

SUPREME COURT OF YUKON

Between

GX, by their Guardian ad litem, YY and
TA by their Guardian ad litem BB in a representative capacity on behalf of
all students and former students of Jack Hulland Elementary School who were subject
to holds and restraints and who were locked in a room and/or placed in seclusion
between January 1, 2002 and June 30, 2022

Plaintiffs

and

Government of Yukon, Department of Education
Jack Hulland Elementary School Council of Attendance Area #22

Defendants

Brought under Rule 5(11) as a proposed class proceeding

NOTICE OF APPLICATION FOR CERTIFICATION

To: The Defendants

TAKE NOTICE that an application will be made by the Plaintiffs to the presiding judge at the The Law Courts, 2134 Second Avenue, Whitehorse, Yukon, at a date and time to be set.

The plaintiffs are applying for an order that:

1. This action is certified as a class proceeding.
2. The Class Members are defined as:

all students and former students of Jack Hulland Elementary School who
were subjected to holds and restraints and/or who were locked in a room
and/or placed in seclusion between January 1, 2002 and June 30, 2022.
3. That GX, by their Guardian ad litem, YY and TA by their Guardian ad litem BB
are named as the representative plaintiffs of all Class Members who do not opt-out
further to paragraph 9 herein.

4. The Class Members assert claims for the torts of assault and battery, false imprisonment, and negligence.
5. The relief sought by the Class Members includes general damages, special damages, aggravated damages, punitive damages, court ordered interest, and costs.
6. The certified common issues are as follows:
 - (a) Did the staff commit the torts of assault, battery, and/or false imprisonment when subjecting the Class Members to holds, restraints, and/or seclusion?
 - (b) Did the defendants owe a duty of care to the plaintiffs?
 - (c) Did the defendants breach the duty of care owed to the plaintiffs?
 - (d) Did the defendants owe fiduciary obligations to the plaintiffs?
 - (e) Did the defendants breach their fiduciary obligations to the plaintiffs?
 - (f) Are the defendants vicariously liable for the conduct of the staff of Jack Hulland Elementary School?
 - (g) Does the conduct of the defendants merit an award of punitive damages?
7. The Litigation Plan is approved substantially in the form attached as **Schedule "A"** to this application.
8. Notice shall be given to the Class Members in the time and manner to be directed by this court after further submissions by the parties.
9. The time and manner for opting out of the proceeding shall be directed by this court after further submissions by the parties.
10. Costs in favour of the plaintiffs.

The plaintiff/petitioner/applicant will rely on:

- Rules of Court, 5(2), 5(11) and 47; and
- *Education Act*, RSY 2002, c. 61.

At the hearing of the application, the plaintiff/petitioner/applicant will rely on the following affidavit(s) of:

- 2nd Affidavit of [REDACTED] sworn on 6 February 2023 ("[REDACTED] Affidavit")
- 1st Affidavit of Madanna Tourangeau made on February 3, 2023 ("Tourangeau Affidavit")

- 1st Affidavit of Suzanne Lalonde made on 2 February, 2023 ("Lalonde Affidavit")
- 2nd Affidavit of [REDACTED] made on 10 February 2023 ("[REDACTED] Affidavit")
- 1st Affidavit of Harrison Andrew Bredy sworn on 12 December 2022 ("H. Bredy Affidavit")
- 1st Affidavit of Rachel Kenny made on 3 February, 2023 ("Kenny Affidavit")
- 1st Affidavit of Lawrence Bredy made on 6 February 2023 ("L. Bredy Affidavit")
- 1st Affidavit of Donna Miller-Fry made on 9 February 2023 ("Miller-Fry Affidavit")
- 1st Affidavit of Erin Cruickshank sworn on 10 February 2023 ("Cruikshank Affidavit")
- 1st Affidavit of Daria Jordan sworn on 13 February 2023

The expert reports of:

- Nadine Bartlett, Ph.D; and
- Dr. Mel Kaushansky

and other documents n/a.

Set out **brief** reasons for relief:

1. This is an application brought under *Rule* 5(11) to continue this action as a class proceeding brought by representative plaintiffs GX, by their Guardian ad litem, YY, and TA by their Guardian ad litem, BB, on behalf of

all students and former students of Jack Hulland Elementary School who were subject to holds and restraints and/or were locked in a room and/or placed in seclusion between January 1, 2002 and June 30, 2022.

(The "Class Members").

2. Class proceedings serve three principal goals: judicial economy, behaviour modification, and access to justice.

Hollick v. Toronto (City), 2013 SCC 69 at para.15

3. Leave to proceed as a class action is not an exceptional remedy, but is an "ordinary remedy whose purpose is to foster social justice" that is highly appropriate in abuse cases involving vulnerable victims.

L'Oratoire Saint-Joseph du Mont-Royal v. J.J., 2019 SCC 35 at para. 8.

4. Yukon does not have class proceeding legislation. Absent such legislation, "the court must fill the void under their inherent power to settle the rules of practice and procedure as to disputes brought before them".

Fontaine et al. v. Canada et al., 2006 YKSC 63 ("*Fontaine*") at paras. 32 and 34 citing *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 ("*Dutton*") at para. 34.

5. *Fontaine*, citing *Dutton*, identifies four conditions for certifying a class proceeding in the Yukon:

- (a) The class must be capable of clear definition;
- (b) There must be issues of fact or law common to all class members;
- (c) Success for one class member must mean success for all, in the sense that all class members will benefit from the successful prosecution of the action to some extent and success for one class member must not mean failure for another; and
- (d) The class representative(s) must adequately represent the class.

Fontaine at para. 33 citing *Dutton* at para. 38.

Vivendi Canada Inc. v. Dell’Aniello, 2014 SCC 1 at paras 45-47.

6. The plaintiffs have met this test and the action should be continued as a class proceeding:

- (a) The Class Members are objectively identifiable;
- (b) The plaintiffs have proposed common issues of fact and law that are common to the Class Members and which will meaningfully advance their claims against the Defendants;
- (c) All Class Members will benefit to some degree from the resolution of the common issues, and in no circumstance will success for some Class Members mean failure for others; and
- (d) The plaintiffs are adequately able to represent the class.

7. Continuing as a representative proceeding on behalf of the Class Members will advance access to justice for the Class Members, enhance judicial economy by avoiding an unnecessary duplication in legal proceedings regarding the matters at issue, and will encourage behaviour modification with respect to the use of holds, restraints and seclusion as well as school oversight and management in the territory.

The facts upon which the application is based are as follows:

- 1. This action is brought as a proposed class proceeding arising from the systemic use of holds, restraints and involuntary seclusion to control students’ behaviour at Jack Hulland Elementary School (“Jack Hulland”) beginning in, or about, September 2002 and continuing to about June 2022.
- 2. Jack Hulland is a public elementary school located in Whitehorse that serves children from Kindergarten through Grade 7.

3. The defendant, the Government of Yukon, Department of Education (the "Department"), presided over by the Minister of Education for the Yukon, is responsible for the operation and management of Jack Hulland.

4. The defendant, Jack Hulland Elementary School Council of Attendance Area #22, is established under the *Education Act*, and has operational responsibilities for Jack Hulland under that act including the responsibility to review, modify and approve rules for Jack Hulland and procedures for the enforcement of rules at Jack Hulland.

5. Since at least 2002, holds, restraints, and seclusion were regularly used at Jack Hulland against minor children. Students were regularly physically held or restrained in a manner that restricted their ability to move independently, and were regularly transported from one location to another, including to the Isolation Cells (as defined below in paragraph 6), by being physically moved, carried or dragged. They were frequently placed alone in the Isolation Cells without in-person supervision and were physically or mentally obstructed from leaving the Isolation Cells for varying, and sometimes lengthy, periods of time.

Miller-Fry Affidavit at para. 11, 15, 17, 19, 22-23, 24-30.

Lalonde Affidavit at paras. 4-15; 18-21.

██████ Affidavit at paras. 2-11.

██████ Affidavit at para. 7-43.

Kenny Affidavit at paras. 5-17.

Tourangeau Affidavit at paras. 3-19.

H. Bredy Affidavit at paras. 8-21.

Cruikshank Affidavit at paras. 2-5.

6. In, or about, 2008 a classroom in Jack Hulland was modified to include smaller enclosed rooms, sometimes referred to as "study carrels" (the "Isolation Cells"). The Isolation Cells were used to seclude students. At some point, a video surveillance system was installed to observe the Isolation Cells. The classroom with the Isolation Cells was frequently referred to as "The Nest" or the "Study Hall".

Lalonde Affidavit at paras. 9 and 15 – 17.

Tourangeau Affidavit at para. 12.

Miller-Fry Affidavit at para. 9.

7. The Defendants knew that holds, restraints and seclusion were used at Jack Hulland during the class period.

Miller-Fry Affidavit.

8. The plaintiff GX, attended Jack Hulland from November, 2017 until June, 2022. While attending Jack Hulland GX was repeatedly subjected to holds, restraints, and seclusion, where he was physically restrained by staff at Jack Hulland, "dragged

down school hallways to the study hall", and locked in a cell where he would be left alone for periods of time, sometimes for most or all of the day.

██████ Affidavit at paras. 2-11.

9. The plaintiff YY attended Jack Hulland during the class period between the grades of Kindergarten and Grade 5. While attending Jack Hulland YY was repeatedly subjected to holds, restraints, and seclusion in the Isolation Cells.

██████ Affidavit at paras. 7-43.

10. The plaintiffs are prepared to represent the interest of the Class Members and are aware of the duties entailed in acting as a representative plaintiff. Neither of the plaintiffs have any known conflicts with the Class Members.

██████ Affidavit at paras. 22-28.

██████ Affidavit at paras. 48-58.

11. The plaintiffs have provided evidence of other Class Members who were students at Jack Hulland during the class period and who were repeatedly subjected to holds, restraints, and/or seclusion at Jack Hulland, including by being physically dragged or carried to the Isolation Cells. The potential class members will benefit from the continuation of this action as a class proceeding.

Kenny Affidavit.

Tourangeau Affidavit.

H. Bredy Affidavit at para. 23.

Cruickshank Affidavit.

12. The plaintiffs have alleged that Jack Hulland's systemic practices of using holds, restraints, and seclusion for the purposes of behaviour modification amount to corporal punishment, was unlawful and without legal authority, and constituted the torts of assault, battery, false imprisonment and/or negligence.

13. The resolution of the proposed common issues will substantially advance and/or resolve the claims of the Class Members.

The plaintiffs estimate that the application will take 5 days.

If you wish to receive notice of the time and date of the hearing or to respond to the application, you must, within the proper time for response:

(a) deliver to the applicant

(i) 1 copy of a Response in Form 11, and

(ii) 1 copy of each of the affidavits in Form 59 and other documents, not already in the court file, on which you intend to rely at the hearing, and

- (b) deliver to every other party of record
 - (i) 1 copy of a Response in Form 11, and
 - (ii) 1 copy of each affidavit in Form 59 and other document, not already in the court file, on which you intend to rely at the hearing.

TIME FOR RESPONSE

The Response must be delivered on or before the 8th day after the later of

- (a) the last date fixed for entry of appearance by you, and
- (b) the date on which the Notice of Application was delivered to you.

Dated: February 14th, 2023



James R. Tucker
Counsel for the Plaintiffs

SCHEDULE "A" – LITIGATION PLAN

S.C. No. 22-A0097

SUPREME COURT OF YUKON

Between

GX, by their Guardian ad litem, YY and
TA by their Guardian ad litem BB in a representative capacity on behalf of
all students and former students of Jack Hulland Elementary School who were subject
to holds and restraints and who were locked in a room and/or placed in seclusion
between January 1, 2002 and June 30, 2022

Plaintiffs

and

Government of Yukon, Department of Education
Jack Hulland Elementary School Council of Attendance Area #22

Defendants

PLAINTIFFS' PROPOSED LITIGATION PLAN

SECTION 1: GENERAL MATTERS

Defined Terms

1. In this plan, terms have the same meaning as given to them in the Statement of Claim, unless otherwise noted. Otherwise:
 - (a) **"Court"** means the Supreme Court of Yukon;
 - (b) **"class action"** means Supreme Court of Yukon, Court File No. 22-A0097;
 - (c) **"class counsel"** means Tucker Carruthers and CFM Lawyers;
 - (d) **"class member/s"** means a member or members of the proposed class:

All students and former students of Jack Hulland who were subject to holds and restraints and/or who were locked in a room and/or placed in seclusion between January 1, 2002 and June 30, 2022.

- (e) **“defendants”** means Government of Yukon, Department of Education and Jack Hulland Elementary School Council of Attendance Area #22.
- (f) **“Post-Certification CMC”** means a case management conference scheduled within 30 days of a decision regarding the certification application (assuming success in favour of the plaintiffs) to settle the terms and manner of the notice(s) of certification.
- (g) **“Post-Common Issues Trial CMC”** means a case management conference scheduled within 45 days of a decision regarding the common issues trial (assuming success in favour the plaintiffs) to settle the terms and manner of the notice(s) of the common issues trial, confirm the process to be followed in bringing the Class Action to final resolution, and set a schedule for that process.
- (h) **“Websites”** means <https://www.cfmlawyers.ca/active-litigation/jack-hulland-elementary/> and <https://tuckercarruthers.ca/>

Case Summary

- 2. This action arises from the allegedly unlawful systemic use of holds, restraints and involuntary seclusion to control students' behavior at Jack Hulland beginning in, or about, September, 2002 and to about June, 2022.

Reporting

- 3. Class counsel will report regularly to the class members through the Websites. Class counsel also has direct lines of communication with potential class members that have contacted class counsel about this lawsuit, and class counsel intends to continue to update this group and any other potential class members who wish to receive updates directly.

SECTION 2: CERTIFICATION APPLICATION

Notice of Certification

- 4. Within 30 days of a decision regarding the certification application, assuming success in favour of the plaintiffs, the parties shall schedule the Post-Certification CMC, a case management conference to settle the terms and manner of the notice(s) of certification.

5. With respect to the plan of distribution, the plaintiffs may propose that the notice(s) of certification be:
 - (a) Distributed directly to Class Members based upon contact information in the Defendants' possession and control;
 - (b) Published in local news media, subject to reasonable publication deadlines and costs;
 - (c) Posted on the Websites; and
 - (d) Posted on the Jack Hulland school website: <http://jhe.yukonschools.ca/>.
6. The plaintiffs may seek an order that the costs of distributing the notice(s) of certification be paid by the Defendants.

Opting Out Procedure

7. The plaintiffs propose that the deadline for class members to elect not to participate in the class action, or to "opt-out", be set for 90 days after the first day the notice(s) of certification are distributed.
8. At the Post-Certification CMC the plaintiffs will ask the Court to settle the opt-out procedure for the class members.
9. The plaintiffs will propose that the opt-procedure include terms that:
 - (a) A person may opt out of the class action by sending a written election to opt-out to class counsel before a date fixed by the Court; and
 - (b) No class member may opt out of the class action after expiration of the opt-out period without further order of the Court.
10. The plaintiffs will ask the Court to appoint class counsel to receive the opt-out notices and report to the Court the number of persons who opted-out by a date fixed by the Court.

SECTION 3: LITIGATION STEPS PRECEDING THE COMMON ISSUES TRIAL

Judicial Case Management Conferences

11. At the Post-Certification CMC the plaintiff will seek a schedule leading up to the common issues trial. If the defendants appeal the certification order, the litigation shall not be delayed or paused pending the appeal unless the defendants obtain a stay of proceedings or by agreement of the parties.

Documents

12. Within 60 days of a judgment certifying the class action, the defendants will provide their initial lists of documents and provide copies of those documents to the plaintiff in electronic form.
13. Additional production shall be made on an ongoing basis. Demands for further documents may be made pursuant to *Rule 25*. Where disagreements arise about the relevance or scope of producible documents, the parties may schedule applications before the assigned Case Management Judge to resolve those matters.
14. The plaintiff's proposed document exchange protocol is attached to this litigation plan at **Appendix 1**.

Examinations for Discovery

15. The parties shall complete their examinations for discovery within 120 days of receiving substantially complete lists of documents from the opposing party, and at least 30 days in advance of trial.
16. The plaintiff may apply to the court for orders allowing examination of more than one representative of each of the defendants, depending on the knowledge of the representatives on key matters.

Applications

17. Applications should be set before the assigned Case Management Judge. Parties should provide adequate notice in writing of the nature of any contemplated interlocutory applications to assist with both resolution of those matters and scheduling.

Mediation

18. The plaintiff is open to proposals to mediate the common issues if it is in the interests of the class members to do so.

SECTION 4: COMMON ISSUES TRIAL

19. The plaintiff anticipates that the action will proceed in two phases:
 - (a) an initial common issues trial to determine the liability common issues and any common damages; and
 - (b) assuming the success for the class on some or all of the common issues, a process to resolve individual issues, including individual damages.
20. The common issues trial will resolve the common issues certified by the Court.

SECTION 5: LITIGATION STEPS FOLLOWING THE COMMON ISSUES TRIAL

21. Following the common issues trial, and assuming at least partial success for the class, the parties shall meet within 30 days of the resolution of the common issues to discuss the procedure for the resolution of individual issues. Given the subject matter of the action, the representative plaintiffs will propose that the process include simplified procedures for quantification of individual damages on a case-by-case basis and procedures for class members to participate on an anonymous basis.
22. Following which, the parties shall schedule the Post-Common Issues Trial CMC.
23. At the Post-Common Issues Trial CMC, class counsel will seek directions from the Court on a means of distributing the class members' awards, as required, the parties shall settle the terms and manner of the notice(s) of resolution of the

common issues, confirm the process to be followed in bringing the Class Action to final resolution, and set a schedule for that process.

24. At the Post-Common Issues Trial CMC, the court will be asked to:
 - (a) Settle the form and content of the notice(s) of resolution of the common issues;
 - (b) Make an order regarding the distribution of the notice(s) of resolution of the common issues. The plaintiffs may propose that the notice(s) of the resolution of the common issues be distributed in a similar manner as the notice(s) of certification as described in para. 5 herein.
 - (c) directions with respect to the process to resolve any individual issues that remain outstanding.
25. The process required to resolve any individual issues will be dependent on outcome of the common issues trial. Further detail and examples of the types of procedure the Court may direct are outlined below.
26. Class counsel will seek directions from the Court on a means of distributing the class members' awards, as required.

Outstanding Individual Issues

27. If following the resolution of the common issues trial there are issues remaining with respect to individual issues of liability, damages, aggregate damages, or the application of defences, the parties will attempt to agree to a process for the determination of those individual issues and will seek Court approval of that process. If no agreement is reached, the plaintiffs will propose a process and seek direction from the Court further to *Rule 1(8)*, *Rule 36* and its inherent jurisdiction.
28. This may include seeking directions from the Court regarding:
 - (a) The timing, scope and method of discovery appropriate to resolve individual issues;

- (b) The scope and method of proof required in order to address the outstanding individual issues; and
- (c) The applicable procedure, for example, directions regarding:
 - (i) the creation of a structured process whereby the submissions and evidence are adduced in writing;
 - (ii) the categorization of groups of class members and resolution of issues that are common amongst those class members, or to groups of class members, by order of the Court or by the agreement of the parties;
 - (iii) the use of claims forms developed by the parties and approved by the Court that require the class members to swear a statutory declaration setting out all material facts within their knowledge relevant to any outstanding individual issues with an obligation on the Defendants to respond in writing to those Class Members whose claims are disputed;
 - (iv) the use of mandatory notices to mediate for outstanding disputes pursuant to the *Rule 37* or another process by agreement of the parties;
 - (v) the appointment of an assessor, expert or special referee to conduct an inquiry, or inquiries, and report back to the court;
 - (vi) the conduct of test trials on the outstanding individual issues; and/or
 - (vii) some combination thereof.

Aggregate Damages Distribution

- 29. The plaintiffs contemplate that aggregate damages may be available for some part of the class members' damages along with their individual damages.
- 30. If liability is concluded at the common issues trial, and aggregate damages are available but not yet determined, the plaintiffs may seek directions from the Court.
- 31. If liability and the amount of aggregate damages are determined at the common issues trial, a plan for distributing the aggregate damage award will be developed by the plaintiffs, to provide fair compensation through an efficient, timely, and impartial distribution process.

32. Once the division of the aggregate damages award among Class Members has been determined and assuming claims may be assessed in a summary claims assessment procedure, the plaintiffs will ask that the Court implement and adopt a claims procedure, which includes the following steps:
- (d) setting a claims deadline before which eligible Class Members will be required to file their claims for compensation;
 - (e) appointment of an administrator to implement the claims process, including the review and assessment of filed claims;
 - (f) appointment of a referee to review any issues as to eligibility or the value of claims determined by the administrator, if required;
 - (g) the right to appeal the referee's decision to the Court for a final and binding decision; and
 - (h) the creation of a report by the administrator at the conclusion of the claims procedure.
33. The plaintiffs will further propose that the claims assessment procedure, wherever practical, utilize:
- (i) a paperless, web-based claims and claims management system;
 - (j) standardized claims forms and filing procedures; and
 - (k) affidavit or other summary methods for introducing evidence, if necessary.
34. As soon as practicable following the expiration of the claims deadline and, if necessary, after any reviews performed by the referee have been completed and appeals resolved, and the amount and number of eligible claims is known, the administrator shall report to the Court. Class Counsel shall thereafter seek directions from the Court on a means of distributing Class Members' awards.

SECTION 6: AMENDMENTS OF THIS PLAN

35. This plan may be amended from time to time by directions given at case management conferences or by further order of the Court.

APPENDIX 1 TO THE LITIGATION PLAN- DOCUMENT EXCHANGE PROTOCOL

Lists of Documents

36. Each list of documents shall be provided as:
- (a) a native PDF file (i.e. electronically generated, not scanned from hardcopy); and,
 - (b) .DAT and .OPT load files.
37. Documents shall be numbered in accordance with the following rules:
- (a) Each party shall use a unique prefix as follows:
 - (i) XXX.
 - (b) Documents shall be numbered sequentially using zero-padded numbers that will not be dependent on the number of pages in prior documents. For example, the first document listed by a party would be XXX000001 and the second would be XXX000002.
 - (c) Pages shall be numbered sequentially, using a dash to separate page numbers from document numbers. For example, the second page in a party's third document would be XXX000003-002.
 - (d) Pages need not be numbered for documents produced in native format.
 - (e) Parties may use a different prefix for privileged documents. For example, a party may use the prefix XXX_PRIV.
38. The following fields will be used to describe documents, including documents no longer in possession and privileged documents, where appropriate:
- (a) Document ID: The unique identifier for the document, as described in paragraph 3.

- (b) Date Start: If the document is dated, the value should be in Date Start. Date format will be YYYY-MM-DD. If the date is unknown, Date Start will be blank or contain the value 0000-00-00. If there is a range of dates, Date Start should be the earliest date only.
- (c) Date End: If a party chooses to describe a document using a range of dates, Date End will be used to indicate the last date in the range. Otherwise, Date End will be blank. Date format will be YYYY-MM-DD.
- (d) Document Title: The title or description of the document.
- (e) Author: The author of the document. This may include institutional authors if the document cannot be attributed to an individual. If there are multiple authors, they may be identified in a semi-colon separated list, or identified as "Various" if the authors are too numerous to reasonably identify.
- (f) Recipients: The recipient or recipients of the document. The same guidance as described in Author applies.
- (g) Source. This field will identify the person that the document originated from. As described in the Practice Direction, this field may be useful for documents that have been obtained from someone other than the party giving discovery, such as documents obtained by a subpoena. It can also be used to identify the location of the original document, such as a file maintained by a specific employee. Typical entries may include:
 - (i) Party name where the document was in possession of the party, even if it was created by another person. For example, if a government-authored report was in a company file, the Author would be the government agency, but the Source would be the company.
 - (ii) Third party name where the document was obtained from a third party, such as a medical practitioner or the RCMP.

- (iii) "Solicitor" where the document originates from a solicitor's brief rather than a party, counsel elects to disclose the document, and counsel chooses not to disclose the source. For example, this might be used when counsel elects to list a document that was provided to him or her by an expert.
- (h) Redacted: Blank if no redactions. "Yes" if the document has been redacted in part or whole.
- (i) Begattach. Used to identify the Document ID of the first document in a set of attachments.
- (j) Endattach. Used to identify the Document ID of the last document in a set of attachments.
- (k) Privilege. If a claim of privilege is being made over the entire document, describe the nature of the claim, such as litigation privilege or solicitor-client privilege. Other fields should still be used to the extent necessary to describe the document without revealing information that is privileged.

Documents

- 39. The filenames of produced documents shall be the Document ID with the appropriate file extension.
- 40. Natives, Images, and OCR files shall be produced in separate folders.
- 41. Hard Copy documents shall be scanned and produced in PDF format.
- 42. If it is reasonably necessary for a party to view an original hard copy document, the producing party shall make the hard copy document available for inspection.
- 43. Where possible, electronic documents shall be produced in native format. PDF images of native documents shall also be produced.

44. If it is not possible to produce documents in native format, the documents shall be produced as PDF images.
45. Where a file type cannot easily be viewed or may only be viewed with proprietary software counsel shall consult with the opposing parties with respect to how the document will be produced so that all parties are able to view the document.
46. If original digital photographs are converted to another format, a lossless compression algorithm will be used.
47. Where possible, reasons for redactions should be identified on the redaction itself. If this is not possible, the parties may agree to describe the redactions in another manner.
48. Documents shall be provided electronically by email, download link, DVD, USB memory stick, or other means acceptable to the parties.

Privilege

49. This protocol does not alter the substantive requirements for listing and describing privileged documents as required by the Rules of Court.
50. Documents over which privilege is being claimed should be described using those fields that, without revealing information that is privileged, will enable other parties to assess the validity of the claim of privilege
51. This protocol does not alter the law and principles that apply when privileged documents are accidentally disclosed.