] Mr. Carroll does not generally object to the prospective orders sought by the Chief Adjudicator, but questions their legal basis. In essence, while the Settlement Agreement does not explicitly permit the involvement of Form Fillers, there is nothing in the Settlement Agreement prohibiting freedom of contract. In light of this, if the court does choose to prohibit or regulate the practice of form

filling, Mr. Carroll submits that this should not be done retroactively. Mr. Carroll further submits that some aspects of the orders sought by the Chief Adjudicator are too general or vague in nature, specifically the phrase "improper practices". He submits this should be defined in the court's order, as should any procedure for recovering and distributing money collected if the court chooses to order retroactive measures.

[50] Finally, Mr. Carroll draws the court's attention to certain factual inconsistencies in the record with respect to his legal practice and that of FNRSSI, but suggests that resolving these disputes by making factual findings is not necessary for the determination of this RFD. Most facts are not in dispute, and Mr. Carroll submits that the undisputed facts form a sufficient evidentiary basis upon which the court may provide direction on this RFD. On a personal note, Mr. Carroll submits that the record does not show that he himself has acted inappropriately, given that as soon as he learned the views of the former Chief Adjudicator, he changed his practices to conform with the Chief Adjudicator's expectations.

Analysis

[51] After having considered the submissions of the parties, the Settlement Agreement and other related documents, as well as other relevant law, I decline to order that all contracts with Form Fillers are illegal, but do find that certain (albeit large) categories of contracts are in fact illegal and unenforceable. Even if not illegal, other contracts may be unconscionable and therefore voidable at

the option of claimant signatories. I provide guidance below in order to fulfil the court's role to ensure the proper administration of the Settlement Agreement.

Agreements that Are Void as Contrary to Public Policy

[52] It is a foundational principle of legal interpretation that courts will not enforce contracts that are contrary to public policy. Examples of categories of contracts that are void for being contrary to public policy include contracts to commit illegal acts and contracts that interfere with the administration of justice: see G.H.L. Fridman, *The Law of Contract in Canada*, 5th ed. (Toronto: Thomson Carswell, 2006) at 364-366 and 369. A contract with an unlicensed medical practitioner has been held illegal.[16]

[53] I am reluctant to sever or read down any provisions that I find contrary to public policy, because to do so would lead to a situation where Form Fillers may not be deterred from entering into and seeking to enforce illegal contracts, as from their perspective, the worst that could happen is the illegal provisions being read down by the court. Similar to employment law situations, I do not want to encourage such an attitude: S.M. Waddams, *The Law of Contracts*, 6th ed. (Aurora: Canada Law Book, 2010) at 581. Furthermore, severability is only possible where a distinct part of the transaction can survive without depending on the illegal aspect of the transaction: *Ibid*. As explained further below, several aspects of the contracts in question are contrary to public policy and there is no part of them – if they fit the description below – that is otherwise severable and enforceable.

[16] See *Tannock v. Bromley* (1979), 10 B.C.L.R. 62 (B.C.S.C.), cited by Fridman at p. 364.

[54] There are several aspects of the agreements entered into by the claimants K.M. and D.B., the Carroll Firm, and FNRSSI that are problematic. Three aspects in particular render the agreements with FNRSSI contrary to public policy and *void ab initio*: they purport (1) to be assignments or directions to pay from a Claimant's IAP award; (2) to charge for services in furtherance of IAP claims on a contingency fee basis; and (3) to provide what are essentially legal services. For each of these reasons, the service contracts between the claimants and FNRSSI are unenforceable, with the effect that the parties should be restored to their original positions, as if the contracts had never been entered into.

Assignments and Directions to Pay

[55] Firstly, directions to pay Form Fillers directly from a claimant's IAP award are contrary to section 18.01 of the Settlement Agreement[17] and section 67 of the ***Financial Administration Act***.[18] Both explicitly prohibit assignments or direction to pay IAP settlement funds (Crown debt) to a party other than the Claimant. Any agreements purporting to have that effect, such as the service agreements signed by K.M. and D.B., are therefore illegal and unenforceable.

[17] Reproduced at Note 11, above.
[18] Reproduced at Note 12, above.

Contingency Fees

[56] Secondly, contracts providing for contingency fees payable to Form Fillers are illegal for being contrary to public policy and are thus void. Counsel for Mr. Carroll and Independent Counsel suggested that contingency fees charged by Form Fillers should not be viewed as illegal as they are analogous to a real estate agent or broker's commission. However, this analogy is inapt: it is concerned with completion of a conditional transaction, not with the outcome of a legal dispute. On public policy grounds, the law has traditionally abhorred contingency fee arrangements, even where regulated professionals – lawyers – are involved. This has been so because of the courts' concern about conflicts of interest and the potential for perversion of or interference with the administration of justice.

[57] Historically speaking, contingency fees charged in the context of judicial proceedings were illegal for being champertous. *Black's Law Dictionary* 9th ed., (St. Paul, West Group, 2009), defines champerty as "an agreement to divide litigation proceeds between the owner of the litigated claim and a party unrelated to the lawsuit who supports or helps enforce the claim." The law of champerty traditionally precluded lawyers from charging contingency fees, until the law evolved to permit an exception.

[58] In holding for the first time in Ontario (in 2002) that contingency fees charged by lawyers were not illegal for being champertous, the Ontario Court of Appeal provided an insightful justification for this historical change. Specifically, O'Connor A.C.J.O. explained:

> [70] I am persuaded that the historic rationale for the absolute prohibition [on contingency fee agreements] is no longer justified. The common law of champerty was developed to protect the administration of justice from abuse, one aspect of which involved the protection of vulnerable litigants. Within that broad framework, the courts historically held that contingency fee agreements were *per se* champertous. But, as examples from other jurisdictions amply demonstrate, the potential abuses that provided the rationale for the *per se* prohibition of contingency fee agreements can be addressed by an appropriate regulatory scheme governing the conduct of lawyers and the amount of lawyers' fees. [emphasis added]
>
> ***McIntyre Estate v. Ontario (Attorney General)*** (2002), 61 O.R. (3d) 257, [2002] O.J. No. 3417 (Ont. C.A.) ("***McIntyre***")

In other words, regulation of the legal profession and ability to review the appropriateness of contingency fees have mitigated the concerns underlying the historical rationale for prohibiting lawyers from charging such fees. Those concerns relate to the fundamental aim of protecting the administration of justice from abuse.

[59] The Manitoba Court of Appeal has quoted ***McIntyre*** with approval, noting that an important reason why it was not contrary to public policy for lawyers to charge contingency fees was the existence of an appropriate regulatory framework to govern the practice: ***O'Brien v. Tyrone Enterprises Ltd. et al.***,

2012 MBCA 3 at paragraphs 48-51. As the Ontario Court of Appeal noted in ***McIntyre***, Manitoba has authorized contingency fees since 1890.[19]

[60] Prior to changes to the regulatory framework governing paralegals in Ontario, the Ontario Court of Appeal also considered whether the changes to the law established in ***McIntyre*** permitted paralegals to charge contingency fees. The court found that:

> [23] The regulatory network applicable to lawyers, including the Rules of Professional Conduct and the detailed statutory provisions for the review of legal fees found in the *Solicitors Act*, played a central role in the holding in *McIntyre* that contingency fee arrangements between lawyers and clients should no longer be subject to an absolute prohibition.
>
> ***Koliniotis v. Tri Level Claims Consultants Ltd.*** (2005), 257 D.L.R. (4th) 297, 2005 CanLII 28417 (Ont. C.A.) ("***Koliniotis***")

[61] The court further found that "[e]ffective regulation of paralegals must be a prerequisite to contingency fee arrangements" (***Koliniotis***, at paragraph 32). Because there was no such regulation of paralegals in Ontario at the time, the agreement at issue in ***Koliniotis*** which purported to permit a paralegal to charge a client on a contingency fee basis was therefore void and unenforceable.

[62] Along a similar vein, the British Columbia Court of Appeal found in ***Carr-Harris & Co. v. Gnam*** (1993), 108 D.L.R. (4th) 575, 1993 CanLII 1617 (B.C. C.A.) at paragraph 7, that in order to be legal, a contingency fee agreement must be entered into with a member of the law society. In that case, it was found that a contingency fee retainer signed by a legal assistant on behalf of the

[19] *McIntyre*, paragraph 56.

firm was unenforceable, as the legal assistant was not a member of the law society.

[63] Form Fillers are not members of any law society. More importantly, there is no scheme in the Settlement Agreement or otherwise to regulate the Form Filler "industry". This is a matter of concern to the court for a number of reasons, including that the involvement of Form Fillers may lend itself to unprofessional conduct by lawyers, such as fee splitting and charging or paying referral fees. By contrast, the Settlement Agreement regulates the legal fees payable by IAP claimants, including a mechanism whereby adjudicators may review legal fees to ensure they are appropriate: see paragraphs 17 through 19 of the Implementation Orders. This is in addition to the regulatory framework already in place requiring lawyers to only charge fees that are fair and reasonable and permitting the review of legal fees by the court: see ***The Legal Profession Act***, C.C.S.M. c. L107, s. 55.

[64] There is a reason for the extensive regulation of legal fees in general and of contingency fees in particular. In the context of the Settlement Agreement, it helps to protect the integrity of the settlement process. An important reason for the regulation of legal fees within the IAP is to ensure that claimants receive the full benefits of the Settlement Agreement and are not re-victimized by the settlement process. As a group, IAP claimants are uniquely in need of the court's protection. To put it plainly, in supervising the administration of the

Settlement Agreement, the courts have a responsibility to protect claimants from charlatans.[20]

[65] In approving the Settlement Agreement in Ontario, Winkler R.S.J. (as he then was) commented:

> As a general principle, wherever a settlement incorporates a claim resolution procedure, the entirety of that procedure is to be conducted under the supervision of the court. This must of necessity include the relationship between counsel and clients engaged in the process, especially where the legal fees or part thereof are paid pursuant to the settlement. As stated above, the court must ensure the claimants obtain the expected benefits of the settlement.
>
> One of the purported benefits of the settlement is the fact that it presents a comprehensive scheme for dealing with all issues arising from the residential schools program. In keeping with the general principle, claimants must have recourse within the administration of this settlement to challenge the reasonableness of the fees they are charged by counsel. [emphasis added]
>
> ***Baxter v. Canada (Attorney General)*** (2006), 83 O.R. (3d) 481, 2006 CanLII 41673 (ON SC) at paras. 75-76

Winkler R.S.J. went on to say (at paragraph 78) that:

> All fees charged or to be charged to the individual claimant must be clearly set out. This means that any counsel participating in the process will be under an obligation to make full disclosure in respect of the fees charged, directly or indirectly to the claimant, including disbursements and taxes."[21]

[66] Based on the common law of champerty and a purposive reading of the Settlement Agreement, I find that it is illegal for Form Fillers to charge claimants

[20] See *Fontaine et al. v. A.G. Canada et al.*, 2012 BCSC 839, paragraphs 111-113, 122-123.
[21] Emphasis added.

contingency fees in relation to their IAP claims, and that any such agreements, including those entered into by K.M. and D.B. with FNRSSI are *void ab initio* for being contrary to public policy and a threat to the administration of justice.

Form Fillers Cannot Engage in the Unauthorized Practice of Law

[67] In addition to the categories of illegality set out above, the evidentiary record before me raises significant concerns as to whether Form Fillers are engaging in the unauthorized practice of law. While the relationship between Form Fillers and law firms is rather unclear, it appears that some Form Filling Agencies operate under the umbrellas of specific law firms and are being utilized to effectively perform the work of paralegals or claimants' counsel. Many of the services offered by Form Fillers are those encompassed in the fees that counsel would charge IAP claimants, and to which Canada contributes under the terms of the Settlement Agreement.

[68] By way of example, the "Service Contract" used by FNRSSI and which is before this court lists the following as services provided by FNRSSI:

> 1. Explain the whole application and compensation process.
>
> 2. Assist with the completion of the necessary Independent Assessment Process application and various other documents needed.
>
> 3. Ensure that all information received regarding any abuse is kept confidential between survivor, FNRSS and the lawyer appointed to act on behalf of survivor.
>
> 4. Assist survivors with any problems with Common Experience Payments (CEP) claims.
>
> 5. Review and advise survivors regarding Alternative Disputes Resolutions (ADR) claims

> 6. Assist survivors with the appointments of lawyer, and other consultants, experts or advisors, if they become necessary or advisable.
>
> 7. Keep survivors informed regarding the status of their claim.
>
> 8. Arrange for counselling, if desired.
>
> 9. Complete an aftercare program with survivors, if desired.
>
> 10. Arrange for a money management seminar; if desired.
>
> 11. Arrange for coverage or reimbursement of eligible expenses, such as travel for counselling or hearings.
>
> 12. Arrange such appointments as may be necessary or desirable for IAP or counselling.
>
> 13. Arrange attendance at the hearing for any spiritual or emotional support you [choose].
>
> 14. Arrange ~~(in conjunction with Little Hawk Consulting Inc.)~~ such financial plans you decide through them for application of your monies received.
>
> 15. Meet with such other survivors who have asked you for assistance.[22]

[69] Certain of these services, for example explaining the whole application and compensation process and assisting claimants with the completion of necessary documents to make a claim, fall squarely within the role of claimants' counsel. I agree with Independent Counsel's submission that in reality, the "forms" are akin to statements of claim with solemn declarations attached to them. The desirability of having a lawyer assist claimants in the preparation of their applications has been acknowledged and encouraged by the Adjudication

[22] The line through "in conjunction with Little Hawk Consulting Inc." appears in the original.

Secretariat. In recognition of this fact, Canada has, as part of the Settlement Agreement, agreed to pay claimants' legal fees equal to 15% of the value of their award. In other words, the Settlement Agreement was structured so that claimants could receive legal assistance at Canada's cost.

[70] Moreover, the Settlement Agreement (at page 15, heading (q) of Schedule D) explicitly provides that "Agents, whether paid by the Claimant or not, may not discharge the roles specifically established for counsel in this IAP." This reinforces the provisions governing the practice of law in each province and territory, including those that prohibit the unauthorized practice of law: see e.g. ***The Legal Profession Act***, s. 20;[23] and the Law Society of Manitoba, *Code of Professional Conduct*, (Effective January 1, 2011. Current to January 30, 2014) R. 6.1 and 7.6. As the commentary to Rule 7.6 of Manitoba's *Code of Professional Conduct* points out, "unauthorized persons may have technical or personal ability, but they are immune from control, regulation and, in the case of

[23] Subsection 20(2) of the *Legal Profession Act* erects a broad prohibition against unauthorized practice of law:

> 20(2) Except as permitted by or under this or another Act, no person shall
> (a) carry on the practice of law;
> (b) appear as a lawyer before any court or before a justice of the peace;
> (c) sue on any writ or process or solicit, commence, carry on or defend any action or proceeding before a court; or
> (d) Attempt to do any of the things mentioned in clauses (a) through (c).

Certain activities are deemed by subsection 20(3) to carrying the practice of law:

> 20(3) A person who does any of the following, directly or indirectly, for or in the expectation of a fee or reward is deemed to be carrying on the practice of law:
> (a) draws, revises or settles any of the following documents:
> ...
> (ii) A document for use in a proceeding, whether judicial or extra-judicial,
> ...
> (b) negotiates or solicits the right to negotiate for the settlement of, or settles, a claim for loss or damage founded in tort;
> (c) agrees to provide the services of a practising lawyer to any person, unless the agreement is part of, or is made under
> (i) a prepaid legal services plan,
> (ii) a liability insurance policy, or
> (iii) a collective agreement or collective bargaining relationship;
> (d) gives legal advice.

misconduct, from discipline by the Society." It is also contrary to the provincial and territorial law societies' rules of professional conduct for lawyers to engage in fee splitting and paying referral fees to non-lawyers: see e.g. *Manitoba Code of Professional Conduct*, R. 3.6-7. Any relationships between Form Fillers and law firms must comply with these provisions.

[71] Prohibitions against the unauthorized practice of law are for the protection of the public, and are even more important in the context of the Settlement Agreement, where claimants are recovering from traumatic experiences and are more likely to be in a vulnerable position as a result.

[72] The Law Society of Upper Canada has created "Guidelines for Lawyers Acting in Cases Involving Claims of Aboriginal Residential School Abuse", which reflect the unique and sensitive situation of representing claimants in the IAP. The Adjudication Secretariat has also published a document entitled "Expectations of Legal Practice in the IAP", outlining the appropriate conduct of lawyers in the particular context of the IAP.

[73] The guidelines and rules specific to representing claimants under the Settlement Agreement, in conjunction with the rules and laws governing the practice of law generally, suggest that courts should be especially concerned with Form Fillers engaging in unauthorized practice in the representation of claimants in the IAP. I find that assisting claimants with their applications under the Settlement Agreement and giving them advice on the IAP is the role of claimants' counsel. Consequently, agreements whereby Form Fillers purport to provide such services are contracts to engage in the unauthorized practice of

law. To the extent that the services promised by Form Fillers are properly characterized as legal services, such agreements are contrary to public policy and *void ab initio*.

[74] That is not to say that Form Fillers cannot provide any legitimate services to IAP claimants. There are non-legal services which Form Fillers can provide, and claimants are at liberty to enter into contracts with Form Fillers for the provision of such services. Nothing in these reasons should be construed as taking away claimants' inherent rights to enter into private contracts. Such contracts, however, must conform to the bounds of the law.

[75] While claimants are entitled to enter into contracts with Form Fillers for services other than legal services (so long as they are not on a contingency fee or assignment basis), I would note that the Adjudication Secretariat's "Expectations of Legal Practice in the IAP" explicitly indicates that, among other things:

> 7. Lawyers should facilitate their client's healing process through:
>
> (a) identifying and providing referrals to appropriate community resources, including counselling resources;
>
> (b) referring their client to treatment programs, if appropriate;
>
> ...
>
> (f) working with their client to ensure that an appropriate future care plan has been developed (where applicable) for presentation at the hearing ...

[76] Furthermore, the Adjudication Secretariat will pay for up to two support persons, as well as an elder or religious person. There are health support options available to claimants, including the opportunity to meet with the health support worker before the hearing. Accommodations for special requirements, such as interpreters, special dietary needs, mobility requirements, or health concerns are also met by the Adjudication Secretariat. Finally, the Settlement Agreement provides that Canada will pay all reasonable and necessary disbursements upon resolution of the claim, and that adjudicators will resolve any disputes about disbursements.

[77] In short, many of the services performed by Form Fillers as outlined in the evidentiary record before me are within the role of claimant's counsel, provided for by the Adjudication Secretariat, or paid as disbursements by Canada. Therefore, while Form Fillers are entitled to offer non-legal services, the range of such services which are not duplicative appears very limited. This fact can and should be taken into account in the event that it is necessary to determine a reasonable amount of compensation for Form Fillers in assisting IAP claimants.

[78] In summary, a proper interpretation of the Settlement Agreement and the relevant legal landscape leads me to find that service contracts between claimants and Form Fillers are void and unenforceable if they purport to (1) assign or direct the payment of an IAP award to a Form Filler; (2) charge for services on a contingency fee basis; or (3) charge claimants for Form Fillers to provide what are effectively legal services.

[79] Given my findings in particular regarding the unauthorized practice of law and that Form Fillers cannot charge contingency fees, it is not necessary for me to also address the issue of whether agreements such as that entered into between K.M. and the Carroll Firm/FNRSSI, which collectively exceeded the 30% cap on legal fees established by s. 17 of the Implementation Orders, are contrary to public policy. In accordance with these reasons, fees charged by Form Fillers will either be paid as legitimate disbursements included in legal fees by Canada, subsumed in the operating costs of a law firm and reflected in their fees, or charged directly to claimants on a reasonable hourly or flat rate basis should claimants wish to engage a Form Filler for non-legal services. My concern remains that almost all of the services that can be legitimately provided by Form Fillers are duplicative of services that can otherwise be provided at no cost to claimants.

[80] Where Form Fillers' fees are included in legal fees charged by claimants' counsel, adjudicators have the authority pursuant to section 18 of the Implementation Orders to assess and review those fees.

[81] Any legitimate services performed by Form Fillers under contracts that are void for any or all of the above reasons may be compensated on a *quantum meruit* basis, as was the case in ***Koliniotis***. Such recovery should be sought outside the IAP, unless the fees were charged as disbursements or otherwise connected to legal fees. The jurisdiction of adjudicators is limited to reviewing legal fees, and it is beyond their powers to review contracts between Form Fillers and claimants unconnected to that mandate. However, in order to ensure the

continued integrity of the IAP and the proper implementation of the Settlement Agreement, before hearings take place, adjudicators should be provided with all information relating to arrangements between claimants and counsel and Form Fillers involved in the process. This is to provide maximum transparency so that adjudicators can properly conduct a legal fee review where necessary, and inform claimants of other remedies available to them in the event that the involvement of a Form Filler appears contrary to the principles outlined in these reasons.

Unconscionability

[82] In addition to the illegal aspects of the Form Filling contracts outlined above, if the contracts before me were not already void, I would find them voidable for being unconscionable. In order for an agreement to be found unconscionable, two elements must co-exist: inequality of bargaining power and an improvident transaction: ***Harry v. Kreutziger*** (1978), 9 B.C.L.R 166 (B.C. C.A.) at paragraph 14. If an agreement is unconscionable, it is not *void ab initio*, but rather voidable upon declaration by the court: ***Grant v. Saks***, 2010 ONSC 2759 at paragraph 9.

[83] In addressing the question of whether there is inequality of bargaining power as between IAP claimants and Form Fillers, I note that in the context of the Settlement Agreement, there has previously been judicial recognition of the inherent vulnerability of claimants, specifically in their dealings with legal counsel. In ***Fontaine v. Canada (Attorney General)***, 2012 BCSC 839 at paragraphs 153-154, Madam Justice Brown commented on the particular

vulnerability of IAP claimants as a class, and referred to the rules of professional conduct requiring the utmost sensitivity and care when offering legal services to vulnerable persons or those who have suffered a traumatic experience and have not yet had a chance to recover. The Law Society of Upper Canada's special guidelines for dealing with IAP claimants, referred to above,[24] also explicitly acknowledge the unique position and needs of claimants as a class.

[84] It is certainly not true that all claimants are in a position of unequal bargaining power *vis-a-vis* Form Fillers or other service providers. However, the nature of the Settlement Agreement and the experience of claimants in Indian Residential Schools demands that particular caution and sensitivity be used in assessing whether agreements entered into for services arising out of those experiences are unconscionable.

[85] In this case, D.B. and K.M. both gave evidence that they were confused about the fees being charged to them, about the interplay between the Carroll Firm and FNRSSI, and that they would be charged separately for the two services. Both claimants also gave evidence of coercive measures used by FNRSSI to collect money after they were granted an IAP award.

[86] I am satisfied that there was unequal bargaining power as between the claimants in this case and FNRSSI, exacerbated by the lack of full explanations of the fees, agreements, and services proposed. Coercive tactics are never appropriate, and are further evidence of the unequal relationship between the claimants and Form Fillers in this case.

[24] See paragraph 72.

[87] With respect to whether the agreements amounted to improvident transactions, as previously discussed, most if not all of the services described in the service contract of FNRSSI were either legal services or ones which could have been provided at no additional cost to claimants by claimants' counsel, the Adjudication Secretariat, or as a legitimate disbursement paid by Canada. Nevertheless, the "Service Contracts" signed by D.B. and K.M. indicated, "the services that will be available to me are set out in Schedule A to this agreement, all of which I may or may not use but whether or not I take advantage of such services shall not affect the fee payable to you." [emphasis added] In other words, even if all the services listed in the Agreement were provided by others, as contemplated by the Settlement Agreement and guidelines for legal counsel, the Form Filler would still be entitled to 15%, despite having added little or nothing of value. I conclude that given the context of the Settlement Agreement and other services available to claimants, this was in fact an improvident transaction for D.B. and K.M.

[88] Therefore, in addition to the various illegal aspects of the service contracts between FNRSSI and D.B. or K.M. which render them void as contrary to public policy, I would also find the contracts voidable in that they are unconscionable. This latter finding is based on various facts and circumstances applicable to many other cases; however, a judicial declaration would be required for other service contracts to also be declared void for unconscionability, as such contracts are voidable rather than *void ab initio*. It is, therefore, open to other claimants to seek a declaration that their service contract with a particular Form Filler is

void due to unconscionability, if it is not already *void ab initio* for one of the reasons set out above.

[89] It is striking that the Carroll Firm allowed at least two of its IAP claimant clients to enter into agreements that were illegal on three distinct bases (charging for services on a contingency fee basis, involving the unauthorized practice of law, and involving a direction or assignment contrary to the ***Financial Administration Act***, as well as the terms of the Settlement Agreement) and, on top of all of that, were unconscionable. In all of the circumstances – including Mr. Carroll's 25% shareholdings in FNRSSI, I conclude that Mr. Carroll did not meet his fundamental duty of loyalty to his clients. I further conclude that despite what Mr. Carroll's affidavit described as "progressive actions" taken after his communications with the former Chief Adjudicator, it is appropriate to impose remedial measures to guard against any recurrence of events such as those described by D.B. and K.M. This includes taking steps to ensure that clients of Mr. Carroll and his firm receive the full extent of what they are entitled to receive through IAP awards and negotiated settlements.

Summary

[90] For the above reasons, I conclude that any service agreements between Form Fillers and claimants which purport to be assignments or directions to pay are void. I further conclude that any such agreements providing for compensation on a contingency fee basis are also void. Finally, I hold that all Form Filler agreements amounting to contracts for entities not regulated by a

provincial or territorial law society to provide legal services are contrary to public policy and also void. Service agreements between claimants and Form Fillers may also be voidable at the instance of the claimants if such agreements are unconscionable, as were those in this case.

Order/Direction

[91] In consequence of my determination of the issues in this case, I order as follows:

General

1. All "Service Contracts", "Assignment Agreements", "Directions to Pay" and other agreements or contracts requiring IAP claimants to pay contingency fees to Form Fillers or Form Filling Agencies are null and void.
2. All "Service Contracts", "Assignment Agreements", "Directions to Pay" and other agreements or contracts requiring IAP claimants to pay fees to Form Fillers or Form Filling Agencies for legal services are null and void.
3. Unless a Form Filler or Form Filling Agency demonstrates on application to this court that a further order should not issue, such application to be brought within thirty (30) days of the issuance of this Direction, a further order shall issue, to the effect that IAP claimants are under no obligation to pay any fees in relation to the processing of their IAP claims, other than legal fees approved by

adjudicators following their IAP hearing or Negotiated Settlement Process.

4. At the conclusion of each IAP hearing or Negotiated Settlement Process interview involving a self-represented IAP claimant, the adjudicator shall inquire into any and all financial arrangements between the self-represented claimant and Form Fillers or Form Filling Agencies.

Kenneth Carroll/Carroll Firm

5. Until further order of this court, all settlement proceeds in relation to IAP claimants represented by Kenneth Carroll and/or the Carroll Firm shall be paid to the Court Monitor, for distribution to the respective IAP claimants.

Lawyers and Law Firms Served with the RFD[25]

6. All lawyers and law firms served with the RFD shall, at the conclusion of IAP hearings or Negotiated Settlement Process interviews, as the case may be, disclose to adjudicators:

   i. Whether Form Fillers or Form Filling Agencies have performed services in connection with the particular IAP claimant's file, and if so, the nature and extent of such services; and

   ii. All financial arrangements between counsel and a Form Filler or Form Filling Agency with respect to the fees charged to and/or payable by an IAP claimant.

[25] Including Mr. Carroll, the Carroll Firm and the lawyers and law firms listed in note 5, above.

7. Within thirty (30) days of the issuance of this Direction, all lawyers and law firms served with the RFD shall provide to the Court Monitor solemn declarations containing the following with respect to each IAP claimant they represent or have represented:

   i. All retainer and fee agreements between the lawyers and/or law firms and IAP claimants and all correspondence to and from IAP claimants regarding disbursement of compensation proceeds and fee arrangements;

   ii. Any and all knowledge those lawyers and/or law firms have as to any arrangements whereby IAP claimants have paid or have agreed to pay fees to Form Fillers or Form Filling Agencies in addition to legal fees, together with any financial or banking details and documents surrounding such arrangements, including trust account records; and

   iii. Current contact information in relation to each IAP claimant represented by the lawyer and/or law firm.

8. The Court Monitor shall have access to information and records held by the office of the Chief Adjudicator and the Indian Residential Schools Adjudication Secretariat with respect to such IAP claimants.

9. Within thirty (30) days of receiving the information described in paragraph 7 above, the Court Monitor shall report to the court through Court Counsel respecting the information provided by

lawyers and law firms served with the RFD and the Court Monitor may seek further directions from the court.

10. If the Court Monitor advises that a lawyer and/or law firm described in paragraph 7 has failed to comply fully with the Order set out in that paragraph within the time stipulated, that lawyer and/or law firm shall without further Order be suspended from all further participation in the IAP pending compliance as determined by the court. The Court Monitor and lawyer and/or law firm may seek further directions from the court.

Form Fillers and Form Filling Agencies Served with the RFD[26]

11. Within thirty (30) days of the issuance of this Direction, all Form Fillers and Form Filling Agencies served with the RFD ["Served Form Fillers"] shall provide to the Court Monitor, solemn declarations containing the following with respect to each IAP claimant whom they have assisted in the IAP:

    i. Any and all retainer and fee agreements between the Form Fillers or Form Filling Agencies and the IAP claimants;

    ii. Any and all agreements between Form Fillers and lawyers and law firms representing IAP claimants;

    iii. Any and all correspondence to and from IAP claimants and/or to or from lawyers or law firms in respect of fees charged to IAP claimants by the Form Fillers or Form Filling Agencies;

[26] Including FNRSSI, Mr. Knight, Mr. Bokhari and the Form Fillers and Form Filling Agencies listed in note 4, above.

iv. Any and all financial or banking details and/or documents surrounding any monies charged to or collected from IAP claimants; and

v. The most current contact information that the Form Fillers and Form Filling Agencies have in respect of each IAP claimant.

Court Monitor

12. The Court Monitor shall investigate the extent to which Form Fillers and Form Filling Agencies, including but not limited to those served with the RFD:

i. Purported to charge contingency fees for assisting IAP claimants;

ii. Purported to provide legal services in assisting IAP claimants; and

iii. Caused IAP claimants to enter into unconscionable contracts for services associated with the IAP.

13. In conducting the investigation described in paragraph 12, the Court Monitor shall have the discretion to involve an independent special advisor.

14. Within four months of the issuance of this Direction, the Court Monitor shall report to the nine Supervising Judges under the Settlement Agreement, care of Court Counsel, setting out its findings in relation to the investigation and proposing a means by

which IAP claimants can appropriately recover monies paid to Form Fillers and/or Form Filling Agencies.

Court Counsel

15. Court Counsel is directed to take all reasonable steps to bring this Direction to the attention of all parties served with the Chief Adjudicator's RFD as soon as possible following issuance of this Direction.

_____J.

Appendix "A"

Service Contract

I D.B., of _____ hereby engage First Nations Residential Schools Solutions Inc. (FNRSSI) as consultants to assist me in advancing my claim for compensation through the Independent Assessment Process for Continuing Indian Residential Abuse Claims.

The services that will be available to me are as set out in Schedule A to this agreement, all of which I may or may not use but whether or not I take advantage of such services shall not affect the fee payable to you.

In consideration for the services of, I agree to pay to FNRSS Inc. as fees for your service fifteen (15%) of the amount of the compensation awarded to me not including any additional allowances for legal fees or approved disbursements plus a further amount to cover all of Survivors personal expenses such as, but not limited to, Survivor's travel expenses, lodging and food paid by FNRSS on behalf of Survivor. This amount shall be payable by my lawyer from the money received by my lawyer on my behalf.

The amount herein agreed to be paid shall include your own travel expenses, accommodations and communications, and office expenses. Any additional expenses incurred on my behalf and not reimbursed or paid for by any other party, such as my own travel lodging, report fees or other similar expenses shall be in addition to the fees payable hereunder.

FNRSS Inc. is not providing any legal service or advice. It is only facilitating the application process on behalf of applicants. The legal process will be conducted by your lawyers and any legal questions should be directed to them.

Signed by D.B. this 13 day of July, 2011

Witness	X D.B. Applicant/Survivor
Vivian Jorgensen Print Name	D.B. Print Name

Signed and accepted by First Nations Residential Schools Solutions Inc this ____day of _____, 2011

First Nations Residential Schools Solutions Inc

Per: _____

Service Provided by FNRSSI

1. Explain the whole application and compensation process
2. Assist with the completion of the necessary Independent Assessment Process application and various other documents needed.
3. Ensure that all information received regarding any abuse is kept confidential between survivor, FNRSS and the lawyer appointed to act on behalf of survivor
4. Assist survivors with any problems with Common Experience Payments (CEP) claims
5. Review and advise survivors regarding Alternative Disputes Resolutions (ADR) claims
6. Assist survivors with the appointments of lawyer, and other consultants, experts or advisors, if they become necessary or advisable.
7. Keep survivors informed regarding the status of their claim.
8. Arrange for counselling, if desired.
9. Complete an aftercare program with survivors, if desired.
10. Arrange for a money management seminar, if desired.
11. Arrange for coverage or reimbursement of eligible expenses, such as travel for counselling or hearings.
12. Arrange such appointments as may be necessary or desirable for IAP or counselling
13. Arrange attendance at the hearing for any spiritual or emotional support you chose.
14. Arrange ~~(in conjunction with Little Hawk Consulting Ltd.)~~ such financial plans you decide through them for application of your monies received.
15. Meet with such other survivors who have asked you for assistance.

Appendix "B"

No.CI-05-01-43585

IN THE COURT OF QUEEN'S BENCH OF MANITOBA
WINNIPEG CENTRE

BETWEEN:

LARRY PHILIP FONTAINE et al

PLAINTIFFS

AND:

THE ATTORNEY GENERAL OF CANADA et al

Brought under the *Class Proceedings Act*, C.C.S.M. c.C130

DEFENDANTS

ORDER MADE AFTER APPLICATION

BEFORE	THE HONOURABLE JUSTICE P. SCHULMAN	25/April/ 2014

ON THE APPLICATION of the Chief Adjudicator, Independent Assessment Process ["IAP"], (the "**Applicant**") coming on for hearing on 25/April/2014 and on hearing the submissions of the Chief Adjudicator, Kenneth Carroll, John Michaels, Independent Counsel, Assembly of First Nations, the Attorney General of Canada and the Court Monitor and upon reviewing the written submissions of the Merchant Law Group;

THIS COURT ORDERS, in respect of the Request for Direction coming before this Court from the Chief Adjudicator on November 8th, 2012 **["the RFD"]:**

GENERAL

1. Claimants have no obligation to pay any fees in relation to the processing of their Independent Assessment Process ("IAP") claims, other than legal fees approved by Adjudicators following their IAP hearing or negotiated settlement, and that any and all "Assignment Agreements", "Directions to Pay" or any other agreement or contract to pay Form Fillers (deemed to include throughout Form Filling Agencies) fees are null and void;

2. That all Legal Counsel representing Claimants must, at the end of their IAP hearing or Negotiated Settlement Process interview, disclose to Adjudicators:

    a. whether Form Fillers have performed work on the Claimant's file and, if so, the nature and extent of such work;

    b. all financial arrangements between Legal Counsel and Form Fillers with respect to legal fees charged to Claimants.

3. An Order declaring that Adjudicators shall, at the end of every hearing at which a Claimant has not been represented by Legal Counsel, inquire into any and all financial arrangements between the unrepresented Claimant and Form Fillers.

SPECIFIC ORDERS FOR KENNETH CARROLL

4. Until further order, all settlement proceeds in respect of files involving Kenneth Carroll and/or his office shall be paid directly to the Court Monitor for distribution to his claimant clients;

5. A hold back of 20% be imposed on all legal fees payable to Kenneth Carroll or his office shall to be applied towards the work of the Court Monitor as set out below:

ORDERS FOR ALL COUNSEL SERVED WITH REQUEST FOR DIRECTION

6. Within thirty (30) days of the issuance of the within Order, all Legal Counsel served with the RFD shall provide to the Court Monitor solemn declarations containing the following with respect to each IAP claimant they represent or have represented:

    (a) All retainer and fee agreements between Legal Counsel and IAP claimants and all correspondence to and from Claimants regarding disbursement of compensation proceeds and fee arrangements;

    (b) Any and all knowledge they have as to any arrangements whereby Claimants have paid or have agreed to pay Form Fillers fees in addition to legal fees and any financial or banking details and documents surrounding such arrangements, including trust account records;

    (c) Most current contact information the Legal Counsel has in respect of each IAP Claimant.

7. The Court Monitor shall have access to information and records held by the office of the Chief Adjudicator and the Indian Residential Schools Adjudication Secretariat with respect to such Claimants.

8. Within thirty (30) days of receiving the information set out in paragraph 6 above, the Monitor shall report to the Court and the Chief Adjudicator respecting the information provided by Legal Counsel and the Chief Adjudicator and or Court Monitor may seek further directions from the Court.

9. If the Court Monitor advises that Legal Counsel has failed to comply fully with the Order set out in paragraph 6 above within the time stipulated, Counsel shall without further Order be suspended, on such terms as the Chief Adjudicator deems appropriate, from all further participation in the IAP pending compliance as determined by the Court. The Chief Adjudicator and/or Court Monitor may seek further directions from the Court.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER

Signature of

☐ Party

☒ Lawyer for the Chief Adjudicator, IAP
Charles V. Hofley

Signature of

☐ **Party**

☒ **Lawyer for Kenneth Carroll**

Steven Vincent

Signature of

☐ Party

☒ Lawyer for Crawford Class Action Services
Louis Zivot

Signature of

☐ Party

☒ Lawyer for the Attorney General of Canada

Catherine Coughlan

Signature of

☒ Party

☐ Lawyer

Merchant Law Group

Signature of

☐ Party

☒ Lawyer for **Independent Counsel**

Karenna Williams

Signature of

☐ Party

☒ Lawyer for the Chief Adjudicator, IAP

John Michaels

By the Court

Registrar