# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Liptrot v. Vancouver College Limited,* 2026 BCSC 1432

Date: 20260730
Docket: S211242
Registry: Vancouver



Between:

**Darren Liptrot and John C. Doe**

Plaintiffs

And

**Vancouver College Limited, St. Thomas More Collegiate Ltd., Edward English, Joseph Burke, Douglas Kenny, Gerard Gabriel McHugh, the Roman Catholic Episcopal Corporation of St. John's, Roman Catholic Archbishop of Vancouver and Kevin Short**

Defendants

Brought pursuant to the *Class Proceedings Act*, RSBC 1996, c 50

Before: The Honourable Mr. Justice Coval

## Reasons for Judgment
## Re Settlement Agreement and Opt-out Application

| | |
|---|---|
| Counsel for the Plaintiffs: | J. Fiorante, K.C.<br>R. Mogerman, K.C.<br>L.E. Jones<br>A.L. Johnson |
| Counsel for the Defendant, Vancouver College Limited: | B.W. Dixon, K.C.<br>A.K. Foord |
| Counsel for the Defendant, St. Thomas More Collegiate Ltd.: | N. Chang |
| Counsel for the Defendant, Gerard Gabriel McHugh: | M. Ghorayeb |

| | |
|---|---|
| Counsel for the Defendants, Roman Catholic Archbishop of Vancouver and the Catholic Independent Schools of Vancouver Archdiocese: | L. von Bloedau |
| The Defendant, Edward English, appearing via videoconference: | E. English |
| Counsel for the Opt-out Applicants, P. Adams, JG, AW, AD, and SG: | S.L. Kovacs<br>T.L. Martin<br>K. Rogers |
| Counsel for the Opt-out Applicants, VCCD, JH, CH, HTD, HTG, RM, and AB: | C. Dennis, K.C.<br>J. Foster |
| Place and Dates of Hearing: | Vancouver, B.C.<br>April 30 and July 6–7, 2026 |
| Written Submissions received: | July 28, 2026 |
| Place and Date of Judgment: | Vancouver, B.C.<br>July 30, 2026 |

## Table of Contents

## Introduction

[1] This class action arises from allegations of physical, psychological, and sexual abuse of students at two Metro Vancouver schools, Vancouver College and St. Thomas More Collegiate, by members of the Christian Brothers of Ireland in Canada Ltd.

[2] The claims relate back to the notorious physical and sexual abuse of children at the Mount Cashel orphanage in St. John's, Newfoundland, from the 1950s through the 1970s.

[3] In the late 1970s and early 1980s, before the events at Mount Cashel came to light, six Christian Brothers were transferred from Mount Cashel to these two Vancouver schools.

[4] This class action alleges that the transfers were arranged by senior Christian Brothers, in leadership positions at the two schools and connected with the office of the Roman Catholic Archbishop of Vancouver ("RCAV"), who knew what had occurred at Mount Cashel. It alleges that the Mount Cashel transferees, along with other Christian Brothers, went on to commit terrible abuse of some of the students at the two schools.

[5] In the 1990s, when the Mount Cashel crimes finally came to light, four of the six transferees were criminally convicted, including the defendants Messrs. English and Kenny.

[6] On March 8, 2023, over the defendants' objections, I certified these proceedings as a class action under the *Class Proceedings Act,* RSBC 1996, c 50 [*CPA*] (indexed at 2023 BCSC 346 ("Certification Reasons")).

[7] The Class Members were defined as:

> All students enrolled at Vancouver College, between 1976-2013, or St. Thomas More, between 1976-1989, who claim they were physically, sexually, or psychologically abused by current or former members of the Christian Brothers.

[8] After certification, the parties prepared for a complex, lengthy trial while also pursuing mediation to try to settle the case.

[9] On February 4, 2026, the two schools and RCAV (“Settling Defendants”) signed a comprehensive settlement agreement with the plaintiffs (“Settlement Agreement”). The Settling Defendants agreed to pay a combined $30 million to the Class Members, subject to court approval under *CPA* s. 35.

[10] I agree with CFM Lawyers, counsel for the plaintiffs, that the prosecution of this case and the resulting Settlement Agreement exemplify the important access to justice achievable by class proceedings. Essential to this achievement was the courage of Mr. Liptrot as the original representative plaintiff.

[11] To date, over two hundred credible Class Members have identified themselves confidentially to CFM, most of whom would not have done so without the support and protection of these proceedings. Their allegations are aimed mainly at the defendants Edward English, Kevin Short, Douglas Kenny, and Joseph Burke.

[12] Of the two hundred, around 10% report sexual abuse with severe, long-lasting impacts, including anger and addiction, problems with authority, adversity both in personal relationships (including with the closest of family members) and in employment. The balance of the two hundred divide roughly evenly between relatively severe physical or sexual abuse with moderate life impact, and less severe harm with relatively short-term impact.

[13] The two issues for decision at this point are whether: (a) the Settlement Agreement is fair, reasonable and in the best interests of the Class Members, and so should be approved under the *CPA*; and (b) twelve former students (“Applicants”) should be allowed to opt out of these class proceedings, despite the opt-out deadline having passed, so that they may pursue their own individual lawsuits against the Settling Defendants.

[14] This second issue is particularly thorny because, under the express terms of the Settlement Agreement, if these late opt-outs are permitted, the Settling Defendants have the option of withdrawing from the settlement.

[15] For the reasons explained below, I approve the Settlement Agreement and permit the late opt-outs sought by the Applicants.

[16] The late opt-outs having been approved, under the Settlement Agreement the Settling Defendants have until 10 days after the expiry of certain appeal rights to terminate the Settlement Agreement if they wish. If they do so, this litigation against them will proceed to trial. I am told that, regardless of whether the Settlement Agreement survives, the litigation will continue against the remaining personal defendants, all of whom are current or former Christian Brothers.



**Summary of Decision**

[17] I have no hesitation approving the Settlement Agreement as fair, reasonable and in the best interests of the Class Members as a whole. It has the strong support of the representative plaintiffs and many Class Members. Its major benefits include:

a) $30 million for the resolution of claims by the Class Members against the Settling Defendants;

b) A non-adversarial, trauma-informed setting for Class Members to advance their compensation claims;

c) An individualized, confidential claims assessment process; and

d) Earlier compensation than from continued litigation.

[18] By contrast, a common issues trial would be long and difficult, especially for those Class Members required to testify. If the common issues case succeeded, Class Members would face the remaining individual issues, including proving causation and damages in an adversarial context. Many Class Members expressed a strong desire to maintain privacy and control over their personal accounts of abuse.

[19] Without the settlement, Class Members also risk the Settling Defendants' liability insurance not covering their damages. Such coverage was denied in similar cases based on material non-disclosure by the insured defendants (*Roman Catholic Episcopal Corporation of St. John's v. Guardian Insurance Company of Canada*, 2026 NLCA 11).

[20] I accept as reasonable CFM's assessment that, due to these coverage issues: (a) the Settling Defendants and their insurers were unlikely to pay more than $30 million; (b) insurance coverage might be lost at trial, depending on factual findings about whether senior Christian Brothers withheld information from the insurers of the abuse at Mount Cashel and the transfer of some of those abusers to the two Vancouver schools; and (c) If coverage were lost, enforcing a judgment against the assets of the Settling Defendants would mean delay and uncertain recovery.

[21] In approving the settlement, I also approve the 29% contingency fee and expenses of CFM. Having managed this case for four years, I have no doubt about CFM's commitment to the Class Members' cause, its thorough investigation, analysis and prosecution of this complex litigation, and its assessment of the settlement as in the Class Members' best interests. I agree with CFM's submission that its efforts could justify a higher legal fee, which it has foregone in order to increase the amount available to Class Members.

[22] Regarding approval of the Twelve late opt-outs, the Settling Defendants oppose on the basis of alleged prejudice to them and the settlement process of class proceedings in general. Importantly, the plaintiffs support the opting out despite it putting the Settlement Agreement at risk.

[23] In my view, it is in the interests of justice to approve the late opting out because: (a) the scope of the release terms in the Settlement Agreement adversely impact the Applicants' individual litigation rights in ways not reasonably foreseeable to them by the opt-out deadline; (b) the delay does not prejudice the defendants; (c) the undisputed evidence is that survivors of serious abuse and harm often benefit

from the ability to control their litigation against those responsible, and the Applicants should not be denied that control; and (d) the plaintiffs support it.

**Procedural History**



[24] Commenced in February 2021, the case was certified as a class proceeding on March 8, 2023.

[25] In April 2023, the parties began settlement discussions while also preparing for trial. Trial preparation included examinations for discovery, exchange and review of documents, factual investigations, witness interviews, instruction of numerous experts, and trial planning.

[26] On August 9, 2024, the Court approved an opt-out process for former students of the two schools who wished to have the option of pursuing their own individual actions. Seven Class Members opted out by the opt-out deadline of November 28, 2024.

[27] Formal mediation occurred in April, July and August 2024. The 35-day trial, scheduled to begin in October 2024, was adjourned while negotiations continued. Settlement offers were exchanged in 2024-2025. The Settlement Agreement was reached on February 4, 2026, subject to court approval.

**The Settlement Agreement**

[28] Under the Settlement Agreement, each Class Member is entitled to have their damages assessed by a Claims Administrator, being CFM with the assistance of an independent senior lawyer. The assessment will be based on the same concepts applied in a trial. Should a Class Member disagree with their assessment, there is a limited right of review by another independent senior lawyer.

[29] Individual claims are assessed on two tiers, depending on the evidence provided about the severity and circumstances of harm:

- Tier 1 – Cap of $30,000

- Tier 2 – Cap of $1,000,0000 for loss of income and loss of earning capacity (no cap for pain and suffering and other damages)

[30] Tier 1 is a straightforward, claim-form declaration process for physical, psychological, and/or sexual abuse that had less severe or short-term effects on a claimant's life. It is also available for claimants who do not wish to provide the more extensive information or evidence in Tier 2.

[31] Tier 2 requires, in addition to the claim form, an interview with the Claims Administrator and encouragement to provide all probative documentation (e.g., medical, employment, or tax records). The Claims Administrator may request contact information for witnesses with knowledge of the events or harm.

[32] CFM has obtained a waiver from all applicable governments of their rights to claim against the settlement fund to recover government-funded health care of the Class Members.

[33] The claims process will endeavour to dissuade or reject invalid claims. The Claims Administrator owes a duty to Class Members to prevent such claims from reducing the compensation available for valid claims.

[34] If the total awards exceed the available settlement funds, then all individual awards will be reduced proportionately.

[35] In terms of the deadline for claims, there is a Primary Fund with a one-year deadline and a smaller Secondary Fund for late claims with a two-year deadline.

**<u>Objections and Concerns</u>**

[36] Approximately a dozen potential Class Members voiced concerns about the settlement during the hearing. Some spoke in person, some sent letters to be read by CFM. These are to be considered as part of the overall assessment of whether the settlement is fair, reasonable and in the best interests of the Class Members as a whole (*Jones v. Zimmer GMBH*, 2016 BCSC 1847, para 47(g)(iv)).

[37] These former students described suffering and witnessing sexual, physical and mental abuse at the schools, resulting in mental health challenges, relationship and employment difficulties, substance abuse, and loss of faith.

[38] Many expressed gratitude for the courage of Mr. Liptrot, crediting his leadership with assisting them to come forward and in some cases deciding to seek helpful treatment.

[39] Most did not object to the settlement, though some described dissatisfaction with the settlement amount. Many expressed disappointment in the Settling Defendants' apparent lack of accountability and moral responsibility for the terrible events allowed to occur at the two schools.

[40] In response, during the hearing, the two schools pointed to their public statements of profound concern and sympathy for victims of this abuse, and their desire, if the Settlement Agreement is approved, for a restorative justice process and public apology. In a series of written statements in evidence, the Archbishop of Vancouver expressed outrage and discouragement from the failure of Church leaders to prevent this abuse, covering it up by moving abusers around, lack of care and concern for the victims, and a commitment to supporting victims on the path to healing.

[41] The objections and concerns raised were powerful and important but, in my view, they do not undermine the benefits of the settlement. No settlement of a class action is perfect for every class member, and from the members' perspective a higher payment would always be better. In this case, CFM's analysis, described below, indicates the settlement amount is fair, reasonable and in the Class Members' best interests.

[42] Regarding the accountability and moral responsibility of the Settling Defendants, their public statements go some way to addressing this concern. CFM has advised that a more formal apology process will be expected of them as the settlement is implemented.

**Should the Settlement Be Approved?**

[43] Court approval of a class proceeding settlement generally involves four questions (*Chartrand v. Google LLC*, 2021 BCSC 7, para 31):

i. Has counsel of sufficient experience and ability undertaken sufficient investigations to satisfy the court that the settlement is based on a proper analysis of the claim?

ii. Is there any reason to believe that collusion or extraneous considerations have influenced negotiations such that an inappropriate settlement may have been reached?

iii. On a cost/benefit analysis, is the class well-served by accepting the settlement rather than proceeding with the litigation? and

iv. Has sufficient information been provided to the members of the class represented by representative plaintiff, and, if so, are they generally favourably disposed to the settlement?

**Proper Claim Analysis**

[44] Class Members rely on their legal counsel and representative plaintiffs to negotiate the best deal possible for the group. Experienced counsel are well-positioned to assess the risks and rewards of litigation, and their recommendation may be given considerable weight by the court (*Chartrand*, para 31).

[45] CFM Lawyers, a specialist class action law firm for over 20 years, recommends the Settlement Agreement as fair, reasonable and in the best interests of Class Members. The representative plaintiffs – having been involved in the case preparation, mediation, and settlement assessment – also strongly support the settlement. Both plaintiffs provided affidavits deposing to the settlement fulfilling their objectives of achieving some measure of accountability and compensation to Class Members, with an individual claims process designed to be as confidential and trauma-informed as possible.

[46] Having seen CFM's calibre of commitment, investigation, analysis and assessment, I accept its detailed risk assessment in support of the settlement amount, and particularly its analysis that the Settling Defendants and their insurers

were unlikely to pay more than $30 million, the uncertainties regarding insurance coverage at trial, and the potential difficulties of executing against the Settling Defendants' assets.



**Collusion or Extraneous Considerations**

[47] There is nothing to suggest any collusion or extraneous considerations.

[48] This difficult case has been hard fought on both sides on the merits of the legal issues. At the certification hearing, both sides argued all that could be said and more for their respective positions. The settlement was achieved only after much trial preparation and negotiations spanning almost two years.

**Settlement Preferable to Continued Litigation**

[49] In my view, the settlement is clearly preferable to continued litigation.

[50] The claims process is designed to compensate Class Members as fairly and quickly as possible by means of a trauma-sensitive, non-adversarial process.

[51] The alternative is likely protracted litigation, with the lawsuits for Mount Cashel telling a cautionary tale, having spanned over three decades and three institutional insolvency proceedings.

[52] The common issues trial would not be decided until late 2026 or into 2027, perhaps followed by appeals. Only then could the damages phase commence, whereby the Class Members would be required to establish, in an adversarial setting, that they were subjected to abuse that caused them injury for which they were entitled to damages. Although the *CPA* allows for simplified and expedited procedures for determining damages, the suitability and details of this would be assessed in an adversarial context after the common issues trial.

### Sufficient Information to Class Members

[53] The information process for Class Members has been extensive and sufficient. No one has come forward during this lengthy, well-publicized process to suggest otherwise.

[54] As mentioned, over two hundred apparent Class Members have reached out to CFM, and the firm was also contacted by many other non-Class Members aware of the litigation. Mr. Liptrot deposes to communicating with potential class members by Facebook Messenger and phone.

[55] At each step in the process, clear notices were published including on the websites of CFM and the Settling Defendants. The proceedings received media coverage including in the publication *BC Catholic*.

### Approval of CFM's Fees

[56] A fee agreement in a class proceeding requires judicial approval (*CPA* s 38).

[57] In my view, CFM's fees and expenses of $9,600,436 should be approved as part of this settlement. This amount is made up of a 29% contingency fee of $8,571,818 and $442,004.52 of case expenses.

[58] This court has often approved a 33.33% fee in class proceedings and stated that low rates run the risk of inadequate incentives to prosecute risky or difficult class actions.

[59] I agree with CFM that its efforts and results could justify the 33% fee in its fee agreement. However, CFM has reduced its percentage to 29% to increase the amount available for Class Members by $1.43 million. It has also committed to charge no future fees for its role as Claims Administrator over the next two years.

[60] CFM's expenses are mainly for payment of third-party fees (experts, other professionals, court reporters and mediators, notice publication, registry agents and process servers). They also include payment of investigators, consultants to assist

with trauma-informed class member interviews, and a social worker and counsellor for support and information.

[61] The two representative plaintiffs entered into fee agreements with CFM which support the fees sought. The agreements provide that:

a) if unsuccessful, CFM would receive no legal fee and the representative plaintiffs would bear no responsibility for the accrued case expenses; and

b) if successful, CFM would receive a contingency fee of 33.33% (or, if the matter resolved more than 60 days prior to the certification hearing, 25%), with the amount to be calculated on the net recovery after reimbursing counsel for case expenses, with interest.

[62] Since beginning work on this matter in 2020, CFM has recorded over 11,500 hours of work. The value of this work, at the rate for each lawyer or staff member involved, is $4,972,194 (including taxes). It included:

(a) reviewing public documents concerning allegations of abuse of children by Christian Brothers in Newfoundland and other jurisdictions including:

   (i) the proceedings of the Hughes Commission of Inquiry into abuse at Mount Cashel;

   (ii) court records relating to the winding up of the Christian Brothers organization in Canada;

   (iii) court decisions relating to the trial and sentencing of Christian Brothers for abuse at Mount Cashel;

   (iv) court records relating to proceedings against Christian Brothers entities in the United States;

   (v) public inquiries conducted in Australia and Ireland into abuse in Catholic organizations including the Christian Brothers;

(b) reviewing the history of civil proceedings brought on behalf of survivors of abuse at Mount Cashel and consulting extensively with counsel who prosecuted those claims;

(c) reviewing approximately 5,553 documents produced by the defendants in this action;

(d) conducting 12 days of examinations for discovery, including examinations of each of the defendants and/or their representatives (with the exception of Joseph Burke, for reasons described below);

(e) consulting with subject matter experts in various fields (school administration, social work, education history, Canon law; psychology, and child predation); and

(f) conducting witness interviews, including multiple, detailed interviews of numerous Class Members.

**Conclusion**

[63] The Settlement Agreement, including CFM's fees and expenses, is fair, reasonable and in the best interests of the Class Members as a whole and therefore is approved.

## <u>Should The Late Opt-Outs Be Permitted?</u>

[64] Settlement of a class proceeding that is approved by the court binds every class member who has not opted out (*CPA* s 35(4).

[65] The Applicants apply to opt out because of the detrimental impact of the Settlement Agreement on their individual lawsuits against the Settling Defendants and others. Specifically, unless the Applicants can opt out, the release terms in the Settlement Agreement prevent them from pursuing the Settling Defendants for harms they allege suffering that fall outside the scope of these class proceedings.

[66] The Settling Defendants oppose on the basis that extending the opt-out deadline undermines the integrity of the settlement process and is unnecessary and unfair. In their view, the Applicants should be required to remain as Class Members.

[67] CFM supports the Applicants. It suggests as a potential compromise that, in exchange for permission to opt out after the deadline, in their individual lawsuits the Applicants do not pursue the Settling Defendants for claims falling within the Class Definition.

**The Scope of the Settlement Agreement Release**

[68] Since certification, the scope of this class action has been the abuse by current or former Christian Brothers of students at Vancouver College, from 1976-2013, and at St. Thomas More, from 1976-1989.

[69] However, the scope of the release ("Release") negotiated by the Settling Defendant in the Settlement Agreement goes beyond this. It expressly also releases the Settling Defendants for injuries caused by:

(a) <u>Lay Teachers</u> during the Class Period, and

(b) Christian Brothers or Lay Teachers <u>outside the Class Period</u>, if those injuries are legally indivisible from injuries falling within the Class Definition

("Outside Claims").

[70] "Lay Teachers" are defined in the Settlement Agreement as individuals employed in a teaching capacity at either school who were not members of the Christian Brothers.

[71] The effect of (a) is that, for Class Members who suffered abuse at the hands of Lay Teachers within the Class Period, the Release prevents them from suing the Settling Defendants for that harm.

[72] The effect of (b) is that, for Class Members who suffered an indivisible injury outside the Class Period, the Release prevents them from suing the Settling Defendants for that harm.

[73] Indivisible injuries are injuries incapable of being separated one from the other such that the damages they caused cannot be assessed independently (*Khudabux v. McClary*, 2018 BCCA 234, para 32). This could arise, for example, if harm from a Christian Brother before the Class Period is later worsened by a harm from a Christian Brother during the Class Period.

### The Applicants

[74] Most of the Applicants commenced their individual lawsuits against the Settling Defendants and others before the Settlement Agreement was signed.

[75] In their Notices of Civil Claim, most allege abuse that falls outside the Class Definition in these proceedings (“Outside Claims”). That is, abuse by: (a) non-Christian Brothers, or (b) Christian Brothers but before the Class Period. They further allege various legal theories for why the Settling Defendants are liable for not preventing the abuse.

[76] Despite their Outside Claims, the Applicants all fall within the definition of Class Members because they also allegedly suffered abuse <u>from Christian Brothers during the Class Period</u>. In their individual actions, they have generally not sued for that abuse because, for them, it was less severe than the alleged abuse related to the Outside Claims.

[77] Thus, if the Applicants cannot opt out of the class proceedings, their right to continue to sue the Settling Defendants for the Outside Claims is lost due to the scope of the Release in the Settlement Agreement.

### Analysis

[78] The parties agreed there is jurisdiction to permit late opt-outs under *CPA* ss 12 and 35(4).

[79] The right to opt out of a class action is the “[t]he primary protection for the absent class members in the class proceeding process”. It protects a collection of important rights, often referred to as “litigation autonomy”, including the right to appoint counsel of choice and participate in litigation strategy and settlement negotiation. Class members necessarily give up these rights for the benefits achievable in class proceedings. The discretion to allow late opt-outs is a layer of protection of a class member’s litigation autonomy otherwise sacrificed when participating in a class action (*Sanis Health Inc. v. British Columbia*, 2024 SCC 40, paras 68-70).

[80] The parties agreed that, under the case law, the Applicants must show that their failure to comply with the court-imposed deadline is excusable, and that an extension will not result in prejudice to the class, the defendant, or the administration of justice. This approach balances the right to opt with the importance of court-imposed deadlines and parties' ability to rely on them (*Johnson v. Ontario*, 2022 ONCA 725, para 5).

[81] In my view, the late opt-outs should be allowed for the following reasons.

[82] First, CFM supports the opt-outs despite this triggering the Settling Defendants' right to terminate the Settlement Agreement. They do so because the Settling Defendants' insurance coverage for claims outside the Class Period was not made available during the settlement negotiations, but the Release protects the Settling Defendants from such future claims.[1]

[83] Second, protecting the Applicants' litigation autonomy is particularly important given the subject matter of this case. Most Applicants allege sexual and physical abuse with serious ongoing consequences. The uncontested evidence in these proceedings is that the loss of litigation autonomy can be particularly harmful to abuse survivors. The Settling Defendants themselves relied on this evidence when opposing certification (Certification Reasons, paras 206-210).

[84] It would be a serious loss of autonomy for the Applicants to lose the right to pursue the Outside Claims in their individual actions because of a negotiated Settlement Agreement in which they had no role or control.

[85] Third, the Applicants have a reasonable, good faith basis for missing the opt-out deadline.

[1] CFM considered it appropriate to include claims involving Lay Teachers in the Release since the same policies of insurance which applied to the claims of abuse by Christian Brothers would also respond to acts by these Lay Teachers. Class Members who suffered abuse by Christian Brothers in the Class Period, and harms from Lay Teachers in the Class Period, will be able to raise the Lay Teacher harm as part of their claims for compensation from the settlement fund.

[86] I do not accept the Settling Defendants' submission that it was foreseeable that the Release would extend to the Outside Claims due to established legal principles of indivisible injuries and *res judicata*. These principles do not make it foreseeable that the Release would be extended to claims involving Lay Teachers or indivisible injuries falling outside the Class Definition.

[87] To the contrary, the law of indivisible injuries permits a plaintiff to settle with one wrongdoer but continue against the other, and to enforce it against the latter if judgment against them exceeds the settlement amount (*Ashcroft v. Dhaliwal*, 2008 BCCA 352, para 32). I see no reason the Applicants should have expected a different outcome when they are suing the Settling Defendants for alleged injuries outside the Class Definition. The foreseeable outcome was that their Outside Claims would not have been released and the court in their individual lawsuits would have ensured there was no double recovery for indivisible claims.

[88] Regarding the law of *res judicata*, the binding effect of a judgment in class proceedings is limited to the extent the judgment determines common issues set out in the Class Definition or relating to claims described therein (*CPA* s 26(1); *Allan v. CIBC Trust Corp.*, [1998] O.J. No. 2685). Thus, the Applicants should not have expected the Release to extend to the Outside Claims due to the law of *res judicata*.

[89] On the evidence, even the CFM lawyers did not appreciate the impact of the Release on parties such as the Applicants until approximately April 2025, well after the opt-out deadline. Only then did a CFM lawyer withdraw from representing one of the Applicants because of the potential conflict between the Release sought by the Settling Defendants and the legal interests of the Applicants.

[90] Because of this unforeseeable adverse impact of the Release on their individual actions, the Applicants were unable to make a fully informed and voluntary decision about whether to opt out until the details of the Release were published (*Heyder v. Canada (Attorney General)*, 2024 FC 1447, para 26). Contrary to the Settling Defendants' submission, this was nothing like a "wait and see" tactical

decision of seeking to opt out because, having seen the compensation structure in the Settlement Agreement, they believed they can do better individually.

[91] Fourth, contrary to the Settling Defendants' submissions, the Release prejudices the Applicants in various ways if they cannot opt out.

[92] The compensation they receive as Class Members for indivisible damages will be limited by the Settlement Agreement's caps and tiers and will not include punitive damages.

[93] Also, it is unclear how the compensation process will assess whether their Outside Claims are divisible or indivisible or how their indivisible claims will be compensated. The evidence from CFM on this issue is that:

> The question of whether the loss, injury, expenses or damages sustained by Class Members are indivisible or divisible will not be conclusively determined as part of the Claims Process… [T]he assessors will make an assessment of the possibility that these other events produced indivisible or divisible harm and adjust the award accordingly.

[94] Given these uncertainties, and because the Applicants' Outside Claims appear more significant than their Class Definition claims, it appears they are better off opting out and pursuing their indivisible claims in their individual actions.

[95] Also, as pointed out by the Applicants, only by opting out can they seek to publicly establish in their individual claims, using the procedural tools of standard litigation, the specific facts they allege regarding the Settling Defendants. This is part of the litigation autonomy that would be lost without opting out.

[96] I give little weight to the Settling Defendants' argument that it appears the key abusers identified in the Applicants' individual actions are not "Lay Teachers" as defined in the Release, and so the Release does not extend to those claims. In my view, I should not pre-judge this issue. Those alleged abusers held various positions related to the Settling Defendants at different times and had different roles and relationships with the Applicants. This contentious issue would need to be determined at trial on a full evidentiary record.

[97] As a final point on prejudice, it is telling that the Settling Defendants did not take up the possibility, raised during the hearing, of avoiding these late opt-outs by agreeing not to rely on the Release as against the Applicants in their individual proceedings. If the Releases were not potentially prejudicial to the Applicants, presumably the Settling Defendants would have been willing to consider this approach.[2]

[98] Fifth, in my view, no material prejudice to the Settling Defendants has been demonstrated by the Applicants' delay in opting out. The Settling Defendants knew of many of the individual actions, and associated pending opt-out applications, before signing the Settlement Agreement. They were thus able to adjust their bargaining position accordingly including by their termination clause.

[99] I do not accept the Settling Defendants' argument of potential prejudice from other Class Members being encouraged to follow suit and seek additional late opts-outs. There is no evidence of this occurring. Also, such applicants would face two additional legal barriers: (a) in early March 2026, the publication of the Settlement Agreement included the Court's direction that any application for late opt-outs must be filed and served by April 9, 2026 and would be decided in this hearing; and (b) their applications would be after approval of the Settlement Agreement and therefore either unavailable or more difficult to achieve (*Heyder*).

[100] Nor do I accept the argument that permitting these late opt-outs creates a harmful precedent for the integrity of the deadline process. In my view, given all the reasons in favour of the late opt-outs in the specific circumstances of this case, permitting them is no threat to the integrity of the class proceedings process in this case or more generally.

[2] The Settling Defendants intention to rely on the Release as against the Applicants was further illustrated by the situation of applicant AB, whose NoCC does not suggest he was a Class Member. In the hearing he asked for confirmation from the Settling Defendants that he was not. However, counsel for one of the Settling Defendants refused on the basis that they wished to conduct examinations for discovery in case it could be established that he was a Class Member and so caught by the Release.

## Conclusion

[101] The Settlement Agreement, as amended by the CFM letter to the Court of July 28, 2026, is approved, and the associated orders sought in the plaintiffs' April 20, 2026 Notice of Application are granted.

[102] The Applicants' application to opt out of this class proceeding is granted, and they may do so within 30 days from the date of this order.

[103] Endorsement of the order is dispensed with for the defendants Messrs. English, Burke, Kenny and Short and the Roman Catholic Episcopal Corporation of St. John's.

"Coval J."