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UNIFORM LAW CONFERENCE OF CANADA

**CLASS ACTIONS
FIRST POLICY REPORT**

Presented by

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About the Institut québécois de réforme du droit et de la justice (IQRDJ)

Founded in 2018, the Quebec Law and Justice Reform Institute is an independent, public-oriented institution devoted to the reform of law and justice. Its work is aimed at the ongoing adjustment of legal normativity to the contemporary needs of society and the rule of law. It is based on legal and interdisciplinary research, as well as on the ongoing consultation and participation of members of civil society. For the purposes of its research activities, the Institute relies on the advice of a Scientific Committee made up of jurists and researchers from disciplines other than law, affiliated with different universities.

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Introduction

[1] At its 2022 meeting, the ULCC’s Civil Section approved the launch of this Class Actions Project. Overseen by the Institut québécois de réforme du droit et de la justice (“IQRDJ”), the project aims to prepare “a Uniform Act adapted to the current realities of class actions” in order to implement a solution that “promotes access to justice and provides a coherent judicial response”.¹

[2] In February 2024, at the invitation of the IQRDJ, the undersigned formed a working group to carry out this work. The group is made up of practitioners and academics from a variety of backgrounds who work in several provinces as well as within the federal justice system:

- Prof. Jérémy Boulanger-Bonnely, chair (McGill University – Québec)
- Mtre Andréane Joanne-Laflamme (Justice Canada – Federal)
- Mtre Clara Poissant-Lespérance (Trudel Johnston & Lespérance – Québec)
- Mtre Emmanuelle Rolland (Audren Rolland – Québec)
- Prof. Gerard Kennedy (University of Alberta)
- Prof. Guillaume Laganière (Université du Québec à Montréal – Québec)
- Prof. Hassan Ahmad (York University – Ontario)

¹ Uniform Law Conference of Canada, “Minutes of the Civil Section, 2022”, Edmonton, August 2022 at 24, online (pdf): <<https://www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2022/Civil-Section-Minutes-2022.pdf>>.

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- Mtres Opeyemi Bello and Mandy Kinzel, alternate (Government of Alberta)
- Mtre Rima Kayssi (Justice Québec)²

[3] Professor Jasminka Kalajdzic, who was originally a member of the working group, was appointed a judge of the Superior Court of Justice of Ontario on 29 August 2024.

[4] As a reminder, in its 2024 report,³ the working group identified five contemporary issues in class actions that it felt deserved further study and could potentially lead to amendments to the *Uniform Class Proceedings Act*.⁴

[5] At its meeting in August 2024, the ULCC mandated the working group to identify the public policy considerations underlying these issues and to propose ideas for potential amendments.

[6] Since then, the working group has analyzed three of these five issues. These three issues are the subject of this report:

- overlapping class actions within the same jurisdiction;
- class counsel fees; and
- the enforcement of final judgments and settlements.⁵

[7] The working group adopted the following method to analyze each of these three issues and identify proposed directions for future amendments:

- With the help of research assistants, detailed research memoranda were prepared to identify the relevant legislation, regulations, judicial guidelines, case law and doctrine in each province and territory, as well as at the federal level.

² The members of the working group participate in their personal capacity and nothing contained in this report should be attributed to their respective employers. The working group was supported by Mtre Christina Croteau of the ULCC, Mtre Alexandra Pasca of the IQRDJ, Mr. William Gogas-Lirette and Mr. Alex Lépine as research assistants working with the IQRDJ, and Mr. Nathan Penman as a research assistant working at McGill University. We thank them warmly for their invaluable support.

³ Uniform Law Conference of Canada, *Class Actions Progress Report, 2024*, online (pdf): <<https://www.ulcc-chlc.ca/ULCC/media/EN-Annual-Meeting-2024/Class-Actions-Progress-Report-2024.pdf>>.

⁴ Uniform Law Conference of Canada, *Uniform Class Proceedings Act, 1996*, online (pdf): <<https://www.ulcc-chlc.ca/ULCC/media/EN-Uniform-Acts/Uniform-Class-Proceedings-Act.pdf>> (hereinafter “*Uniform Act*”). The amendments would be drafted at a later stage.

⁵ The two remaining issues, namely the certification of class actions and multijurisdictional class actions, will be analyzed in 2025-2026.

- A consultation was carried out to collect the views of class action practitioners on the issues identified by the working group. A total of 129 respondents across Canada completed all or part of the survey. The data collected will be analyzed in more detail in the coming months, but this report contains a summary of the main results which are relevant to the issues it addresses.
- Based on these research memoranda and survey results, the undersigned prepared preliminary reports on which the working group provided comments both in writing and at meetings. These documents were then combined to form this report.

[8] The report is divided into five parts:

- The first part presents an executive summary of the potential directions for amendments proposed by the working group.
- The second part analyzes the issue of overlapping class actions within the same jurisdiction.
- The third part deals with the issue of class counsel fees.
- The fourth part looks at the issue of the enforcement of final judgments and settlements.
- Finally, the fifth part sets out the next steps that the working group proposes to take in 2025-2026 and contains a draft resolution for adoption by the ULCC.

1. Executive summary of proposed directions for potential amendments

[9] The first issue addressed in this report is the **overlap of class actions within the same jurisdiction**. Sometimes, after a motion to certify a class action has been filed, another similar or identical action is brought in the same jurisdiction. Unless that overlap is resolved through negotiations between the lawyers involved, the court must generally choose one action and stay the others.

[10] The working group recommends that the *Uniform Act* govern these types of judicial interventions for greater predictability. It recommends that the *Uniform Act* codify the general principles on which there is consensus across Canada, namely the best interests of members, fairness to defendants, and respect for the objectives of class actions. It suggests, however, that the *Uniform Act* let jurisdictions choose between two mechanisms for resolving these overlaps, namely carriage motions and the first-to-file rule (in its flexible form). This choice reflects well-established practices in the provinces and the absence of a clear advantage in favour of one of the two options. The *Uniform*

Act should codify the factors to be considered in a carriage motion to harmonize them and improve their effectiveness.

[11] The second issue addressed in this report is the **approval of class counsel fees**. Although it is accepted that courts have the power to review and approve these fees in the class action context, Canadian jurisdictions take various approaches to this issue.

[12] The working group recommends that the *Uniform Act* codify the general criterion that already guides the approval of these fees, namely their fairness and reasonableness. It proposes, moreover, that the *Uniform Act* be amended to specify the factors relevant to the assessment of this criterion, by putting forward two main factors – the results obtained and the risk incurred – together with other factors, and by specifying that calculation methods may be used for comparative purposes but should not constitute the core of the analysis. Finally, the *Uniform Act* should allow courts to order holdbacks on class counsel fees until the occurrence of a future event, such as the filing of a final report, although such holdbacks should not become the norm.

[13] Finally, the third issue addressed in this report is the **enforcement of final judgements and settlements**. Although crucial, this phase of the proceedings sometimes proves challenging. While the court can supervise the enforcement of the judgment or settlement, it does not always have the information it needs to do so correctly.

[14] Therefore, it seems appropriate to add to the *Uniform Act* a requirement to report on the enforcement of judgments and settlements and to set out the elements that this report should include. To avoid this obligation becoming too onerous or disproportionate, however, it should be provided that courts may derogate from it depending on the circumstances of each case.

2. Overlapping class actions within the same jurisdiction

[15] The first issue analyzed by the working group is the overlap between class actions within a single jurisdiction. While such overlaps can sometimes be avoided through negotiation between the lawyers involved, the court must otherwise intervene to choose one action and stay the others.

[16] This report recommends that the *Uniform Act* govern these interventions for greater predictability and codify the general principles on which there is consensus across Canada. It proposes, however, that the *Uniform Act* allow jurisdictions to choose between carriage motions and the first-to-file rule (in its flexible form) to reflect well-established practices and the absence of a net advantage in favour of one of the two options. The *Uniform Act* should codify the factors to be considered in the context of a carriage motion so that they are harmonized and more effective.

[17] These recommendations are the result of the analysis presented in this section, which is divided into three parts:

- The first part presents the issue and its context (2.1).
- The second part describes the situation in each Canadian province, identifying the legislative provisions and case law dealing with overlapping class actions (2.2).
- The third part identifies possible solutions for amending the *Uniform Act* based on the first two parts and the results of a survey of practitioners across Canada (2.3).

[18] It should be noted that this report does not address overlaps between class actions filed in two or more jurisdictions. That discrete issue will be addressed in the second policy report that the working group intends to present next year. However, that issue should be kept in mind since overlaps within a single jurisdiction often arise in cases where other related actions have been filed in other jurisdictions.

2.1. Background and presentation of the issue

[19] After an application for certification⁶ of a class action has been filed, another similar or identical action may sometimes be brought in the same jurisdiction.

[20] For example, in the context of the COVID-19 pandemic, several airlines refused to reimburse customers for cancelled flights. In Quebec, one representative (Lachaine) applied for authorization to institute a class action on March 20, 2020, seeking reimbursement for tickets purchased for these flights and packages. Two months later, on May 27, 2020, another representative (Genest) filed an application claiming the same reimbursement and other sums for an essentially similar class. The two actions, therefore, partly overlapped since they both claimed the same sums against at least some of the same defendants and on behalf of a partly identical class.⁷

[21] This type of overlap causes two main problems. First, it is inefficient from the point of view of judicial resources since it can lead to similar or identical evidence being gathered and presented in two separate proceedings. Second, and more importantly, it entails a risk of contradictory judgments and double compensation, which must be avoided.⁸

⁶ The term “certification” is used in the English version of this report, as it is used in common law provinces. For the purposes of this report, the term “authorization”, used in Quebec, is included in the notion of certification.

⁷ *Genest c Air Transat AT inc.*, [2021 QCCA 857](#).

⁸ See e.g. *ibid* at para 26; see also *Canada v Hudson*, [2024 FCA 33](#) at para 47.

[22] These overlaps are sometimes resolved amicably by the parties and their lawyers. For example, they may join forces to bring a single action. Where no such agreement is reached, however, the courts must intervene to prevent two or more competing class actions from proceeding in parallel.

[23] This raises two main questions. First, what action should be allowed to proceed, and how should it be chosen? Should it be the first to be filed or the one that seems most appropriate based on a series of factors? Second, what should happen to the other actions? Should they be dismissed or stayed until the chosen action is over?

[24] In the Canadian context, there is a consensus on the second question since competing class actions are rarely dismissed and are instead stayed.⁹ When the chosen action is the subject of a final judgment or settlement, the actions that have been stayed may be dismissed or discontinued if they no longer have any purpose, or they may resume if some of their dimensions remain relevant. Therefore, the debate that concerns us here is more about the choice of the action that should proceed.

2.2. State of the law

[25] Now that the issue has been identified, we can determine how the *Uniform Class Proceedings Act* and Canadian jurisdictions respond to it.

2.2.1. The *Uniform Class Proceedings Act*

[26] The *Uniform Act* does not expressly provide for what happens when class actions overlap. However, two sections give the courts broad powers to manage and stay proceedings:

Court may determine conduct of proceeding

12 The court may at any time make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms it considers appropriate.

Court may stay any other proceeding

13 The court may at any time stay or sever any proceeding related to the class proceeding on the terms the court considers appropriate.

[27] These sections have been included in most provincial class action statutes¹⁰ and, as we shall see, they are frequently invoked by the courts to stay competing class actions. Beyond this general principle, however, Canadian courts adopt three distinct approaches:

⁹ See e.g. the *Class Proceedings Act, 1992*, SO 1992, c 6, [s 13.1\(2\)](#) [*CPA (ON)*].

¹⁰ See the relevant provisions appended to this report (Appendix I).

- a. In the federal courts, British Columbia, Saskatchewan and Manitoba,¹¹ the choice between competing actions is made through carriage motions based on jurisprudential factors;
- b. In Ontario, this choice is also made through carriage motions, but since 2020, the legislation sets the procedure to be followed and the relevant factors;
- c. In Quebec, courts apply the “first-to-file” rule, which gives priority to the action filed first, save exceptions.

[28] The following sections explain in more detail the ins and outs of these three approaches.

2.2.2. The dominant approach: motion and jurisprudential criteria

[29] In most Canadian provinces and before the federal courts, no specific section governs the overlap of competing actions. However, most class action statutes contain the general sections mentioned above.

[30] Based on these sections,¹² the federal courts and those of British Columbia, Saskatchewan, and Manitoba resolve overlaps between class actions using carriage motions. These motions are generally brought by class counsel in one of the competing actions and seek to have the other actions stayed.

[31] Since these motions are not governed by statute or regulation, courts have developed their own criteria for choosing which action may proceed. Generally speaking, they have based themselves on Ontario case law dating from before the 2020 reform. These cases should, therefore, be taken as a starting point for our analysis.

[32] The *VitaPharm*¹³ case was the first to address the issue in 2000. The Court concluded that “[t]here cannot be two class actions which proceed in respect of the same putative class [...] asserting the same cause(s) of action”.¹⁴ To choose between these two actions, the Court relied on a general criterion and six factors:

¹¹ The issue of overlapping class actions does not appear to have been the subject of published decisions in Alberta, New Brunswick, Newfoundland and Labrador, Prince Edward Island and Nova Scotia. However, given the presence of sections similar to those in other provinces, it is likely that the courts in these provinces would adopt a similar approach.

¹² See e.g. *Wong v Marriott International Inc*, [2020 BCSC 55](#) at para 22; *Ravvin v Canada Bread Co*, [2019 ABQB 686](#) at paras 30-31, aff’d [2020 ABCA 424](#) (that case was however decided in a multijurisdictional context); *Thompson v Manitoba (Minister of Justice)*, [2017 MBCA 71](#) at paras 20-23 (relying also on inherent powers); *Kowalyshyn v Valeant Pharmaceuticals International Inc*, [2016 ONSC 3819](#) at para 134.

¹³ *VitaPharm Canada Ltd v F Hoffmann-LaRoche Ltd*, [2000] OJ No 4594 (SC).

¹⁴ *Ibid* at para 14.

48 In my view, the main criterion for the determination of the issue must be keeping in mind the policy objectives of the CPA, what resolution is in the best interests of all putative class members while at the same time fair to the defendants?

49 Factors to consider in determining who should be appointed as solicitor of record in a class action include: the nature and scope of the causes of action advanced, the theories advanced by counsel as being supportive of the claims advanced; the state of each class action, including preparation; the number, size and extent of involvement of the proposed representative plaintiffs; the relative priority of commencing the class actions; and the resources and experience of counsel.¹⁵

[33] A seventh factor, the presence of conflicts of interest, has sometimes been added to this list¹⁶. These factors are still applied in Saskatchewan and Manitoba, but courts have cautioned that they are not exhaustive and do not have to be considered systematically in every case.¹⁷

[34] Although still applied in these provinces, the *VitaPharm* approach was adjusted in the *Kowalyshyn* case.¹⁸ The Court reiterated that the issue of overlap arises “[w]here two or more class proceedings are brought with respect to the same subject-matter”¹⁹ and that the general test is to choose the action which is “better for the interests of the putative class members while being fair to the defendants and while promoting the prime objectives of class proceedings”.²⁰ However, the Court added ten factors to those set out in *VitaPharm*:

141 Courts generally consider a list of non-exhaustive factors in determining which action should proceed. There are fourteen factors that have been identified in the case law. Because of the arguments made on this carriage motion, I shall add two additional factors for the case at bar; i.e., (1) the prospect of success of the action; and (2) the interrelationship with class actions in other jurisdictions. [...]

143 The factors tend to overlap and interconnect. The sixteen factors for the immediate case are:

- 1) The Quality of the Proposed Representative Plaintiffs
- 2) Funding
- 3) Fee and Consortium Agreements
- 4) The Quality of Proposed Class Counsel
- 5) Disqualifying Conflicts of Interest
- 6) Preparation and Readiness of the Action
- 7) Relative Priority of Commencement of the Action
- 8) Case Theory
- 9) Scope of Causes of Action
- 10) Selection of Defendants
- 11) Correlation of Plaintiffs and Defendants

¹⁵ *Ibid* at paras 48-49 (our emphasis).

¹⁶ *Mancinelli v Barrick Gold Corp*, [2015 ONSC 2717](#) (Div Ct) at para 15.

¹⁷ *Baumung v Bayer Inc*, [2016 SKQB 221](#) at paras 27-28; *Horstman v Canada*, [2014 SKQB 114](#) at para 21; *Fontaine et al. v The Government of Manitoba et al.*, [2023 MBKB 84](#) at paras 38-39; *Thompson*, *supra* note 12 at paras 24-29.

¹⁸ *Kowalyshyn*, *supra* note 12.

¹⁹ *Ibid* at para 135.

²⁰ *Ibid* at para 138.

- 12) Class Definition
- 13) Class Period
- 14) Prospect of Success: (Leave and) Certification
- 15) Prospect of Success against the Defendants
- 16) Interrelationship of Class Actions in More than one Jurisdiction²¹

[35] British Columbia courts have adopted the *Kowalyshyn* approach and factors, with the addition of “preparation and performance on carriage motion”:

[27] The factors to be considered on a carriage motion are not in issue. [...]

[28] While there is no universal formula of factors to be considered, counsel agree that the considerations are to be guided by the following non-exhaustive factors:

- (1) The quality of the proposed representative plaintiffs;
- (2) Funding;
- (3) Fee and consortium agreements;
- (4) The quality of proposed class counsel;
- (5) Disqualifying conflicts of interest;
- (6) Relative priority of commencement of the action;
- (7) Preparation and readiness of the action;
- (8) Preparation and performance on carriage motion;
- (9) Case theory;
- (10) Scope of causes of action;
- (11) Selection of defendants;
- (12) Correlation of plaintiffs and defendants;
- (13) Class definition;
- (14) Class period;
- (15) Prospect of success: (leave and) certification;
- (16) Prospect of success against the defendants; and
- (17) Interrelationship of class actions in more than one jurisdiction.²²

[36] As in other provinces, British Columbia courts have also made it clear that these factors are to be applied holistically to promote the best interests of class members and fairness to defendants and that the judge is, therefore, not bound to consider them systematically in their reasons or to give them equal weight.²³

[37] Finally, the Federal Courts have also concluded that, despite the absence of specific rules, they have the power to stay class actions that “are commenced with respect to the same alleged wrongdoing”.²⁴ In *LaLiberte*,²⁵ the Federal Court of Appeal used the *Kowalyshyn* factors while identifying and reformulating seven of them that seemed predominant:

[12] [...] the motion judge stated (at paragraph 41) that in determining carriage, “the best interests of the class are paramount” and that a multi-factor analysis “allows for the flexibility necessary for

²¹ *Ibid* at paras 141-143.

²² *Morel v Koninklijke Philips N.V.*, [2023 BCSC 625](#) at paras 27-28.

²³ *Ibid* at para 29; *Reid v Google*, [2022 BCSC 158](#) at para 44, aff’d [2023 BCCA 350](#).

²⁴ *Hudson*, *supra* note 8 at para 23.

²⁵ *LaLiberte v Day*, [2020 FCA 119](#) at paras 11-13.

the Court to determine the best interests of the class.” He set out what he saw as the most relevant factors in this case as follows, and identified the first of these factors as “a critical factor” [at paragraph 42]:

- the representative quality of the proposed plaintiff – a critical factor;
- the preparation and readiness of the action;
- the class definition;
- scope of causes of action;
- timing of filing of action;
- quality, expertise and conduct of counsel; and
- relevance of class actions in more than one jurisdiction.

[13] In moving from the list of 16 potentially relevant factors to the shorter list of the most relevant factors in this litigation, the motion judge reframed somewhat the first of the factors that he set out—from “The Quality of the Proposed Representative Plaintiffs” to “the representative quality of the proposed plaintiff.” This was not the only change. Reflecting the issues raised before him, he also changed “The Quality of Proposed Class Counsel” to “quality, expertise and conduct of counsel.”

[38] In short, in common law provinces where there is no statutory provision specifying how carriage motions are to operate, courts have broad discretion to stay actions that invoke the same cause of action or the same wrongdoing. Courts generally agree on the factors to be considered, with some variation. That said, the large number of factors and the lack of weighting between them means that the result depends mainly on each judge’s assessment and is often unpredictable²⁶.

2.2.3. The Ontario approach: motion and legislative criteria

[39] In its 2020 reform, Ontario decided to replace the jurisprudential approach described above with a new section, section 13.1 of the *Class Proceedings Act, 1992*, the text of which is found in Appendix I to this report.

[40] This section specifies several aspects of carriage motions, namely :

- a. **Qualifying conditions:** These motions are appropriate when the proceedings “involve the same or similar subject matter and some or all of the same class members”.
- b. **Deadline:** Motions must be filed no later than 60 days after the day on which the first of the proceedings is filed, although the courts may extend this deadline if necessary.²⁷
- c. **The general test to be applied:** “[T]he court shall determine which proceeding would best advance the claims of the class members in an efficient and cost-

²⁶ See Gerald Antman, “Carriage Motions in Ontario: Inconsistent Application of an Indeterminate Test” (2018) 13:1 Can Class Actions Rev 103.

²⁷ See *Parkin v The Toronto-Dominion Bank*, [2025 ONSC 120](#) at paras 43-49.

effective manner”. This test focuses not only on the best interests of the class but also on the proportionality, efficiency and productivity of the action.²⁸

- d. **Factors to be considered:** The list has been reduced to four items that echo, in part, prior case law:
- (a) each representative plaintiff’s theory of its case, including the amount of work performed to date to develop and support the theory;
 - (b) the relative likelihood of success in each proceeding, both on the motion for certification and as a class proceeding;
 - (c) the expertise and experience of, and results previously achieved by, each solicitor in class proceedings litigation or in the substantive areas of law at issue; and
 - (d) the funding of each proceeding, including the resources of the solicitor and any applicable third-party funding agreements as defined in section 33.1, and the sufficiency of such funding in the circumstances.
- e. **Other aspects:** Decisions are final, no new concurrent proceedings may be instituted after such a decision or the expiry of the 60-day time limit, and class counsel must themselves bear the costs of the carriage motion.

[41] It appears that only four published decisions have applied section 13.1 since its adoption. These decisions take two distinct approaches:

- a. The first is to apply section 13.1 in light of previous case law by continuing to refer (in whole or in part) to the *Kowalyszyn* factors while recognizing that the law now places particular emphasis on efficiency and proportionality.²⁹
- b. The second is to set aside this earlier case law and rely solely on the new legislative framework³⁰.

[42] It is unlikely that the Court of Appeal will resolve this discrepancy since “[t]he decision of the court on a carriage motion is final and not subject to appeal”.³¹ In any event, however, it is noticeable that decisions under section 13.1 are often shorter and less fact-intensive than decisions under the *VitaPharm/Kowalyszyn* framework.

²⁸ *Blackford-Hall v Simply Group*, [2021 ONSC 8502](#) at para 8.

²⁹ *Ibid* at para 7; see also *Parkin*, *supra* note 27 at paras 67-133.

³⁰ *Liang v SSR Mining, Inc.*, [2024 ONSC 4432](#) at para 28; *Dziedziejko v Canopy Growth Corporation*, [2023 ONSC 6318](#) at paras 4 and 49-52.

³¹ *CPA (ON)*, *supra* note 9, s 13.1(5).

[43] In short, Ontario’s new approach has not fundamentally changed the procedure for carriage motions. It has, however, clarified, through legislation, various aspects of this procedure, including the factors to be considered.

2.2.4. The Quebec approach: first-to-file rule and exceptions

[44] Quebec adopts an approach that, at least in principle, is entirely different: the action filed first is presumed to take precedence, and the others are stayed unless the court is convinced that the action is not in the best interests of class members.

[45] Quebec has not enacted any legislation specifically governing overlapping class actions. However, by virtue of its inherent powers,³² the Superior Court has drawn inspiration from the approach in individual actions: in such cases, the first action may generally proceed while subsequent actions are stayed or dismissed if they concern the same parties, the same object and the same cause.³³

[46] In class actions, Quebec courts have concluded that this *lis pendens* principle should be applied more flexibly since actions that overlap significantly but do not share precisely the same cause of action or the same parties (for example, if the class is slightly different) can also pose a problem if they are allowed to proceed in parallel.³⁴

[47] Over time, Quebec courts have therefore developed an approach that retains the fundamental idea of *lis pendens* – that the action filed first should normally proceed – while allowing for a degree of flexibility specific to class actions. This analytical framework, developed in *Hotte* and *Schmidt*,³⁵ was reiterated more recently in *Badamshin*³⁶:

[TRANSLATION]

[50] In my opinion, the perverse effects described above stem from a misuse of the *Servier* rule. However, these could possibly be countered by a flexible application of the *Servier* rule as follows:

- in principle, the first application filed with the clerk’s office is the one that will be heard in priority;
- subsequent applications are, in the meantime, suspended and will only be heard, in the order in which they are filed, if the previous application is rejected;
- the precedence enjoyed by the first application may be challenged by counsel responsible for subsequent applications; and

³² See e.g. art 49 *CCP*.

³³ See e.g. arts 168(1) *CCP* and 2848 *CCQ*.

³⁴ See *Schmidt c Johnson & Johnson inc.*, [2012 QCCA 2132](#) at paras 30-32.

³⁵ *Hotte c Servier Canada inc.*, [\[1999\] RJQ 2598](#) (CA); *Schmidt*, *ibid.*

³⁶ *Badamshin c Option Consommateurs*, [2017 QCCA 95](#).

- the person challenging the precedence has the burden of establishing that the application is not in the best interests of the putative members, but rather constitutes an abuse of the *Servier* rule.

[51] The demonstration that the first application is not in the best interests of the putative members must be made on the basis of elements specific to the contested motion and not by demonstrating the superior quality of the competing motion, the proposed representative or the lawyers who put it forward. This is not a contest between two law firms seeking fees or between two organizations seeking publicity.

[52] Thus, it is admissible to show that the first motion filed with the clerk’s office suffers from serious deficiencies, that the lawyers responsible for it are not hurrying to move it forward, that they have filed similar proceedings elsewhere in Canada for the same putative members, etc., i.e. indications that the lawyers behind the first proceedings are merely trying to occupy the field and are not motivated by the best interests of the putative Quebec members.³⁷

[48] In other words, the analysis takes as its starting point the action filed first and gives it precedence, except in rare cases where it is “seriously deficient” or has been filed merely to “occupy the field”.

[49] This approach differs from carriage motions in two respects. First, a strong presumption is attached to the date of filing of the first action, whereas this is only one factor among many to be considered in a carriage motion. Second, the burden of rebutting this presumption is very high and is tied solely to an analysis of the first action filed. Carriage motions, on the other hand, adopt a flexible and holistic approach that *compares* the various claims to determine which one should proceed.

2.3. Analysis and proposed amendments to the *Uniform Act*

[50] What conclusions can be drawn from the foregoing to identify avenues for reforming the *Uniform Class Proceedings Act*?

[51] There are three main questions:

- a. Should the *Uniform Act* govern this issue or leave it to existing and future case law to establish the applicable criteria?
- b. If the *Uniform Act* is amended to govern overlapping actions, which mechanism should be retained: carriage motions, the first-to-file rule, or a hybrid of these two options? Should a single approach be adopted, or should a choice be proposed between these two options?
- c. Finally, if the chosen mechanism requires the court to analyze the proposed actions, what factors should be considered?

³⁷ *Ibid* at paras 9-10, citing *Schmidt*, *supra* note 34 at paras 50-52.

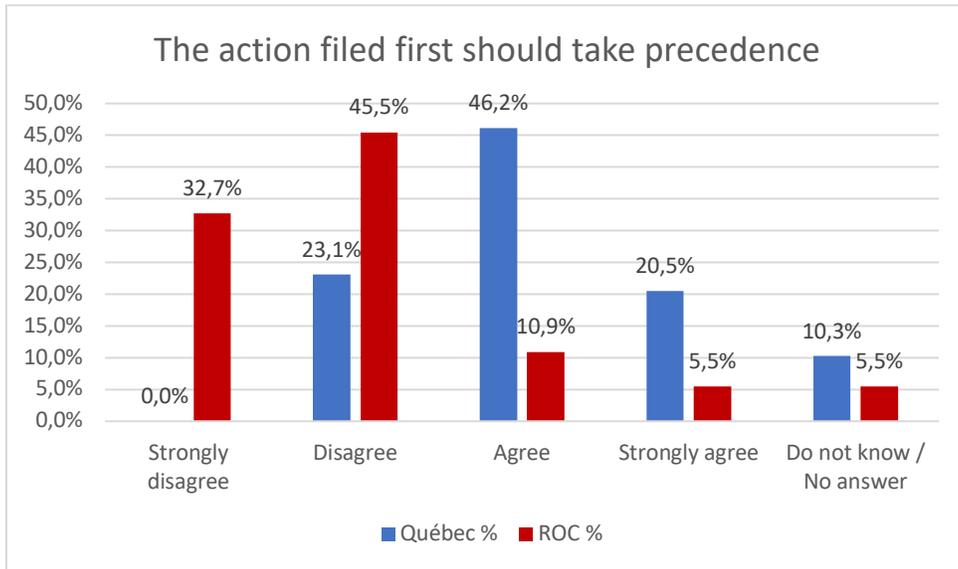
[52] Before looking at these issues in more detail, it is worth briefly presenting the results of the survey carried out as part of this project.

2.3.1. Results of the survey conducted as part of this project

[53] A fuller analysis of these results will be provided separately, but for now, it should be noted that 129 respondents completed the survey in whole or in part, 84% of whom were lawyers representing a diversity of practices, perspectives³⁸ and jurisdictions³⁹.

[54] Of these, 94 respondents answered the questions on overlapping actions. Although the sample from each province is obviously limited, and the results are not necessarily statistically significant, it remains helpful to compare the results from Quebec (n = 39) with those from the rest of Canada (n = 55), given the marked differences identified above.

[55] First, the “first to file” approach used in Quebec was supported by a large majority of Quebec respondents (66.7% in favour, 23.1% against), while the opposite was true in the rest of Canada (78.2% against, 16.4% in favour).

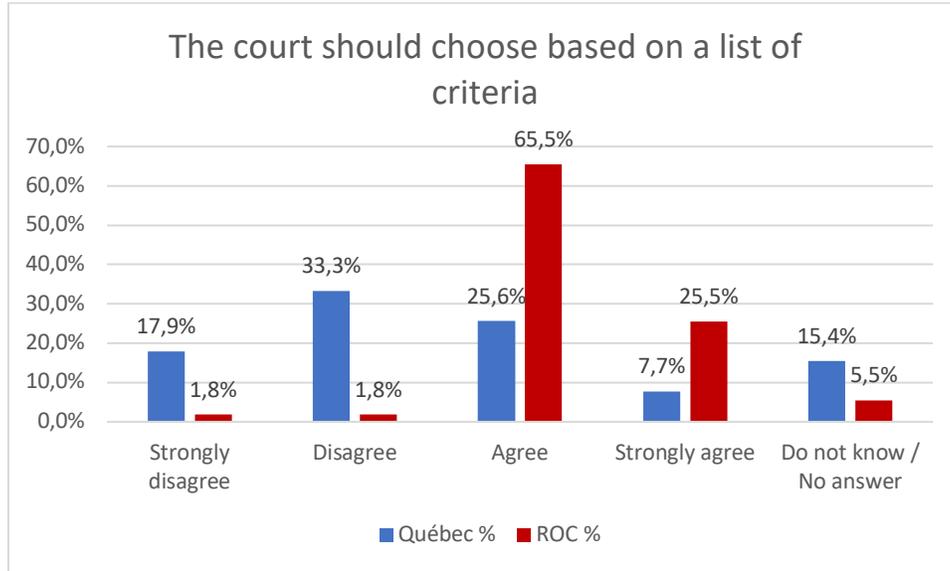


[56] The same difference, although less pronounced, can be observed regarding carriage motions. 90.9% of respondents outside Quebec agreed or strongly agreed that “[t]he court should choose the action that will proceed based on a list of criteria” (3.6%

³⁸ 35.6% act mainly for plaintiffs, 39.5% for defendants and 4.7% for both, with the remainder of respondents not answering this question.

³⁹ The most common jurisdictions are Quebec (34.9%), British Columbia (17.8%) and Ontario (14.7%).

against), while 51.3% of Quebec respondents disagreed with this idea (versus 33.3% in favour).



[57] These results suggest that practitioners are deeply attached to the mechanism used in their jurisdiction, whether it be carriage motions outside Quebec or the first-to-file rule in Quebec. Moreover, practitioners seem to have a great deal of mistrust towards the mechanism that is not their own. The fact that a relatively greater number of Quebecers are open to a criteria-based analysis may be explained by the flexibility with which the first-to-file rule is already applied in that province.

[58] Having made these observations, let us turn to the proposed amendments to the *Uniform Act*.

2.3.2. The *Uniform Act* should govern overlapping actions

[59] First, it seems clear that the *Uniform Act* should address the issue of overlapping actions, as Ontario has recently done in its reformed legislation.

[60] Leaving this question to case law, without a clear legislative framework, has several disadvantages. First, one author notes that this makes the factors unpredictable from one jurisdiction to another.⁴⁰ The case law reviewed earlier confirms this since the factors used vary from case to case and have evolved over time. Similarly, one survey respondent colourfully noted that the factors “appear to be a shifting target” and “operate akin to the Wild West”!

⁴⁰ Antman, *supra* note 26.

[61] Therefore, it seems preferable for the *Uniform Act* to provide a framework governing overlapping actions for greater predictability. That said, the jurisprudential approach has the advantage of giving courts the flexibility to consider factors not spelled out in the Act. As evidenced by some recent Ontario decisions, it may be appropriate to preserve a certain measure of judicial discretion in this area despite the adoption of a legislative approach. This point will be considered below when the relevant factors are discussed.

2.3.3. The *Uniform Act* should codify consensual principles

[62] In our opinion, the *Uniform Act* should codify certain principles common to all Canadian jurisdictions, regardless of their choice between the first-to-file rule and carriage motions.

[63] First, the *Uniform Act* should identify the type of overlap that may justify judicial intervention. Courts have used various expressions to hold that actions targeting the same source of injury, the same cause of action (or a similar cause of action) or a similar class (in whole or in part) cannot be allowed to proceed in parallel. The wording recently added to the Ontario statute seems to reflect this idea since it refers to actions that “involve the same or similar subject matter and some or all of the same class members”. Similar language could be included in the *Uniform Act*.

[64] Second, the general criterion that guides courts in such circumstances also seems unanimous across Canada and should, therefore, be added to the *Uniform Act*. The courts should intervene in the members’ best interests and in fairness to the defendants while respecting the objectives of class actions: access to justice, judicial economy and behaviour modification. This criterion is similar to the one set out in the Ontario legislation but uses broader parameters drawn from case law rather than placing particular emphasis on efficiency and productivity.

2.3.4. The *Uniform Act* should offer a choice between two mechanisms

[65] The central question is which mechanism should be used to select the action that will proceed: the first-to-file rule (with its exceptions); the carriage motion; or a hybrid of the two. For the reasons below, it seems preferable for the *Uniform Act* to offer a choice between these two mechanisms.

[66] As the survey results above indicate, the approaches are well-established and accepted in their respective jurisdictions. A significant change in this respect does not appear necessary or proper.

[67] Moreover, neither approach seems clearly preferable to the other since they each have their advantages and disadvantages. Some have criticized the Quebec rule for encouraging class counsel to file their actions as quickly as possible, even if it means botching them and amending them later.⁴¹ These amendments are sometimes repeated, which causes considerable delay when they require defendants to adjust their strategy. Some survey respondents also noted that this approach may allow counsel to file an action with no real intention of pursuing it in order to negotiate a percentage from another firm that might want to bring a competing action. Others noted, more fundamentally, that the date – or sometimes even the time – at which an action was filed is a somewhat arbitrary measure for determining what is in the best interest of members.

[68] These are very real risks of the “first to file” approach. Quebec courts were aware of some of these risks when they developed the current framework, which provides an exception where an action is filed without any real intention of pursuing it. However, the criteria for invoking this exception are restrictive: proving that the first application “suffers from serious deficiencies”, for example, can be difficult. As a result, actions are still being brought in Quebec by lawyers who rush to file without necessarily having developed the best strategy for class members.

[69] Conversely, some authors believe that common law carriage motions are too complex and costly.⁴² This is, perhaps, the price of an approach that is more malleable and flexible than the Quebec rule. The *Kowalyshyn* case itself is a good example of these difficulties. The decision is 276 paragraphs long and, as the judge noted, was the subject of a “fierce battle” and a “heated debate”.⁴³ The judge also pointed out that the “voluminous motion material was comprised of a motion record of 4,011 pages, six factums (247 pages), and 101 legal authorities not counting numerous statutory

⁴¹ *Schmidt*, *supra* note 34 at paras 35-36; Médicaments Novateurs Canada & Medtech Canada, *Mémoire dans le cadre de la consultation publique du ministère de la Justice du Québec « Perspectives de réforme de l’action collective au Québec »*, 30 September 2021 at 13, online (pdf):

<<http://innovativemedicines.ca/wp-content/uploads/2021/10/Reforme-de-laction-collective-au-Quebec-Memoire-de-Medicaments-novateurs-Canada-et-MedTech-Canada.pdf>>; André Ryan & Shaun E Finn, « Une proposition plus modeste : soumissions au ministre de la Justice du Québec dans le cadre de réformes possibles au régime d’action collective », *Repères*, October 2021, EYB2021REP3365 (La Référence); see also *Turon v Abbott Laboratories Ltd.*, [2011 ONSC 4343](#) at para 19, aff’d [2011 ONSC 4676](#).

⁴² See Timothy Law, “Determining a Fair Price for Carriage?: Applying a “Fee-Driven” Factor and Reverse Auctions to Adjudicating Carriage Motions in Ontario” (2021) 16:2 *Can Class Actions Rev* 187; Cole Pizzo, “Class Actions and Beauty Pageants: The Need for Carriage Motion Reform in Ontario” (2019) 15:1 *Can Class Actions Rev* 111; See also Law Commission of Ontario, *Class Actions: Objectives, Experiences and Reforms – Final Report*, Toronto, 2019 at 23, online (pdf): <<https://www.lco-cdo.org/wp-content/uploads/2019/07/LCO-Class-Actions-Report-FINAL-July-17-2019.pdf>> [*LCO Report*].

⁴³ *Kowalyshyn*, *supra* note 12 at paras 1 and 274.

references”.⁴⁴ This finding led the judge to raise “serious questions about the utility of the approach to evidence, methodology, and the factors used in a carriage fight”.⁴⁵

[70] For the same reason, “Québec courts have resisted all attempts to recognize carriage motions in this jurisdiction, as they are considered much too time-consuming”.⁴⁶ Several respondents to the survey conducted as part of this project echoed these remarks: even when they said they preferred carriage motions, they acknowledged that “lengthy, complex carriage fights are undesirable”.

[71] In short, both approaches have shortcomings. Ultimately, the first-to-file rule prioritizes an efficient and straightforward approach to the detriment of an in-depth assessment of class members’ interests. In contrast, the carriage motion prioritizes these interests, sometimes to the detriment of the efficiency and speed of the mechanism. To allow each jurisdiction to choose among these public policy issues and to avoid disrupting established practices, it seems desirable to offer both options in the *Uniform Act*.

[72] In addition, it seems appropriate to provide, following the example of the Ontario legislation, that any motion must be lodged within 60 days of the filing of the first action and that the decision cannot be appealed in order to give the parties some finality and allow the chosen action to take its course.

2.3.5. The *Uniform Act* should list the factors to be considered

[73] The final question concerns the factors that the courts should consider when deciding between several competing actions.

[74] In the context of the first-to-file mechanism, this question is less critical. As Quebec courts have noted, the first action proceeds and the others are stayed unless it is established that the action “is not in the members’ best interests”, particularly if it has “serious deficiencies” or was filed only to “occupy the field”. The analysis focuses entirely on the first action, and the standard must remain high to avoid opening the door to frequent and costly challenges, which would be inconsistent with the *raison d’être* of the mechanism.

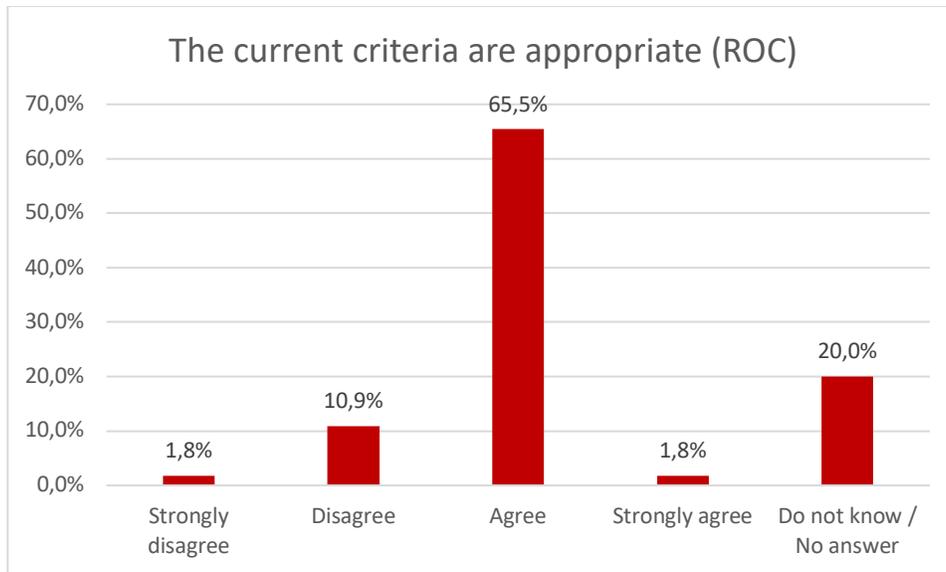
⁴⁴ *Ibid* at para 8.

⁴⁵ *Id.*

⁴⁶ 4037308 *Canada inc v Navistar Canada*, [2022 QCCS 110](#) at para 56 (that case touched on a multijurisdictional issue, however).

[75] However, the factors are crucial in the context of a carriage motion. It therefore seems appropriate to include in the *Uniform Act* a limited series of factors that largely reflect previous case law.

[76] Respondents to the survey conducted for this report who practice outside of Quebec were of the opinion that the criteria applicable to carriage motions were generally appropriate. As a result, a major upheaval does not seem desirable.



[77] However, the case law reviewed earlier shows that the more factors there are, the greater the incentive for parties to present voluminous evidence and pleadings and the more time and resources a carriage motion is likely to consume. From this perspective, the list of sixteen factors developed in *Kowalyshyn* seems too extensive for the mechanism to remain effective.

[78] Based on existing case law and Ontario law, the factors included in the *Uniform Act* could be as follows (based on wording that will be reworked at a later stage):

- a. a preliminary analysis of the applications to determine the extent of the causes of action and to identify any significant problems or easily identifiable advantages or disadvantages;
- b. the nature and quality of the proposed representatives;
- c. the progress of each action, including the amount of work carried out by the lawyers;
- d. the skills, experience, resources and conduct of the lawyers.

[79] The first factor echoes comments made in *Kowalyszyn*, according to which the analysis of the merits of the proposed actions is often the factor that consumes the most time and resources and should, therefore, be only a “limited or modest examination of case theories for the limited purpose of identifying: (a) conspicuous or egregious problems; or (b) readily apparent advantages and disadvantages in the competing theories”.⁴⁷

[80] The second factor is part of the traditional list of factors but is not included in the Ontario legislation. It nevertheless seems relevant to include it since, depending on the case, certain representatives may be better able to lead the action, for example, because they are already in close contact with other class members or with the representatives or members of similar actions brought elsewhere.

[81] The third factor implicitly incorporates another factor considered in case law: the date on which the action is brought⁴⁸. Indeed, if the action was filed earlier, it will generally have made more progress and will therefore fare better on this factor, although the impossibility of filing a carriage motion more than 60 days after the first action was filed will limit the progress of the actions at the time of the hearing. On the other hand, it does not seem appropriate to favour an action that was filed earlier but has not progressed since. Therefore, the filing date itself is of limited relevance.

[82] The fourth factor adds the conduct of lawyers to the traditional factors. The factor of the skill and experience of lawyers has been criticized for its tendency to favour more established lawyers and to prevent the development of a new generation of class action lawyers.⁴⁹ However, a lawyer who may be less experienced but who demonstrates exemplary and sophisticated conduct before the court, particularly in the context of the motion itself, could be in a position to conduct the action well. In addition, this factor includes the resources of class counsel, which were already considered in case law, and corresponds in substance to the fourth factor in the Ontario legislation.

[83] Finally, it seems desirable that judges retain some discretion to consider factors other than those set out in the Act. However, the wording of the *Uniform Act* should caution judges to ensure that the list of factors does not grow over time in the same way as in *Kowalyszyn*. For instance, the *Uniform Act* could require that any new factor be “essential” or “necessary” for an adequate consideration of the motion.

⁴⁷ *Kowalyszyn*, *supra* note 12 at paras 147-151.

⁴⁸ See e.g. *Morel*, *supra* note 22 at para 28; *Kett v Google LLC*, [2023 BCCA 350](#) at paras 182-183.

⁴⁹ Jasminka Kalajdzic, *Class Actions in Canada: The Promise and Reality of Access to Justice*, Vancouver, UBC Press, 2018 at 207.

3. Class counsel fees

[84] The second issue analyzed by the working group this year concerns the approval of class counsel fees.

[85] On that point, the working group recommends that the *Uniform Act* codify the general criterion that already enjoys consensus, namely that fees be approved if they are fair and reasonable. The *Uniform Act* should also specify the factors relevant to the application of this criterion. It should put forward two main factors – the results obtained and the risk incurred –, provide for a series of other factors detailed below, and specify that the various calculation methods may be used for comparative purposes but should not constitute the core of the analysis. Finally, the *Uniform Act* should allow courts to withhold a portion of the fees until a future event occurs, such as the filing of a final report. However, such holdbacks should not become the norm.

[86] These recommendations stem from the following analysis, which is divided into three parts:

- The first part sets out the general principles that guide the award and approval of class counsel fees (3.1).
- The second part provides an overview of the situation in each Canadian province (3.2).
- The third part identifies avenues for reform that could lead to potential amendments to the *Uniform Act*, based on the first two parts (3.3).

3.1. General principles

[87] The fees of a lawyer acting for a party to a civil dispute are usually paid by that party, pursuant to an agreement between them.⁵⁰ However, this mechanism proves unsuitable for class actions, in which the representative is not simply class counsel's individual client but acts on behalf of a larger group.⁵¹

[88] This particularity calls for a different method of remuneration for class counsel. Generally, when the action is successful, their fees are borne by the whole class, based on different formulas to which we will return. Conversely, if the action fails, class counsel

⁵⁰ Of course, some jurisdictions provide that these fees must be borne by the losing party, in whole or in part, with some exceptions, whether in any type of litigation or in class actions. On this point, section 37 of the *Uniform Act* provides two different options, but both attempt to avoid the imposition of costs on the representatives. This issue is not addressed in the context of this project.

⁵¹ On the defence side, defendants (or their insurers) usually pay their lawyers' fees.

generally bear the corresponding losses as it would be unrealistic to impose them on the class or the representative.

[89] From this particularity of class actions stem certain principles that guide the award of fees to class counsel:

- First, because fees are most often⁵² conditional on the success of the action, class counsel must assume significant **risk**. They invest time and money in the action knowing that they will only be compensated if it succeeds.
- Second, to account for that risk and for the considerable amount of time a class action can take, it is accepted that class counsel fees may be **higher** than they would be in a regular case.⁵³ The possibility of insufficient remuneration sometimes leads lawyers to refuse certain mandates, for instance when a class is too small or the potential compensation minimal in comparison to the work to be done, which leaves the members of the class in question without compensation and limits the deterrent effect of class actions.⁵⁴
- Third, members who pay class counsel fees out of the compensation they receive are sometimes not involved in the action itself or in the determination of fees, especially when the amount claimed for each member is minimal. As a result, as in many other aspects of class actions, courts play [TRANSLATION] “a role of **guardian and protector of class members’ rights**.”⁵⁵ This gatekeeping role is even more important when fees are approved as part of a settlement because, in

⁵² In some cases, other formulas may be adopted. In addition, a portion of the fees may be paid by a third party where permitted.

⁵³ See generally Catherine Piché, *Perspectives de réforme de l’action collective au Québec*, 2019 at p 47, online (pdf): <<https://numerique.banq.qc.ca/patrimoine/details/52327/4628952>> [*Piché Report*]. It must be added, however, that in other files, class counsel fees are sometimes *lower* than those that would usually be claimed using an hourly rate.

⁵⁴ See, e.g., Theodore Eisenberg, Geoffrey Miller & Roy Germano, “Attorney’s Fees in Class Actions: 2009-2013” (2017) 92 NYU L Rev 937, 937-38; Michael Molavi, “Beyond the Courtroom: Access to Justice, Privatization, and the Future of Class Action Research” (2015) 10:1-2 Can Class Actions Rev 7, 18; André Durocher, “A Big Carrot, a Big Stick: Access to Justice and the Financial Aspects of Class Action Practice” (2013) Colloque national sur l’action collective : développements récents au Québec, au Canada et aux États-Unis 337; *Piché Report*, *supra* note 53 at 43; *Gagne v Silcorp Ltd.*, [1998 CanLII 1584](#) (ONCA) [*Gagne*]; *Sayers v Shaw Cablesystems Limited*, [2011 ONSC 962](#) at para 37; *Lowe v Dr. Meikle Professional Corporation*, [2021 ONSC 7450](#) at para 25; *Pro-Sys Consultants Ltd. v Infineon Technologies AG*, [2013 BCSC 316](#) at para 39 [*Pro-Sys*].

⁵⁵ *Option Consommateurs c Banque Amex du Canada*, [2018 QCCA 305](#) at para 61 [*Option Consommateurs*], referring to Pierre-Claude Lafond, *Le recours collectif, le rôle du juge et sa conception de la justice : impact et évolution*, Cowansville, Éditions Yvon Blais, 2006 at 44-53; see also *BGA inc. c Banque de Montréal*, [2022 QCCA 140](#) at para 3; *Smith Estate v National Money Mart Company*, [2011 ONCA 233](#) at para 17 [*Smith Estate*]; *Fresco v Canadian Imperial Bank of Commerce*, [2023 ONSC 3335](#) at para 62 [*Fresco*], *aff’d* [2024 ONCA 628](#).

such a case, all parties usually agree, which limits the adversarial nature of the debate.⁵⁶

- Fourth, assessing the reasonableness of class counsel fees is a **highly discretionary** exercise, which involves a part of subjectivity in the analysis of the criteria identified by the courts.⁵⁷ For example, a class action may require minimal work and involve relatively little risk but lead to a large settlement if the amount at stake is high; in such a case, fees representing 30% of the amount obtained could raise questions. Conversely, a class action with a lower amount at stake but involving complex issues and considerable work could justify fees that represent a higher percentage of the final amount awarded.⁵⁸

Because parties on the plaintiff side are often best placed to assess these different considerations, courts have tended to limit their own intervention. For example, one court cautioned against an overly interventionist approach, noting that it could encourage lawyers to inflate their fees knowing they will be reduced.⁵⁹ That court and many others have noted that fee agreements must be presumed valid or at least used as a starting point in the analysis, which also limits judicial intervention.⁶⁰

- Fifth, we must remain aware of the impact of class counsel fees on **public confidence** in class actions. Class counsel fees have made headlines, sometimes giving the impression that they were disproportionate in comparison with the compensation offered to class members.⁶¹ In other words, an assessment of the risk of class actions must not entirely set aside the result obtained for the class, which must be the key principle guiding the assessment of the reasonableness of

⁵⁶ For a discussion of this phenomenon, see *Smith Estate*, *supra* note 55 at paras 15-33; *Fresco*, *supra* note 55 at paras 69-72.

⁵⁷ *Skarstedt c Corporation Nortel Networks*, [2011 QCCA 767](#) at paras 12, 31-34 [*Skarstedt*]; *Option Consommateurs*, *supra* note 55 at para 63; *Brown v Canada (Attorney General)*, [2018 ONSC 3429](#) at para 57 [*Brown*]; *Bancroft-Snell v Visa Canada Corporation*, [2016 ONCA 896](#) at para 33; *Lavier v MyTravel Canada Holidays Inc.*, [2013 ONCA 92](#) at paras 20-21 [*Lavier*].

⁵⁸ See the comparison between “mega-funds” of more than \$100 million and those under \$100 million in *Brown*, *supra* note 57 at para 47; see also *Fresco*, *supra* note 55 at paras 116-117; see a similar discussion in *Skarstedt*, *supra* note 57 at para 31, citing Louise Ducharme, “Les honoraires judiciaires et les honoraires extrajudiciaires en matière de recours collectif” (1999) 115 *Développements récents sur les recours collectifs* 45, 65-66.

⁵⁹ *A.B. c Clercs de Saint-Viateur du Canada*, [2023 QCCA 527](#) at para 56 [*A.B.*].

⁶⁰ *Ibid* at para 51; *Option Consommateurs*, *supra* note 55 at para 66; *Trudelle c Ticketmaster Canada*, [2024 QCCS 1007](#) at para 69 [*Trudelle*]; *A.B.*, *supra* note 59 at para 51; *Cardoso v Canada Dry Mott's Inc.*, [2020 BCSC 1569](#) at para 17 [*Cardoso*]; *Anderson v Canada (Attorney General)*, [2016 CanLII 76817](#) (NLSC) [*Anderson*]; *Sweetland v Glaxosmithkline Inc.*, [2019 NSSC 136](#) at paras 30-31 [*Sweetland*].

⁶¹ Law Commission of Ontario, *Class Actions: Objectives, Experiences and Reforms – Final Report*, Toronto, 2019 at 8, online (pdf): <<https://www.lco-cdo.org/wp-content/uploads/2019/07/LCO-Class-Actions-Report-FINAL-July-17-2019.pdf>> [*LCO Report*]; *Piché Report*, *supra* note 53 at 43.

the fees.⁶²

However, the public is not always informed of the considerable time and resources invested in a class action or of the risk involved in the work of class counsel. While public confidence remains important, it is perilous to make it a determinative consideration in this context.

[90] In short, the main issue in setting class counsel fees is to [TRANSLATION] “balance the incentives experienced by various actors”⁶³ by providing class counsel with fair and reasonable remuneration that serves the interests of class members, adequately reflects the result obtained, the work performed, and the risk assumed, but does not become excessive or exaggerated. This is a fine line that is often difficult to draw. The statutes and the criteria established through case law can help judges in this delicate exercise.

3.2. State of the law

3.2.1. The *Uniform Class Proceedings Act* and its implementation

[91] How are these general principles reflected in current statutes? It is helpful to take as a starting point the *Uniform Class Proceedings Act*, which is the focus of our work. The *Uniform Act* provides the following with respect to class counsel fees:

Agreements respecting fees and disbursements

38. (1) An agreement respecting fees and disbursements between a solicitor and a representative plaintiff must be in writing and must

- (a) state the terms under which fees and disbursements are to be paid,
- (b) give an estimate of the expected fee, whether or not that fee is contingent on success in the class proceeding, and
- (c) state the method by which payment is to be made, whether by lump sum or otherwise.

(2) An agreement respecting fees and disbursements between a solicitor and a representative plaintiff is not enforceable unless approved by the court, on the application of the solicitor.

(3) An application under subsection (2) may,

- (a) unless the court otherwise orders, be brought without notice to the defendants, or
- (b) if notice to the defendants is required, be brought on the terms respecting disclosure of the whole or any part of the agreement respecting fees and disbursements that the court may order.

⁶² See *Fresco*, *supra* note 55 at para 57; *Smith Estate*, *supra* note 55 at para 92; *A.B.*, *supra* note 59 at para 51.

⁶³ *Piché Report*, *supra* note 53 at 42-43.

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(4) Interest payable on fees under an agreement approved under subsection (2) must be calculated in the manner set out in the agreement or, if not so set out,

(a) at the interest rate, as that term is defined in [the court order interest Act of the enacting jurisdiction], or

(b) at any other rate the court considers appropriate.

(5) Interest payable on disbursements under an agreement approved under subsection (2) must be calculated in the manner set out in the agreement or, if not so set out,

(a) at the interest rate, as that term is defined in [the court order interest Act of the enacting jurisdiction], or

(b) at any other rate the court considers appropriate, on the balance of disbursements incurred as totalled at the end of each 6 month period following the date of the agreement.

(6) Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award.

(7) If an agreement is not approved by the court, the court may

(a) determine the amount owing to the solicitor in respect of fees and disbursements,

(b) direct an inquiry, assessment or accounting under the [rules of court] to determine the amount owing, or

(c) direct that the amount owing be determined in any other manner.

[92] There seems to be a broad consensus around this section, since most of its aspects have been implemented across Canada, with some adjustments:⁶⁴

	BC	AB	SK	MB	ON	QC	NB	NS	PEI	NL
Agreement in writing	X	X	X	X	X		X	X	X	X
Content: Terms, estimate, payment method	X	X	X	X	X	*	X	X	X	X
Court approval	X	X	X	X	X	X	X	X	X	X
No notice to defendants	X	X	X	X			X	X	X	X
If notice required, conditions for disclosure of agreement	X	X	X	X			X	X	X	X
Interest on fees	X	X	X	X		*	X	X	X	X
Interest on disbursements	X	X	X	X		*	X	X	X	X

⁶⁴ The relevant legislation is provided in Appendix II to this report. The most significant adjustments are found in the Ontario, Alberta and Prince Edward Island legislation. The statutes of British Columbia and Manitoba are almost identical to the *Uniform Act*. The Saskatchewan statute is also almost identical to the *Uniform Act* but addresses the issue of interest in a separate section. The New Brunswick and Nova Scotia statutes are almost identical to the *Uniform Act* but add the issue of interests to the content of the agreement rather than addressing them in a separate section.

	BC	AB	SK	MB	ON	QC	NB	NS	PEI	NL
First charge on settlement funds or monetary award	X	X	X	X	X	X	X	X	X	X
Court's power to determine fees	X	X	X	X	X	X	X	X	X	X

[93] Two main findings emerge from this table. First, the fact that most of the provisions of the *Uniform Act* pertaining to class counsel fees have been incorporated into provincial legislation suggests that it is preferable to leave them unchanged unless an overriding reason calls for a change.

[94] Second, the Ontario and Quebec statutes seem, at first glance, to adopt a different approach since they do not include certain aspects of the *Uniform Act*. In Quebec, these differences can be explained in part by the civilian style of drafting of article 593 of the *Code of Civil Procedure*. This style favours succinct provisions, the details of which are then determined by the courts. In fact, Quebec courts have completed this provision by referring to the rules of professional conduct of lawyers, in particular regarding the information to be given to the client and the interest that may be charged.⁶⁵ The rules applicable in Quebec are, therefore, more comprehensive than they appear at first glance, although they are found in disparate texts (see section 3.3.2, below).

[95] In Ontario, the provincial statute seems to have pruned some of the more technical aspects regarding notices to defendants and applicable interest rates, but most of the provisions of the *Uniform Act* are still implemented.

3.2.2. Innovations in some provinces beyond the *Uniform Act*

[96] While most provinces have adopted the provisions of the *Uniform Act*, some have also introduced additional clarifications.

[97] First and foremost, while the *Uniform Act* provides that class counsel fees must be approved by the court, it remains silent on the **criteria** that should guide this approval. Several provinces have enacted provisions to resolve that question:

- In Quebec, the *Code of Civil Procedure* requires that class counsel fees be “reasonable.” Courts have supplemented this general test by referring to other statutes,⁶⁶ as explained below (section 3.3.2).

⁶⁵ *Code of Professional Conduct of Lawyers*, CQLR, c B-1, [r 3.1](#), ss 99, 103. These points are indicated by an asterisk in the preceding table.

⁶⁶ Conversely, the New Brunswick Act provides that Part 14 of the *Law Society Act, 1996*, SNB 1996, [c 89](#), does not apply to class actions: *Class Proceedings Act*, RSNB 2011, [c 125](#), s 40(6); this is also the case in Nova Scotia: *Class Proceedings Act*, SNS 2007, [c 28](#), s 41(6).

- In Ontario, the 2020 reform of the *Class Proceedings Act, 1992* introduced new sections that require courts to provide their approval only if the “fees and disbursements ... are just and reasonable”, and provide a list of factors and methods to be considered in determining whether the fees meet this test in a given case.⁶⁷
- In Alberta, the relevant statute specifies that contingency fees can only be approved if they are “fair and reasonable in the circumstances.”⁶⁸

[98] In Ontario, a section added in the context of the 2020 reform also provides that the court *may* determine that a portion of the fees and disbursements will be **held back** until a final report has been filed and approved by the court and/or until the amounts owed to class members have been satisfactorily distributed. The same section was included in the Prince Edward Island statute enacted in 2021.⁶⁹

[99] The Ontario legislation also contains a section that imposes additional requirements on **conditional premium hourly rate agreements**, i.e., where an agreement “provid[es] for payment of fees and disbursements only in the event of success in a class proceeding”⁷⁰ and allows class counsel to make a motion to the court to have their fees increased by a multiplier; this increase is subject to the approval of the court which awards only reasonable fees based on the criteria set out above.⁷¹

[100] In Alberta, the statute only governs contingency fee agreements. It incorporates most aspects of the *Uniform Act*, while adding several formal and substantive requirements. Thus, the agreement must not only be in writing but also **signed** by counsel and the representative in the presence of a witness, and served on the representative within ten days of its signing.⁷² The **content of the agreement** must specify the maximum amount or rate of remuneration. The representative may **cancel** the agreement within five days of receipt without liability for any fees incurred, and at any time by paying the fees incurred up to that time. The agreement must be **approved** not only at the end of the proceeding but also at the certification stage. The **application for approval** must contain certain details required by law, namely the amount of the fees and disbursements, the right of the class members to object, the place and time of the hearing, and the steps a member can take to be heard.

⁶⁷ *Class Proceedings Act, 1992*, SO 1992, [c 6](#), ss 32(2.1)-(2.3).

⁶⁸ *Class Proceedings Act*, SA 2003, [c C-16.5](#), s 39(1)(b) *in fine*.

⁶⁹ *Class Proceedings Act*, RSPEI 1988, [c C-9.01](#), s 44(2).

⁷⁰ *Class Proceedings Act, 1992*, SO 1992, [c 6](#), s 33.

⁷¹ For an explanation of the distinction between section 32 (which applies to all fee agreements) and section 33 (which applies to premium hourly rate agreements), see *Smith Estate*, *supra* note 55 at paras 53-65; for an example of the application of section 33, see *Gagne*, *supra* note 54.

⁷² *Class Proceedings Act*, SA 2003, [c C-16.5](#), s 38(2)(a)-(b).

[101] Finally, in Quebec, the *Code of Civil Procedure* provides that the **Fonds d'aide aux actions collectives** must be heard before the court rules on legal costs and fees. This provision responds to the specific context of Quebec, where the Fonds finances several class actions and must, therefore, be able to intervene at the fee approval stage to recover what it is owed, if applicable.

3.3. Proposed amendments to the *Uniform Act*

[102] What observations can we draw from the above to find avenues for reforming the *Uniform Class Proceedings Act*?

[103] First of all, certain options should be ruled out. It does not seem necessary to adopt an approach as detailed as Alberta's, where fee agreements and their approval are more strictly regulated than in other provinces. Because courts already have broad powers to intervene, they can impose several of these requirements on a case-by-case basis when necessary. In addition, the detailed procedure in Alberta reflects the fact that the fee agreement must be approved upon certification, allowing any deficiencies to be cured before the proceeding is too advanced.⁷³ In the absence of such a two-step approval process, detailed requirements appear riskier.

[104] On this point, it also does not appear necessary to provide for the approval of fees twice, at the time of certification and at the end of the proceeding, as is currently the case in Alberta. Courts have explained that this approach is intended to give counsel, class members and the courts themselves, at the certification stage, an idea of the fees that may be incurred.⁷⁴ However, as Alberta courts have noted, the subsequent course of the action may result in a significant change in the fees already approved.⁷⁵ The usefulness of this step is therefore limited, and yet it requires a debate at the certification stage, with the attendant costs and delays.⁷⁶

[105] Similarly, it seems preferable to ignore the distinction made in the Ontario statute between the approval of a fee agreement generally (section 32 of the *Class Proceedings Act, 1992*) and the approval of a conditional agreement at an hourly rate with a multiplier (section 33). As the courts have noted, this distinction is "somewhat confusing" especially since section 33 applies only in the rare cases where the agreement provides for an hourly rate and allows class counsel to apply to the court for an increase in that rate

⁷³ *Roth v Alberta (Minister of Human Resources and Employment)*, [2005 ABQB 505](#) at para 15 [*Roth*]; *L.C. v Alberta (Metis Settlements Child & Family Services, Region 10)*, [2012 ABQB 394](#) at para 19 [*L.C.*].

⁷⁴ *Roth*, *supra* note 73 at para 12.

⁷⁵ *Ibid*; see also *L.C.*, *supra* note 73 at para 12.

⁷⁶ For a critique of this formula, see *Plimmer v Google, Inc.*, [2013 BCSC 681](#) at para 45.

if the action is successful.⁷⁷ The more general provisions of the *Uniform Act*, which apply to all types of fee agreements, appear to be both simpler and more efficient.

[106] Finally, it does not seem helpful to prescribe a particular method to calculate fees, since different methods may be appropriate for the particularities of each case. First and foremost, parties on the plaintiff side must be trusted to choose the right method since they are best placed to assess the appropriate fees in the context of the case.⁷⁸ Moreover, each method has been criticized:

- The use of a fixed percentage could, in some cases, encourage a quick resolution of the case to obtain the highest amount with the least effort possible.⁷⁹
- The use of increasing percentages – i.e., percentages that vary depending on the stage at which the case ends – is also criticized as it could, conversely, deter early resolution [TRANSLATION] “even when in the best interests of the members.”⁸⁰
- The multiplier factor model, on the other hand, is criticized among other reasons because it could encourage class counsel to spend more time on the case than necessary.⁸¹ Courts caution against giving too much weight to the time spent on the case, which is, in any event, difficult to assess accurately.⁸² Moreover, this method assumes that all firms have pre-determined hourly rates that they charge to clients, whereas this is not necessarily the case if a firm exclusively uses another remuneration method, particularly if it only acts as class counsel.

Despite this criticism, Professor Piché (as she then was) recommended in 2019 that courts first consider the “hours worked” and apply a multiplier factor before considering the other criteria, because that method is, according to her, a good proxy for risk and hours worked.⁸³ Still, neither legislatures nor subsequent judicial decisions have adopted that view.

⁷⁷ *Smith Estate*, *supra* note 55 at paras 57-60.

⁷⁸ *Option Consommateurs*, *supra* note 55 at para 67; *Bergeron c Procureur général du Québec*, [2023 QCCS 1264](#) at para 85 [*Bergeron*].

⁷⁹ *Piché Report*, *supra* note 53 at 47.

⁸⁰ *A.B.*, *supra* note 59 at para 58.

⁸¹ *Ibid* at para 59; *Trudelle*, *supra* note 60 at para 89; *Marcantonio v TVI Pacific Inc.*, [2009 CanLII 43191](#) (ONSC) at paras 36-37; *Cannon v Funds for Canada Foundation*, [2013 ONSC 7686](#) at para 5 [*Cannon*]; *Endean v The Canadian Red Cross Society*, [2000 BCSC 971](#) at paras 16-19 [*Endean*]; *Killough v The Canadian Red Cross Society*, [2007 BCSC 941](#) at paras 45-47; for a strong critique of the calculation of time spent on class actions, see *Fresco*, *supra* note 55 at para 99.

⁸² *Vaillancourt c Ville de Montréal*, [2024 QCCS 1419](#) at para 43; *Jane Doe (#7) v Newfoundland and Labrador*, [2022 NLSC 133](#) at para 95; *Elwin v Nova Scotia Home for Colored Children*, [2014 NSSC 375](#) at para 41 [*Elwin*]; *Anderson*, *supra* note 60 at para 95.

⁸³ *Piché Report*, *supra* note 53 at 74.

[107] Therefore, these criticisms are not uniform and depend on the particulars of each case, which reinforces the idea that the law should not prescribe one method over another.

[108] Having ruled out these potential options, what solutions should be adopted and lead to amendments to the *Uniform Act*? The following sections present three proposals that are primarily aimed at codifying existing law, with some adjustments. This codification seems appropriate in order to promote (1) better harmonization of the rules across Canada; (2) greater transparency toward litigants who will find in statutes – and not only in case law – the criteria according to which class counsel fees will be assessed; and (3) in some cases, a clarification of the state of the law and of certain powers of the courts.

3.3.1. Clarify the general test: Fair and reasonable fees

[109] The first potential amendment to the *Uniform Act* is very simple: It would clarify that class counsel fees can only be approved by the court if they are **fair and reasonable**.

[110] This amendment would merely codify existing law. As noted above, the Quebec and Ontario statutes already expressly set out this test, while courts in other provinces have embraced it in their decisions.

[111] Therefore, the main objective of such an amendment would be pedagogical. It would make visible to the parties, class members, and the courts a criterion around which there is already broad consensus.

3.3.2. Specify the factors relevant to the approval

[112] A more substantial amendment would be to specify in the *Uniform Act* the factors that the court must consider when determining whether fees are fair and reasonable.

[113] Some of the stakeholders consulted in preparation for this report noted that including such a list of factors in the legislation could increase the predictability and transparency of fees. In fact, prior to the 2020 Ontario reform, the Law Commission of Ontario suggested incorporating such a list of factors into that province's *Class Proceedings Act*,⁸⁴ as did Professor Piché (as she then was) in Quebec.⁸⁵

[114] The main challenge, then, is to identify the list of criteria that should be included in the Act, in light of the principles set out in section 3.1 of this report. To do so, it may

⁸⁴ *LCO Report*, *supra* note 61 at 9.

⁸⁵ *Piché Report*, *supra* note 53 at 49.

be helpful to start by considering the factors that have been included in the Ontario statute since 2020 and those that courts have developed in other jurisdictions.

[115] In Ontario, the legislation reformed in 2020 provides that the fairness and reasonableness of fees must be assessed in light of the following factors (the full text of which can be found in Appendix II to this report):

- the **results achieved** for class members (including the expected number of individual claims and the expected rate of acceptance of such claims);
- the **degree of risk** (considering, among other factors, the likelihood of a refusal to certify, of a dismissal of the action on the merits, and any other relevant factor such as any funding received and any related reports or investigations);
- the proportionality of the fees in relation to the **amount obtained**;
- an (optional) comparison with **different methods** that could have been used to structure or determine fees; and
- **any other matter** prescribed or that the court considers appropriate.

[116] These criteria codify in part the state of the law before the reform,⁸⁶ whereby the courts applied a broader list of factors that included the following items:

- the time spent and work done;
- the factual and legal complexities of the matters dealt with;
- the risk undertaken, including the risk that the matter might not be certified;
- the degree of responsibility assumed by class counsel;
- the monetary value of the matters in issue;
- the importance of the matter to the class;
- the degree of skill and competence demonstrated by class counsel;
- the results achieved;
- the ability of the class to pay;
- the expectations of the class as to the amount of the fees; and
- the opportunity cost to class counsel in the expenditure of time in pursuit of the litigation and settlement.⁸⁷

⁸⁶ See *Fresco*, *supra* note 55 at para 50.

⁸⁷ *Smith Estate*, *supra* note 55 at para 80; *Welsh v Ontario*, [2019 ONCA 41](#) at para 15; *Brown*, *supra* note 57 at para 40.

[117] Similar to what the *CPA* has provided since 2020, Ontario courts have often given significant weight to the risk undertaken by class counsel and the results achieved.⁸⁸ They have also sometimes considered whether the fees maintain the integrity of the profession, a flexible criterion.⁸⁹ Finally, they stress that a purely mathematical approach should not be adopted,⁹⁰ while sometimes using the multiplier approach and the percentage method for comparative purposes.⁹¹ In that context, multiplying factors of 1.1 to 4⁹² and percentages of 15% to 33%⁹³ have often been considered reasonable, depending on the circumstances of each case.

[118] In Quebec, although the *Code of Civil Procedure* does not contain a similar list of factors, courts have developed it based on other statutes,⁹⁴ first and foremost the *Code of Professional Conduct of Lawyers*.⁹⁵ That Code provides that lawyers must avoid giving a profit-seeking character to the profession (article 7)⁹⁶ and that their fees must be “fair and reasonable” (article 101), taking into account the following factors (article 102):

- experience;
- the time and effort required and devoted to the matter;
- the difficulty of the matter;
- the importance of the matter to the client;
- the responsibility assumed;
- the performance of unusual professional services or professional services requiring special skills or exceptional speed;
- the result obtained;

⁸⁸ *Lavier*, *supra* note 57 at para 27 (taking into account members’ take-up rate); *MacDonald et al v BMO Trust Company et al*, [2021 ONSC 3726](#) at para 26; *Shah v LG Chem, Ltd.*, [2018 ONSC 6101](#) at para 45 [*Shah*]; *Fischer v IG Investment Management Ltd.*, [2010 ONSC 7147](#) at para 25.

⁸⁹ *Shah*, *supra* note 88 at para 47; *The Trustees of the Drywall Acoustic Lathing and Insulation Local 675 Pension Fund v SNC-Lavalin Group Inc.*, [2018 ONSC 6447](#) at para 76; *Fresco*, *supra* note 55 at para 57.

⁹⁰ *Gagne*, *supra* note 54; *Parsons v Canadian Red Cross Society*, [2000 CanLII 22386](#) (ONSC) at paras 25-27 [*Parsons*].

⁹¹ See, e.g., *Parsons*, *supra* note 90 at paras 62-66; *Gagne*, *supra* note 54. While the multiplier approach is expressly mentioned in section 33 of the *Class Proceedings Act, 1992*, SO 1992, [c 6](#), the statute is silent with respect to percentage agreements in the event of a favourable outcome. The courts have nevertheless held that section 32(1)(c) of the same Act, by using “otherwise”, allows for percentage agreements in the event of a favourable outcome. See, for example, *Cass v WesternOne Inc.*, [2018 ONSC 4794](#) at paras 119-126.

⁹² *Gagne*, *supra* note 54.

⁹³ *Pro-Sys*, *supra* note 54 at para 42. This British Columbia decision also discusses the state of the law in Ontario with respect to the applicable range. See also *Baker (Estate) v Sony BMG Music (Canada) Inc.*, [2011 ONSC 7105](#) at para 63 where the Court wrote that a contingent fee of 20 to 30% is very common in the province. In *Cannon*, *supra* note 81, Belobaba J. held that up to 33% should be presumed valid and enforceable unless the agreement is not understood or accepted by the representative, or the amount is excessive or unreasonable. He then limited this approach to cases under \$50 million: *Brown*, *supra* note 57 at para 56. See most recently *Seed v Ontario*, [2017 ONSC 3534](#) at para 24; *Phillip v Deloitte Management Services LLP et al*, [2023 ONSC 1210](#) at para 9.

⁹⁴ See, e.g., *Option Consommateurs*, *supra* note 55 at para 64.

⁹⁵ CQLR, c B-1, [r 3.1](#).

⁹⁶ See, e.g., *A.B.*, *supra* note 59 at para 55.

- the fees prescribed by statute or regulation; and
- the disbursements, fees, commissions, rebates, costs or other benefits that are or will be paid by a third party with respect to the mandate the client gave him.

[119] These criteria, which largely match those developed by Ontario courts, are often adapted to the class action context. Thus, the result achieved consists of an assessment of [TRANSLATION] “what the class gets out of the action,”⁹⁷ but also of the effect of the action on the modification (or not) of reprehensible behaviour⁹⁸ and on the other goals of class actions.⁹⁹ Courts also consider the stage at which the case ended.¹⁰⁰ Moreover, the list is not exhaustive, so any other relevant factors may be considered.¹⁰¹ Courts place particular emphasis on the risk to class counsel, assessed at the time the agreement is concluded.¹⁰²

[120] If the fees appear unreasonable,¹⁰³ the courts may consider the hours worked on the action and compare the fees with the results of other calculation methods, such as the multiplier method.¹⁰⁴ While the Quebec Court of Appeal recommends no fixed scale, the Superior Court recognizes that a multiplier of 2 to 3 is the norm, which may however be exceeded depending on the circumstances.¹⁰⁵ In addition, fees between 20 and 25%, or sometimes between 15% and 33% of the amount obtained, may be considered reasonable, depending on the circumstances.¹⁰⁶

⁹⁷ *Option Consommateurs*, *supra* note 55 at para 62.

⁹⁸ *A.B.*, *supra* note 59 at para 55.

⁹⁹ *Ibid*; *Lépine c Société canadienne des postes*, [2017 QCCS 1407](#) at para 5.

¹⁰⁰ *Association québécoise de lutte contre la pollution atmosphérique c Groupe Volkswagen du Canada inc.*, [2022 QCCS 2186](#) at para 95 [*AQLPA*] (leave to appeal dismissed by [2022 QCCA 1305](#)); *Skarstedt*, *supra* note 57 at paras 13-14.

¹⁰¹ *A.B.*, *supra* note 59 at para 53.

¹⁰² *Ibid* at para 54; *Skarstedt*, *supra* note 57 at para 16. Some authors suggest, however, that this risk is lower than elsewhere in Canada since class counsel in Quebec are not exposed to significant costs awards: André Ryan and Shaun E Finn, “A More Modest Proposal: Submissions to the Quebec Minister of Justice in the Context of Possible Reforms to the Class Action Regime,” *Repères*, October 2021, EYB2021REP3365 (La Référence). However, we have been informed that a new practice of the Fonds d’aide aux actions collectives has the effect of requiring lawyers to pay costs if the action is dismissed, which can represent a considerable amount, especially if the case has required multiple expert opinions and appeals.

¹⁰³ *A.B.*, *supra* note 59 at para 64.

¹⁰⁴ *Ibid* at para 59; see also *Option Consommateurs*, *supra* note 55 at para 66.

¹⁰⁵ *A.B.*, *supra* note 59 at para 62. For example, the judge in *Pellemans c Lacroix*, [2011 QCCS 1345](#) approved a percentage fee agreement representing a multiplier of 4.58, while the judge in *Bergeron*, *supra* note 78, approved a multiplier of 4.25.

¹⁰⁶ *Trudelle*, *supra* note 60 at para 79 (referring to the 20 to 25% range); *A.B.*, *supra* note 59 at para 58; *AQLPA*, *supra* note 100 at paras 90 and 95 (suggesting that 30% is unusual). It should also be noted that agreements sometimes provide for increasing or decreasing rates depending on the steps taken in the case or the amount obtained: see *Girard c Vidéotron*, [2019 QCCS 2412](#) at para 29 (leave to appeal dismissed by [2019 QCCA 1531](#)); *Marcil c Commission scolaire de la Jonquière*, [2018 QCCS 3836](#) at para 80.

[121] In British Columbia, courts have developed, like their Quebec and Ontario counterparts, a list of factors to consider when assessing class counsel fees:

- the results achieved;
- the risks undertaken;
- the time expended;
- the complexity of the matter;
- the degree of responsibility assumed by counsel;
- the importance of the matter to the client;
- the quality and skill of counsel;
- the ability to pay;
- the client and the class expectation;
- the monetary value of the matters in issue;
- fees in similar cases; and
- the integrity of the profession.¹⁰⁷

[122] In addition, British Columbia courts often cite the analyses of Ontario courts.¹⁰⁸ Thus, as in Ontario, where the agreement is percentage-based, a range of 15% to 33% is generally considered reasonable¹⁰⁹ and the multiplier approach can be used as a comparative tool.¹¹⁰

[123] In other common law jurisdictions, courts have largely adopted the criteria set out in the Ontario and British Columbia cases. This is the case in Saskatchewan,¹¹¹ Alberta,¹¹² Manitoba,¹¹³ New Brunswick,¹¹⁴ Nova Scotia,¹¹⁵ and Newfoundland and Labrador.¹¹⁶ The issue does not seem to have been addressed yet in Prince Edward

¹⁰⁷ *Endean*, *supra* note 81; *Jeffery v Nortel Networks*, [2007 BCSC 69](#) at para 70; *Catalyst Paper Corporation v Atofina Chemicals Inc.*, [2009 BCSC 1659](#) at para 65; *Kett v Kobe Steel, Ltd.*, [2020 BCSC 1977](#) at paras 53 and 58.

¹⁰⁸ *Sherry v CIBC Mortgage Inc.*, [2022 BCSC 676](#) at para 41.

¹⁰⁹ *Pro-Sys*, *supra* note 54 at para 43; *Cardoso*, *supra* note 60 at para 18.

¹¹⁰ *Endean*, *supra* note 81 at para 19. For an example where the judge uses the multiplier approach as a comparative tool, see *Coburn and Watson's Metropolitan Home v Bank of Montreal*, [2021 BCSC 2398](#) at paras 23 and 26 [*Coburn*].

¹¹¹ *Sparvier v Canada (Attorney General)*, [2006 SKQB 533](#) at para 44, *aff'd* [2007 SKCA 37](#); *Hello Baby Equipment Inc. v Bofa Canada Bank*, [2018 SKQB 276](#) at para 50; *Carruthers v Purdue Pharma*, [2022 SKKB 214](#) at para 96.

¹¹² *TL v Alberta (Director of Child Welfare)*, [2015 ABQB 815](#) at paras 30-31; *Northwest v Canada (Attorney General)*, [2006 ABQB 902](#) at para 70; *Adrian v Canada (Minister of Health)*, [2007 ABQB 377](#) at para 11.

¹¹³ *Weremy v Manitoba*, [2023 MBKB 122](#) at para 36; *Tataskweyak Cree Nation et al. v Canada (A.G.)*, [2021 MBQB 276](#) at para 14.

¹¹⁴ *Tidd v New Brunswick*, [2023 NBKB 185](#) at paras 28-32.

¹¹⁵ *Elwin*, *supra* note 82 at para 29; *Sweetland v Glaxosmithkline Inc.*, [2019 NSSC 136](#) at para 28; *Gallant v The Roman Catholic Episcopal Corporation of Halifax*, [2022 NSSC 347](#) at paras 62-63.

¹¹⁶ See, e.g., *Verna Doucette v Eastern Regional Integrated Health Authority*, [2010 NLTD 29](#); *Rideout v Health Labrador Corp*, [2007 NLTD 150](#); *Anderson*, *supra* note 60 at para 88.

Island.¹¹⁷ Courts have also confirmed that the issue [TRANSLATION] “receives similar treatment” across Canada.¹¹⁸

[124] Finally, beyond the criteria already set out in these various statutes and court decisions, Professor Piché (as she then was) recommended in her 2019 report that fees be set [TRANSLATION] “according to the judicial stage at which the case is concluded,” that is, that they be lower at the authorization stage than at the final judgment stage, and potentially that they follow a curve that would be inversely proportional to the amount obtained.¹¹⁹ This proposal has carried favour with some courts.¹²⁰

[125] In light of the above, it seems appropriate to amend the *Uniform Act* to specify the criteria to be considered by the court when it is called upon to approve class counsel fees. To reflect not only certain provincial statutes but also the concerns expressed by the courts, it is proposed to:

- Set out, in the first place, two main factors that should guide the court in its assessment: the results achieved (not only in monetary terms, but also with respect to other remedies which contribute to the objectives of class actions) and the risk undertaken (at the moment of filing the initial application);
- Provide a list of other factors that may be considered, namely:
 - o the time spent and work done, in relation among other things to the stage at which the file concluded;
 - o the factual and legal complexities of the issues dealt with;
 - o the degree of responsibility assumed by class counsel;
 - o the monetary value of the matters in issue;
 - o the importance of the matter;
 - o the degree of skill and competence demonstrated by class counsel; and
 - o the opportunity cost to class counsel in the expenditure of time in pursuit of the litigation and settlement;
- Clarify that different calculation methods – i.e. the multiplier and the percentage methods – can be used for comparative purposes but should not be at the core of the analysis, which relates primarily to the criteria listed above; and
- Allow the court to consider any other factors it deems relevant to keep the assessment contextual and discretionary.

¹¹⁷ See *King & Dawson v Government of P.E.I.*, [2020 PECA 13](#).

¹¹⁸ *Option Consommateurs*, *supra* note 55 at para 68.

¹¹⁹ *Piché Report*, *supra* note 53 at 72.

¹²⁰ *Anderson*, *supra* note 60 at para 115.

[126] These amendments would essentially adopt the approach of the new Ontario legislation while further clarifying the factors to be considered, for pedagogical and harmonization purposes, and relegating calculation methods to a secondary and comparative role.

3.3.3. Provide for the possibility of a holdback

[127] Finally, a third amendment would add to the *Uniform Act* the possibility for the court to order a holdback on fees until a future event occurs, such as the filing of a final report setting out the distribution of the funds awarded and the administration of the claims, as well as the rate of claims made and accepted in relation to the estimated or known size of the class. Without becoming the norm, such a holdback could prove relevant, for instance, in cases of individual recovery, collective recovery with individual liquidation, or in certain settlements.

[128] Ontario law has expressly provided for this possibility since 2020. However, even before this reform, the courts of several jurisdictions, including Ontario, Quebec, British Columbia and Nova Scotia, had also confirmed this possibility.¹²¹ In addition, in 2019 Professor Piché (as she then was) made a similar proposal that [TRANSLATION] “the award of fees would only proceed after having been able to observe the completion of the distribution procedure to the members,” especially in cases where an individual recovery is ordered.¹²²

[129] As noted by some courts, the purpose of such a measure is to ensure that class counsel continue to assist class members throughout the claims process rather than terminating their involvement as soon as judgment is obtained or the settlement is approved.¹²³ It is important not to suggest that lawyers necessarily cease to work when their fees are no longer at stake, but it seems wise to allow the courts, on a case-by-case basis, to provide for some holdback where it seems appropriate in the circumstances, in particular if class counsel are given a role in the administration of the judgment or settlement and if there are indications that this role may be poorly performed.

[130] In addition, in certain cases of individual recovery, a holdback may sometimes be appropriate if the fees represent a percentage of the compensation actually paid to members of the class, since the latter will only be known after the individual claims process is completed.

¹²¹ *Eidoo v Infineon Technologies AG*, [2014 ONSC 6082](#) at paras 85-86; *Sweetland*, *supra* note 60 at paras 36-37; *Option Consommateurs c Infineon Technologie, a.g.*, [2014 QCCS 4949](#) at paras 133 and 148; *Option Consommateurs c Rohm Co. Ltd.*, [2023 QCCS 4212](#) at para 123; *Coburn*, *supra* note 110 at para 28.

¹²² *Piché Report*, *supra* note 53 at 73.

¹²³ *Jardine v Certaineed Corporation*, [2017 BCSC 364](#) at paras 13-14; *Sweetland*, *supra* note 60 at paras 36-37.

[131] In short, since this objective appears to be laudable and the possibility of a holdback has already been confirmed by the courts of several jurisdictions, it seems appropriate to amend the *Uniform Act* to include this aspect as well, without however making holdbacks the norm and while leaving judges a wide margin of discretion to determine, on a case-by-case basis, whether this option is useful. This codification would harmonize the approach across Canada and would pursue a pedagogical objective by clarifying the power of the courts in that regard.

4. Enforcement of final judgments and settlements

[132] The third and final issue that the working group analyzed this year concerns the enforcement of final judgments and settlements.

[133] This very last phase of a class action is critical but is sometimes fraught with difficulties. While the court can monitor enforcement, it does not always have the necessary information to do so correctly. Therefore, it seems appropriate to add to the *Uniform Act* a requirement to report on the enforcement of judgments and settlements and specify the elements that such a report should include. To avoid this obligation becoming too onerous or disproportionate, it should be provided that the courts may derogate from it depending on the circumstances of each case.

[134] This recommendation is based on the analysis presented in this section, which is divided into three parts:

- The first part presents the issue and its context. It identifies the circumstances in which the enforcement of judgments and settlements may be lacking and the measures that could address this issue (4.1).
- The second part describes the state of the law in each Canadian province. It identifies the legislative and regulatory provisions and the case law that provide for measures to monitor the enforcement of final judgments and settlements (4.2).
- The third part identifies possible solutions for amending the *Uniform Act* based on the first two parts and the results of a survey of practitioners across Canada (4.3).

4.1. Background and presentation of the issue

4.1.1. The importance of enforcing judgments and settlements

[135] There are several possible outcomes to class actions, including a final judgment or a court-approved settlement.¹²⁴ The available data suggest this second eventuality is more frequent than the first.¹²⁵

[136] The final judgment granting the action in whole or in part generally imposes remedial measures on the defendants, which may take the form of compensation for class members, other remedial measures, or changes to certain practices. Settlements may also provide for such measures, which the defendants voluntarily undertake to implement.

[137] Once these corrective measures have been ordered, they must be enforced to have the desired effect. For Professor Piché (as she then was), this [TRANSLATION] “phase of enforcement of the judgment or settlement, and thus of recovery by the members, is *the most fundamental*”¹²⁶ because, without enforcement, the judgment or settlement cannot achieve the objectives of class actions. Enforcement is essential for access to justice for class members and, above all, for access to substantive justice.¹²⁷ It is also valuable in helping to change defendants’ behaviour, another objective of class actions.¹²⁸

[138] Moreover, the proper enforcement of judgments and settlements appears necessary to maintain public confidence in class actions. As the Law Commission of Ontario noted in a report by Professors Piché and Kalajdzic (as they then were), “[l]ack of compensation to class members is one of the most common and trenchant criticisms of class actions”.¹²⁹ While this issue does not affect all class actions, the proper enforcement of judgments and settlements reinforces the idea that class actions truly serve their members and can succeed in achieving their objectives.

¹²⁴ Other procedural incidents may bring the proceedings to an end, such as discontinuance, but the most frequent outcomes are settlement and, to a lesser extent, judgment on the merits.

¹²⁵ See e.g. Jasminka Kalajdzic, *Class Actions in Canada: The Promise and Reality of Access to Justice*, Vancouver, UBC Press, 2018 at 25.

¹²⁶ Catherine Piché, “Le recouvrement et l’indemnisation des membres dans l’action collective” (2016) 94 *Can Bar Rev* 171 at 174.

¹²⁷ Kalajdzic, *supra* note 125 at 25; Piché, *supra* note 126 at 178; see also *AIC Limited v Fischer*, [2013 SCC 69](#) at para 24 (which focuses on access to substantive justice, i.e. fair and adequate redress for members).

¹²⁸ Law Commission of Ontario, *Class Actions: Objectives, Experiences and Reforms – Final Report*, Toronto, 2019 at 10, online (pdf): <<https://www.lco-cdo.org/wp-content/uploads/2019/07/LCO-Class-Actions-Report-FINAL-July-17-2019.pdf>> [*LCO Report*].

¹²⁹ *Ibid* at 58; see also Kalajdzic, *supra* note 125 at 112.

4.1.2. The most frequent enforcement difficulties

[139] Certain types of orders pose few enforcement difficulties: if a defendant undertakes, for example, to stop charging certain fees, it is often easy to verify that this undertaking is respected.

[140] However, compensating members can be more complex, especially when an action is subject to individual recovery or collective recovery with individual liquidation. A parenthesis is in order here to explain these two concepts: recovery and liquidation.

[141] The method of recovery essentially concerns the terms of payment by the defendant. There are three possible mechanisms. In collective recovery, the defendant pays the total amount of the claims from the outset – when it is known with sufficient precision¹³⁰ –, regardless of the actual number of claims made, which means that a balance may remain after they have been settled. In individual recovery, on the other hand, the defendant only pays the claims submitted in due form by each class member.¹³¹ In principle, this type of recovery is only appropriate if it is impossible to assess the total amount of the claims, either because the number of members or the amount to which they are entitled is unknown. Finally, recovery can be hybrid, i.e. partly collective and partly individual.

[142] When the recovery is collective, the court must also determine how the amount will be distributed.¹³² The rule is individual liquidation – also known as direct distribution – which involves paying each class member their share of the collective recovery. Collective liquidation – or indirect distribution – consists of paying the amount of the collective recovery to third parties, for example, organizations whose mission is related to the action. Exceptional in nature, it is useful [TRANSLATION] “when the identity of the members is impossible or difficult to obtain, when it would be very complex for the members to prove their damages on an individual basis, or when the claims are modest”.¹³³

[143] Enforcement issues, therefore, arise mainly in cases of individual recovery or collective recovery with individual liquidation. In these situations, several factors can limit the compensation awarded to members. When each member must file a claim, the effect of inertia and the difficulty of reaching all members mean that claim rates are sometimes low, although they vary significantly from one action to another.¹³⁴ Even

¹³⁰ See e.g. art 595 *CCP*. The mechanism may differ in other provinces, but the general idea remains the same: see the *Class Proceedings Act, 1992*, SO 1992, c 6, arts 24(1) and 26.

¹³¹ See arts 599-601 *CCP*; *CPA (ON)*, *ibid*, art 25.

¹³² See arts 596-597 *CCP*; *CPA (ON)*, *ibid*, art 26.

¹³³ Piché, *supra* note 126 at 202.

¹³⁴ See e.g. Kalajdzic, *supra* note 125 at 114.

when the distribution of sums is more automatic – for example, by paying an amount into an electronic account – it can be difficult to reach members to send them what they are owed. As a result, the compensation rate may be lower than anticipated in the judgment or settlement.

4.1.3. The requirement to report on enforcement

[144] In some cases, this result is unavoidable: despite the often considerable efforts of the administrator or the parties' lawyers, the distribution may remain imperfect. In other cases, however, better compensation could be achieved if additional efforts were made, for example, by trying another distribution method or another way of notifying members.

[145] In these cases, there is no real structural incentive for the actors involved to make these additional efforts. If the administration of the settlement or judgment is entrusted to a third party – often a company specializing in the field – it will invest the necessary effort, but nothing beyond that. The defence does not necessarily have a particular interest in making these efforts, either because it has already paid the total amount claimed or because a more significant number of claims would result in a larger sum in cases involving individual recovery. Although often excellent at accompanying class members, class counsel may also have no incentive to do so when their fees have already been paid unless they are delegated the responsibility to administer the judgment or settlement.

[146] In the absence of such structural incentives, the appropriate actor to supervise enforcement is the court, which already acts as a protector of absent members in other contexts.¹³⁵ Informed of a low claims rate, it could, for example, approve a second distribution, order new notices to be sent to members or extend the claims deadline.¹³⁶

[147] However, to intervene in this way, the court must have the necessary information to assess the success of the enforcement. Various mechanisms can be contemplated to ensure that the administrator of the judgment or settlement provides the court with the information, whether it be a brief sworn statement confirming that the distribution has been made or a more detailed report providing statistics on claims, for example.

[148] These mechanisms have advantages and disadvantages, which will be examined in more detail in section 4.3 of this report. On the one hand, in addition to enabling the court to monitor enforcement, the report can act upstream to encourage the parties to develop effective distribution mechanisms, knowing that the result of these mechanisms

¹³⁵ See *Baxter v Canada (AG)*, [2006 CanLII 41673](#) (ON SC) at para 12.

¹³⁶ Bruce Johnston & Yves Lauzon, *Traité pratique de l'action collective*, Montréal, Éditions Yvon Blais, 2021 at 359-360.

will be systematically made public.¹³⁷ In addition, public reports can provide [TRANSLATION] “the legal community as a whole (academic researchers, in particular) with reliable data for measuring and comparing the arrangements for compensating class members”.¹³⁸ From this perspective, the reports can contribute to the social dimension of class actions, in addition to fostering enforcement in each particular case.

[149] On the other hand, preparing an administration report can sometimes prove difficult. In many cases, for example, it is impossible to determine with certainty the number of class members and, consequently, calculate the rate of individual claims.¹³⁹ Even when such a calculation is possible, it can be tedious. The administrator who performs the calculation will generally be remunerated from the funds set aside for the compensation of members. As a result, an overly onerous accounting process can be counterproductive regarding the objectives of class actions.

4.2. State of the law

[150] Now that the issue has been identified, we can examine how the *Uniform Act* and Canadian jurisdictions respond to it.

4.2.1. The *Uniform Class Proceedings Act*

[151] The *Uniform Act* does not expressly provide that the administrator must report to the court. It does, however, give the court the power to oversee the distribution of amounts awarded at the end of the judicial process:

Distribution

33(1) The court may direct any means of distribution of amounts awarded under this Division that it considers appropriate. [...]

(4) The court must supervise the execution of judgments and the distribution of awards under this Division and may stay the whole or any part of an execution or distribution for a reasonable period on the terms it considers appropriate.

[152] The *Uniform Act* also provides that a third party who has been asked by the court to inquire into individual matters (in the case of individual recovery) is bound to report to the court:

27(1) If the court determines common issues in favour of a class or subclass and determines that there are issues, other than those that may be determined under section 32, that are applicable only to certain individual members of the class or subclass, the court may [...]

¹³⁷ Kalajdzic, *supra* note 125 at 118.

¹³⁸ *Patterson c Ticketmaster Canada Holdings*, [2022 QCCS 3203](#) at para 71; see also Kalajdzic, *supra* note 125 at 113 and 118.

¹³⁹ Kalajdzic, *supra* note 125 at 26.

(b) appoint one or more persons including, without limitation, one or more independent experts, to conduct an inquiry into those individual issues under the [rules of court] and report back to the court

[153] Therefore, the *Uniform Act* is largely silent on the topic of reporting. Canadian jurisdictions, for their part, adopt three distinct approaches, ranging from the least demanding to the most demanding.

4.2.2. The dominant approach: exceptional reports

[154] At the less demanding end of the spectrum, most provinces adopt section 33 of the *Uniform Act* and simply provide that the court has the power to supervise the administration of the judgment or settlement, including the distribution of any amounts awarded.¹⁴⁰

[155] For example, section 36(4) of Saskatchewan's *Class Actions Act* provides as follows:

36(1) The court may direct any means of distribution of amounts awarded pursuant to this Part that it considers appropriate. [...]

(4) The court shall supervise the execution of judgments and the distribution of awards pursuant to this Part and may stay the whole or any part of an execution or distribution for a reasonable period on the terms it considers appropriate.¹⁴¹

British Columbia, Alberta, Manitoba, New Brunswick and Nova Scotia have adopted similar, if not identical, provisions.

[156] In these provinces, no legislative or regulatory provision specifically provides for the filing of an administration report. Some courts have imposed such a requirement on a case-by-case basis, relying on their general supervisory powers, but a review of the relevant case law suggests that this practice is inconsistent and not widespread.¹⁴²

[157] In British Columbia, for example, a few published decisions required the preparation and filing of a final report. However, these decisions concerned settlements between the parties, which themselves provided for the obligation to report.¹⁴³ In only one more recent case, the Court imposed such an obligation even though it was not provided for in the settlement, relying on its general supervisory power and drawing inspiration from, among other things, the recent Ontario reforms discussed below.¹⁴⁴ In

¹⁴⁰ With the exception of Newfoundland and Labrador and the Federal Courts, which do not have a provision to the same effect. Even so, their courts probably have similar inherent powers: see e.g. *Canada (Attorney General) v Fontaine*, [2017 SCC 47](#) at para 33.

¹⁴¹ *Class Actions Act*, SS 2001, c C-12.01. See the other relevant provisions in Appendix III to this report.

¹⁴² It is of course possible that decisions have been missed or remain unpublished.

¹⁴³ See e.g. *Bartolome v Nationwide Payday Advance Inc.*, [2010 BCSC 1433](#) at para 16; *Bodnar v The Cash Store Inc.*, [2011 BCCA 384](#) at para 5.

¹⁴⁴ *Sherry v CIBC Mortgage Inc.*, [2022 BCSC 676](#) at para 13.

other words, judges seem reluctant to proactively impose an obligation to report but readily endorse such an obligation when the parties propose it.

[158] In Saskatchewan, our research identified only one decision that specified that the administrator of an individual claims process had to report to the Court. This case dealt with residential schools, and the complexity of the parties' proposed claims process likely led the court to include this requirement without, however, imposing any more specific conditions.¹⁴⁵

[159] A judge hearing a similar case reached the same conclusion in Alberta,¹⁴⁶ while one of his Manitoba counterparts reached the opposite conclusion, ruling that a reporting mechanism was not necessary.¹⁴⁷ This notable difference in cases that were factually very similar illustrates how the imposition of a reporting requirement under a more general supervisory power remains fickle and subject to the will of each judge.

[160] Finally, in Nova Scotia and New Brunswick, our research in case law did not identify any decisions that imposed a reporting requirement despite the existence of a similar supervisory power.

[161] In short, when the law does not require a report, judges sometimes rely on their general powers to require one on a case-by-case basis. However, this type of intervention is infrequent and does not follow clear guidelines.

4.2.3. The Quebec approach: reports required in some instances

[162] In Quebec, no article in the *Code of Civil Procedure* expressly gives the court the power to supervise the enforcement of the judgment or settlement. However, courts have concluded that this is one of their inherent powers, which has enabled them to reach the same result as in the jurisdictions mentioned above.

[163] In addition to this general power, section 59 of the *Regulation of the Superior Court of Québec in civil matters*¹⁴⁸ provides more specifically that an administration report must be prepared and filed in cases where a *judgment* orders the *collective recovery* of claims with *individual liquidation*:

59. Report on administration. If a judgment orders the collective recovery of the claims made with individual payment of the members' claims, the special clerk or third person designated by the court must file with the court, after the time limit for members to file their claim has expired, a detailed report on its administration and give notice to the parties and the Fonds d'aide aux actions collectives.

¹⁴⁵ *Sparvier v Canada (Attorney General)*, [2006 SKQB 533](#) at para 18.

¹⁴⁶ *Northwest v Canada (Attorney General)*, [2006 ABQB 902](#) at para 22.

¹⁴⁷ *Semple et al v The Attorney General of Canada et al*, [2006 MBQB 285](#) at para 4.

¹⁴⁸ *Regulation of the Superior Court of Québec in civil matters*, [CQLR, c C-25.01, r 0.2.1](#), art 59.

The report lists the members who filed a claim, the amount paid to each member, the remaining balance and the amount withheld for the Fonds d'aide aux actions collectives pursuant to section 42 of the Act and Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives (chapter F-3.2.0.1.1, r. 2).¹⁴⁹

[164] In such cases, the courts have developed a practice whereby they provide that the proceedings will only come to an end by obtaining a “closing judgment”. As long as this judgment has not been issued, the judge retains their power to supervise the proceedings and may, in particular, receive and approve the report provided in the article above.¹⁵⁰ As the Superior Court noted, even though [TRANSLATION] “the *Code of Civil Procedure* is silent on the issue of a closing judgment, [i]t is a judicial practice that is becoming more systematic”.¹⁵¹

[165] Section 59 of the *Regulation* applies only in particular circumstances. The courts have concluded, however, that [TRANSLATION] “[e]ven beyond what is set out in section 59 of the *Regulation*, the court has inherent powers to require such a final report in all cases of execution of a settlement or a final judgment”.¹⁵²

[166] In *Pacius v. Stockx*,¹⁵³ for example, the settlement agreement provided that the defendant would automatically issue a credit to each class member. The Court did not apply section 59 of the *Regulation*. Still, it did impose an obligation on the claims administrator to file an administration report with content similar to that provided in that section.¹⁵⁴

[167] Moreover, even without ordering the production of a detailed report, courts have sometimes imposed more summary accountability measures. In *Leung*, for example, the settlement between the parties provided compensation for class members through automatic credit to their DoorDash accounts. In the absence of an individual claims process, the judge concluded that section 59 of the *Regulation* did not apply but nevertheless required DoorDash to file with the Court a sworn declaration that the credits

¹⁴⁹ This article already existed under the former *Code of Civil Procedure*, CQLR, c C-25, through the *Règlement de procédure civile*, [RLRQ, c C-25, r 11](#), art 67. The working group notes that the list of members, which is requested in principle, is rarely provided and is often replaced by the number of members having filed a claim.

¹⁵⁰ In the context of settlements, see the *Directives de la Cour supérieure du Québec, division de Montréal*, [10 février 2025](#), art 130.

¹⁵¹ *Handicap-Vie-Dignité c Résidence St-Charles-Borromée, CHSLD Centre-ville de Montréal*, [2018 QCCS 2159](#) at paras 68-69.

¹⁵² *Patterson*, *supra* note 138 at para 70; see also *Morier c Ouellet Canada inc.*, [2024 QCCS 269](#) at paras 73 and 74.

¹⁵³ *Pacius c Stockx*, [2023 QCCS 1984](#).

¹⁵⁴ *Ibid* at para 61.

had been issued and postponed the end of the proceedings until the issuance of a closing judgment.¹⁵⁵

[168] In short, Quebec formally imposes an administration report only in cases where a collective recovery is subject to individual liquidation. In other cases, judges have sometimes relied on their general power to supervise enforcement in order to impose less stringent reporting measures tailored to the circumstances of the case in question.

4.2.4. The Ontario approach: reports required in most cases

[169] Finally, the Ontario approach since the 2020 reform, modelled by Prince Edward Island the following year, includes the most detailed requirements for administration reports. Reports are now required in all cases where the proceedings result in a judgment ordering collective recovery – whether accompanied by collective or individual liquidation – or in a settlement.

[170] Section 26(12) of the *Class Proceedings Act, 1992* requires a report in cases where the court orders collective recovery in accordance with section 24 of that Act, whether the distribution is collective or individual:

26 (1) The court may direct any means of distribution of amounts awarded under section 24 or 25 that it considers appropriate. [...]

(7) The court shall supervise the execution of judgments and the distribution of awards under section 24 or 25 and may stay the whole or any part of an execution or distribution for a reasonable period on such terms as it considers appropriate. [...]

(12) No later than 60 days after the date on which an award made under section 24 is fully distributed, including any distribution under subsection (10) or section 27.2, the person or entity who administered the distribution shall file with the court a report containing their best information respecting the following:

1. The amount of the award.
2. The total number of class members.
3. Information respecting the number of class members identified in each affidavit filed under subsection 5 (3) in the motion for certification.
4. The number of class members who received notice associated with the distribution, and a description of how notice was given.
5. The number of class members who made a claim for monetary relief and, of them, the numbers of class members who did and who did not receive the relief.

¹⁵⁵ *Leung c DoorDash Technologies Canada Inc.*, [2022 QCCS 1083](#) at paras 67 and 82-84.

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6. The amount of the award distributed to class members and a description of how the award was distributed.
7. The amount and recipients of any distribution under subsection (10) or section 27.2.
8. The number of class members who opted out of the class proceeding.
9. The smallest and largest amounts distributed to class members, the average and the median of the amounts distributed to class members, and any other aggregate data respecting the distribution that the person or entity who administered the distribution considers to be relevant.
10. The administrative costs associated with the distribution of the award.
11. The solicitor fees and disbursements.
12. Any amount paid to the Class Proceedings Fund established under the *Law Society Act* or to a funder under a third-party funding agreement approved under section 33.1.
13. Any other information the court requires to be included in the report.

(13) Once the court is satisfied that the requirements of subsection (12) have been met with respect to a filed report, the court shall make an order approving the report and append the report to the order.

[171] Almost identical requirements are imposed in all cases where a settlement puts an end to the proceedings, pursuant to section 27.1 of the *Class Proceedings Act, 1992*:

27.1 (1) A proceeding under this Act may be settled only with the approval of the court. [...]

(13) The court shall supervise the administration and implementation of the settlement.

(16) No later than 60 days after the date on which the settlement funds are fully distributed, including any distribution under section 27.2, the administrator or other person or entity who administered the distribution shall file with the court a report containing their best information respecting the following:

1. The amount of the settlement funds before distribution.
2. The total number of class or subclass members.
3. Information respecting the number of class members identified in each affidavit filed under subsection 5 (3) in the motion for certification.
4. The number of class members who received notice associated with the distribution, and a description of how notice was given.
5. The number of class or subclass members who made a claim under the settlement and, of them, the numbers of class or subclass members who did and who did not receive settlement funds.
6. The amount of the settlement funds distributed to class or subclass members and a description of how the settlement funds were distributed.

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7. The amount and recipients of any distribution under section 27.2, and the amount, if any, that was subject to reversion or otherwise returned to the defendant.
8. The number of class or subclass members who objected to the settlement and the nature of their objections.
9. The number of class or subclass members who opted out of the class proceeding.
10. The smallest and largest amounts distributed to class or subclass members, the average and the median of the amounts distributed to class or subclass members, and any other aggregate data respecting the distribution that the administrator or other person or entity who administered the distribution considers to be relevant.
11. The administrative costs associated with the distribution of the settlement funds.
12. The solicitor fees and disbursements.
13. Any amount paid to the Class Proceedings Fund established under the *Law Society Act* or to a funder under a third-party funding agreement approved under section 33.1.
14. Any other information the court requires to be included in the report.

(17) Once the court is satisfied that the requirements of subsection (16) have been met with respect to a filed report, the court shall make an order approving the report and append the report to the order.

[172] Prince Edward Island's *Class Proceedings Act*, enacted in 2021, is modelled in many respects on the new Ontario legislation¹⁵⁶ and, therefore, contains similar provisions, with a few minor adjustments.¹⁵⁷

[173] Given the recent adoption of the Ontario and Prince Edward Island provisions, few decisions have applied them. The few judgments on the subject show that the reports are sometimes very short, listing the elements required by the relevant provisions without providing further explanations or details.¹⁵⁸

[174] It should be noted that before the 2020 reform, Ontario courts had only the general supervisory power described above.¹⁵⁹ Using this power, some courts had already required an administrative report, although this practice was at best inconsistent and seemed to depend as much on the terms of the agreement between the parties, where applicable, as on the wishes of the judge hearing the action.¹⁶⁰ Professor Kalajdzic (as she

¹⁵⁶ Prince Edward Island Legislative Assembly, *Order of the Legislature*, 2nd sess, 66th leg, 22 October 2021 at 2133.

¹⁵⁷ *Class Proceedings Act*, SPEI 2021, c 18, arts 36(7) and 38(5).

¹⁵⁸ See e.g. *Rezmuves v Hohots*, [2023 ONSC 7062](#) at para 3.

¹⁵⁹ *LCO Report*, *supra* note 128 at 60; Warren Winkler et al, *The Law of Class Actions in Canada*, Toronto, Canada Law Book, 2014 at 330-333.

¹⁶⁰ See e.g. *Sauer v Canada (Agriculture)*, [\[2008\] OJ No 3419 \(QL\)](#) at para 93; *Abdulrahim v Air France*, [2011 ONSC 398](#) at para 37; *Griffin v Dell Canada Inc.*, [2011 ONSC 3292](#) at para 55; *Forbes v Toyota Canada Inc.*, [2018 ONSC 5369](#) at paras 37-38.

then was) noted that few judges required such reports.¹⁶¹ However, this observation made before the 2020 reform confirms that an approach based on a general supervisory power can prove unpredictable.

4.3. Proposed amendments to the *Uniform Act*

[175] What conclusions can be drawn from the foregoing to identify avenues for reforming the *Uniform Class Proceedings Act*?

[176] From the outset, it seems appropriate to retain section 33(4) of the *Uniform Act*, which provides generally that the courts have the power to supervise the enforcement of judgments and settlements. This power is inherent,¹⁶² but it is helpful to codify it for educational purposes and better to establish the courts' authority in this area. In addition, the generality of this attribution allows the courts to adjust the reporting requirements to the circumstances of each case.

[177] As described in greater detail below, however, it seems appropriate to add to the *Uniform Act* the requirement to file a report in all cases¹⁶³ and to provide a list of items that should be included in the report while giving the courts broad discretion to modify the contents or completely exempt the administrator from the obligation to file a report, if the circumstances so warrant.

[178] These recommendations aim to clarify the reporting requirements to ensure greater predictability in this area while preserving a high degree of flexibility so that this obligation can be modulated according to the case.

4.3.1. The *Uniform Act* should require the filing of an administration report

[179] The first question is whether the *Uniform Act* should require the filing of an administration report and, if so, in what circumstances.

[180] There are opposing views on this point. On the one hand, Professors Piché and Kalajdzic (as they then were), in their respective writings or in the report they prepared for the Law Commission of Ontario in 2019, suggested that “claims administrators submit reports as part of the final approval/reporting on *every* class action

¹⁶¹ Jasminka Kalajdzic, “The “Illusion of Compensation”: Cy Près Distributions in Canadian Class Actions” (2013) 92:2 Can Bar Rev 173 at 191; Kalajdzic, *supra* note 125 at 25, 115-116.

¹⁶² Fontaine, *supra* note 140 at para 33.

¹⁶³ In the case of individual recovery, which is often administered by the court itself, a report is not required under current legislation and guidelines, presumably because the court already has access to the relevant information. That said, a report could still be produced for the sake of public transparency. What is more, in all cases where a holdback is ordered (see section 3.3.3, above), a report would seem useful, if not necessary, to verify compliance with the conditions to which the holdback is subject.

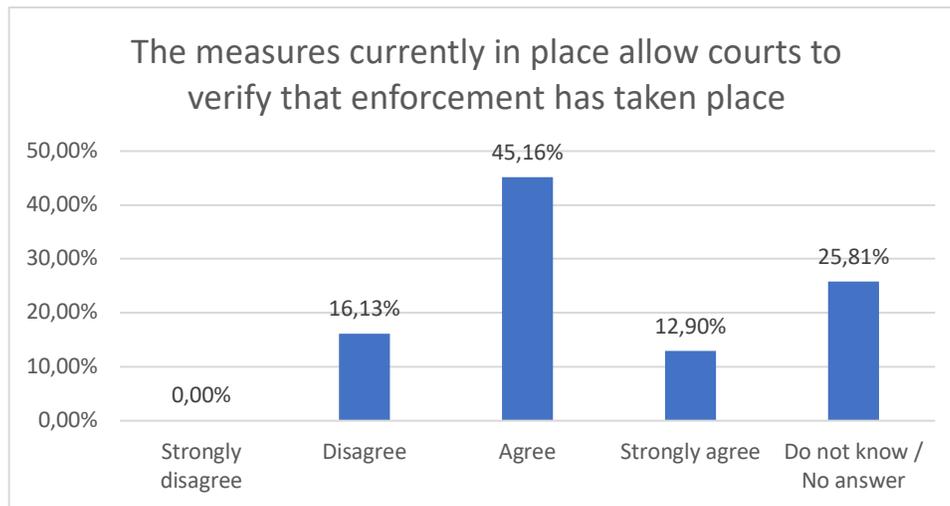
distribution”.¹⁶⁴ In their view, courts should not hesitate to impose such an obligation while ensuring that it is easy to administer.¹⁶⁵

[181] Their position is based on the reasons set out in the introduction to this report, including the necessity of the report for the court to fulfil its oversight role, the incentive that a public report represents for the parties to devise an effective distribution mechanism, and the usefulness of a report in better understanding the effectiveness of judgments and settlements, and therefore of class actions more broadly.

[182] On the other hand, the Law Reform Commission of Saskatchewan concluded in its 2023 Final Report on the reform of Saskatchewan’s *Class Actions Act* that such a requirement was unnecessary. It cited the opinion of one person consulted that it “would create unnecessary work for settlement administrators that would not, in the end, provide any greater access to justice, judicial economy, or behaviour modification”.¹⁶⁶

[183] The results of the survey conducted as part of this project provide helpful insight into this issue. A fuller analysis of these results will be provided separately, but for now, it should be noted that 129 people completed all or part of the survey, 84% of whom were lawyers representing a diversity of practices, perspectives¹⁶⁷ and jurisdictions.¹⁶⁸

[184] Respondents were asked to comment on the following statement, based on the law in their jurisdiction: “The measures currently in place allow courts to verify that enforcement has taken place”. The 93 respondents to this question answered as follows:



¹⁶⁴ LCO Report, *supra* note 128 at 64.

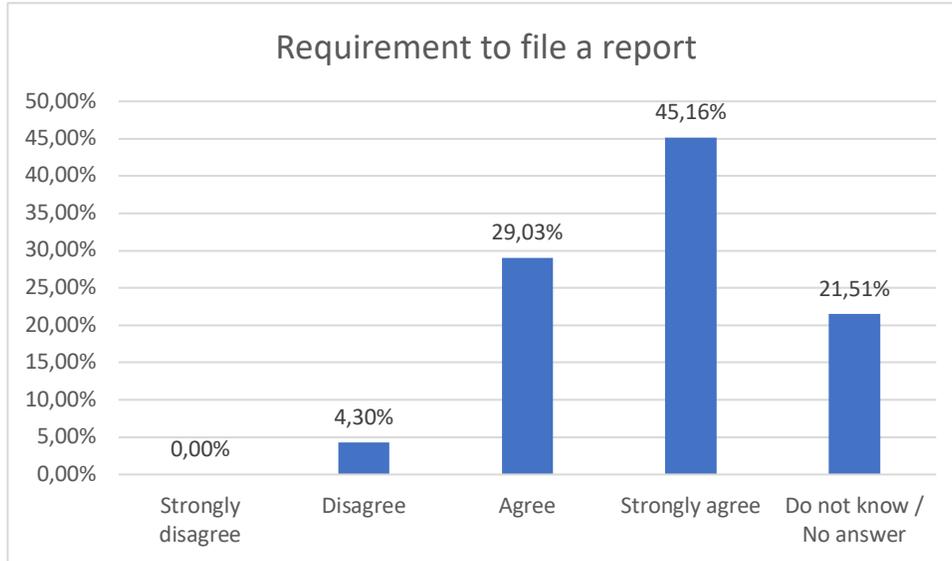
¹⁶⁵ *Ibid* at 58-59.

¹⁶⁶ Law Reform Commission of Saskatchewan, *Reform of The Class Actions Act*, Final Report, 2023 at 77, para 208, online (pdf): <<https://lawreformcommission.sk.ca/Class-Actions-Act-Final-Report-1.pdf>>.

¹⁶⁷ 35.6% act mainly for plaintiffs, 39.5% for defendants and 4.7% for both, with the remainder of respondents not answering this question.

¹⁶⁸ The most common jurisdictions are Quebec (34.9%), British Columbia (17.8%) and Ontario (14.7%).

[185] Respondents were also asked to comment on the following statement: “The parties or the settlement administrator should be required to file a report detailing the implementation of the judgment or settlement”. The 93 respondents to this question answered as follows:



[186] These results reveal strong support for the requirement to report to the court on the enforcement of judgments and settlements. The comments gathered through the survey also clarify and nuance this support in three ways:

- a. First, many emphasize the need for the tribunal to have the flexibility necessary to adjust the reporting requirements to suit each case’s particularities.
- b. Second, others point out that while the reporting requirement can be helpful, it should not become too onerous and use resources that could otherwise be distributed to members.
- c. Finally, some respondents stressed the importance of making the reports public, for example, through a centralized website, so that the information they contain is as accessible as possible.

[187] In light of the above, it seems appropriate to provide in the *Uniform Act* that the administrator responsible for enforcing the judgment or settlement – whether one of the parties or a third party – should report to the court on such enforcement results.

[188] While this requirement seems particularly useful in the context of collective recovery with individual liquidation, it may also be relevant in other cases, particularly where a form of individual recovery is provided for in a settlement; think, for example, of cases relating to residential schools. Even in a case of collective recovery with collective

liquidation, it would be helpful for the person responsible for enforcement to confirm to the court – in a very simple report – that the sums have been distributed as planned.

[189] The main argument against this requirement is that it can be onerous and disproportionate to the nature of the action. While this argument does not justify ruling out the reporting requirement altogether, it does highlight the need for the *Uniform Act* to provide that the reporting requirement applies “unless the court orders otherwise” to allow for exemptions in appropriate circumstances.

4.3.2. The *Uniform Act* should provide for the default content of the report and allow the court to adapt it to the circumstances

[190] The proportionality of the report also depends on its contents. Documents filed, for example, with the Registre des actions collectives du Québec, reveal that reports can take various forms, from a simple letter confirming that distribution has taken place to a document providing detailed statistics on claims.¹⁶⁹

[191] In Quebec, the administration report must include the “list[] [of] members who filed a claim, the amount paid to each member, the remaining balance and the amount withheld for the Fonds d’aide aux actions collectives”.¹⁷⁰

[192] The Ontario and Prince Edward Island statutes provide that the reports filed must be more detailed. For example, the Ontario legislation provides for the following:

1. The amount of the award.
2. The total number of class members.
3. Information respecting the number of class members identified in each affidavit filed under subsection 5 (3) in the motion for certification.
4. The number of class members who received notice associated with the distribution, and a description of how notice was given.

¹⁶⁹ Compare, for example, the following reports:
<https://www.registredesactionscollectives.quebec/fr/Fichier/Document?NomFichier=13595.pdf> (a multi-page report setting out the actions taken by the administrator to communicate with members and distribute sums to them, precise statistics and details of account transactions);
<https://www.registredesactionscollectives.quebec/fr/Fichier/Document?NomFichier=10619.pdf> (a four-page report summarizing the handling of individual claims);
<https://www.registredesactionscollectives.quebec/fr/Fichier/Document?NomFichier=4470.pdf> (two-page report (with confidential appendices) presenting financial data);
<https://www.registredesactionscollectives.quebec/fr/Fichier/Document?NomFichier=3081.pdf> (a simple two-page letter confirming the completion of a settlement distribution).

¹⁷⁰ *Regulation of the Superior Court of Québec in civil matters*, [CQLR, c C-25.01, r 0.2.1](#), art 59.

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5. The number of class members who made a claim for monetary relief and, of them, the numbers of class members who did and who did not receive the relief.
6. The amount of the award distributed to class members and a description of how the award was distributed.
7. The amount and recipients of any distribution under subsection (10) or section 27.2.
8. The number of class members who opted out of the class proceeding.
9. The smallest and largest amounts distributed to class members, the average and the median of the amounts distributed to class members, and any other aggregate data respecting the distribution that the person or entity who administered the distribution considers to be relevant.
10. The administrative costs associated with the distribution of the award.
11. The solicitor fees and disbursements.
12. Any amount paid to the Class Proceedings Fund established under the *Law Society Act* or to a funder under a third-party funding agreement approved under section 33.1.
13. Any other information the court requires to be included in the report.

[193] These items provide a good starting point and could be the default content for reporting under the *Uniform Act*. In some cases, however, these items may not all be helpful; for example, if all class members receive the same amount, some dimensions of item 9 may be less relevant.

[194] In short, while the elements set out in the Ontario Act provide a good starting point and should be added to the *Uniform Act*, they should be presented as a list of elements from which the court can choose to determine the content of the report based on the circumstances of each case.

5. Next steps and proposed resolution

[195] In its 2024 Progress Report, the working group identified two further issues that have not been addressed in this report, namely the certification of class actions and various issues pertaining to multijurisdictional class actions. These two issues are substantial and multi-faceted. Therefore, the working group intends to devote the academic year 2025-2026 to their analysis.

[196] This analysis will include legislative, jurisprudential and doctrinal research on these issues; an in-depth analysis of the results of the survey of class action practitioners; and meetings of the working group to develop new directions for future amendments. The working group plans to present the results of this exercise at the ULCC's 2026 annual meeting. Based on the directions adopted in 2025 and 2026, it could then draft proposed amendments to the *Uniform Class Proceedings Act* in 2026-2027.

[197] Based on the above, the working group proposes the following resolution for adoption by the Civil Section:

BE IT RESOLVED

THAT the First Policy Report of the Class Actions working group be accepted;

THAT the working group continue its activities to identify possible solutions to address the two remaining issues raised in its 2024 Progress Report, namely the certification of class actions and issues related to multijurisdictional class actions;

THAT the working group present a second policy report to the ULCC at its 2026 annual meeting.

APPENDIX I
Provisions on overlapping class actions

British Columbia

Class Proceedings Act, RSBC 1996, c 50

Court may determine conduct of proceeding

12 The court may at any time make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms it considers appropriate.

Court may stay any other proceeding

13 The court may at any time stay any proceeding related to the class proceeding on the terms the court considers appropriate.

Alberta

Class Proceedings Act, SA 2003, c 16.5

Court may determine conduct of proceeding

13(1) The Court may at any time make any order it considers appropriate respecting the conduct of a class proceeding to ensure the fair and expeditious determination of the proceeding and, for that purpose, may impose on one or more of the parties any terms or conditions that the Court considers appropriate.

(2) If the Court is of the opinion that a representative plaintiff is not fairly or adequately representing the interests of the class or a subclass, the Court may substitute another class member or subclass member or any other person as the representative plaintiff.

Court may stay any other proceeding

14 The Court may at any time stay or sever any proceeding related to the class proceeding on any terms or conditions that the Court considers appropriate.

Saskatchewan

Class Actions Act, SS 2001, c C-12.01

Court may determine conduct of actions

14 The court may, at any time, make any order it considers appropriate respecting the conduct of a class action to ensure a fair and expeditious determination and, for that purpose, may impose on one or more of the parties any terms it considers appropriate.

Court may stay any other action

15 The court may, at any time, stay or sever any action related to the class action on any terms the court considers appropriate.

Manitoba

Class Proceedings Act, CCSM, c C130

Court may determine conduct of proceeding

12 The court may at any time make any order that it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms it considers appropriate.

Court may stay proceeding

13 The court may at any time stay or sever a proceeding related to the class proceeding on terms the court considers appropriate.

Ontario

Class Proceedings Act, SO 1992, c 6

Carriage motions

13.1 (1) In this section,

“carriage motion” means a motion for an order under this section.

Stay of other proceedings

(2) Where two or more proceedings under this Act involve the same or similar subject matter and some or all of the same class members, the court may, on the motion of a representative plaintiff in one of the proceedings, order that one or more of the proceedings be stayed.

Timing

(3) A carriage motion shall be made no later than 60 days after the day on which the first of the proceedings was commenced, and shall be heard as soon as is practicable.

Considerations

(4) On a carriage motion, the court shall determine which proceeding would best advance the claims of the class members in an efficient and cost-effective manner, and shall, for the purpose, consider,

- (a) each representative plaintiff’s theory of its case, including the amount of work performed to date to develop and support the theory;
- (b) the relative likelihood of success in each proceeding, both on the motion for certification and as a class proceeding;
- (c) the expertise and experience of, and results previously achieved by, each solicitor in class proceedings litigation or in the substantive areas of law at issue; and

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(d) the funding of each proceeding, including the resources of the solicitor and any applicable third-party funding agreements as defined in section 33.1, and the sufficiency of such funding in the circumstances.

Decision final

(5) The decision of the court on a carriage motion is final and not subject to appeal.

Bar on proceedings without leave

(6) In making an order under this section, the court shall also bar the commencement, without leave of the court, of any proceeding under this Act involving the same or similar subject matter and some or all of the same class members.

Costs

(7) Solicitors for the representative plaintiffs who are parties to the carriage motion shall bear the costs of the motion, and shall not attempt to recoup any portion of the costs from the class or any class member, or from the defendant.

Bar on proceedings without leave following motion period

(8) Despite section 2, a proceeding may not be commenced under that section without leave of the court if,

- (a) the proceeding would involve the same or similar subject matter and some or all of the same class members as an existing proceeding under this Act; and
- (b) more than 60 days have passed since the existing proceeding was commenced.

Québec

Code of Civil Procedure, RLRQ, c C-25.01

168. A party may ask that an application or a defence be dismissed if

- (1) there is *lis pendens* or *res judicata*;

New Brunswick

Class Proceedings Act, SNB 2011, c 125

Court may determine conduct of class proceeding

14 At any time, the court may make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms or conditions the court considers appropriate.

Court may stay any other proceeding

15 At any time, the court may stay or sever any proceeding related to the class proceeding on the terms or conditions the court considers appropriate.

Nova Scotia

Class Proceedings Act, SNS 2007, c 28

Court may determine conduct of class proceeding

15 The court may at any time make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms or conditions the court considers appropriate.

Court may stay other proceeding

16 The court may at any time stay or sever any proceeding related to the class proceeding on the terms or conditions the court considers appropriate.

Prince Edward Island

Class Proceedings Act, RSPEI 1988, c C-9.01

Court may determine conduct of class proceeding

15. The court may at any time make any order it considers appropriate respecting the conduct of a class proceeding to ensure its fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms it considers appropriate.

Court may stay, sever other proceeding

16. The court may at any time stay or sever any proceeding related to the class proceeding on the terms the court considers appropriate.

Newfoundland and Labrador

Class Actions Act, SNL 2001, c C-18.1

Court may determine conduct of action

13. Notwithstanding [section 12](#), the court may make an order it considers appropriate respecting the conduct of a class action to ensure a fair and expeditious determination and, for that purpose, may impose on one or more of the parties the terms it considers appropriate.

Court may stay other action

14. The court may stay an action related to the class action on terms the court considers appropriate.

Federal Courts

Federal Courts Act, RSC 1985, c F-7, s 50.

Stay of proceedings authorized

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50 (1) The Federal Court of Appeal or the Federal Court may, in its discretion, stay proceedings in any cause or matter

- (a) on the ground that the claim is being proceeded with in another court or jurisdiction; or
- (b) where for any other reason it is in the interest of justice that the proceedings be stayed.

Federal Courts Rules, SOR/98-106.

Consolidation of proceedings

105 The Court may order, in respect of two or more proceedings,

- (a) that they be consolidated, heard together or heard one immediately after the other;
- (b) that one proceeding be stayed until another proceeding is determined; or
- (c) that one of the proceedings be asserted as a counterclaim or cross-appeal in another proceeding.

APPENDIX II
Provisions on class counsel fees

British Columbia

Class Proceedings Act, RSBC 1996, c 50

Agreements respecting fees and disbursements

- 38** (1) An agreement respecting fees and disbursements between a solicitor and a representative plaintiff must be in writing and must
- (a) state the terms under which fees and disbursements are to be paid,
 - (b) give an estimate of the expected fee, whether or not that fee is contingent on success in the class proceeding, and
 - (c) state the method by which payment is to be made, whether by lump sum or otherwise.
- (2) An agreement respecting fees and disbursements between a solicitor and a representative plaintiff is not enforceable unless approved by the court, on the application of the solicitor.
- (3) An application under subsection (2) may,
- (a) unless the court otherwise orders, be brought without notice to the defendants, or
 - (b) if notice to the defendants is required, be brought on the terms respecting disclosure of the whole or any part of the agreement respecting fees and disbursements that the court may order.
- (4) Interest payable on fees under an agreement approved under subsection (2) must be calculated
- (a) in the manner set out in the agreement, or
 - (b) if not so set out, at the interest rate, as that term is defined in section 7 of the *Court Order Interest Act*, or at any other rate the court considers appropriate.
- (5) Interest payable on disbursements under an agreement approved under subsection (2) must be calculated
- (a) in the manner set out in the agreement, or
 - (b) if not so set out, at the interest rate, as that term is defined in section 7 of the *Court Order Interest Act*, or at any other rate the court considers appropriate, on the balance of disbursements incurred as totalled at the end of each 6 month period following the date of the agreement.
- (6) Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award.
- (7) If an agreement is not approved by the court or if the amount owing to a solicitor under an approved agreement is in dispute, the court may
- (a) determine the amount owing to the solicitor in respect of fees and disbursements,
 - (b) direct an inquiry, assessment or accounting under the Supreme Court Civil Rules to determine the amount owing,
 - (c) direct that the amount owing be determined in any other manner, or
 - (d) make any other or further order it considers appropriate

Alberta

Class Proceedings Act, SA 2003, c 16.5

Contingency fee agreements

38(1) A lawyer may in respect of a proceeding under this Act enter into a contingency fee agreement with a representative plaintiff respecting the amount and manner of payment for services provided or to be provided and respecting any fees or disbursements in relation to those services and may provide for that payment to be by a gross sum, commission, percentage, salary or otherwise and at the same rate as or at a greater or lesser rate than the rate at which the lawyer would otherwise be entitled to be paid.

(2) A contingency fee agreement

- (a) must be in writing, and
- (b) must be signed by the lawyer and the representative plaintiff.

(3) A contingency fee agreement must be in precise and understandable terms and must set out at least the following:

- (a) the name and address of the representative plaintiff;
- (b) the name and address of the lawyer;
- (c) the nature of the claim;
- (d) the event or contingency on which fees are to be paid to the lawyer;
- (e) the manner in which the contingency fee is to be calculated;
- (f) the maximum fee payable, or the maximum rate to be used to calculate the fee, after deducting disbursements;
- (g) whether the representative plaintiff is responsible to pay disbursements and, if so, a general description of types of disbursements likely to be incurred, other than relatively minor disbursements;
- (h) a statement that, if the representative plaintiff gives notice in writing to the lawyer within 5 days after the representative plaintiff's copy of the contingency fee agreement is served on the representative plaintiff, the representative plaintiff may terminate the contingency fee agreement without incurring any liability for fees, but the representative plaintiff is liable to reimburse the lawyer for reasonable disbursements.

(4) The contingency fee agreement must be witnessed by a person who sees the representative plaintiff actually sign the agreement, who must then swear an affidavit of execution.

(5) The representative plaintiff must be served with a copy of the signed contingency fee agreement within 10 days after the date on which the agreement is signed, and an affidavit of service to that effect must be executed by the person who serves the copy of the agreement.

(6) Subject to subsection (7), a representative plaintiff may terminate a contingency fee agreement on giving written notice of the termination to the lawyer and the payment of the fees and disbursements owing at the time of the termination or as otherwise agreed on by the representative plaintiff and the lawyer.

(7) A representative plaintiff may terminate a contingency fee agreement without incurring liability for payment of any fees related to or arising from the agreement, but is liable to pay reasonable disbursements, if the representative plaintiff, within 5 days after being served with the copy of the agreement, gives written notice of the termination to the lawyer.

(8) If a representative plaintiff terminates a contingency fee agreement,

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- (a) the lawyer must give notice to the class members or subclass members for whom the representative plaintiff was appointed, and
- (b) any class member or subclass member may apply to the Court to act as the representative plaintiff for the purposes of bringing or continuing an action.

(9) This section applies whether or not a class member or subclass member is appointed as the representative plaintiff.

Court approval of contingency fee agreement

39(1) A contingency fee agreement respecting fees and disbursements between a lawyer and a representative plaintiff is not enforceable unless,

- (a) on the application of the lawyer made prior to or at the time of applying for certification of the proceeding, the agreement was approved by the Court, and
- b) after
 - (i) the common issues have been resolved, in the case of a trial of the common issues, or
 - (ii) a settlement agreement has been approved, in the case of a class proceeding being settled,

the judge who presided over the trial of the common issues or approved the settlement agreement has, on the application of the representative plaintiff or, if the representative plaintiff fails to apply, on the application of the lawyer, reviewed the contingency fee agreement for the purposes of ensuring that the fees and disbursements payable under the agreement are fair and reasonable in the circumstances.

(2) An application under subsection (1) may,

- (a) unless the Court otherwise orders, be brought without notice to the defendant, or
- (b) if notice to the defendant is required, be brought subject to any terms or conditions respecting disclosure of the whole or any part of the agreement relating to any fees and disbursements as the Court may order.

(3) Unless the Court otherwise directs, an application under subsection (1)(b) may only be brought if the notice of the application sets out at least the following:

- (a) the actual amount of the fees and disbursements as calculated;
- (b) the right of any class member or subclass member to object;
- (c) the time and place at which the application is to be heard;
- (d) those steps or procedures that a class member or subclass member must take or carry out in order to be heard.

(4) Interest payable on fees under a contingency fee agreement approved under subsection (1) must be calculated in the manner set out in the agreement or, if not so set out,

- (a) at the interest rate prescribed under the Judgment Interest Act for pecuniary damages, or
- (b) at any other rate that the Court considers appropriate.

(5) Interest payable on disbursements under a contingency fee agreement approved under subsection (1) must be calculated in the manner set out in the agreement or, if not so set out,

- (a) at the interest rate prescribed under the Judgment Interest Act for pecuniary damages, or
- (b) at any other rate that the Court considers appropriate,

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on the balance of disbursements incurred as totalled at the end of each 6-month period following the date of the agreement.

(6) Amounts owing under a contingency fee agreement that is enforceable pursuant to this section are a first charge on any settlement funds or monetary award.

(7) If a contingency fee agreement is not approved by the Court or the Court determines that the agreement should not be followed, the Court may

- (a) determine the amount owing to the lawyer in respect of fees and disbursements,
- (b) direct that an inquiry, assessment or accounting under the Rules of Court be carried out to determine the amount owing, or
- (c) direct that the amount owing be determined in any other manner not referred to in clause (a) or (b).

(8) Representative parties may seek funding of their costs and disbursements from other persons and organizations, including persons who are not members of the class

Saskatchewan

Class Actions Act, SS 2001, c C-12.01

Agreements respecting fees and disbursements

41(1) An agreement respecting fees and disbursements between a lawyer and a representative plaintiff must be in writing and must:

- (a) state the terms under which fees and disbursements are to be paid;
- (b) give an estimate of the expected fee, whether or not that fee is contingent on success in the class action; and
- © state the method by which payment is to be made, whether by lump sum or otherwise.

(2) An agreement respecting fees and disbursements between a lawyer and a representative plaintiff is not enforceable unless approved by the court, on the application of the lawyer.

(3) An application pursuant to subsection (2) may:

- (a) unless the court orders otherwise, be brought without notice to the defendants; or
- (b) if notice to the defendants is required, be brought on the terms respecting disclosure of the whole or any part of the agreement respecting fees and disbursements that the court may order.

(4) Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award.

(5) If an agreement is not approved by the court, the court may:

- (a) determine the amount owing to the lawyer respecting the fees and disbursements;
- (b) direct an inquiry, assessment or accounting pursuant to The King's Bench Rules to determine the amount owing; or
- © direct that the amount owing be determined in any other manner.

Calculation of interest

42(1) Interest payable on fees under an agreement approved pursuant to section 41 must be calculated in the manner set out in the agreement or, if not set out in the agreement:

- (a) at the interest rate, as that term is defined in The Pre-judgment Interest Act; or

(b) at any other rate the court considers appropriate.

(2) Interest payable on disbursements under an agreement approved pursuant to section 41 must be calculated in the manner set out in the agreement or, if not set out in the agreement:

(a) at the interest rate, as that term is defined in The Pre-judgment Interest Act; or

(b) at any other rate the court considers appropriate, on the balance of disbursements incurred as totalled at the end of each six-month period following the date of the agreement.

Manitoba

Class Proceedings Act, CCSM, c C130

Agreements respecting fees and disbursements

38(1) An agreement respecting fees and disbursements between a lawyer and a representative plaintiff must be in writing and must

(a) state the terms under which fees and disbursements are to be paid;

(b) give an estimate of the expected fee, whether or not the fee is contingent on success in the class proceeding; and

(c) state the method by which payment is to be made, whether by lump sum or otherwise.

Approval of agreements

38(2) An agreement respecting fees and disbursements between a lawyer and a representative plaintiff is not enforceable unless approved on motion to the court.

Motion for approval of agreements

38(3) A motion under subsection (2) may,

(a) unless the court otherwise orders, be brought without notice to a defendant; or

(b) if notice to a defendant is required by the court, be brought on the terms respecting disclosure of the whole or any part of the agreement respecting fees and disbursements that the court may order.

Interest

38(4) Interest payable on fees under an agreement approved under subsection (2) must be calculated in the manner set out in the agreement or, if it is not so set out, must be charged

(a) at the prejudgment rate, as defined in *The Court of King's Bench Act*; or

(b) at any other rate the court considers appropriate.

Calculation of interest

38(5) Interest payable on disbursements under an agreement approved under subsection (2) must be calculated in the manner set out in the agreement or, if it is not set out in the agreement,

(a) at the prejudgment rate, as defined in *The Court of King's Bench Act*; or

(b) at any other rate the court considers appropriate, on the balance of disbursements incurred as totalled at the end of each 6 month period following the date of the agreement.

First charge

38(6) Amounts owing under an agreement approved by the court under subsection (2), are a first charge on any settlement funds or monetary award.

Power of court to determine fees

38(7) If an agreement is not approved by the court or if the amount owing under an approved agreement is in dispute the court may, on motion,

- (a) determine the amount owing to the lawyer in respect of fees and disbursements;
- (b) direct a reference under the *King's Bench Rules* to determine the amount owing; or
- (c) direct that the amount owing be determined in any other manner.

Ontario

Class Proceedings Act, 1992, SO 1992, c 6

Fees and disbursements

32 (1) An agreement respecting fees and disbursements between a solicitor and a representative party shall be in writing and shall,

- (a) state the terms under which fees and disbursements shall be paid;
- (b) give an estimate of the expected fee, whether contingent on success in the class proceeding or not; and
- (c) state the method by which payment is to be made, whether by lump sum, salary or otherwise. 1992, c. 6, s. 32 (1).

Court to approve agreements

(2) An agreement respecting fees and disbursements between a solicitor and a representative party is not enforceable unless approved by the court, on the motion of the solicitor. 1992, c. 6, s. 32 (2).

Fees must be fair and reasonable

(2.1) The court shall not approve an agreement unless it determines that the fees and disbursements required to be paid under the agreement are fair and reasonable, taking into account,

- (a) the results achieved for the class members, including the number of class or subclass members expected to make a claim for monetary relief or settlement funds and, of them, the number of class or subclass members who are and who are not expected to receive monetary relief or settlement funds;
- (b) the degree of risk assumed by the solicitor in providing representation;
- (c) the proportionality of the fees and disbursements in relation to the amount of any monetary award or settlement funds;
- (d) any prescribed matter; and
- (e) any other matter the court considers relevant. 2020, c. 11, Sched. 4, s. 29 (1).

Same

(2.2) In considering the degree of risk assumed by the solicitor, the court shall consider,

- (a) the likelihood that the court would refuse to certify the proceeding as a class proceeding;
- (b) the likelihood that the class proceeding would not be successful;
- (c) the existence of any other factor, including any report, investigation, litigation, initiative or funding arrangement, that affected the degree of risk assumed by the solicitor in providing representation; and

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(d) any other prescribed matter. 2020, c. 11, Sched. 4, s. 29 (1).

Same

(2.3) In determining whether the fees and disbursements are fair and reasonable, the court may, by way of comparison, consider different methods by which the fees and disbursements could have been structured or determined. 2020, c. 11, Sched. 4, s. 29 (1).

Priority of amounts owed under approved agreement

(3) Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award. 1992, c. 6, s. 32 (3); 2020, c. 11, Sched. 4, s. 29 (2).

Determination of fees where agreement not approved

- (4) If an agreement is not approved by the court, the court may,
- (a) determine the amount owing to the solicitor in respect of fees and disbursements;
 - (b) direct a reference under the rules of court to determine the amount owing; or
 - (c) direct that the amount owing be determined in any other manner. 1992, c. 6, s. 32 (4).

Considerations

(5) In making an order under clause (4) (a), the court shall take into account the factors set out in subsection (2.1), in accordance with subsections (2.2) and (2.3). 2020, c. 11, Sched. 4, s. 29 (3).

Holdback

- (6) The court may determine and specify an amount or portion of the fees and disbursements owing to the solicitor under this section that shall be held back from payment until,
- (a) the report required under [subsection 26 \(12\)](#) or [27.1 \(16\)](#), as the case may be, has been filed with the court and the court is satisfied that it meets the requirements of that subsection; and
 - (b) the court is satisfied with the distribution of the monetary award or settlement funds in the circumstances, including the number of class or subclass members who made a claim for monetary relief or settlement funds and, of them, the number of class or subclass members who did and who did not receive monetary relief or settlement funds. 2020, c. 11, Sched. 4, s. 29 (3).

Agreements for payment only in the event of success

33 (1) A solicitor and a representative party may enter into a written agreement providing for payment of fees and disbursements only in the event of success in a class proceeding. 1992, c. 6, s. 33 (1); 2020, c. 11, Sched. 4, s. 30 (1).

(2) Repealed: 2020, c. 11, Sched. 4, s. 30 (2).

Definitions

- (3) For the purposes of subsections (4) to (7),
- “base fee” means the result of multiplying the total number of hours worked by an hourly rate; (“honoraires de base”)
 - “multiplier” means a multiple to be applied to a base fee. (“multiplicateur”) 1992, c. 6, s. 33 (3).

Agreements to increase fees by a multiplier

(4) An agreement under subsection (1) may permit the solicitor to make a motion to the court to have his or her fees increased by a multiplier. 1992, c. 6, s. 33 (4).

Motion to increase fee by a multiplier

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- (5) A motion under subsection (4) shall be heard by a judge who has,
- (a) given judgment on common issues in favour of some or all class members; or
 - (b) approved a settlement that benefits any class member. 1992, c. 6, s. 33 (5).

Idem

(6) Where the judge referred to in subsection (5) is unavailable for any reason, the regional senior judge shall assign another judge of the court for the purpose. 1992, c. 6, s. 33 (6).

Idem

- (7) On the motion of a solicitor who has entered into an agreement under subsection (4), the court,
- (a) shall determine the amount of the solicitor's base fee;
 - (b) may apply a multiplier to the base fee; and
 - (c) shall determine the amount of disbursements to which the solicitor is entitled, including interest calculated on the disbursements incurred, as totalled at the end of each six-month period following the date of the agreement. 1992, c. 6, s. 33 (7); 2020, c. 11, Sched. 4, s. 30 (3).

Idem

(8) In making a determination under clause (7) (a), the court shall allow only a reasonable fee. 1992, c. 6, s. 33 (8).

Same

(9) In making a determination under clause (7) (b), the court shall take into account the factors set out in [subsection 32 \(2.1\)](#), in accordance with subsections (2.2) and (2.3) of that section. 2020, c. 11, Sched. 4, s. 30 (4).

Quebec

Civil Code of Québec, CQLR, c CCQ-1991

2134. The remuneration, if any, is determined by the contract, usage or law, or on the basis of the value of the services rendered.

Code of Civil Procedure, CQLR, c C-25.01

593. The court may award the representative plaintiff an indemnity for disbursements and an amount to cover legal costs and the lawyer's professional fee. Both are payable out of the amount recovered collectively or before payment of individual claims.

In the interests of the class members, the court assesses whether the fee charged by the representative plaintiff's lawyer is reasonable; if the fee is not reasonable, the court may determine it.

Regardless of whether the Class Action Assistance Fund provided assistance to the representative plaintiff, the court hears the Fund before ruling on the legal costs and the fee. The court considers whether or not the Fund guaranteed payment of all or any portion of the legal costs or the fee.

Act respecting the Barreau du Québec, CQLR, c B-1

126. (1) Services justifying professional fees shall include, among others, attendances, travelling, notices, written and oral consultations, the examination, preparation, drafting, dispatch or delivery of any document, proceeding or record, and generally all other services required of an advocate.

(2) (*Subsection repealed*).

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(3) In the absence of an express agreement between the advocate and his client, an advocate shall be entitled to his fees and costs on the basis of services rendered.

Code de déontologie des avocats, RLRQ, c B-1, r 3.1

7. A lawyer must avoid all methods and attitudes likely to give a profit-seeking character to his profession, namely, greedily seeking a profit or abusing his status as a lawyer in order to enrich himself.

101. A lawyer must charge and accept fair and reasonable fees and disbursements.

The same applies to advances he asks the client to provide.

102. The fees are fair and reasonable if they are warranted by the circumstances and proportionate to the professional services rendered. In determining his fees, the lawyer must in particular take the following factors into account :

- (1) experience;
- (2) the time and effort required and devoted to the matter;
- (3) the difficulty of the matter;
- (4) the importance of the matter to the client;
- (5) the responsibility assumed;
- (6) the performance of unusual professional services or professional services requiring special skills or exceptional speed;
- (7) the result obtained;
- (8) the fees prescribed by statute or regulation; and
- (9) the disbursements, fees, commissions, rebates, costs or other benefits that are or will be paid by a third party with respect to the mandate the client gave him.

New Brunswick

Class Proceedings Act, RSNB 2011, c 125

Agreements respecting fees and disbursements

40(1) An agreement respecting fees and disbursements between a solicitor and a representative plaintiff shall be in writing and shall

- (a) state the terms or conditions under which fees and disbursements are to be paid,
- (b) give an estimate of the expected fee, whether or not that fee is contingent on success in the class proceeding,
- (c) if interest is payable on fees or disbursements referred to in paragraph (a), state the manner in which the interest will be calculated, and
- (d) state the method by which payment is to be made, whether by lump sum or otherwise.

40(2) An agreement respecting fees and disbursements between a solicitor and a representative plaintiff is not enforceable unless approved by the court, on the motion of the solicitor.

40(3) A motion under subsection (2) may,

- (a) unless the court otherwise orders, be made without notice to the defendants, or

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(b) if notice to the defendants is required, be made on the terms or conditions that the court may order respecting disclosure of the whole or any part of the agreement respecting fees and disbursements.

40(4) Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award.

40(5) If an agreement is not approved by the court, the court may

- (a) determine the amount owing to the solicitor in respect of fees and disbursements,
- (b) direct that a reference into the amount owing be conducted under the Rules of Court, or
- (c) direct that the amount owing be determined in any other manner.

40(6) Part 14 of the *Law Society Act, 1996*, does not apply to an agreement referred to in this section.

Nova Scotia

Class Proceedings Act, SNS 2007, c 28

Agreements respecting fees and disbursements

41 (1) An agreement respecting fees and disbursements between a solicitor and a representative party must be in writing and shall

- (a) state the terms or conditions under which fees and disbursements are to be paid;
- (b) give an estimate of the expected fee, whether or not that fee is contingent on success in the class proceeding;
- (c) where interest is payable on fees or disbursements referred to in clause (a), state the manner in which the interest will be calculated; and
- (d) state the method by which payment is to be made, whether by lump sum or otherwise.

(2) An agreement respecting fees and disbursements between a solicitor and a representative party is not enforceable unless approved by the court, on the application of the solicitor.

(3) An application under subsection (2) may

- (a) unless the court otherwise orders, be made without notice to any other party; or
- (b) where notice to any other party is required, be made on the terms or conditions that the court may order respecting disclosure of the whole or any part of the agreement respecting fees and disbursements.

(4) Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award.

(5) Where an agreement is not approved by the court, the court may

- (a) determine the amount owing to the solicitor in respect of fees and disbursements;
- (b) direct that a taxation be conducted in accordance with the Civil Procedure Rules; or
- (c) direct that the amount owing be determined in any other manner.

(6) Sections 65 to 70 of the Legal Profession Act do not apply in respect of an agreement referred to in this Section. *2007, c. 28, s. 41*.

Prince Edward Island

Class Proceedings Act, RSPEI 1988, c C-9.01

44. Written agreement required - fees and disbursements

(1) An agreement respecting fees and disbursements between a lawyer and a representative plaintiff shall be in writing and shall

- (a) state the terms under which fees and disbursements are to be paid;
- (b) give an estimate of the expected fee, whether or not that fee is contingent on success in the class proceeding; and
- (c) state the method by which payment is to be made, whether by lump sum or otherwise.

Holdback

(2) The court may determine and specify an amount or portion of the fees and disbursements owing to a lawyer that shall be held back from payment until

- (a) the report required under subsection 36(7) or subsection 38(5), as the case may be, has been filed with the court and the court is satisfied that the report meets the requirements of the applicable subsection; and
- (b) the court is satisfied with the distribution of the monetary award or settlement funds in the circumstances, including that number of class or subclass members who made a claim for monetary relief or settlement funds and, of them, the number of class or subclass members who did and who did not receive monetary relief or settlement funds.

Court approval required for enforcement

(3) An agreement respecting fees and disbursements between a lawyer and a representative plaintiff is not enforceable unless approved by the court, on the motion of the lawyer.

Notice requirements

(4) A motion under subsection (3) may,

- (a) unless the court otherwise orders, be brought without notice to the defendants; or
- (b) if notice to the defendants is required, be brought on the terms respecting disclosure of the whole or any part of the agreement respecting fees and disbursements that the court may order.

Interest on fees

(5) Interest payable on fees under an agreement approved under subsection (3) shall be calculated in the manner set out in the agreement or, if not so set out,

- (a) at the prejudgment interest rate, as that term is defined in clause 56(1)(d) of the *Judicature Act* R.S.P.E.I 1988, Cap. J-2.1; or
- (b) at any other rate the court considers appropriate.

Interest on disbursements

(6) Interest payable on disbursements under an agreement approved under subsection (3) shall be calculated in the manner set out in the agreement or, if not so set out,

- (a) at the prejudgment interest rate, as that term is defined in clause 56(1)(d) of the *Judicature Act*; or
- (b) at any other rate the court considers appropriate, on the balance of disbursements incurred as totalled at the end of each six-month period following the date of the agreement.

First charge on settlement funds, monetary award

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(7) Amounts owing under an enforceable agreement are a first charge on any settlement funds or monetary award.

Determination of amount owing

- (8) Where an agreement is not approved by the court, the court may
- (a) determine the amount owing to the lawyer in respect of fees and disbursements;
 - (b) direct an inquiry, assessment or accounting under the Rules of Civil Procedure to determine the amount owing; or
 - (c) direct that the amount owing be determined in any other manner. *2021, c.30, s.44* .

Newfoundland and Labrador

Class Actions Act, SNL 2001, c C-18.1

Agreement respecting fees and disbursements

38. (1) An agreement respecting fees and disbursements between a solicitor and a representative plaintiff shall be in writing and shall

- (a) state the terms under which fees and disbursements are to be paid;
 - (b) give an estimate of the expected fee, whether or not that fee is contingent on success in the class action; and
 - (c) state the method by which payment is to be made, whether by lump sum or otherwise.
- (2) An agreement respecting fees and disbursements between a solicitor and a representative plaintiff is not enforceable unless approved by the court, on the application of the solicitor.
- (3) An application under subsection (2) may,
- (a) unless the court orders otherwise, be brought without notice to the defendants;
- or
- (b) where notice to the defendants is required by the court, be brought on the terms respecting disclosure of the whole or a part of the agreement respecting fees and disbursements that the court may order.
- (4) Interest payable on fees under an agreement approved under subsection (2) shall be calculated in the manner set out in the agreement or if not set out,
- (a) at the interest rate prescribed for post-judgment interest under the *Judgment Interest Act* ; or
 - (b) at a rate the court considers appropriate.
- (5) Interest payable on disbursements under an agreement approved under subsection (2) shall be calculated in the manner set out in the agreement or if not set out,
- (a) at the interest rate prescribed for post-judgment interest under the [*Judgment Interest Act*](#) ; or
 - (b) at a rate the court considers appropriate, on the balance of disbursements as totalled at the end of each 6 month period following the date of the agreement.
- (6) Amounts owing under an enforceable agreement are a first charge on settlement funds or a monetary award.
- (7) Where an agreement respecting fees and disbursements is not approved by the court, the court may

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- (a) determine the amount owing to the solicitor in respect of fees and disbursements;
- (b) direct an inquiry, assessment or accounting under the [*Rules of the Supreme Court, 1986*](#) to determine the amount owing; or
- (c) direct that the amount owing be determined in another manner.

APPENDIX III

Provisions on the enforcement of final judgments and settlements

British Columbia

Class Proceedings Act, RSBC 1996, c 50

33(4) The court must supervise the execution of judgments and the distribution of awards under this Division and may stay the whole or any part of an execution or distribution for a reasonable period on the terms it considers appropriate.

Alberta

Class Proceedings Act, SA 2003, c 16.5

33 (4) The Court is to supervise the enforcement proceedings in respect of judgments arising under this Act and the distribution of awards under this Division and may stay the whole or any part of an enforcement proceeding or distribution for a reasonable period on any terms or conditions that the Court considers appropriate.

Saskatchewan

Class Actions Act, SS 2001, c C-12.01

36 (4) The court shall supervise the execution of judgments and the distribution of awards pursuant to this Part and may stay the whole or any part of an execution or distribution for a reasonable period on the terms it considers appropriate.

Manitoba

Class Proceedings Act, CCSM c C130

33(4) The court must supervise the execution of judgments and the distribution of awards under this Division and may stay the whole or any part of an execution or distribution for a reasonable period, on terms that it considers appropriate.

Ontario

Class Proceedings Act, 1992, SO 1992, c 6

26 (7) The court shall supervise the execution of judgments and the distribution of awards under section 24 or 25 and may stay the whole or any part of an execution or distribution for a reasonable period on such terms as it considers appropriate.

[...]

(12) No later than 60 days after the date on which an award made under section 24 is fully distributed, including any distribution under subsection (10) or section 27.2, the person or entity who administered the distribution shall file with the court a report containing their best information respecting the following:

1. The amount of the award.
2. The total number of class members.
3. Information respecting the number of class members identified in each affidavit filed under subsection 5 (3) in the motion for certification.

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4. The number of class members who received notice associated with the distribution, and a description of how notice was given.
5. The number of class members who made a claim for monetary relief and, of them, the numbers of class members who did and who did not receive the relief.
6. The amount of the award distributed to class members and a description of how the award was distributed.
7. The amount and recipients of any distribution under subsection (10) or section 27.2.
8. The number of class members who opted out of the class proceeding.
9. The smallest and largest amounts distributed to class members, the average and the median of the amounts distributed to class members, and any other aggregate data respecting the distribution that the person or entity who administered the distribution considers to be relevant.
10. The administrative costs associated with the distribution of the award.
11. The solicitor fees and disbursements.
12. Any amount paid to the Class Proceedings Fund established under the *Law Society Act* or to a funder under a third-party funding agreement approved under section 33.1.
13. Any other information the court requires to be included in the report.

(13) Once the court is satisfied that the requirements of subsection (12) have been met with respect to a filed report, the court shall make an order approving the report and append the report to the order.

[...]

27.1 (1) A proceeding under this Act may be settled only with the approval of the court.

[...]

(13) The court shall supervise the administration and implementation of the settlement.

[...]

(16) No later than 60 days after the date on which the settlement funds are fully distributed, including any distribution under section 27.2, the administrator or other person or entity who administered the distribution shall file with the court a report containing their best information respecting the following:

1. The amount of the settlement funds before distribution.
2. The total number of class or subclass members.
3. Information respecting the number of class members identified in each affidavit filed under subsection 5 (3) in the motion for certification.
4. The number of class members who received notice associated with the distribution, and a description of how notice was given.
5. The number of class or subclass members who made a claim under the settlement and, of them, the numbers of class or subclass members who did and who did not receive settlement funds.
6. The amount of the settlement funds distributed to class or subclass members and a description of how the settlement funds were distributed.
7. The amount and recipients of any distribution under section 27.2, and the amount, if any, that was subject to reversion or otherwise returned to the defendant.

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8. The number of class or subclass members who objected to the settlement and the nature of their objections.
9. The number of class or subclass members who opted out of the class proceeding.
10. The smallest and largest amounts distributed to class or subclass members, the average and the median of the amounts distributed to class or subclass members, and any other aggregate data respecting the distribution that the administrator or other person or entity who administered the distribution considers to be relevant.
11. The administrative costs associated with the distribution of the settlement funds.
12. The solicitor fees and disbursements.
13. Any amount paid to the Class Proceedings Fund established under the *Law Society Act* or to a funder under a third-party funding agreement approved under section 33.1.
14. Any other information the court requires to be included in the report.

(17) Once the court is satisfied that the requirements of subsection (16) have been met with respect to a filed report, the court shall make an order approving the report and append the report to the order.

Québec

Regulation of the Superior Court of Québec in civil matters, CQLR, c C-25.01, r 0.2.1

59. Report on administration. If a judgment orders the collective recovery of the claims made with individual payment of the members' claims, the special clerk or third person designated by the court must file with the court, after the time limit for members to file their claim has expired, a detailed report on its administration and give notice to the parties and the Fonds d'aide aux actions collectives.

The report lists the members who filed a claim, the amount paid to each member, the remaining balance and the amount withheld for the Fonds d'aide aux actions collectives pursuant to section 42 of the Act and Regulation respecting the percentage withheld by the Fonds d'aide aux actions collectives ([chapter F-3.2.0.1.1, r. 2](#)).

Directives de la Cour supérieure du Québec, division de Montréal, 10 février 2025

130. Dans le cadre de l'exécution d'une transaction approuvée par le tribunal, les parties doivent demander l'obtention d'un jugement de clôture, en présentant au tribunal une demande, laquelle doit contenir les éléments suivants ou s'en inspirer fortement :

[...]

4. Le rapport d'administration est déposé comme pièce R-□.

New Brunswick

Class Proceedings Act, SNB 2011, c 125

35(4) The court shall supervise the execution of judgments and the distribution of awards under this Division and may stay the whole or any part of an execution or distribution for a reasonable period on the terms or conditions it considers appropriate.

Nova Scotia

Class Proceedings Act, SNS 2007, c 28

(4) The court shall supervise the execution of judgments and the distribution of awards under [Sections 32 to 35](#) and may stay the whole or any part of an execution or distribution for a reasonable period on the terms or conditions it considers appropriate.

Prince Edward Island

Class Proceedings Act, RSPEI 1988, c C-9.01

36 (4) The court shall supervise the execution of judgments and the distribution of awards under this Part and may stay the whole or any part of an execution or distribution for a reasonable period on the terms it considers appropriate.

[...]

(7) No later than 60 days after the date on which the monetary award is fully distributed, including any distribution under section 37, the person who administered the distribution shall file with the court a report containing the person's best information respecting

- (a) the amount of the award before distribution;
- (b) the total number of class or subclass members;
- (c) the number of class or subclass members who received notice of the distribution, and a description of how notice was given;
- (d) the number of class or subclass members who made a claim and, of them, the numbers of class or subclass members who did and who did not receive moneys from the award;
- (e) the amount of the award distributed to class or subclass members and a description of how the award was distributed;
- (f) the amount and recipients of any distribution under section 37 and the amount, if any, that was subject to reversion or otherwise returned to the defendant;
- (g) the number of class or subclass members who opted out of the class proceeding;
- (h) the smallest and largest amounts distributed to class or subclass members, the average and median of the amounts distributed to class or subclass members and any other aggregate data respecting the distribution that the person who administered the distribution considers to be relevant;
- (i) the administrative costs associated with the distribution of the settlement funds;
- (j) the lawyer's fees and disbursements; and
- (k) any other information the court requires to be included.

38 (5) No later than 60 days after the date on which the settlement funds are fully distributed, including any distribution under section 37, the administrator or other person or entity who administered the distribution shall file with the court a report containing the administrator's, person's or entity's best information respecting

- (a) the amount of the settlement funds before distribution;
- (b) the total number of class or subclass members;

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- (c) the number of class or subclass members who received notice of the distribution, and a description of how notice was given;
- (d) the number of class or subclass members who made a claim under the settlement and, of them, the numbers of class or subclass members who did and who did not receive settlement funds;
- (e) the amount of the settlement funds distributed to class or subclass members and a description of how the settlement funds were distributed;
- (f) the amount and recipients of any distribution under section 37 and the amount, if any, that was subject to reversion or otherwise returned to the defendant;
- (g) the number of class or subclass members who objected to the settlement and the nature of their objections;
- (h) the number of class or subclass members who opted out of the class proceeding;
- (i) the smallest and largest amounts distributed to class or subclass members, the average and median of the amounts distributed to class or subclass members and any other aggregate data respecting the distribution that the administrator or other person or entity who administered the distribution considers to be relevant;
- (j) the administrative costs associated with the distribution of the settlement funds;
- (k) the lawyer's fees and disbursements; and
- (l) any other information the court requires to be included.

Newfoundland and Labrador

Class Actions Act, SNL 2001, c C-18.1

No relevant provision.