

CANADA / JUDGMENT

Fontaine v. Canada (Attorney General)

2012 BCSC 839

COURT

Supreme Court of British Columbia

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2012 BCSC 839 Fontaine v. Canada (Attorney General)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Fontaine v. Canada (Attorney General),

2012 BCSC 839

Date: 20120605

Docket: L051875

Registry: Vancouver

Between:

Larry Philip Fontaine et al

Plaintiffs

And

The Attorney General of Canada et al

Defendants

Before: The Honourable Madam Justice B.J. Brown

Reasons For Judgment

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Date and Place of Hearing:

April 30, May 1, 2, 9, 10 & 11, 2012

Vancouver, B.C.

Place and Date of Judgment:

Vancouver, B.C.

June 5, 2012

Nature of the Application

- [1] The Court Monitor appointed in respect of the settlement in this class proceeding brings an application to have the court consider and implement a number of recommendations. The recommendations arise from an investigation conducted by the Court Monitor into the conduct of the Blott & Company law firm and others regarding the assessment of individual claims under one of the settlement processes pursuant to an order dated November 10 2012.

Background and Overview

- [2] This court is one of 9 across Canada supervising the implementation and administration of a settlement of all of the individual and class action litigation related to the Indian Residential Schools operated by Canada. The settlement was approved simultaneously by each of the 9 courts on December 15, 2006. The various courts indicated that there were further administrative details that needed to be addressed in subsequent orders to finalize and implement the settlement. On March 8, 2007, the courts involved issued further orders designed to deal with the various details of implementation and administration.
- [3] One of those orders is known as the "Implementation Order". It provides the additional administrative details that the courts identified as deficient at the time of approval of the settlement. Paragraphs 1 to 6 deal with the appointment, payment and scope of engagement of the Court Monitor ("the Monitor"). Paragraphs 7 and 8 relate to the Chief Adjudicator and establish a direct line of reporting by the Chief Adjudicator to the courts "on all aspects of the implementation and operation of the IAP".
- [4] Paragraphs 20 and 23 are the other two provisions most pertinent to the application before the court. Paragraph 20, in combination with Schedule A to the order, addresses the manner in which applications relating to the settlement will be dealt with by the courts. In essence, Schedule A provides for the appointment of two judges from the nine supervising the administration and implementation of the settlement to act as Administrative Judges. I am currently designated as one of the Administrative Judges pursuant to the protocol. Where issues arise, they are brought before the court through the use of a "Request for Direction" to the Administrative Judges at first instance.

- [5] Paragraph 23 of the Implementation Order gives the courts supervisory authority over the Settlement Agreement, the judgments dated December 15, 2006 and the Implementation Order in general. It also provides, without limiting the general supervisory authority, that the courts may issue such further orders "as are necessary to implement and enforce" any of the foregoing.
- [6] The Settlement Agreement itself has a number of constituent elements. There are two processes under the Settlement Agreement that result in monetary compensation to individual class members. This application arises in relation to the Independent Assessment Process ("IAP") and the representation of claimants within that process.
- [7] The IAP is designed to provide class members with a forum to advance claims for serious physical abuse and sexual abuse suffered while at any of the identified Residential Schools covered by the Settlement Agreement. Although the IAP is structured as an inquisitorial adjudicative model where the neutral adjudicator is charged with eliciting the evidence of the claimant through questioning, claimants are recommended to obtain legal representation in the IAP.
- [8] Lawyers' fees are paid through a combination of money from Canada, as the primary paying defendant in the Settlement Agreement, and contingency fees charged as a percentage of the compensation obtained by claimants. Pursuant to the terms of the Settlement Agreement, Canada will pay an additional 15% of any award made to a claimant toward his or her legal fees. Regardless of any other arrangement with their clients, lawyers representing claimants in the IAP have their fees subject to an overall cap of 30% of any award, including Canada's portion. In addition, the total fees charged to a claimant are subject to a review and adjustment by the adjudicator hearing a particular claim at the request of the claimant or on the adjudicator's own initiative. These conditions on the payment of lawyers' fees in paragraphs 17 and 18 of the Implementation Order are meant to address concerns raised by the courts at the time the Settlement Agreement was approved.
- [9] The application before the court concerns the representation of claimants in the IAP by the principal and associates of the law firm Blott & Company. The principal of the firm is David Blott, a lawyer based in Alberta, whose firm represents claimants across Canada. For the sake of clarity, I will refer throughout these reasons to the law firm as "Blott" and to David Blott as "Mr. Blott".
- [10] The Monitor's role is, among other things, oversight with respect to the administration and implementation of the settlement. In late October 2011, the Monitor was presented with affidavit evidence from several former clients of Blott. These affidavits variously detailed concerns about their representation within the IAP, Blott's relationship with a company known as Honour Walk Ltd. ("Honour Walk"), the operations of several companies advancing loans to IAP claimants and Blott's role in ensuring that the companies making loans were fully repaid through the use of "directions to pay" from the proceeds of compensation awards under the Settlement Agreement. Some of the affiants also indicated

that, notwithstanding significant interest charges and "finders' fees" being charged on loans, monies noted as being lent to them were never received. Nonetheless, these monies were ultimately deducted from the compensation they received in the IAP by Blott and paid to the lenders, pursuant to the directions to pay.

- [11] Section 18.01 of the Settlement Agreement prohibits assignments of compensation awards from the IAP. Directions to pay are considered to be assignments for the purposes of s. 18.01.
- [12] Given the concerns raised, the Monitor filed, on an ex parte basis, a Request for Direction, incorporating an application for an order that the court direct an investigation into the representation of claimants by Blott. In addition, the Monitor sought a temporary order suspending any future IAP hearings involving Blott until further order of the court. I granted the order suspending the IAP hearings on an interim basis, pending a hearing, on notice to Blott and affected parties, on November 10, 2011 to consider the balance of the relief sought.
- [13] A hearing was held before me on November 10, 2011. As a result of the hearing, the Monitor was ordered to conduct an investigation into the representation of claimants by Blott, with periodic reports to be provided to the court while the investigation was continuing. The order suspending the hearings in the IAP involving Blott was vacated and Blott was allowed to continue representing clients within the IAP, subject to certain conditions. One of those conditions was a direction to the Chief Adjudicator to file monthly reports with the court regarding the conduct of lawyers from Blott at IAP hearings during the pendency of the investigation. Another condition involved the implementation of a process to ensure that any compensatory payments made under the IAP were directed solely to clients.
- [14] At the time this matter originally came before the court, the Chief Adjudicator was conducting his own investigation into Blott's representation of claimants. That investigation had been commenced as a result of concerns being raised by adjudicators in the IAP. The Chief Adjudicator had assigned one of his deputies to conduct the investigation in or about February 2011 and it was still ongoing in November 2011. The November 10, 2011 order directed the Chief Adjudicator to provide the material from his investigation to the Monitor.
- [15] In addition to the investigation being conducted by the Chief Adjudicator, the affidavits sworn by Mr. Blott in respect of the November 10, 2011 hearing also indicated that there had been previous complaints to the Law Society of Alberta ("LSA") regarding Blott. One of those complaints involved the relationship between Blott and Thomas Denomme, and the manner in which Blott was soliciting clients. The complaint resulted in a "Mandatory Conduct Advisory" in 2009, which was overseen by a Bencher of the LSA. In summary, the final report of the Bencher indicated that Mr. Blott had recognized the problems, was sincere in his concern about them and had taken appropriate steps to address the issues. The LSA accepted the report and did not proceed further at that time.

- [16] The investigation of the Monitor proceeded until its Final Report on February 24, 2012. During the course of its investigation, the staff of the Monitor received and reviewed over 200,000 pages of documents and conducted twenty-four in-person interviews of individuals connected with Blott, Honour Walk and various lenders. There were also 4,621 calls made to Blott clients which resulted in 786 interviews by telephone.
- [17] The Final Report of the Monitor is 7496 pages, consisting of an executive summary and more than 7,400 pages of exhibits. Among other things, the report details the fact that at the time of the investigation Blott had more than 1,159 completed applications from clients that had not been submitted in the IAP process, despite the fact that the deadline for filing claims is September 19, 2012. (There were also unsubmitted claims relating to deceased claimants.) The report also indicates that 77 Blott claimants had received over 380 loans from various lenders for which directions to pay had been accepted or facilitated by Blott. Taking all fees and interest charges into account, 73% of these loans from one lender exceeded the criminal rate of 60% per annum. The loans made to a sample of 6 claimants were analyzed in more detail. Taking all available information into account, it was found that over \$79,000 of the ostensible loans to those claimants were never received by them.
- [18] The Monitor's Final Report also addresses the continuing relationship between Honour Walk and Blott. Thomas Denomme is the sole shareholder of Honour Walk. It is not a law corporation, nor is Mr. Denomme a practicing lawyer. However, the Monitor's investigation revealed that Blott was paying Honour Walk a fee of \$200,000 per month in respect of its work in relation to IAP claims. This payment was in addition to other benefits, including the payment of the credit cards held by Mr. Denomme. Additionally, Honour Walk employees are noted to have complete access to the confidential claimant files of Blott.
- [19] On March 14, 2012, the Monitor filed an application seeking to have the court accept and implement a number of recommendations. These included a prohibition on any further involvement in the IAP by any of Blott, David Blott, his associate lawyers, Honour Walk, Thomas Denomme, the loan companies and other associated or affiliated individuals and entities. A hearing was set for April 30, 2012. The Monitor relies on its own reports, information from the investigation of the Chief Adjudicator and the monthly reports the Chief Adjudicator has delivered since the November 10, 2012 hearing.
- [20] In early April 2012, Blott retained the services of Paul McLaughlin, a former Practice Management Advisor, former Acting Practice Advisor with the LSA, and a published author and experienced advisor in the area of law practice management. Mr. McLaughlin was retained to act as an independent overseer of Blott's practice until its IAP practice is concluded. It should be noted that Mr. McLaughlin's retainer expressly excludes any inquiry into "allegations that did not relate to practice management (the 'loans' issue)".
- [21] In the course of commencing his retainer, Mr. McLaughlin visited Blott's Calgary office for a day and a half, and spent another half day in Bragg Creek "to review the documentation process, review files and to meet with the staff who manage the Database, the Document

Server [] and who are involved in client contact." Mr. McLaughlin proposes to discharge his oversight responsibilities through a combination of regular file management reports prepared by Blott and weekly on-site visits to Blott's Calgary offices. On the basis of his initial inspection of Blott facilities in Calgary and Bragg Creek, Mr. McLaughlin concluded that no "radical restructuring" of Blott's operations was necessary from a practice management point of view.

- [22] On April 11, 2012, I was advised by way of a Request for Directions from the Monitor that Blott had begun divesting itself of clients by a letter to affected Blott clients. In summary, the letter advised each recipient claimant that Blott was no longer able to act for him or her. The letter also stated that in the absence of an objection from the client within 14 days, his or her file would be transferred to a lawyer selected by Blott. Some 1,500 of those letters were sent to clients. Despite the pending application, no approval was sought from the court prior to Blott delivering these letters to its clients. There is no evidence that any real investigation was conducted by anyone at Blott to determine whether the lawyers to whom the clients were being assigned on this "negative option" basis would be able to provide adequate service to them.
- [23] On April 12, 2012, the court issued an order prohibiting any further such action on the part of Blott and prohibiting any client file transfer until the application scheduled for April 30, 2012 had been heard and determined.
- [24] On April 20, 2012, the LSA, having sought and received copies of the Monitor's interim First Report and its Final Report, convened a panel of Benchers for a special meeting. The purpose of the meeting was to hold a hearing to determine whether Mr. Blott should be suspended on an interim basis until full investigation of the LSA was conducted.
- [25] The LSA panel determined that there was a sufficient basis to order the immediate interim suspension of Mr. Blott. However, the panel had concerns about the disruption a suspension would cause for the clients of the firm. Accordingly, the order issued imposed stringent conditions on Mr. Blott and his firm, including the appointment of a practice manager (Mr. McLaughlin) and a prohibition on Mr. Blott having any dealings with clients until a full hearing had been held and a further order issued.
- [26] The hearing of the application before me was conducted over 6 days commencing on April 30, 2012. As noted above, the Monitor made recommendation or sought directions on a variety of issues. In my view, the issue of whether Blott, Honour Walk or their principals, affiliates or associates should be permitted to continue dealing with or representing claimants in the IAP is the most pressing and must be dealt with expeditiously. Accordingly, it is the subject of the remainder of these reasons. The balance of the issues raised in the Monitor's recommendation will be dealt with in supplemental reasons to follow.
- [27] I am of the view that this is case where the supervisory jurisdiction of the court is clearly engaged. Further, it must be exercised in order to ensure that claimants obtain the benefits of the settlement and to ensure that the integrity of the implementation and administration

is maintained. After a review of the material presented to the court and consideration of the submissions of various participants, I have concluded that an order must go prohibiting the further involvement of Blott, David Blott, Honour Walk, Thomas Denomme and certain other parties in IAP proceedings. This order will be subject to conditions to alleviate the impact on the clients of Blott as much as possible. My reasons follow.

Facts

- [28] The IAP is embodied in the Settlement Agreement. As a whole, the Settlement Agreement is extraordinary. It is a Canada-wide settlement, encompassing residential school operations spanning more than a century and includes an estimated 79,000 class members in total. It is unrivalled in Canada in terms of complexity and temporal scope. It was the subject of approval motions in 9 courts and, to date, over \$2.5 billion dollars have been paid in compensation to class members under its claims processes.
- [29] The purpose of the IAP is to provide a modified adjudicative proceeding for the resolution of claims of serious physical or sexual abuse suffered while at a residential school. The hearings are to be inquisitorial in nature and the process is designed to minimize further harm to claimants. The adjudicator presiding over the hearing is charged with asking questions to elicit the testimony of claimants. Counsel for the parties may suggest questions or areas to explore to the adjudicator but they do not question claimants directly.
- [30] The hearings are meant to be considerate of the claimant's comfort and well-being but they also serve an adjudicative purpose where evidence and credibility are tested to ensure that legitimate claims are compensated and false claims are weeded out. It is strongly recommended that claimants retain legal counsel to advance their claims within the IAP.
- [31] The IAP is also a successor to a former Dispute Resolution ("DR") scheme that was created unilaterally by Canada to deal with claims arising from the operation of residential schools. The DR process was rolled into the Settlement Agreement at the implementation date. All DR claims were thereafter administered through the Settlement Agreement and heard by the adjudicators hearing claims under the IAP. Section 15.02 of the Settlement Agreement provides that claimants may opt in DR claims for physical abuse to the IAP but sexual abuse claims under the DR were automatically rolled into the IAP unless the claimant specified otherwise within 60 days of the settlement implementation.
- [32] It is the general practice for counsel representing claimants in the IAP to be paid on a contingency basis. Pursuant to the terms of the IAP, Canada pays an additional 15% of a claimant's award to defray legal fees. Canada also pays the reasonable disbursements of counsel in relation to successful claims. A further payment may be obtained from clients as a percentage of the award he or she receives. The courts approving the Settlement Agreement set a 30% cap on fees to be charged to claimants, inclusive of Canada's contribution. Notwithstanding any retainer agreement, the adjudicator conducting the hearing has the authority to review fees charged by counsel, either at the request of the

claimant or on his or her own motion.

- [33] David Blott is a lawyer resident in Alberta. He was called to the Alberta bar in 1999. His practice now consists almost exclusively of representing clients in IAP proceedings. He is also the principal of the David Blott Professional Corporation and Blott.
- [34] Blott represents IAP claimants across the country but primarily in Alberta, British Columbia, Saskatchewan and Manitoba. The firm structure appears to be somewhat different from the usual law practice, employing mostly contract lawyers and third party administrative services.
- [35] In one of the five affidavits Mr. Blott has sworn in the course of this proceeding, he refers to having 9 associates but goes on to say that, with the exception of one, "each of the lawyers working for [Blott] are independent contractors".
- [36] It also appears to be case, at least until shortly before the date that this application was heard, that the majority of Blott's administrative functions were carried out by a third-party services provider, operating as Hands Free Office Services Corp.
- [37] At the time of the Monitor's investigation, Blott had represented claimants at approximately 1,500 hearings. The firm was on record for approximately 2,900 other claimants. However, the Monitor also found 1,222 completed but unsubmitted applications for class members (including deceased claimants), held in either the Blott offices or offices of entities associated with Blott. There is no evidence that any of the claimants to whom these unfiled applications relate have been made aware that they are not yet in the IAP system.
- [38] The Monitor's Final Report also indicates that it obtained 19 boxes labeled "Do Not Qualify/ DNQ" from one of Blott's locations containing 182 client files. The Monitor confirmed that only 62 had been submitted to the IAP Secretariat for adjudication. While there is nothing inherently objectionable about counsel advising a client where no legitimate claim exists, the client cannot be left with the impression that a claim has been made. I am concerned that it does not appear that many of the clients whose IAP applications found their way into the "DNQ" boxes were informed of that decision on a timely basis. Further, given the lack of separation between Blott, Honour Walk and Hands Free Office Services, it is not clear who made the decision that the claims did not qualify.
- [39] Mr. Blott states in his affidavit sworn April 20, 2012 that 502 letters were sent to clients whose applications, in Blott's judgment, "will not be eligible or will not qualify for compensation in the IAP." Of these 502 letters, 212 were directed to clients whose applications had not been forwarded to the IAP Secretariat. Mr. Blott indicated that letters to clients associated with "DNQ claims" were among those contacted using these letters. These letters appear to have been delivered sometime between late March 2012 and the April 12, 2012 order.
- [40] There is no dispute that most of the Blott clients are directed to it from Honour Walk. As noted above, the shares of Honour Walk are solely owned by Thomas Denomme. While there are slight inconsistencies in the evidence of Mr. Blott and statements made by Mr.

Denomme to the Monitor during the investigation, it appears that Mr. Denomme and Mr. Blott were actively seeking involvement in the IAP and DR processes at the same time in 2006. Mr. Blott began representing clients and Honour Walk began operations as a form filling organization under the supervision of Mr. Denomme, directing clients to Mr. Blott or the his firm.

- [41] "Form fillers" are non-lawyers who assist claimants in filling out the application forms for the IAP, and its predecessor DR process. The application forms generally provide personal information as well as a pleading or statement of allegations on behalf of the claimant. The practice in the IAP is to require the claimant's lawyer to go through, with the claimant, the allegations made on the application, to "certify" that they have done so and that the claim is complete and accurate. The certification is supposed to provide a measure of administrative efficiency and a degree of accuracy to the claims being alleged. Canada, as the defendant, is provided with a copy of the application form to be able to prepare for the case. It also permits the IAP Secretariat to make a determination for scheduling of the hearing.
- [42] Based on the statements of Mr. Denomme, Honour Walk form fillers are paid on a per application basis. The total paid varies between \$225 and \$300 per form. Including the unfilled applications, Honour Walk has provided Blott with approximately 5,600 clients. Making the necessary calculations, the total paid to form fillers by Honour Walk is between \$1,260,000 and \$1,680,000. Notwithstanding this, Blott has paid Honour Walk \$6,000,000 during the course of their business relationship dealing with the IAP claims. At the time of the Monitor's investigation, Blott was paying Honour Walk a flat fee of \$200,000 per month or \$2,400,000 per year. In an affidavit sworn April 20, 2012, Mr. Blott deposes that his firm has now ended its relationship with Honour Walk.
- [43] Honour Walk's standard form client retainer document is pre-printed and requires the claimant to initial certain clauses and sign the document. Interestingly, the third and fourth clauses of that document read as follows:

I understand and agree that Honour Walk Ltd. has the right to recommend a law firm or lawyer to me who may help me pursue my residential school claim but that I am under NO obligation to hire ANY lawyer or law firm to assist me with the pursuit of my residential school claim. I understand and agree that any law firm retained by me shall be required to pay Honour Walk's \$4,000.00 document collection fee on my behalf otherwise such fee is my own responsibility and I am fully liable for its payment.

After careful thought and consideration, and based on information I received in the community and based on information Honour Walk Ltd. has provided, I have decided to hire Blott & Company as the law firm to represent me in my residential school claim. I hereby acknowledge and agree that I have NOT been offered or promised any compensation or benefit by Honour Walk Ltd. of its form fillers as a way to induce or cause me to choose the law firm of Blott & Company to represent me in my Indian Residential School Claim. (Emphasis and capitalization in original)

[44] The Blott retainer agreement also contains a "break fee" provision similar to one included in the Honour Walk document. The relevant part of the Blott document reads as follows:

NOTE TO CLIENT: IF YOU WANT TO CHANGE LAWYERS PRIOR TO YOUR HEARING OR PRIOR TO ANY NEGOTIATION, YOU ARE REQUIRED TO PAY BLOTT & COMPANY \$8,000 PLUS EXPENSES. READ THE FOLLOWING THREE PARAGRAPHS CAREFULLY:

5. (a) Subject to subparagraph 5(b) below, the Client further agrees that, if at any time after the date of this Contingency and Retainer Agreement the Client elects not proceed with the Client's claim, or in the event the Client refuses to follow the Solicitor's advice, or in the event the Client notifies Blott & Company that the Client wants to change lawyers FOR ANY REASON, or in the event the Client provide (sic) faulty, misleading or inaccurate information to the Solicitor, the Client agrees that the Client shall forthwith pay the Solicitor the sum of EIGHT THOUSAND DOLLARS (\$8,000), plus ALL disbursements and GST;
- (b) provided however, that if any of the Solicitor's lawyers attends any Indian residential school hearing, appeal hearing or enters into any negotiation on behalf of the Client, then the full amount set forth in Section 2 of this Retainer Agreement shall be immediately due and owing to the Solicitor by the Client.

(All emphasis and capitalization in original)

- [45] The settlement negotiations for the residential school litigation began in earnest in May 2005. In November 2005, an agreement in principle was reached amongst the parties. The settlement approval motions commenced in August 2006 and the approval decisions were issued in December 2006.
- [46] Based on that timeline and the evidence of Mr. Blott, it is reasonable to infer that his interest in developing a practice in the representation of claimants in residential school litigation was sparked by the prospect of the settlement and its contemplated claims process. This inference is further supported by statements he made in response to the LSA regarding a complaint in 2009.
- [47] According to the evidence of Mr. Blott, he was introduced to the aboriginal community through Mr. Denomme, who had previous connections through various business ventures and cultural events over the years. The ultimate result of the collaboration was that Blott went from no clients with residential school claims in 2006 to over 5,600 clients in total as of the conclusion of the Monitor's investigation in February 2012. Of those, approximately 4,100 clients have open files with the firm. Most, if not all, of those clients came to Blott through the Honour Walk form filling efforts.
- [48] Documents in the application record indicate that sometime in 2008 Blott began the practice of accepting "directions to pay" in respect of loans advanced by third parties to its clients. The Monitor's investigation revealed that 77 claimants received over 380 loans from the various lenders.

- [49] A number of the loans were arranged through a company known as Funds Now Inc. ("Funds Now"). One of its principals was David Hamm, a business associate of Mr. Denomme. The documents in the record from Funds Now indicate that the company charged a "finder's fee" of 20% of the loan proceeds to claimants in addition to any interest charged by the actual lender. Further, this "finder's fee" was charged every time a claimant obtained a loan, regardless of whether a claimant obtained multiple loans through Funds Now or from the same lender.
- [50] During the course of its investigation, the Monitor retained KPMG to perform a forensic review of the records relating to the loans. As one exercise in verification, KPMG looked at the documentation relating to the loans of 6 specific clients. The entirety of the information available with respect to those loans, including handwritten notes where no banking records existed, led KPMG to conclude that out of \$375,915 purportedly advanced on the loans, \$79,934 could not be accounted for. To be clear, this sum was calculated giving full credit for all stated fees, interest and service charges, whether questionable or otherwise. Despite the fact there is no evidence that the claimants received the missing amounts, the "directions to pay" the face values of the loans to the lenders were honoured by Blott. The lenders were repaid in full from the compensation awards received by Blott on behalf of these clients.
- [51] In another part of its report, KPMG provided some calculations on the loans relating to the fees and interest charged. By one approach, which is based on the money actually received by the claimants through these loans, over 73% of the loans from one lender had total fees and interest in excess of 60% per annum. Anything in excess of 60% per annum is of course a "criminal rate" due to the prohibition set out in s. 347 of the Criminal Code.
- [52] The documents in the record also indicate that Mr. Blott was negotiating a loan for his firm from Bridge Point Financial, one of the client lenders, during the same period. It is interesting that the loan to Blott appears to be based on the expectation that the claims of its clients in the IAP would result in sufficient income to enable repayment of the loan. The interest rate Mr. Blott negotiated was 18% based on that expectation. Blott's clients, however, were being charged an interest rate at a face value of 22% per annum, with an actual rate much higher, by the same lender. This despite the fact that the client loans were secured by an irrevocable direction to pay and were advanced after a decision had been issued and payment of the award was a certainty.
- [53] Indeed, in two cases, it appears that loans totaling more than \$14,000.00 were extended to Blott clients, with all of the corresponding fees, interest and service charges usually deducted after their IAP compensation had been deposited in Blott's trust account but not yet paid to the clients.
- [54] In practice, as found by KPMG, the actual rate paid by clients was significantly higher than the ostensible rate of 22%. Mr. Blott states that he received no direct benefit from the loans by Bridge Point to his clients, but there is no explanation as to why there was such an interest rate disparity between his own loan and that of the loans to his clients.

[55] As the Blott practice grew, other issues appear to have arisen. In July 2009, Mr. Blott found himself the subject of a complaint to the LSA. The complaint was based on the manner in which Blott solicited clients and its relationship with Mr. Denomme. The substantive part of the letter from the LSA read as follows:

The Conduct Committee Panel considered the following conduct and directed that you receive a Mandatory Conduct Advisory:

You attempted to solicit professional employment by inappropriate means and thereby reached (sic) Chapter 5, Rule 3, of the Code of Professional Conduct and the your (sic) relationship with Mr. Denomme or Mr. Denomme's company breached Chapter 5, Rule 7 of the Code of Professional Conduct.

The purpose of the Mandatory Conduct Advisory is to specifically inquire into the manner in which you retain your clients, to review your form of retainer letter to ensure that it is not potentially misleading or accepted by clients without a full understanding of its import, and to inquire as to your procedures to ensure that you were not communicating with persons who had had (sic) already retained other counsel on the matter. The Mandatory Conduct Advisory will also inquire as to your previous and current relationship with Mr. Denomme and the relationship of the Residential School Healing Society of Alberta.

We will be in touch again when we have a volunteer from a Benchers.

[56] The Residential School Healing Society of Canada is another company controlled by Mr. Denomme. At the time of the Mandatory Conduct Advisory, Mr. Denomme was contacting potential claimants and using a business card with a telephone number for the Residential School Healing Society that rang through to the offices of Blott. Some of these claimants were already clients of another firm.

[57] The Benchers appointed to conduct the review of Blott's practice reported to the LSA on August 17, 2009. The report contains a succinct conclusion which reads:

I expressed to Mr. Blott the seriousness of the Law Society's concerns having to do with the solicitation of potentially vulnerable clients, and the need for clarity when marketing efforts are undertaken, particularly when those efforts involve third parties such as Mr. Denomme.

Mr. Blott appeared to be sincere in his concern with respect to these matters, he acknowledged past weaknesses (such as the letter sent to the Washington clients and the Denomme business card), and he appears to have taken appropriate steps to deal with these matters.

In the end result, it is my opinion that the Mandatory Conduct Advisory process has been successful in this case, and I do not recommend proceeding with this complaint any further.

[58] The Conduct Committee Panel of the LSA accepted this report and recommendation and, indeed, did not proceed further.

[59] There was another complaint to the LSA in October 2010. This complaint was from a client of Blott who was dissatisfied with his or her representation in respect of an IAP claim. The letter from the LSA to the complainant on April 12, 2011 provides some details about the nature of the complaint. Apart from representation concerns, the client also apparently alleged that Mr. Blott was giving people "advances at high interest rates" such that by the time the a claimant's settlement award actually arrived there was nothing left.

[60] The LSA letter of April 12, 2011 indicates that Mr. Blott's response with respect to the allegation about advances was as follows:

[Mr. Blott] denied any involvement by his firm in providing cash advances or any intentional delay in processing claims but did acknowledge that if a client arranges a settlement loan, he does cooperate with the settlement loan provider after confirming that the client wishes to proceed with the loan. He included samples of the normal documentation which he confirmed is prepared by the settlement loan provider. (Emphasis added)

[61] The form filling operation of Honour Walk and the Blott practice of submitting the applications so prepared to the IAP came under scrutiny again in 2010. The Monitor's Final Report contains material gathered during the course of the investigation ordered by the Chief Adjudicator. That investigation was conducted by Kaye Dunlop, Q.C. who was, and remains, a Deputy Chief Adjudicator in the IAP. Included in the information she compiled is a report to the Executive Director of the Indian Residential Schools Adjudication Secretariat regarding a review of IAP applications from Blott between July 1, 2009 and June 30, 2010. The purpose and conclusion of the review is stated in the executive summary, which reads as follows:

This report is based on a review of Independent Assessment Process (IAP) application forms submitted by Blott and Company that were admitted to the IAP between July 1, 2009 and June 30, 2010. The study was conducted at the request of the Executive Director, Indian Residential Schools Adjudication Secretariat in response to concerns brought forward by one of the parties to the Indian Residential (sic) regarding applications submitted by Blott and Company. The results of the study suggest that most of the harm and education/work history narrative sections of the Blott and Co. applications are completed using a standardized template or list across claims. The abuse narrative sections appear to use relatively unique terminology, suggesting that these sections are completed without the assistance of template text.

(Emphasis added)

[62] There were other concerns being expressed in or about this time in relation to the accuracy of the applications filed by Blott in the IAP. There is a memo included in the information compiled by Ms. Dunlop dated December 15, 2010. It was authored by Jack Hillson, an IAP adjudicator, and directed to Rodger Linka, another Deputy Chief Adjudicator. The subject matter relates to form fillers and specifically to their use by Blott in respect of IAP applications. The Hillson memo reads in part:

Last week, I had three Blott hearings in Alberta. In all three cases the counsel had only just met the client and the application bore little resemblance to the Claimant's story. There were two lawyers; one had the decency to express embarrassment, the other simply said she was not responsible. Here is the rundown:

1. One was never at a residential school. Because she have never talked to the lawyer this only came to light the morning of the hearing. If the two had met prior to hearing date it would have been resolved. The Claimant knew she had been to a day school but the form filler told her to send it in anyway.
2. One claimant who had been a day student at an IRS was shocked to hear that the application had claimed that her grade one teacher would not allow her to wear underwear. Again, the lawyer had never spoken with her prior to that morning to try to resolve an allegation that strikes one as preposterous. One application mentioned the Claimant's alcoholism. He denied ever having an alcohol problem. He is a non-drinker. So where did the form filler get the information "I am now an alcoholic"? The lawyer didn't care.
3. The applications all use the same wording expressing fear and dislike of whites, churches and persons in authority, although often the applications involve only allegations against other (aboriginal) students. The same phrase also appears in applications from the 1970's when the churches were long out of the school. At the hearing, claimants express no such resentment against white/churches/priests, etc. Where did these phrases come from in the application? One lawyer didn't seem to understand that such entries on an application can prejudice adjudicators against a claimant before they ever meet him/her.

When adjudicators find wild discrepancies between the application and the evidence, there is a natural tendency to look questioningly at the Claimant. I am increasingly of the view that such accretions are not the result of a change of story at all, but rather are solely the work of form fillers.

4. Two Blott Lawyers have told me that the application is "nothing. It is merely a form to get into the process." (Bill Campbell has been told this as well.) When I read to the lawyers the final certification about the statements being true and having the same affect (sic) as sworn testimony in court, they were unmoved. One lawyer told me it was "unreasonable" to expect that lawyers would spend their time filling out application forms. She has no involvement in any part of the claim prior to the hearing date and cannot be held to account for it. The other expressed regret that as an employee of the firm she is simply hired to turn up for hearings and wishes it was otherwise.

[63] At Exhibit 58 to the Monitor's Final Report, there is an email chain starting with Mr. Blott, going eventually to Mr. Denomme and then onward, apparently to individuals acting as form fillers. The subject being discussed is the filling out of application forms for the IAP. The email from Mr. Blott, dated July 4, 2010, sets out the "most popular" aggravating factors and lists 5 specific items. Mr. Denomme forwards the email from Mr. Blott to the individual form fillers, stating:

Hi Guys

Starting as soon as you can, these are the only aggravating factors I want marked. Let all your people know.

[64] Mr. Blott offered this explanation for the emails in his affidavit sworn April 20, 2012:

39. It was never my intention for any of the form fillers to advance certain grounds over others. It was instead my intention to have the form fillers listen to the claimant's story and assist the claimant in choosing the appropriate grounds.
40. When I provided guidance to Honour Walk in my email dated July 4, 2010 (Exhibit 58 to the Final Report) listing the most popular grounds, I was referring to grounds that, based on what I was seeing in notices of decisions, were the most common grounds claimed by claimants and accepted by adjudicators. I did not want Honour Walk filling out every ground and instead thought that the lawyers, once they received the applications, would pursue additional grounds at the hearing as part of the normal progressive disclosure if warranted.

(Emphasis added)

[65] The "progressive disclosure" alluded to by Mr. Blott is a concept that requires some explanation as it relates to the IAP. It has been recognized that claimants who suffered abuse as children may disclose details of the abuse over a period of time because of the emotional ordeal involved in recalling and recounting the events. Within the IAP, adjudicators are made aware of this aspect of dealing with abuse claims and are advised to consider it when assessing the credibility of claimants. In practical application, the issue may arise where the claimant's evidence is materially different from a previous statement. The adjudicator must assess whether the reason is as a result of progressive disclosure or a more recent fabrication on the part of the claimant.

[66] Claimants in the IAP are given the benefit of the doubt where new allegations or factual recollections could be explained by progressive disclosure. However, as Mr. Hillson's memo indicates, the principle has its limits. Further, the practice used by Honour Walk, with the apparent approval of Mr. Blott, is one of delayed rather than progressive disclosure. More to the point, it arises entirely as a result of the manner in which applications are prepared rather than any reluctance or inability on the part of claimants to provide details of their claims.

[67] There is an equally, it not more, troubling email chain at Exhibit 62 to Monitor's Final Report. The emails are between Thom Denomme, Debbie Baker and Jennie Mackenzie (Hands Free) with a blind copy to David Blott on the last email in the chain. The emails are dated September 22, 2010 and relate to the completion of applications for the IAP. The substantive text from the emails is as follows:

(From Thom Denomme to Debbie Baker, Jennie Mackenzie, bcc'd to David Blott)

Hi Deb

I talked with David and here's how it works. Do not worry about changing harms; we are getting to the point that most of these will not be mentioned. What David has a problem with is when we change the abuse AFTER THE GOVT RECEIVES THE APP. That leaves us with abuse before we send it in and that is something a little bit different from phone apps (Trevor) and agent written apps (Doug)

With Trevor their apps are scanned in and sent to the lawyers. Any abuse changes that we do with those, we have to let the lawyer know because they are reading it from the scan. As a result, I will make sure Trevor and Lalaine write these properly so we do not have to change, or if we do, we email the lawyer. Still process as normal.

With Doug we are free to change whatever we want for abuse because these are still in our possession and not submitted to the govt. SO proceed as normal with these.

As I read this, it seems a little confusing. Please call me if you have any questions.

Have a great day!

Thom Denomme

Residential School Healing Society

(From Debbie Baker to Thom Denomme, cc to Jennie Mackenzie)

Thom

After the new policy was issued yesterday that David or Amina have to review all apps before I can change or remove an abuse, harm, etc. things have slowed me down. Not sure why the change but anything that you have marked on an envelope for me to remove or I find to be incorrect in the way of an abuse now has to be reviewed by David or Amina first. I now have to scan them and then send them over to them for review before I can continue. I am having trouble with the printer/scanner I have here and will be going to buy a new one tonight. If they have been left blank on the app, I can make the harms a 3 and the LOO -3. In addition to this change, I also have to make a list for Lisa P of all the Dr's or Treatment Centres that I add to the Master List on the database so they know about them before they think they are complete and can be sent in. There is also the list for the lawyers of all the Not Certified apps that I send to Jenn Hall so she can forward them on to the lawyers. Very frustrating all the way around because we seem to be

continuously repeating our work.

Basically with this latest policy, all apps that are being done now that have to be reviewed by a lawyer are now taking precedence over the apps that needed certifying that I have sent in prior. The last batch was 50 N/C in the 100+ files that I sent over to the office.

Sorry I needed to rant because I feel like every time I get a handle on this it spirals in a new direction. I know this goes with the job but feel very much out of the loop. I told Jen last week I could easily do 75 files a week. With these changes it could easily go back to being 50 because I am chasing my tail.

Deb

(Emphasis added, capitalization in original)

[68] Mr. Blott was blind copied by Mr. Denomme on the entire email chain. The only logical inference to be drawn from the underlined passages is that the Honour Walk operation, with the knowledge of Mr. Blott, was actively engaged in manipulating application forms for the IAP.

[69] By 2011, neither the Mandatory Conduct Advisory from the LSA nor the IAP reviews had improved the practices of the Blott firm. The concerns related to the handling of IAP claims by Blott remained unresolved. In February 2011, the Chief Adjudicator assigned Ms. Dunlop to start the investigation referred to above. There was correspondence at an early stage where it appears that Mr. Blott challenged both the purpose of the investigation and the Chief Adjudicator's authority to order that it be conducted. On April 4, 2011, Ms. Dunlop sent a letter to Mr. Blott comprehensively addressing the reasons for the investigation. The letter reads in part:

A significant number of adjudicators have raised concerns to the Chief Adjudicator's office about the application and other documentation, document production, and related presentation of evidence and conduct of hearings in files involving your office. Concerns have also surfaced relating to the documentation and information which should be considered in the carrying out of the responsibilities of Adjudicators relating to Legal Fee Reviews, and regarding the depth to which the necessary inquiry into Legal Fee issues should proceed. These concerns have been expressed by adjudicators on a regular basis for some time now and there have been attempts to address these issues with you on at least four different occasions in the past. Unfortunately, despite assurances from you that the identified issues would be resolved by your office, the Chief Adjudicator is continuing to receive complaints and concerns from adjudicators about issues revolving around these areas. I have been asked to investigate specific problems that have arisen and to consider how the standards set out in the IAP may be more consistently met going forward. (Emphasis added)

- [70] As also noted above, Ms. Dunlop had not concluded her investigation at the time the Monitor was ordered to commence an investigation by the court on November 10, 2011. As set out in earlier reasons, that investigation was ordered on the basis of evidence put before the court relating to issues raised about Blott's representation of clients and its involvement in facilitating loans at high interest rates to clients.
- [71] On February 24, 2012, the Monitor delivered its Final Report. Together with its executive summary, attachments and exhibits, it totals 7,496 pages, and includes:
- (a) transcripts and summaries of interviews with Blott clients and other individuals relevant to the investigation;
 - (b) examples of retainer and contingency fee agreements entered into with Blott by Blott clients;
 - (c) examples of agreements entered into by Blott clients with Honour Walk Ltd.;
 - (d) reproductions of Blott's internal accounting documents, including copies of bank and credit card statements relating to Blott, Honour Walk Ltd. or their respective principals;
 - (e) copies of "Irrevocable Assignment and Direction to Pay" documents and similar agreements executed by Blott clients;
 - (f) copies of "Finder Fees Agreement" and other documents executed by Blott clients in favour of Funds Now Inc. and Settlement Lenders of Canada Inc.;
 - (g) the report of a detailed investigation conducted by KPMG Forensic into Blott's financial relationships;
 - (h) transcripts of IAP hearings involving Blott clients;
 - (i) correspondence among individuals relevant to the investigation; and
 - (j) documentation regarding the financial relationships between and amongst individuals and entities relevant to the investigation.
- [72] According to the Executive Summary to the Monitor's Final Report, the Monitor obtained over 200,000 pages of documents and conducted twenty-four personal interviews, while making 4,621 outbound calls to Blott clients, 786 of whom were interviewed by telephone.
- [73] Using records obtained from Blott and Honour Walk, the Monitor identified more than 1,100 completed IAP applications in Blott's possession or control which had never been submitted to the IAP Secretariat. Mr. Blott has not offered any explanation for withholding completed applications. Further, there is no evidence that any of these claimants were made aware by Blott or Honour Walk that the applications had not been filed.

- [74] The Monitor's investigation disclosed instances where copies of client signatures were added to documents never signed by the client. The Monitor also discovered that clients were not provided with copies of their applications, a practice which allowed alterations to be made in the application without the knowledge of clients.
- [75] The Monitor also notes that the "employees of Honour Walk were provided access to the confidential electronic notes and file database system used by the Blott & Company lawyers". The same appears to have been the case for the employees of Hands Free Office Services. Indeed, there are no bright lines that can be drawn from the evidence to show where Blott stops and the other entities begin despite their separate corporate identities.
- [76] From the interviews conducted with the 786 Blott clients, 38% expressed dissatisfaction or concerns with their representation by Blott lawyers. As further documented in the reports of the Chief Adjudicator, the issues raised included concerns about meeting with their lawyer for the first time at the hearing, an inability to contact counsel and inaccurate information in their applications.
- [77] There were instances where family members of Mr. Blott made loans to claimants or to Funds Now. One of Mr. Blott's associates, Kim DesLandes, who was separately represented on this hearing, invested \$20,000 in the Funds Now operation.

[78] The Executive Summary of the Monitor's Final Report also states that:

A number of claimants have also Reported that they did not receive the full value of their loan proceeds, and in some cases the Monitor determined that proceeds from claimant settlements were paid out by Blott & Company to loan companies or other parties without supporting loan documents on file and without direction from Blott & Company clients to do so, including payments to the Funds Now Inc. for home electronics items allegedly provided to the claimants as part of their loan proceeds, without being documented in the loan file or in the direction to pay.

[79] Another noteworthy extract from the Executive Summary on the lack of separation between the various entities being investigated reads as follows:

Mary McStravik, office manager for 117 - 1st St. East, Cardston, Alberta, (a space shared by Blott, Honour Walk and Hands Free Office Services) advised representatives of the Monitor that she works for Honour Walk Ltd. Ms. McStravik was only advised of this two days prior to the attendance of the representatives of the Monitor at her office, despite having worked in that office for four years. Ms. McStravik answers the phone "Residential School Healing Society of Canada," and advised the Monitor that this was done to put the Claimants at ease.

Ms. McStravik appeared to be unaware that Residential School Healing Society of Canada is a separate organization.

Ms. McStravik advised that her paycheques are issued from Hands Free Offices Services, another separate legal entity.

Ms. McStravik's office was observed to have a number of Blott & Company documents. Mr. David Blott advised the Monitor that the house in which Ms. McStravik operates her office is owned by David Blott Professional Corporation.

Posted in Ms. McStravik's office was a framed note which showed the same facsimile number for both Blott & Company, and "R.S.H.S."

[80] The LSA sought and was granted access to a copy of the Monitor's Interim First Report in January 2012. On March 20, 2012 the LSA was similarly granted access to the Monitor's Final Report. On April 20, 2012, the LSA convened a special meeting of its Benchers, on notice to Mr. Blott, to consider whether he should be suspended on an interim basis pending a completion of an investigation by the LSA.

[81] The LSA intervened in this proceeding. It filed two affidavits sworn by Katherine Whitburn, the Manager of Complaints of the LSA. To her affidavit of April 27, 2012, Ms. Whitburn attached an excerpt from a transcript taken during Mr. Blott's suspension hearing.

[82] Mr. Blott has characterized the LSA's hearing as vindicating his position. In his affidavit sworn April 27, 2012, Mr. Blott stated as follows:

Instead of suspending me, the panel imposed interim conditions on my practice [...] From my attendance at the hearing, I understood that the benchers unanimously believed that it is in my clients' interests and the public interest that the firm should continue to be able to serve clients, subject to the conditions.

[83] The transcript excerpt included in Ms. Whitburn's affidavit paints a different picture.

[84] In imposing the conditions referred to by Mr. Blott, the LSA panel noted as follows:

In the circumstances before us, we are unanimous that the test for an interim suspension has been met here. We are of the view that, absent conditions, there is a present danger to the public and, in particular, to Mr. Blott's own clients.

In this case, however, we conclude that our hands are, to some extent, tied by circumstances. The danger to the clients, that have already been victimized once, of suspending Mr. Blott would be that those clients may find themselves victimized yet again by a process outside of their control. We do not wish to reach a conclusion which would victimize those clients again.

(Emphasis added)

[85] The LSA also expressed concern at the approach of Blott towards the principle of progressive disclosure, stating as follows:

We do understand in the nature of this process that progressive disclosure is something which occurs where clients become comfortable only later on in the process of disclosing certain information. We do not see that as in any way justifying a lack of reporting of things that are disclosed by clients early on, and we have concerns about whether all of this was handled in clients' best interests.

[86] These excerpts illustrate the fact that the LSA in no way endorsed Mr. Blott's continuing representation of IAP claimants as serving their interests or the public interest. Rather, the LSA panel determined that Blott's continued representation of IAP claimants was, essentially, the lesser of two evils. Any doubt as to the LSA panel's opinion on the subject should be dispelled by the following passage:

But after considering all of the evidence in this matter and hearing Mr. Blott, we continue to be concerned that Mr. Blott does not appear to understand what it means to be a lawyer. We are concerned that Mr. Blott appears not to recognize that his primary role is as a fiduciary and everything else is secondary.

(Emphasis added)

[87] Mr. Blott's misperceptions notwithstanding, the LSA's message is unmistakable: action was required to protect Blott's IAP clients and the public interest.

[88] For the sake of offering a complete historical perspective, a short step backward in the timeline is necessary. On April 11, 2012, the Monitor filed an urgent Request for Directions regarding additional conduct of Blott that it felt raised new concerns. The Request was dealt with by a hearing on April 12, 2012.

[89] In substance, the issue was action being taken by Blott to divest itself of clients prior to the hearing of the Monitor's application. As referred to above, Blott had begun mailing letters to clients, advising that the firm would no longer be representing them and that their files would be assigned to a new firm or lawyer, chosen by Blott. This was done on a "negative option" basis. In other words, in the absence of an objection from the client receiving the letter within 14 days, the file would automatically be assigned to a lawyer chosen by Blott. It is not clear exactly how many letters of this nature were sent to clients but the estimates ranged from 1,200 to 1,500 as of April 12, 2012.

[90] I issued an order, inter alia, enjoining this conduct and prohibiting the transfer of any clients in this manner until the Monitor's application was heard and determined.

The Monitor's Recommendations

[91] As previously stated, these reasons will only be dealing with 2 recommendations of the Monitor. They are set out as points 1 and 2 in the Monitor's application:

- 1) That the Court consider as appropriate the recommendation of the Monitor that:

- a. David Blott, David Blott Professional Corporation, Blott & Company, and all lawyers, legal partnerships and professional corporations associated or affiliated with any of the foregoing;
- b. Honour Walk Ltd., Residential School Healing Society of Canada and Hands Free Office Services Corp. and all other persons associated or affiliated with any of the foregoing; and
- c. All officers and directors of each of the foregoing;

be removed from participation in providing services relating to Indian Residential School ("IRS") claims made pursuant to the Settlement Agreement process other than with respect to a claim by an individual referred to in sub-paragraphs (i), (ii) or (iii) above asserted on his or her own behalf.

- 2) That the removal of the above parties from participation in the claims processes be done in a manner that minimizes the impact on Blott Claimants and in a manner as recommended below:
 - a. That a lawyer or lawyers be appointed as a claimant representative for the purposes of evaluating and arranging for the proper handling of the claims of Blott Claimants (the "Claimant Representative");
 - b. The Claimant Representative would, pending satisfaction of any requirements that the Law Society of Alberta or any other law society with jurisdiction may have, take control of and have temporary conduct of all the Blott Claimant files notwithstanding any claim that David Blott, David Blott Professional Corporation, Blott & Company or any associated lawyer handling claims of the Blott Claimants have for fees and disbursements;
 - c. The Claimant Representative with the assistance of the Monitor would be responsible for inter alia:
 - i. Reviewing all of the unsubmitted claims identified by the Monitor and/or Blott & Company and taking such steps as are necessary to have such claims filed and processed in a timely manner;
 - ii. Reviewing all of the claims that have been designated as non qualifying Claims by Blott & Company and/or Honour Walk Ltd. and taking such steps as are necessary to have such claims filed and processed in a timely manner;
 - iii. Consulting with Blott Claimants whose claims have already been adjudicated to determine if such claimants desire that their claims be re-submitted to the Adjudication Secretariat for a determination as to appropriate further process, if any;
 - iv. Consulting and liaising with the Adjudication Secretariat with respect to the foregoing claims;
 - v. Engaging such other lawyers as the Claimant Representative deems appropriate to assist the Claimant Representative in fulfilling his or her duties;

- vi. In consultation with and with the approval of each Blott Claimant, arranging for the appointment of such lawyers, as the Claimant Representative deems appropriate to represent (such representation of the Blott Claimants with respect to their claims;
 - vii. In consultation with and with the approval of each Blott Claimant, entering into representation agreements with such lawyers for the representation of the Blott Claimants; and
 - viii. Any other matter relating to the administration and prosecution of the Blott Claimant claims as directed by this Honourable Court;
- d. The Claimant Representative would report to the Court through Court Counsel and to the Monitor on a quarterly basis as to progress on the advancement of the Blott Claimant claims;
 - e. The Claimant Representative would be at liberty to seek further directions from the Court upon notice to interested parties.
 - f. David Blott, David Blott Professional Corporation, Blott & Company and those lawyers, legal partners and legal professional corporations associated or affiliated with any of the foregoing will co-operate with the Claimant Representative and the Monitor with respect to the orderly handling and transition of Blott Claimant files; and
 - g. The Claimant Representative would be remunerated in whole or in part from the fees payable by Canada generated by the claims on a basis to be determined by the Court.

The Positions of the Parties and Intervenors

Monitor

- [92] The Monitor, having conducted its investigation into the operations of Blott, Honour Walk and associated entities, stands in the position of applicant in this matter. The relief it seeks is the adoption by the Court of its recommendations, as set out above.

David Blott, David Blott Professional Corporation and Blott & Company

- [93] Mr. Blott and his associated entities take the position that the relief sought by the Monitor is extraordinary and unprecedented, and could only be justified in the most extreme circumstances. Mr. Blott argues that the record before the court is insufficient, from factual and evidentiary perspectives, to justify the relief sought by the Monitor, and that granting the relief sought would cause disruption to the Blott IAP claimants.

The Chief Adjudicator

- [94] The Chief Adjudicator's submissions focus on the process to be implemented for the transfer of IAP claimant files from Blott to new counsel, suggesting that the primary emphasis should be placed on minimizing adverse impacts on claimants. The Chief Adjudicator supports the Claimant Representative structure proposed by the Monitor, and provided suggestions as to the appropriate qualifications and capabilities of the Claimant

Representative. The Chief Adjudicator also expressed concern as to the detrimental impact of any freeze placed on the hearing of Blott IAP claims.

- [95] In respect of the question of representation, the Chief Adjudicator did not object to lawyers associated with Blott continuing to represent IAP claimants under supervision, but did not support Blott's long-term participation in the IAP process.

Law Society of Alberta

- [96] The LSA's submissions focused on the finding of the LSA panel that, while there was sufficient basis for an immediate interim suspension of Mr. Blott, the potential for disruption to and re-victimization of clients militated against such a suspension. The LSA also takes the position that, in light of their experience with IAP claims and existing relationships with clients, lawyers associated with Blott should not be prohibited from continuing to represent IAP claimants.
- [97] With respect to the Monitor's suggestion that the LSA assist any Claimant Representative the court chooses to appoint, the LSA suggests that it does not have sufficient IAP expertise to offer substantial assistance in this regard.

Kelly Kristensen and Kim DesLandes

- [98] Ms. Kristensen and Ms. DesLandes, both lawyers associated with Blott, jointly oppose all relief sought by the Monitor, arguing that the relief sought would require findings of wrongdoing which the record before the court cannot support. Furthermore, Ms. Kristensen and Ms. DesLandes suggest that the relief sought by the Monitor properly falls within the jurisdiction of the LSA as the regulator of lawyers in Alberta.
- [99] Ms. Kristensen and Ms. DesLandes submit that they were not involved in advancing to or securing loans for IAP claimants, and that each of them have taken steps to reduce their caseloads in order to provide improved client service.

Bridge Point Financial Services Inc.

- [100] Bridge Point takes no position on the two heads of relief sought by the Monitor which form the basis of these reasons.

National Administration Committee

- [101] It is the common practice of the courts supervising the administration of the Settlement Agreement to afford the National Administration Committee ("NAC") the opportunity to make joint or several submissions from its constituent members in regard to any issue which arises in relation to the interpretation or administration of the Settlement Agreement.

[102] The NAC is composed of representatives of various groups which participated in the negotiations which produced the Settlement Agreement. In this proceeding, submissions were heard from five members of the NAC:

- 1) Attorney General of Canada
- 2) The Assembly of First Nations and Larry Philip Fontaine
- 3) Merchant Law Group LLP
- 4) A counsel group known as Independent Counsel
- 5) A counsel group known as the National Consortium.

Attorney General of Canada

[103] Canada supports granting the relief sought by the Monitor, arguing that the conduct of Blott and related entities undermined the integrity of the IAP at the expense of claimants, and that it has no confidence that Mr. Blott can act as an effective advocate in the IAP going forward. To that end, Canada is willing to undertake such measures as are necessary to minimize disruption associated with the removal of Blott as counsel of IAP claimants.

Assembly of First Nations and Larry Philip Fontaine

[104] The Assembly of First Nations ("AFN") and Mr. Fontaine support granting the relief sought by the Monitor, and requested that any order removing Blott as counsel for IAP claimants provide for any health supports required by claimants and the appointment of a Chief's committee to liaise with the Claimant Representative, the Monitor and Blott IAP claimants. The Chief's committee would also participate in any process required to remedy issues arising from Blott's representation of IAP claimants.

[105] If it is found that highly personal and confidential information of IAP claimants has been divulged by Blott in breach of solicitor-client privilege, the AFN and Mr. Fontaine suggest that the claimant in question be advised in person by an AFN representative supported by health support providers.

Merchant Law Group LLP

[106] Merchant Law Group LLP does not oppose the relief sought by the Monitor under consideration in these reasons.

Independent Counsel

[107] Independent Counsel support granting the relief sought by the Monitor, and suggested that any Claimant Representative should be knowledgeable with the IAP, but should not be actively involved in it.

National Consortium

[108] The National Consortium takes no position on the Monitor's recommendation that Blott be removed as counsel for IAP claimants, and suggested that the appointment of a Claimant Representative be carried out in a manner compatible with the jurisdiction of the LSA. The National Consortium also suggested that the Claimant Representative be experienced with the IAP and that a suitable plan be developed for the Claimant Representative's completion of the duties proposed by the Monitor.

Analysis

[109] In essence, there are 2 issues raised on this part of the application:

- 1) Does the court have the jurisdiction to accept and implement the recommendations of the Monitor? and
- 2) If yes, should the court exercise that jurisdiction in this case?

Jurisdiction

[110] Blott's submissions on the question of jurisdiction focus on the fact that Mr. Blott's conduct has not been demonstrated to meet the high standard required for a court to order the removal of counsel. As an additional or alternative ground, Mr. Blott submitted that the action being recommended by the Monitor is more of a process of lawyer discipline, a function reserved to law societies in their roles as regulators of the legal profession. I cannot accept either of these submissions.

[111] On the first point, it is well established that superior courts possess inherent jurisdiction to ensure that they can function as courts of law and fulfill their mandate to administer justice. Inherent jurisdiction includes, inter alia, the authority to remove counsel from a case when necessary to protect its process: see *R. v. Cunningham*, [2010] 1 S.C.R. 331, at para. 18.

[112] Although the inherent jurisdiction of the court may well allow the relief sought by the Monitor to be granted on the basis of the facts before me, I find that this matter falls squarely within the specific supervisory jurisdiction of the court set out in s. 12 of the Class Proceedings Act, R.S.B.C. 1996, c. 50, which provides as follows:

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.

[113] In this action, the general supervisory jurisdiction under s. 12 of the Class Proceedings Act (CPA), is reinforced by the terms of the Implementation Order, which provides as follows at para. 23:

The Courts shall supervise the implementation of the Agreement and this order and, without limiting the generality of the foregoing, may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the Agreement, the judgment dated December 15, 2006 and this order.

[114] In *Bodnar v. Cash Store Inc.*, [2011] B.C.J. No. 947, Griffin J. addressed an application to remove the settlement administrator by class counsel. In that proceeding, as noted at para. 103, one of the terms of the settlement agreement provided as follows:

The Court shall retain continuing and exclusive jurisdiction over the Parties hereto, including the Plaintiffs and all Settlement Class Members, and over the administration and enforcement of the Settlement and the benefits to the Plaintiffs and Settlement Class Members hereunder, notwithstanding that the Related Actions may have been dismissed pursuant to paragraph 48 of this Agreement.

[115] After a review of the case law on the court's supervisory authority, she held at para. 96 that "there is little doubt that this Court has jurisdiction to supervise the administration of the settlement in this proceeding." Considering the supervisory authority specifically in the class action context, Griffin J. adopted the reasoning set out at para. 39 of the Court of Appeal for Ontario's reasons in *Fantl v. Transamerica Life Canada*, [2009] O.J. No. 1826:

The existence of the absent class members, among other factors is the reason that the court's supervisory jurisdiction is engaged from the inception of an intended class proceeding. It continues throughout the "stages" of the proceeding until a final disposition, including the implementation of the administration of a settlement or, where applicable, a resolution of all individual issues.

[116] The decision of this court in *Bodnar* was subsequently affirmed by the British Columbia Court of Appeal: see [2011] B.C.J. No. 1777.

[117] The reference in *Fantl* to "absent class members" as a basis for the court's supervisory jurisdiction in class proceedings bears some discussion here. The submission was made by counsel for Blott that, as all of the affected claimants here are clients of Blott, they are not unrepresented "absent class members". The effect of this, he submitted, was to call into question an exercise of the court's supervisory jurisdiction in the present circumstances.

[118] In my view, such an argument misses the point. As the court in *Fantl* noted, the supervisory jurisdiction is engaged from inception until "a final disposition" of the class proceeding. Further, the phraseology "absent class members" should not be construed quite so literally. It is meant to convey the concern of the court that supervision is warranted where there are class members vulnerable to having their rights or interests affected by decisions made or actions taken by others. This is especially so where the impact on the rights or interests will occur as a result of a court process.

- [119] It goes without saying that, in any given class proceeding, there will be numerous class members who, for whatever reason, take no part in the conduct of the action. Notwithstanding their inactivity, however, non-participating class members will be subject to opt-out/opt-in deadlines, will be bound by the outcome of the proceeding, and their substantive right of action against the defendant may well be truncated or foreclosed. In short, it is the vulnerability of "absent class members" rather than the fact of their existence that justifies the court's broad supervisory power. Similarly, it is that supervisory power which permits the court to fashion safeguards to protect their interests.
- [120] Where there are vulnerable claimants, the court's supervisory jurisdiction will permit the court to fashion such terms as are necessary to protect the interests of that group. Here, the courts in approving the Settlement Agreement have already indicated that their concerns extend to situations where the class members are represented. It was an exercise of the supervisory jurisdiction to include the requirement that IAP claimants be entitled to have the legal fees charged to them by counsel reviewed and determined in the adjudicative process itself, notwithstanding any agreements otherwise. Throughout this proceeding courts have recognized that IAP claimants are a particularly vulnerable class.
- [121] This was expressly recognized by Winkler R.S.J. (as he then was) in his settlement approval reasons in *Baxter v. Canada*, [2006] O.J. No. 4968 (S.C.J.). Having reviewed evidence that claimants had difficulty in understanding correspondence as a result of literacy problems, he stated at paras. 74 to 76:
- [74] In the fact of this evidence, it is difficult to accept that the claimants will be in a position to successfully navigate the legal system to ensure that their rights are protected in regard to the legal fees they might have to pay. Accordingly, the suggestion that such disputes or concerns should be left to ordinary course litigation to be resolved must be rejected.
- [75] As a general principle, wherever a settlement incorporates a claims resolution procedure, the entirety of that procedure is to be conducted under the supervision of the court. This must of necessity include the relationship between counsel and clients engaged in the process, especially where the legal fees or part thereof are paid pursuant to the settlement. As stated above, the court must ensure that claimants obtain the expected benefits of the settlement.
- [76] One of the purported benefits of the settlement is the fact that it presents a comprehensive scheme for dealing with all issues arising from the residential school program. In keeping with the general principle, claimants must have recourse within the administration of this settlement to challenge the reasonableness of the fees they are charged by counsel. (Emphasis added.)

[122] In summary, therefore, there is no question that the CPA grants the court supervisory jurisdiction over class proceeding settlement agreements generally and that the supervisory jurisdiction extends to the relationship between class members and their counsel, especially where, as here, there is evidence of a particular vulnerability of the class members.

[123] The supervisory jurisdiction extends to severing the solicitor-client relationship where the circumstances dictate that it must be done. In *Lau v. Bayview Landmark Inc.*, [2004] O.J. No. 2788, the Ontario Superior Court of Justice concluded as follows at para. 38:

Any decision that would have the effect of removing the solicitors of record must be considered to be an extraordinary exercise of the powers conferred by section 12 of the [Ontario Class Proceedings Act]. It should be made only when the circumstances compel it. However, while the selection of solicitors of record for representative plaintiffs should preferably be made by them, the ultimate responsibility to protect the interests of class members lies with the court. The existence of these interests creates a significant distinction between this case and other civil proceedings where the responsibility for finding a solution might, in some cases, be left to the parties. (Emphasis added)

[124] The court in *Lau* went on to determine that it must intervene to remove the solicitors of record due to the failure of the two lawyers to work together in an efficient manner in the interests of the class.

[125] In respect of the removal of counsel, I cannot accept Blott's submissions to the effect that the court has no jurisdiction to issue an order that could be characterized as disciplinary action against a lawyer. It need not be the case, and it would not be the case here, that removal of counsel constitutes a form of discipline per se. As indicated by Rothstein J. in *Cunningham* at para. 38, the removal of counsel by a superior court in order to safeguard the administration of justice is distinct from discipline meted out by the law society:

While the court is not bound to apply law society or Canadian Bar Association codes of professional conduct, these codes "should be considered an important statement of public policy" (*MacDonald Estate*, at p. 1246). These standards complement the court's discretion to refuse withdrawal where the effects on the administration of justice will be severe. For example, the Canadian Bar Association rules recognize the distinct, yet complementary, nature of the functions served by the court and law societies:

Where withdrawal is required or permitted by this Rule the lawyer must comply with all applicable rules of court as well as local rules and practice. [commentary 3]

Both the courts and the law societies play different, but important, roles in regulating withdrawal: the courts prevent harm to the administration of justice and the law societies discipline lawyers whose conduct falls below professional standards. They are not mutually exclusive. (Emphasis added.)

[126] Concurrent jurisdiction over lawyers, shared between superior courts and law societies, is an ordinary aspect of the dual identities of lawyers as officers of the court and members of a regulated profession. The jurisdiction of one does not oust that of the other. More to the point, the recommendations of the Monitor as regards Mr. Blott and his firm relate specifically to the representation of clients within the IAP, rather than a prohibition from practicing law generally. As such, I can give no effect to Blott's submissions on this point.

Exercise of Jurisdiction

- [127] I turn then to the second issue: whether the court should accept and implement the recommendations of the Monitor. In Bodnar, Griffin J. noted at para. 109 that while the jurisdiction has limits, "the court's supervisory role must have some substance to it if it is to have any meaning or weight." I agree.
- [128] The court's supervisory jurisdiction permits it to fashion a broad range of remedies. However, the jurisdiction should be exercised with restraint. As Fantl also makes clear at para. 44, the court's supervisory role is not "one of mandatory intervention."
- [129] The court's exercise of jurisdiction should also be guided by the objectives the supervisory authority is meant to safeguard. By way of example, one area of supervision is with respect to notices or communications with the class members. Often the notices serve to provide class members with information about events that may require them to make a choice from which consequences will flow. The objectives of supervising a notice process, inter alia, are to ensure that the information is clearly stated, is properly distributed in a timely manner, provides the class member with a sufficient basis to know the choice that must be made, the consequences of making that choice and to whom notification of the choice should be delivered.
- [130] The oversight of the implementation of a settlement with an adjudicative compensatory process invokes different objectives. The court supervision aims to ensure that legitimate claims are compensated to the full extent available under the settlement terms and that the process by which those claims are adjudicated has the integrity, impartiality and transparency expected of any other court process. Further, where the adjudicative process has non-compensatory benefits, the supervisory objective is to ensure that those benefits are not compromised or sacrificed to expedite the compensatory elements.
- [131] The IAP provides both compensatory and non-compensatory benefits. Pursuant to the settlement terms, claimants are entitled to compensation for proven claims of abuse. They are also entitled to the opportunity to have their claims adjudicated in a non-confrontational process that takes into account special considerations in determining credibility, which in essence, is the main issue in respect of any claim in the IAP.
- [132] The recommendations of the Monitor being dealt with in these reasons may be summarized as follows:

- 1) That the Court remove and prohibit the following named parties from participation in the administration of the Settlement Agreement:
 - a. David Blott, David Blott Professional Corporation, Blott & Company, and all lawyers, legal partnerships and professional corporations associated or affiliated with any of the foregoing;
 - b. Honour Walk Ltd., Residential School Healing Society of Canada and Hands Free Office Services Corp. and all other persons associated or affiliated with any of the foregoing; and
 - c. All officers and directors of each of the foregoing;
 - 2) That, upon the removal of the above parties from participation in the administration of the Settlement Agreement, the court impose a structure to facilitate the orderly transition of IAP claimant files to new counsel.
- [133] It follows that the recommendations should only be adopted if I find that the supervisory objectives related to settlement implementation, as set out above, cannot be achieved by more limited intervention.
- [134] The submissions made by counsel for Blott, and the positions taken by Mr. Blott in his affidavits, in opposition to the Monitor's recommendations may be summarized as follows: Where the loans and the accompanying 380 breaches of the court's orders are concerned, it was contended that the conduct is in the past; Mr. Blott was not the only lawyer engaged in this type of conduct; he never profited from the loans; he acted only on client instructions.
- [135] With respect to the acknowledged improper completion and certification of applications, the stated position was that the progressive disclosure principle operated to prevent any detriment to claimants. Further, it was argued, the Monitor's Final Report cites only a "handful" of cases in which the claimant's credibility was questioned as a result of discrepancies between the application form and the testimony given at the hearing. Finally, at paragraph 79 of his April 20, 2012 affidavit Mr. Blott states "I understand now that Blott & Company should have been supervising Honour Walk more closely." He goes on to say "I did not realize that my Blott & Company's business relationship with Honour Walk would be misinterpreted by Honour Walk's consultants or by clients."
- [136] The 1,159 completed but unfiled claims were not the subject of any explanation or justification but rather there was a contention in Mr. Blott's affidavit that, prior to the order of April 12, he was directing them to other lawyers who would undertake to make "best efforts" to file them by July 19, 2012.
- [137] The claimants with the unfiled applications in the boxes seized by the Monitor marked DNQ were apparently sent letters on or before April 5, 2012 to advise them that Blott believes that they will not be eligible for compensation and that their files are being closed.

- [138] Counsel for Blott also cautioned the court against adopting a paternalistic approach to IAP claimants in the guise of supervision. That submission may be summarily rejected. The courts supervisory role exists to ensure that the implementation of the settlement is appropriate and in accordance with its objectives. Where a particular vulnerability to unscrupulous or indifferent conduct within the settlement process has been identified, there is nothing paternalistic about ensuring that conduct is eliminated. Protection of the vulnerable from exploitation in a court process designed to remedy past wrongs is very different from paternalism. I categorically reject the suggestion by counsel for Blott that action undertaken to protect the vulnerable would perpetuate paternalistic attitudes towards Canada's aboriginal peoples.
- [139] Another argument presented by counsel for Blott is that the court should reject the Monitor's recommendations and accept as sufficient Blott's plans to reduce the size of its IAP practice, with the oversight of Mr. McLaughlin and the observance of the practice limitations imposed by the LSA. While these steps may address some of the concerns relating to case volume and file management, I am not convinced that Mr. McLaughlin's planned weekly visits to Blott's offices will resolve the persistent attitudinal problems of Mr. Blott.
- [140] It is clear from the evidence that Mr. Blott, despite his commitments to the LSA and the IAP Secretariat to do so, has not reformed his practice in the past. No other conclusion can be drawn but that the changes now proposed and implemented by him were driven by the court's intervention and the conditions most recently imposed by the LSA.
- [141] Moreover, as Mr. Blott's affidavits demonstrate, and the submissions made on his behalf confirm, there is simply no recognition of either the impropriety of or the harm caused by his conduct. Accordingly, there is no reason to believe that his current commitments are any more reliable than those made in the past. Indeed, there is clear evidence that Mr. Blott has been quite prepared to make statements in the past that are misleading at best or outright fabrication at worst.
- [142] One example of his propensity for misstatement relates to his relationship with Honour Walk. Although the Monitor was able to discern the amounts paid to Honour Walk from Blott (\$6,000,000 as of the report), it also discovered that there is no written agreement between the two entities. Mr. Blott deposes at paragraph 80 of his April 20, 2012 affidavit:
80. I know that the Monitor does not understand the informal financial relationship between Blott & Company and Honour Walk but I have known Thom Denomme for years. We effectively started our businesses at the same time. When I could not afford to pay amounts owing to Honour Walk, Thom agreed to use an American Express card that I provided which would help me with cash flow. That Process worked well and we kept it in place as it was convenient. I was not in control of Honour Walk--Thom was. Because we knew each other, he trusted me to pay him amounts Blott & Company owed for services provided by Honour Walk. Thom Denomme and I had a system of paying him a monthly amount based on what

he and I agreed it would cost to provide Honour Walk's services to Blott & Company each year. (Emphasis added.)

[143] The evidence of Mr. Blott regarding his "informal" financial arrangements with Mr. Denomme is in striking contrast to information he previously provided to an adjudicator on the same issue. In the record, at Exhibit 75 of the Monitor's Final Report, there is a fee review decision of Vivienne Beisel, an IAP adjudicator. Ms. Beisel, in conducting the review spoke with Mr. Blott directly. Ms. Beisel was concerned about the degree of work that was done on the claim by Honour Walk rather than the Blott firm. According to the reasons of Ms. Beisel, Mr. Blott provided the following information. Under the heading "Honour Walk Ltd.", Ms. Beisel writes in her decision:

Mr. Blott describes HWL as a general business consulting firm that does promotions work and provides Aboriginal relations training: It does not provide referral services. When asked about the nature of the work done by Honour Walk Ltd., Mr. Blott replied that because the business relationship between the Blott Firm and Honour Walk Ltd. is "wrapped up in non-disclosure agreements" he could not comment about the work done by Honour Walk Ltd. with specificity.

Mr. Blott was able to describe the process through which each of his firm's files go through. Mr. Blott explained that, typically, an employee of Honour Walk Ltd. will meet with a potential claimant and fill in the application. Upon completion, they send the application to David Blott who then reads it over the phone to the claimant, with the form filler in attendance, and signs the certificate. The Contingency Fee Agreement is ordinarily explained and signed on the same day. The Blott firm does not monitor the work completed by Honour Walk Ltd. employees, takes no responsibility for the quality of the work completed by HWL, and has no knowledge of the inner workings of Honour Walk Ltd. (Emphasis added.)

[144] Ms. Beisel's reasons further state:

Characterizing HWL's work as business promotions and Aboriginal relations does not disguise the fact that HWL is engaged in direct marketing through local media and making referrals primarily if not exclusively to the Blott firm. Filling applications and doing document production is appropriately characterized as paralegal work. When asked why a business promotions and Aboriginal relations firm is doing paralegal work, apparently at no cost, Mr. Blott replied that they have their own purposes for doing this.

It is not uncommon for law firms to out-source paralegal services, but Mr. Blott denies that HWL is contracted in this manner. The work done and time spent by Honour Walk Ltd. on individual files does not show up on the claimant's invoice generated by Blott & Associates. Mr. Blott stated that HWL is privately funded. When asked directly about whether his firm pays HWL, Mr. Blott stated that he is under very strict non-disclosure agreement and cannot discuss how Honour Walk Ltd. gets paid. He did not deny that the Blott firm pays Honour Walk Ltd. for their services. (Emphasis added.)

- [145] An "informal" arrangement hardly rises to the level of a "strict non-disclosure agreement" or indicates that the arrangements between Honour Walk and Blott are "wrapped up in non-disclosure agreements", such that Mr. Blott is "unable to comment about the work done by Honour Walk Ltd. with specificity". In consideration of the fact that there is no written agreement, or any documents acknowledging the terms of the arrangements between Honour Walk and Blott, it can only be concluded that Mr. Blott intended to mislead the adjudicator. Further, Mr. Blott knew at the time he was making these statements to Ms. Beisel that Honour Walk was not performing the services at no cost and that it received a substantial stream of revenue from Blott.
- [146] Another example of Mr. Blott's misstatement is the evidence related to the loans made to his clients. In his affidavit sworn November 8, 2011, Mr. Blott states as follows:
35. I assumed that the prohibition against the assignment of funds in the Settlement Agreement only applied to claims under the IAP, not claims started in the ADR Process. It is my understanding that law firms all over Canada were doing exactly what I was doing with respect to loan documents for ADR process Clients.
- [147] As noted above, any application involving allegations of sexual abuse filed under the DR process as of the approval date was automatically transferred to the IAP model unless the applicant objected to the transfer within sixty days. Mr. Blott was not aware of this as demonstrated by para. 33 of his affidavit which suggests that he believed that all claimants were required to elect to transfer claims from the DR process to the IAP.
- [148] The larger point, however, is that from Mr. Blott's statement in his affidavit, one could be lead to the conclusion that he mistakenly accepted assignments on loans because he thought there was a distinction in the two compensation processes. However, this would not be a complete picture of Mr. Blott's involvement in the loan scheme. There is an email at page 806 of the Monitor's Interim First Report from John Rossos (of Bridge Point) to Mr. Blott and David Hamm dated October 1, 2008. (It was also produced as an Exhibit D to the Affidavit of John Rossos) The email reads as follows:

Gentlemen,

I attach:

- 1) A revised loan agreement. To ensure transparency this agreement has been revised as follows:
 - a. Funds Now Inc. is acting as Agent on behalf of the Borrower and has full authority for receiving funds on the Borrower's behalf as directed;
 - b. The Borrower directs the Lender to pay Funds Now Inc. an Arrangement Fee of \$50.00 plus GST;

- c. The Borrower grants the Lender an "interest" in the Settlement Funds but does not "assign" its entitlement to the Lender in contravention of the IRS settlement agreement. (Emphasis added)

[149] His affidavit evidence notwithstanding, no other conclusion can be drawn from this email than that Mr. Blott had knowledge of the prohibition against assignments of proceeds from the settlement and was either actively engaged or knowingly acquiescing in a scheme to circumvent the prohibition. Bridge Point subsequently made loans to clients of Mr. Blott totaling more than \$1.4 million with Mr. Blott facilitating the execution of and honouring directions to pay from clients for every loan.

[150] The ability of Mr. McLaughlin to effectively supervise Mr. Blott on a long distance, intermittent basis has to be considered in the context of Mr. Blott's demonstrated propensity to mislead and his failure to recognize his own misconduct. The structure proposed by Mr. McLaughlin largely depends on the willingness of Mr. Blott to observe and comply with the terms of the supervision. Based on the past behaviour of Mr. Blott, I have no hesitation in concluding that there is a real risk that Mr. McLaughlin's supervisory effort will be compromised. Moreover, Mr. McLaughlin has no experience in IAP claims and could not be expected to instruct/supervise Blott in the proper representation of IAP claimants. Accordingly, I do not find it to be an acceptable means to ensure that the objectives of the settlement will be satisfied in the long term with respect to clients who continue to be represented by the Blott firm.

[151] I turn then to consider the necessity of removal from participation in the administration of the Settlement Agreement of each of the individuals and entities named by the Monitor in turn.

David Blott, David Blott Professional Corporation, and Blott & Company

[152] As I have noted, it is clear that Mr. Blott does not understand the gravity of the allegations against him. Mr. Blott's response to many of the allegations against him and his firm, and particularly in relation to his acceptance and honouring of assignments or directions in regard to the proceeds of IAP claims, is that he acted only on the express wishes of his clients, "providing them with a service they told [him] they wanted," according to his affidavit sworn April 20, 2012. Furthermore, Mr. Blott points out at para. 13 of his April 20 affidavit, neither he nor his firm benefited from the extension of loans secured by IAP proceeds to his clients, although he could have done so had he chosen to do so. Finally, as Mr. Blott points out at several points in his evidence and submissions, he does not believe that he was the only lawyer in Canada honouring assignments / directions in regard to IAP proceeds.

[153] The fundamental issue with Mr. Blott's rebuttal on these points is his failure to recognize his duties as a fiduciary for his clients and the particular vulnerability of IAP claimants as a class. The latter point is recognized by the Law Society of Upper Canada, which has produced formal guidelines for counsel acting on behalf of IAP claimants. Those guidelines, which Mr. Blott recognizes as pertinent and authoritative in regard to the principle of progressive disclosure, include the following passage:

Lawyers should appreciate the need for the utmost sensitivity in dealings with claimants. Lawyers should ensure that the methods they employ in making legal services available to claimants are culturally appropriate and comply with Rule 3.06, in particular Rule 3.06(2)(c) which prohibits unconscionable or exploitive means in offering legal services to vulnerable persons or persons who have suffered a traumatic experience and have not yet had a chance to recover. Lawyers should make reasonable efforts to ensure that initial communications offering legal services to claimants are welcomed and respectful. Care should be taken to ensure that these communications will not result in further trauma to the claimant.

[154] As noted above, the LSA also recognizes IAP claimants as a vulnerable class in regard to which special care must be taken by counsel, as indicated in the practice review letter dated August 17, 2009 from the LSA. There can be no doubt, therefore, that Blott was aware of the fact that IAP claimants, as potentially vulnerable clients, demanded a high degree of conduct from their counsel. In my view, those clients were entitled to counsel and advocacy in relation to the provision of loans and their terms, at the very least. Blott's clients did not obtain the benefit of such advice.

[155] In fact, it appears that the IAP claims practice established by Blott was essentially devoid of many of the ordinary hallmarks of the solicitor-client relationship. The relationship between lawyer and client was kept to a minimum. It appears that many of the day-to-day tasks associated with client contact and file management were conducted by paralegal staff or by Honour Walk or Hands Free; it could hardly be otherwise, given the brief relationship Blott lawyers had with IAP claimants prior to their hearings. In fact, almost every aspect of the Blott IAP practice appears to have been designed to maximize file throughput with minimal overhead.

[156] For instance, at para. 14 of her affidavit dated November 9, 2011, Kim DesLandes stated as follows:

As of October 31, 2011, I was doing up to 20 hearings per month. I estimate that, to date, I have been involved in over 400 hearings.

[157] Similarly, at para. 30 of her affidavit dated November 9, 2011, Kelly Kristensen stated as follows:

As of October 31, 2011, I was doing 12-15 hearings per month. I estimate that, to date, I have been involved in over 300 hearings.

[158] Claimants in the IAP are advancing claims arising from events that have occurred, at a minimum, 15 years ago and perhaps may have occurred decades ago. Mr. Blott advances the concept of progressive disclosure as cure all with respect to deficiencies in the applications. However, it seems obvious that actually obtaining information on a progressive basis is more likely where a level of trust is built up with the lawyer who will be presenting the case. The schedules attested to by Ms. Deslandes and Ms. Kristensen leave little time for any relationship development between claimants and counsel. Indeed, it is difficult to see how real preparation time could be worked into those schedules.

[159] The approach taken by Blott to file management also raises concerns as to the relationship Blott sought to build with its clients. As he recounted in an interview with the Monitor's investigators on December 7, 2011, Blott's intention in retaining Hands Free Office Services was to create a mass file management system of the same sort as is used by the Monitor to manage CEP applications. The following excerpt is found at pages 596 and 597 of the Monitor's Final Report:

Well, it was all set up unofficially. The whole idea was Jennifer [Mackenzie], the main paralegal that we have, she wanted to start her own business and the whole idea was to mimic the, even before I understood how [the Monitor] worked we wanted to sort of create this idea where she could run her business and manage all these files and then go to other firms, but the problem is she just got overwhelmed with us as much as she tried to market a little.

[160] One of the primary aspects of such a file management system is that it minimizes the degree to which any individual actually manages (or, for that matter, becomes even reasonably well-acquainted with) any particular file. Many individuals might contribute to a file, but, in the case of Blott at least, no relationship between a client and a lawyer was ever intended to be created until the time at which a hearing date was assigned. In many instances, as noted above, clients never met their lawyers until the day of or the day before their hearing date.

[161] A further example of the degree to which claims became abstracted from claimants in Blott's IAP practice is the manner in which Blott treated claims associated with deceased clients. In five cases, Blott submitted IAP claims on behalf of IAP clients months after their death. In two of these cases, the applications in question were filed within three months of the claimant's death. In two other cases, the applications in question were submitted within five months of the claimant's death. In one incomprehensible instance, the claimant's application was received on August 30, 2010, more than eight months after the claimant's death, which occurred on December 8, 2009; remarkably, this application was dated February 26, 2010. Mr. Blott's only response to the Monitor's concerns regarding deceased Blott clients appears at paras. 61 and 62 in his April 20, 2012 affidavit:

61. On page 30 of the Final Report the Monitor also identifies 63 files belonging to deceased claimants that were stored in boxes at Blott & Company. In the case of deceased claimants we would get a call from a relative telling Blott & Company that a claimant had died. On occasion, when relatives said they wanted to proceed with the claim, we would tell that relative to provide us with documents showing us who the executor of the estate was so that we could transfer the file to the estate. We rarely heard back from relatives in those cases.
62. Blott & Company did complete some cases in respect of deceased claimants who had already had their hearings and did pay the estate settlement funds. In many cases, however, dealing with deceased claimant files was very difficult as there was no way to collect evidence or prepare for hearing where the claim was in the very early stages of the IAP process.
63. As I will explain below, I believe that Blott & Company's practice grew too big and there were instances where client service was not as prompt as it could be. Administrative tasks such as closing files that Blott & Company believed did not qualify for the IAP were difficult to prioritize when Blott & Company lawyers were very busy with active files. I am hoping to take positive steps to rectify these issues by reducing the size of Blott & Company's practice, as I will describe later in this my Affidavit.
- [162] The manner in which Mr. Blott intended to 'reduce the size of Blott's practice' is described elsewhere in these reasons. Briefly, during the month of March 2012, Blott attempted to summarily terminate its relationship with over 2,200 clients. As Mr. Blott deposed, at para. 115 in his April 20, 2012 affidavit, over a third of the 'closing letters' sent by Blott in that month were 'no option' letters, where clients had no opportunity for input or discussion into the termination of their representation by Blott. In other cases, as discussed above, Blott clients were given the opportunity to reject Blott's unilateral transfer of carriage of their file to alternate counsel, but if they did not do so within 14 days, Blott would assume that the client wished to have his or her file transferred.
- [163] It is undeniable that Blott's operations were designed to maximize economies of scale. To the extent that lawyers were required by the Settlement Agreement for only two steps in the IAP (i.e. certification of applications and hearings), their time was spent exclusively on those two aspects of claims, while all other steps appear to have been completed by non-lawyer staff. There can be no doubt that IAP claimants were, in the system established by Blott, treated not as individual people who had in many cases suffered traumatic personal experiences at a very early age, but rather as claims, requiring little lawyer interaction.
- [164] One example of Blott's failure to properly advise and advocate for its IAP clients is Blott's passive acquiescence in accepting and honouring the assignments/directions in regard to IAP proceeds without inquiring into or objecting to the terms upon which those loans were extended. For instance, as noted above, Blott negotiated a loan on its own behalf with Bridge Point in the amount of \$85,000.00 in April 2009 at an annual interest rate of 18%. During the same period, loans were extended from Bridge Point, through Funds Now, to Blott clients in amounts ranging from \$3,918.75 to \$17,231.25 at effective annual interest

rates between 57.3% and 3,353.9%, notwithstanding the fact that the loans extended to clients were 'secured' by obligations of the Government of Canada. There is no evidence that Blott attempted to negotiate more favourable loan terms on behalf of its IAP clients, or that Blott ever drew its clients' attention to the objectionable nature of the loan terms offered to them. Mr. Blott, as he says, simply acted on his clients' instructions. At no time, it appears, did he question those instructions or present any advice to his clients.

[165] His treatment of vulnerable clients; the abrupt termination of the solicitor-client relationship with claimants, the acquiescence in the application manipulation by Honour Walk and the 'banking' of unfiled claims without the knowledge or consent of his clients all indicate that Mr. Blott does not appreciate the position of trust and confidence reposed in him as counsel for claimants pursuant to the Settlement Agreement.

[166] That Mr. Blott has not reformed his practices despite LSA intervention or the concerns imparted repeatedly by the IAP administration and adjudicators, indicates that direct and persistent supervision would be required to ensure that his clients were protected. Mr. Blott has shown no capacity for rehabilitation, a conclusion reinforced by the fact that Mr. Blott, in the weeks before this application was heard, attempted to summarily terminate his solicitor-client relationship with 2,238 IAP claimants.

[167] The conclusion of the LSA panel regarding Mr. Blott's conduct bears repeating:

But after considering all of the evidence in this matter and hearing Mr. Blott, we continue to be concerned that Mr. Blott does not appear to understand what it means to be a lawyer. We are concerned that Mr. Blott appears not to recognize that his primary role is as a fiduciary and everything else is secondary.

[168] I share the LSA's concern that Mr. Blott does not understand what it means to be a lawyer. Further, while I also understand the desire to avoid additional victimization of the members of an already-vulnerable class, a more lasting remedy than the interim measure implemented by the LSA is required. The process approved by the LSA, and advanced by Mr. Blott on this application, would see at least 1,500 clients moved from the Blott firm to other lawyers in any event. Viewed in that light, the issue is not whether disruption will be experienced by Blott clients, but rather the number of clients who will experience it.

[169] It would be far better to have this client transfer process conducted under the supervision of the court and it is necessary for the integrity of the process and the protection of the clients that it be a complete transfer. Therefore, I will accept and implement the Monitor's recommendation in respect of the removal of David Blott, David Blott Professional Corporation, Blott & Company, and any associated entity from the current or future representation of claimants in the IAP or any other process embodied in the settlement.

[170] In accepting this recommendation, I am not ignoring Mr. Blott's arguments to the effect that terminating his participation in the IAP would effectively terminate his law practice. I simply do not find the argument compelling. As a starting point, it must be noted that the

Settlement Agreement has a finite term and a defined and limited class. Accordingly, any practice specializing in IAP claims is by necessarily of limited duration. Given the manner in which Mr. Blott structured his practice with independent contractors and third party service providers, it is reasonable to infer that the inherently temporary nature and eventual termination of the practice were well within his contemplation.

[171] Furthermore, the only interests to be served in letting Mr. Blott continue would be his own economic interests. In that regard, I find the passage at paras. 65 and 66 in Fantl to be on point:

Turning to the third factor, to the extent that prejudice was argued by the appellant, this line of argument focused on the economic prejudice to the appellant rather than on any prejudice to the interests of the class. The appellant emphasized what was characterized as the policy arguments in support of entrepreneurial lawyers, which were said to advance one of the goals of the [Ontario Class Proceedings Act] - access to justice. Effectively, the appellant's argument is that it would be unfair for a plaintiff, upon dissolution of his or her counsel's law firm, to choose any lawyer other than the lawyer who had previously acted as the lead counsel. In other words, in a class action, the lawyer's time and effort on the file constitutes an equity investment by the lawyer in the case. It is argued that if representative plaintiffs are allowed to switch counsel at will, there will be less of an incentive for counsel to take on class actions and make an investment of time and effort that may be lost.

There is no question that class proceedings are entrepreneurial in nature. However, the proposition advanced by the appellant would only be supportable if the creation of an entrepreneurial class action bar was a policy goal underpinning the CPA. This argument fails because as far as the CPA is concerned, the entrepreneurial lawyer is a means to an end, not an end in and of itself. Were it otherwise, one of the criticisms of the CPA, that it promulgates plaintiff-less litigation benefiting only the lawyers involved, would be well founded. Such is not the case.

(Emphasis added)

[172] Finally, I must address several issues raised by counsel for Blott in regard to the conclusions the Monitor draws from the documentation included in the Final Report. Throughout Blott's submissions, criticism is directed to the fact that the Monitor's conclusions are in some instances drawn from a handful of cases. Broadly speaking, Blott's counsel submit that the Monitor, "in its rush to blindly condemn the entire Blott & Company firm has selected certain files and documents to make bald assertions about Blott that are unfair."

[173] On a specific basis, Blott's submissions note that Mr. Blott "is only implicated in loaning money to one" of his IAP clients, and that no interest was charged on that loan. Similarly, Blott suggests that the Monitor's statement to the effect that Blott was repaying loans as late as July 2011 is an "exaggeration"; in fact, only one loan was repaid by Blott in 2011, in June. Likewise, Blott notes that "the Monitor can only point to one example where a Blott Claimant allegedly suffered a financial loss based on inconsistencies between testimony

and the [contents of the IAP] application form." Similarly, Blott argues that the Monitor was only able to refer to one instance where an IAP adjudicator did not believe the credibility of a Blott IAP client as a result of inconsistencies between their testimony and the contents of their IAP application form. Finally, Blott emphasizes that, although the Monitor's investigation indicated that 38% of Blott IAP clients were not satisfied with their legal representation, this unhappy 38% actually constituted less than 8% of all Blott IAP clients, as less than 17% of all Blott IAP clients were contacted by the Monitor.

- [174] The broader point advanced by counsel for Blott seems to be that, where things went wrong, only a few claimants were impacted. I cannot give any weight to this position. While a high success rate may excuse the occasional shortcoming in some occupations (such as professional sports, perhaps), the adoption of such an attitude towards a law firm's clients is entirely unacceptable. As noted above, the structure established by the Class Proceedings Act is intended to ensure that the hallmarks of a just adjudicative system are reproduced in the context of class proceedings. In no other aspect of legal practice would it be acceptable for counsel to argue that occasional failure in the role of advocate and adviser is to be expected or excused because of the high volume of cases he or she handles. Moreover, the monitor's investigation was in the nature of an audit, testing some files but not all files.
- [175] Counsel for Blott also seized upon a submission made in reply by counsel for the Chief Adjudicator. The submission was to the effect that the Chief Adjudicator was not aware of any adjudicated decisions where claimants represented by Blott have not received appropriate compensation for the claims presented. Counsel for Blott suggested that this raises the question "Why are we here?" With respect, this line of argument ignores the context in which the submission was made and, further, underscores the lack of concern Blott exhibits for its clients.
- [176] The Chief Adjudicator's reports to the court, and submissions made during the course of this proceeding, have made it quite clear that adjudicators are cautioned to adhere to an exceptional level of vigilance when claimants represented by Blott are before them. This is the context in which the submission was made. More to the point, however, this heightened level of vigilance should be unnecessary. Further, the argument underscores the apparent but mistaken view of Blott that deficiencies in representation only raise issues where claimants do not receive compensation.
- [177] An argument to similar effect was made by counsel for Ms. DesLandes and Ms. Kristensen. The nuanced difference in his submission was that the court should be prepared to accept, and indeed to encourage, summary procedures in order to deal with a high volume of claims. This is to confuse a summary procedure with summary representation. The former is acceptable, the latter is not. Further, the IAP is the court approved summary procedure in this case but there is no indication that counsel are being paid at a discount rate. Indeed, from the fee review decisions included in the record, counsel fees approved as being reasonable usually fall far short of the 30% cap approved by the court.

- [178] I do not accept that some degree of impropriety or failure of representation is acceptable in the broad context of Blott's mammoth IAP practice.
- [179] Mr. Blott, Ms. Kristensen and Ms. Deslandes argue that the evidence before the court in some cases is not under oath and that affiants have not been tested by cross-examination. They say that the evidence should not be accepted. I do not accept this submission. The evidence which grounds my decision is not disputed.

Lawyers Associated with Blott & Company

- [180] It is clear that none of the lawyers associated with Blott & Company or David Blott Professional Corporation, other than Mr. Blott himself, played a role in many of the disturbing events and practices set out above. The file management structure established by Mr. Blott emphasized an extraordinarily high-tempo hearing schedule for its lawyers, with a concomitant minimization of lawyer involvement. Mr. Blott's evidence is that, at all relevant times, he was the only lawyer at Blott who executed documentation in relation to loans extended to clients. Finally, although there are some questions in regard to the propriety of some of the procedures used to certify IAP applications, I am unable to single out any particular lawyer associated with Blott for particular objectionable conduct.
- [181] As the record clearly indicates, lawyers associated with Blott became involved in IAP claims very late in that process, as little as one month before a scheduled hearing. The limitations imposed on their ability to advocate on behalf of IAP claimants on the basis of such an abbreviated relationship must have been apparent to lawyers associated with Blott. There can be no doubt that these shortcomings were observed by IAP adjudicators, as demonstrated by the instigation of an investigation by the Chief Adjudicator. Nonetheless, it appears that there was little in the way of resistance to this practice model; in fact, there is evidence of some degree of indifference toward the inherent limitations in client service and representation associated with this model.
- [182] On the whole, however, the Blott lawyers, to the extent that they hindered the proper administration of the Settlement Agreement, did so only through passive acquiescence in the structure established by Mr. Blott. They have not demonstrated that they are unsupervisable; on the contrary, it appears that proper supervision is one of the primary elements which was missing at Blott. As such, there is no basis to bar the lawyers associated with Blott from representation of IAP claimants.
- [183] However, in light of the acquiescence of Blott's associated lawyers in the model of representation established by Blott, those lawyers may continue to represent claimants pursuant to the Settlement Agreement only if affiliated with another firm where supervision is available.

Honour Walk Ltd., Residential School Healing Society of Canada and Hands Free Office Services Corporation and affiliated individuals or entities

- [184] Honour Walk's misconduct in its role as a form filler has been made abundantly clear. There is ample documentation to indicate that employees of Honour Walk made 'on-the-spot' determinations as to the viability of prospective IAP claims, notwithstanding the fact that, aside from their manifest lack of relevant qualification, the training materials employed by Honour Walk included incorrect information as to whether applications with particular characteristics would qualify for IAP compensation. It is not known to what extent this incorrect guidance impacted the completion of IAP applications.
- [185] There is also substantial evidence of mishandling of client documents in the possession Honour Walk. Particularly egregious examples include:
- 1) The document appearing at Exhibit 14 of the Final Report, in which a claimant's signature appears to have been appended to a Personal Information Request Form by affixing a signed piece of paper with tape;
 - 2) The use of "Honour Walk Ltd. Authorization for Release of Information (Clinical Records)" forms which had been 'pre-witnessed' by Mary McStavrik, examples of which appear at Exhibit 66 to the Final Report; and
 - 3) The use by Honour Walk of several printed forms with 'pre-witnessed' signatures signed by Thomas Denomme and Ken Oswald, examples of which appear at Exhibit 43 to the Final Report.
- [186] It goes without saying that, where the signature of a claimant is intended to be witnessed, the 'witness' signature must be applied only after the claimant signature. Similarly, use of paper and tape to apply a claimant's signature to a document brings into question some of the fundamental assumptions which attach to a signature requirement, such as the consent of the signer to the terms printed on the document in question.
- [187] The falsification of signatures, both of claimants and witnesses, the failure to ensure the accuracy of forms completed by its employees on behalf of claimants, the failure to ensure that application forms obtained by its employees were filed in a timely manner, and its employees' practice of pre-empting the adjudication process by refusing to accept applications which did not appear to them to be eligible for IAP compensation all indicate that Honour Walk and its principals have no appreciation for their role and obligations as participants in the administration of the Settlement Agreement.
- [188] The internal dynamics of Honour Walk appear to have promoted misconduct of the sort set out above. As such, it would be insufficient to merely prohibit Honour Walk itself from continued involvement in the administration of the Settlement Agreement. As I cannot be assured that the interests of class members would be preserved by barring only Honour Walk, I have determined that it is necessary that each of Honour Walk and Thom Denomme, together with any entity currently associated with either of them and any entity associated with either of them in the future, are hereby prohibited from future participation in the administration of the Settlement Agreement. To be clear, my use of the

word 'administration' includes any and all aspects of the IAP or CEP processes, including but not limited to the collection of application forms and the provision of physical spaces for IAP hearings.

The Monitor's Request for a Claimant Representative

[189] In light of my conclusions above, it is clear that, in order to avoid the disorderly collapse of Blott's IAP practice, there must be a structured distribution of Blott's IAP clients to new counsel. Rather than endorse the Monitor's request for a Claimant Representative, however, I favour the orderly wind-down of Blott's IAP practice.

[190] I will appoint the Honourable Ian Pitfield, a retired British Columbia Supreme Court judge with extensive experience in complex class action settlements, to oversee the orderly transition of the IAP clients of the Blott firm.

[191] Turning to the term and powers that Mr. Pitfield will require to oversee the orderly transfer of the Blott IAP files, I anticipate that Mr. Pitfield will:

1. set up a program to expeditiously transfer the files to other qualified law firms;
2. publicise that process by public meetings or otherwise as he deems appropriate;
3. retain such assistance as he deems necessary;
4. be provided with the names and contact information for each claimant (including deceased and DNQ claimants);
5. have access to the help lines and other resources of the Monitor;
6. co-ordinate his efforts with Mr. McLaughlin and others at Blott;
7. report to the court from time to time and seek directions of the court; and
8. be compensated in the first instance by Canada, which will recover this cost by a levy of a specific percentage of the fees of each transferred file.

[192] These are broadly the powers which I anticipate will be required. I ask that the parties and Mr. Pitfield discuss the detailed terms and powers to be set out in the entered order. The parties may appear before me in the week of June 11 to make submissions with respect to these powers and finalize the order.

[193] Honour Walk and Blott each have "break fees" in their contracts with claimants, which provide for a fee to be paid if the client transfers their file to another law firm. My order will preclude Honour Walk and Blott from participation in the IAP process and will transfer the files to other law firms. In my view, in law, no "break fee" would be payable as a result of this transfer. In any event, to ensure that there is no confusion, I will order that no break fee will be paid to Honour Walk or Blott as a result of the transfer of files pursuant to my order.

[194] I accept the suggestion of the Monitor that all unfilled claims will be accepted as filed by the Monitor to ensure that the deadline is not missed.

[195] For hearings scheduled during the file transfer period, the lawyers associated with Blott, other than Mr. Blott, may continue to appear.

"B.J. Brown J."

The Honourable Madam Justice B.J. Brown

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