

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Noramco LLC v. British Columbia*,
2026 BCCA 272

Date: 20260624

Dockets: CA50458; CA50459; CA50460;
CA50462; CA50464; CA50466;
CA50467; CA50469; CA50470;
CA50471; CA50472; CA50473;
CA50474; CA50475; CA50486

Docket: CA50458

Between:

Noramco LLC, formerly known as Noramco Inc.

Appellant
(Defendant)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Paladin Labs, Endo Pharmaceuticals Inc., Endo International PLC, Endo Ventures Ltd., Ethypharm Inc., Janssen Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Sanis Health Inc., Sandoz Canada Inc., Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, Valeant Canada LP / Valeant Canada S.E.C., Bausch Health Companies Inc., Amerisourcebergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., McKesson Corporation, McKesson Canada Corporation, Nu-Quest Distribution Inc., United Pharmacists Manitoba Inc., Procurity Inc., Procurity Pharmacy Services Inc., Shoppers Drug Mart Inc., unipharm Wholesale Drugs Ltd., and LPG Inventory Solutions

Respondents
(Defendants)

- and -

Docket: CA50459

Between:

Ethypharm Inc.

Appellant
(Defendant)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Paladin Labs, Endo Pharmaceuticals Inc., Endo International PLC, Endo Ventures Ltd., Janssen Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Mylan Pharmaceuticals ULC, Purdue Pharma Inc., Purdue Pharma L.P., The Purdue Frederick Company Inc., Purdue Frederick Inc., Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Hikma Labs Inc., Hikma Pharmaceuticals PLC, Roxane Laboratories Inc., Boehringer Ingelheim (Canada) Ltd. / Boehringer Ingelheim (Canada) LTEE., West-Ward Columbus Inc., Sanis Health Inc., Sandoz Canada Inc., Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, Valeant Canada LP / Valeant Canada S.E.C., Bausch Health Companies Inc., Imperial Distributors Canada Inc., AmerisourceBergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., McKesson Corporation, McKesson Canada Corporation, Nu-Quest Distribution Inc., United Pharmacists Manitoba Inc., Procurity Inc., Procurity Pharmacy Services Inc., Shoppers Drug Mart Inc., unipharm Wholesale Drugs Ltd., LPG Inventory Solutions, and Noramco Inc.

Respondents
(Defendants)

- and -

Docket: CA50460

Between:

LPG Inventory Solutions

Appellant
(Defendant)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Ethypharm Inc., Janssen Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Mylan Pharmaceuticals ULC, Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Hikma Labs Inc., Hikma Pharmaceuticals PLC, Roxane Laboratories Inc., Boehringer Ingelheim (Canada) Ltd. / Boehringer Ingelheim (Canada) LTEE., West-Ward Columbus Inc., Sanis Health Inc., Sandoz Canada Inc., Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, Valeant Canada LP / Valeant Canada S.E.C., Bausch Health Companies Inc., Imperial Distributors Canada Inc., AmerisourceBergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., McKesson Corporation, McKesson Canada Corporation, Nu-Quest Distribution Inc., United Pharmacists Manitoba Inc., Procurity Inc., Procurity Pharmacy Services Inc., Shoppers Drug Mart Inc., unipharm Wholesale Drugs Ltd., and Noramco Inc.

Respondents
(Defendants)

- and -

Docket: CA50462

Between:

Nu-Quest Distribution Inc.

Appellant
(Defendant)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Paladin Labs, Endo Pharmaceuticals Inc., Endo International PLC, Endo Ventures Ltd., Ethypharm Inc., Janssen Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Mylan Pharmaceuticals ULC, Purdue Pharma Inc., Purdue Pharma L.P., The Purdue Frederick Company Inc., Purdue Frederick Inc., Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Hikma Labs Inc., Hikma Pharmaceuticals PLC, Roxane Laboratories Inc., Boehringer Ingelheim (Canada) Ltd. / Boehringer Ingelheim (Canada) LTEE., West-Ward Columbus Inc., Sandoz Canada Inc., Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, Valeant Canada LP / Valeant Canada S.E.C., Bausch Health

Companies Inc., Imperial Distributors Canada Inc., AmerisourceBergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., McKesson Corporation, McKesson Canada Corporation, United Pharmacists Manitoba Inc., Procurity Inc., Procurity Pharmacy Services Inc., unipharm Wholesale Drugs Ltd., LPG Inventory Solutions, and Noramco Inc.

Respondents
(Defendants)

- and -

Docket: CA50464

Between:

Sandoz Canada Inc.

Appellant
(Defendant)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Paladin Labs, Endo Pharmaceuticals Inc., Endo International PLC, Endo Ventures Ltd., Ethypharm Inc., Janssen Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Mylan Pharmaceuticals ULC, Purdue Pharma Inc., Purdue Pharma L.P., The Purdue Frederick Company Inc., Purdue Frederick Inc., Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Hikma Labs Inc., Hikma Pharmaceuticals PLC, Roxane Laboratories Inc., Boehringer Ingelheim (Canada) Ltd. / Boehringer Ingelheim (Canada) LTEE., West-Ward Columbus Inc., Sanis Health Inc., Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, Valeant Canada LP / Valeant Canada S.E.C., Bausch Health Companies Inc., Imperial Distributors Canada Inc., AmerisourceBergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., McKesson Corporation, McKesson Canada Corporation, Nu-Quest Distribution Inc., United Pharmacists Manitoba Inc., Procurity Inc., Procurity Pharmacy Services Inc., Shoppers Drug Mart Inc., unipharm Wholesale Drugs Ltd., LPG Inventory Solutions, and Noramco Inc.

Respondents
(Defendants)

- and -

Docket: CA50466

Between:

Janssen Inc. and Johnson & Johnson

Appellants
(Defendants)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Paladin Labs, Endo Pharmaceuticals Inc., Endo International PLC, Endo Ventures Ltd., Ethypharm Inc., Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Sanis Health Inc., Sandoz Canada Inc., Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, Valeant Canada LP / Valeant Canada S.E.C., Bausch Health Companies Inc., Amerisourcebergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., McKesson Corporation, McKesson Canada Corporation, Nu-Quest Distribution Inc., United Pharmacists Manitoba Inc., Procurity Inc., Procurity Pharmacy Services Inc., Shoppers Drug Mart Inc., unipharm Wholesale Drugs Ltd., LPG Inventory Solutions, and Noramco Inc.

Respondents
(Defendants)

- and -

Docket: CA50467

Between:

McKesson Canada Corporation and McKesson Corporation

Appellants
(Defendants)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Paladin Labs, Endo Pharmaceuticals Inc., Endo International PLC, Endo Ventures Ltd., Ethypharm Inc., Janssen

Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Mylan Pharmaceuticals ULC, Purdue Pharma Inc., Purdue Pharma L.P., The Purdue Frederick Company Inc., Purdue Frederick Inc., Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Hikma Labs Inc., Hikma Pharmaceuticals PLC, Roxane Laboratories Inc., Boehringer Ingelheim (Canada) Ltd. / Boehringer Ingelheim (Canada) LTEE., West-Ward Columbus Inc., Sanis Health Inc., Sandoz Canada Inc., Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, Valeant Canada LP / Valeant Canada S.E.C., Bausch Health Companies Inc., AmerisourceBergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., Nu-Quest Distribution Inc., United Pharmacists Manitoba Inc., Procurity Inc., Procurity Pharmacy Services Inc., Shoppers Drug Mart Inc., unipharm Wholesale Drugs Ltd., LPG Inventory Solutions, and Noramco Inc.

Respondents
(Defendants)

- and -

Docket: CA50469

Between:

Valeant Canada LP / Valeant Canada S.E.C. and Bausch Health Companies Inc.

Appellants
(Defendants)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Paladin Labs, Endo Pharmaceuticals Inc., Endo International PLC, Endo Ventures Ltd., Ethypharm Inc., Janssen Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Sanis Health Inc., Sandoz Canada Inc., Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, AmerisourceBergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., McKesson Corporation, McKesson Canada Corporation, Nu-Quest Distribution Inc., United Pharmacists Manitoba Inc., Procurity Inc., Procurity Pharmacy Services Inc., Shoppers Drug Mart Inc., unipharm Wholesale Drugs Ltd., LPG Inventory Solutions, and Noramco Inc.

Respondents

(Defendants)

- and -

Docket: CA50470

Between:

Bristol-Myers Squibb Canada and Bristol-Myers Squibb Company

Appellants
(Defendants)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Paladin Labs, Endo Pharmaceuticals Inc., Endo International PLC, Endo Ventures Ltd., Ethypharm Inc., Janssen Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Sanis Health Inc., Sandoz Canada Inc., Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, Valeant Canada LP / Valeant Canada S.E.C., Bausch Health Companies Inc., AmerisourceBergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., McKesson Corporation, McKesson Canada Corporation, Nu-Quest Distribution Inc., United Pharmacists Manitoba Inc., Procurity Inc., Procurity Pharmacy Services Inc., Shoppers Drug Mart Inc., unipharm Wholesale Drugs Ltd., LPG Inventory Solutions, and Noramco Inc.

Respondents
(Defendants)

- and -

Docket: CA50471

Between:

Sanis Health Inc. and Shoppers Drug Mart Inc.

Appellants
(Defendants)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Ethypharm Inc., Janssen Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Mylan Pharmaceuticals ULC, Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Hikma Labs Inc., Hikma Pharmaceuticals PLC, Roxane Laboratories Inc., Boehringer Ingelheim (Canada) Ltd. / Boehringer Ingelheim (Canada) LTEE., West-Ward Columbus Inc., Sandoz Canada Inc., Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, Valeant Canada LP / Valeant Canada S.E.C., Bausch Health Companies Inc., Imperial Distributors Canada Inc., AmerisourceBergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., McKesson Corporation, McKesson Canada Corporation, Nu-Quest Distribution Inc., United Pharmacists Manitoba Inc., Procuracy Inc., Procuracy Pharmacy Services Inc., unipharm Wholesale Drugs Ltd., LPG Inventory Solutions, and Noramco Inc.

Respondents
(Defendants)

- and -

Docket: CA50472

Between:

Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceutical Industries Ltd., Teva Pharmaceuticals USA, Inc., Actavis Pharma Company, Joddes Limited, Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceuticals Industries Ltd., and Pharmascience Inc.

Appellants
(Defendants)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Ethypharm Inc., Janssen Inc., Johnson & Johnson, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Sanis Health Inc., Shoppers Drug Mart Inc., Sandoz Canada Inc., Valeant Canada LP / Valeant Canada S.E.C., Bausch Health Companies Inc., Kohl & Frisch Distribution Inc., Kohl & Frisch Limited, AmerisourceBergen Canada Corporation, United Pharmacists Manitoba Inc., Procuracy Inc., Procuracy Pharmacy Services Inc., uniPHARM Wholesale Drugs Ltd., McKesson Canada Corporation, McKesson Corporation, Noramco Inc., Nu-Quest Distribution Inc., and LPG Inventory Solutions

Respondents
(Defendants)

- and -

Docket: CA50473

Between:

uniPHARM Wholesale Drugs Inc.

Appellant
(Defendant)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Ethypharm Inc., Janssen Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Sanis Health Inc., Sandoz Canada Inc., Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, Valeant Canada LP / Valeant Canada S.E.C., Bausch Health Companies Inc., AmerisourceBergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., McKesson Corporation, McKesson Canada Corporation, Nu-Quest Distribution Inc., United Pharmacists Manitoba Inc., Procurity Inc., Procurity Pharmacy Services Inc., Shoppers Drug Mart Inc., LPG Inventory Solutions, and Noramco Inc.

Respondents
(Defendants)

- and -

Docket: CA50474

Between:

United Pharmacists Manitoba Inc., Procurity Inc., and Procurity Pharmacy Services Inc.

Appellants
(Defendants)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Ethypharm Inc., Janssen Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Sanis Health Inc., Sandoz Canada Inc., Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, Valeant Canada LP / Valeant Canada S.E.C., Bausch Health Companies Inc., AmerisourceBergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., McKesson Corporation, McKesson Canada Corporation, Nu-Quest Distribution Inc., Shoppers Drug Mart Inc., uniPHARM Wholesale Drugs Inc., LPG Inventory Solutions, and Noramco Inc.

Respondents
(Defendants)

- and -

Docket: CA50475

Between:

AmerisourceBergen Canada Corporation, Kohl & Frisch Limited, and Kohl & Frisch Distribution Inc.

Appellants
(Defendants)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Apotex Inc., Apotex Pharmaceutical Holdings, Inc., Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Ethypharm Inc., Janssen Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Sanis Health Inc., Sandoz Canada Inc., Teva Canada Innovation G.P. -S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, Valeant Canada LP / Valeant Canada S.E.C., Bausch Health Companies Inc., McKesson Corporation, McKesson Canada Corporation, Nu-Quest Distribution Inc., United Pharmacists Manitoba Inc., Procuracy Inc., Procuracy Pharmacy Services Inc., Shoppers Drug Mart Inc., uniPHARM Wholesale Drugs Inc., LPG Inventory Solutions, and Noramco Inc.

Respondents

(Defendants)

- and -

Docket: CA50486

Between:

Apotex Inc. and Apotex Pharmaceutical Holdings, Inc.

Appellants
(Defendants)

And

His Majesty the King in Right of the Province of British Columbia

Respondent
(Plaintiff)

And

Bristol-Myers Squibb Canada, Bristol-Myers Squibb Company, Paladin Labs, Endo Pharmaceuticals Inc., Endo International PLC, Endo Ventures Ltd., Ethypharm Inc., Janssen Inc., Johnson & Johnson, Pharmascience Inc., Joddes Limited, Pro Doc Limitee, The Jean Coutu Group (PJC) Inc., Mylan Pharmaceuticals ULC, Purdue Pharma Inc., Purdue Pharma L.P., The Purdue Frederick Company Inc., Purdue Frederick Inc., Ranbaxy Pharmaceuticals Canada Inc., Sun Pharmaceutical Industries Ltd., Hikma Labs Inc., Hikma Pharmaceuticals PLC, Roxane Laboratories Inc., Boehringer Ingelheim (Canada) Ltd. / Boehringer Ingelheim (Canada) LTEE., West-Ward Columbus Inc., Sanis Health Inc., Sandoz Canada Inc., Teva Canada Innovation G.P. - S.E.N.C., Teva Canada Limited, Teva Pharmaceuticals USA, Inc., Teva Pharmaceutical Industries Ltd., Actavis Pharma Company, Valeant Canada LP / Valeant Canada S.E.C., Bausch Health Companies Inc., Imperial Distributors Canada Inc., AmerisourceBergen Canada Corporation, Kohl & Frisch Limited, Kohl & Frisch Distribution Inc., McKesson Corporation, McKesson Canada Corporation, Nu-Quest Distribution Inc., United Pharmacists Manitoba Inc., Procurity Inc., Procurity Pharmacy Services Inc., Shoppers Drug Mart Inc., unipharm Wholesale Drugs Ltd., LPG Inventory Solutions, and Noramco Inc.

Respondents
(Defendants)

Before: The Honourable Chief Justice Marchand
 The Honourable Mr. Justice Harris
 The Honourable Justice Iyer

On appeal from: An order of the Supreme Court of British Columbia, dated January 22, 2025 (*British Columbia v. Apotex Inc.*, 2025 BCSC 92, Vancouver Docket S189395).

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Place and Date of Hearing:

Vancouver, British Columbia
December 1–5, 2025

Place and Date of Judgment:

Vancouver, British Columbia
June 24, 2026

Written Reasons of the Court

Summary:

The case management judge certified a proposed class action brought by the province of British Columbia ("Province") on behalf of Canadian governments against a number of pharmaceutical manufacturers, wholesalers, distributors, and related companies. The Province seeks to recover the health care costs governments incurred in their response to the harms allegedly caused by the overprescription of opioid medications. It claims the defendants engaged in a range of wrongful conduct by promoting opioid medications for conditions for which they were not suitable, including, principally, the treatment of chronic pain.

On appeal, the appellants argue the judge erred in finding there was some basis in fact to establish commonality and that a class proceeding was the preferable procedure. One appellant, LPG Inventory Solutions ("LPG"), also raises jurisdictional issues.

Held: Appeals dismissed. The judge did not err in his approach to commonality. Applying the appellate standard of review, it was open to the judge on the admissible evidence before him to certify the common issues. The appellants propose an approach to certification that is inconsistent with established principles. Specifically, they propose a level of detail, specificity, and particularity that goes well beyond what is necessary to satisfy the some basis in fact standard needed to meet the certification criteria. Further, the judge did not err in concluding a class proceeding was the preferable procedure. On the jurisdictional challenge, the judge did not make any reversible error in rejecting LPG's challenge to subject matter jurisdiction and forum non conveniens.

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APPENDIX A —COMMON ISSUES CERTIFIED BY THE CERTIFICATION JUDGE	-

Reasons for Judgment of the Court:**Introduction**

[1] Commonality. Preferability. Jurisdiction. These are key issues a judge considers early on in a proposed class action, including at certification. When parties appeal, they often seek to reargue these core issues.

[2] An appeal, however, is not a chance for parties to relitigate the certification application. It is not a chance for parties to ask the court to reweigh evidence and arrive at a different result. Routine certification appeals, where litigants seek a second kick at the can, undermine the important goals of class action proceedings—judicial economy and access to justice. The appellate standard of review is essential to discourage this type of appeal.

[3] These appeals substantially fall into this category. When one examines the fundamentals of the claims brought by the various governments arising out of a well-documented national opioid crisis, it is clear the governments advance similar claims about the origins of that crisis and the defendants' connections to it. Not only is there a demonstrated factual foundation to these claims, their resolution in a class proceeding is reasonable. Indeed, when one compares the alternative of individual claims advanced in each province or territory litigating essentially the same questions multiple times, the preferability of a class proceeding is obvious.

[4] The certification application and the subsequent appeals are examples of the unhelpful and disproportionate overcomplication of what should be a relatively straightforward inquiry brought early in a proceeding. That inquiry is to determine, as a procedural matter, whether there is some basis in fact to conclude that claims raise issues that can be decided commonly so as to avoid duplication of fact finding or legal analysis and whether it is preferable to resolve those issues in a common issues trial. The screening of cases through this lens should be functional and pragmatic, designed, not as a concealed merits test, but as a means of ensuring that a case will not founder at the merits stage for lack of commonality or preferability.

[5] In our view, it is time to return to basics. We encourage parties as well as chambers judges to focus on the procedural issues engaged by commonality and the other certification criteria.

[6] The principles of class action certification are well settled. Rather than disputing those principles, parties should focus on applying them to their given case: *Moiseiwitsch v. Canadian National Railway Company*, 2025 BCSC 2377 at para. 4. The facts of each case are different and a judge will need to decide certification in that context.

[7] The nature of the underlying claim in this case, which stems from the national opioid crisis, is critical to our resolution of the three main issues raised on these appeals. The province of British Columbia (“Province”) brought a proposed class action on behalf of Canadian governments against a number of pharmaceutical manufacturers, wholesalers, distributors, and related companies. The Province seeks to recover the health care costs governments incurred in their response to the harms allegedly caused by the overprescription of opioid medications.

[8] The Province claims the defendants engaged in a range of wrongful conduct by promoting opioid medications for conditions for which they were not suitable, including, principally, the treatment of chronic pain. In doing so, the Province alleges the defendants acted in an industry-wide, systemic, and coordinated fashion, which has caused or contributed to a health crisis and burdened the provincial and territorial health care systems with substantial costs.

[9] The Province’s proposed class action relies in part on the *Opioid Damages and Health Care Costs Recovery Act*, S.B.C. 2018, c. 35 [ORA], which came into force on October 31, 2018, shortly after the Province filed its action on August 29, 2018. The ORA is targeted legislation designed to facilitate a direct and distinct action for the government against a manufacturer, wholesaler, or consultant to recover the cost of health care benefits caused or contributed to by an opioid-related wrong: ORA, s. 2(1).

[10] Commonality and preferability are the two core issues in the appeals before us. The arguments on appeal largely mirror those made to the certification judge. Broadly, the appellants argue the judge erred in finding there was some basis in fact to ground the common issues. They also claim he erred in concluding a class proceeding was the preferable procedure. One appellant, LPG Inventory Solutions (“LPG”), also raises jurisdictional issues.

[11] For the reasons that follow, we dismiss the appeals. In our view, applying the appellate standard of review, it was open to the judge on the admissible evidence before him to certify the common issues and to conclude a class proceeding was the preferable procedure. In fact, as a nation-wide mass tort claim, this is precisely the type of claim the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 [CPA], and *ORA* were designed to facilitate.

[12] Assessed in light of the nature of the Province’s claims and the *ORA* (and its equivalents in other jurisdictions), the appellants propose an approach to certification that is inconsistent with the established principles. Specifically, they propose a level of detail, specificity, and particularity that goes well beyond what is necessary to satisfy the some basis in fact standard needed to meet the certification criteria.

[13] On the jurisdictional challenge, we are satisfied the judge did not make any reversible error in rejecting LPG’s challenge to subject matter jurisdiction and *forum non conveniens*.

The Province’s Claim

[14] The Province sought to certify a class, which includes all federal, provincial, and territorial governments (the “Class” and “Class Members”) that paid health care, pharmaceutical, treatment, and other costs relating to opioids from 1996 to present (the “Class Period”). The Province also sought to certify a subclass of federal, provincial, and territorial governments that have legislation (substantially similar to the *ORA*) directed specifically to the recovery of damages and health care costs arising from an “opioid-related wrong” (the “*ORA Subclass*”): *British Columbia v.*

Apotex Inc., 2025 BCSC 92 at para. 25 [RFJ]. All provincial and territorial governments now have similar legislation to the *ORA*.

[15] The Province's claim rests on a variety of common law, equitable, and statutory causes of action on the one hand, as well as the *ORA* on the other. There is a substantial overlap between these two categories of claims because liability under the *ORA* requires the Province to establish a breach of common law, equitable, or statutory duties. Moreover, the factual underpinnings of several alleged breaches of duty are common. For example, what the defendants knew about whether opioids have generic characteristics or properties that lead to certain consequences, including addiction, or their suitability to treat certain conditions, including chronic rather than acute pain, is relevant to a variety of different causes of action, such as negligent design, failure to warn, and misrepresentations. The apparent complexity of the large number of certified common issues is misleading because it is the result of a relatively straightforward set of factual precursors to the legal claims.

[16] The Province's proposed class action identifies categories of defendants, specifically manufacturers, generic manufacturers, and distributors. These categories differentiate defendants based on the nature of their participation in the industry. They also relate to the nature of the claim advanced against the different categories of defendants because it is alleged defendants falling within each category knew or ought to have known of certain facts and acted in similar ways.

[17] The "Manufacturer Defendants" are alleged to have marketed and promoted their brand name opioid products in Canada as being less addictive than they knew to be the case and for conditions they knew the opioids drugs were not effective in treating. The Province alleges the Manufacturer Defendants' marketing and promotion efforts resulted in an increase in prescription and use of all opioid products. This is the core claim in the proposed class proceeding.

[18] An "opioid product" is defined in the *ORA* as a product that contains a drug or active ingredient set out in the Schedule to the *ORA* or prescribed by regulation:

s. 1(1). This term is also tied to the breach of a duty giving rise to an opioid-related wrong. The Province's Third Amended Notice of Civil Claim defines "Opioid Products" as products that contain any opioid drugs—a class of drugs defined by a chemical compound naturally found in the opium poppy plant or which are synthetically or semi-synthetically made using the same chemical structure. They include, but are not limited to Butorphanol, Fentanyl, Hydrocodone, Hydromorphone, Meperidine, Methadone, Morphine, Normethadone, Opium, Oxycodone, Oxymorphone, Pentazocine, Tapentadol, and Tramadol. At a common issues trial, this definition of opioid products will provide a factual and legal foundation for the claim.

[19] The "Generic Manufacturers" are alleged to have been aware of the marketing of brand name Opioid Products by Manufacturer Defendants and to have endorsed and spread the misrepresentations about Opioid Products. The Province claims the Generic Manufacturers made a deliberate decision to manufacture, market, and sell their generic versions of brand name Opioid Products without regard for the potential risks to public health.

[20] The "Distributor Defendants" are alleged to have delivered the Opioid Products manufactured and marketed by the Manufacturer Defendants and Generic Manufacturers to pharmacies and hospitals in Canada in quantities they knew or should have known exceeded any legitimate market. Specifically, the Province says the Distributor Defendants ignored suspicious sales volumes and patterns, and they instead purchased large volumes of the Opioid Products and engaged in a common design with the Manufacturer and Generic Manufacturer Defendants to maximize opioid sales in Canada. Their efforts are said to have intensified the crisis of opioid abuse, addiction, and death in Canada.

[21] The Province and Class Members allege they spend billions of dollars annually in health care benefits arising from the opioid crisis, including for physician services, hospitalization, medical treatment, costs for prevention, and for acute and chronic conditions.

The Certification Application

[22] There was a massive evidentiary record, including expert and factual evidence, presented to the certification judge. He had to sift the evidence to determine what was admissible and then evaluate its effect on whether some basis in fact had been established to meet the certification criteria. He also had to decide what approach he should take to determine whether the some basis in fact standard had been met to certify the proposed common issues.

[23] The parties disagreed fundamentally about what some basis in fact entailed. We detail the nature of that disagreement below. Suffice to say, the appellants contended it was necessary to show both that an issue existed in relation to each defendant and the issue was common across the class. They argued the Province had not provided evidence with a level of detail and particularity to establish some basis in fact. The judge rejected the defendants' approach, concluding the Province had provided sufficient evidence to meet the some basis in fact standard. He found much of what the defendants alleged to be necessary to meet that standard actually went to the merits of the claim, which would be the subject of the common issues trial.

[24] The judge comprehensively addressed the main challenge to preferability, which was the degree to which the issues raised in the proposed class proceeding were individual issues not suitable for a common issues trial. He recognized the significance of individual issues and the differences between defendants and the regimes under which they operated in different jurisdictions. He concluded that, notwithstanding the extent to which the proposed common issues raised individual issues, these could be accommodated within a common issues trial. He decided the proposed common issues would materially advance the litigation, avoid duplication of factual and legal analysis, and provide answers to questions raised in each Class Member's action that could be extrapolated across Class Members, thereby laying a foundation for the resolution of remaining individual issues.

[25] In an extensive set of reasons (totalling 760 paragraphs), the certification judge, who was also the case management judge and therefore familiar with the lengthy procedural history of these matters, certified the proposed common issues. The common issues certified by the judge are set out in Appendix A to these reasons. A number of these issues deal with factual questions and are, as the judge noted, factual precursors to legal questions that arise from them. He found there was some basis in fact for each of the issues listed below, and a common issues trial would meaningfully advance the litigation on these issues:

- a) facts about Opioid Products-related disease, injury, or illness (Common Issues 2–3);
- b) facts about the defendants and their Opioid Products (Common Issues 6–8);
- c) the Manufacturer Defendants' opioid misrepresentations (Common Issues 9–11);
- d) facts about the defendants' knowledge of the characteristics of opioids (Common Issues 13–21);
- e) common design allegations (Common Issues 22–28);
- f) unjust enrichment allegations (Common Issues 35–37);
- g) breach of the *Competition Act*, R.S.C. 1985, c. C-34, (Common Issue 38);
- h) *ORA* Claims advanced on behalf of the *ORA* Subclass (Common Issue 39);
- i) breach of duties under the *Food and Drugs Act*, R.S.C. 1985, c. F-27, (Common Issue 40);
- j) the failure to warn as against the Manufacturer Defendants and the Distributor Defendants (Common Issues 41–44);
- k) the negligent misrepresentations and fraudulent misrepresentations alleged against the Manufacturer Defendants (Common Issues 45–48);

- l) the negligent design by the Manufacturer Defendants (Common Issues 49–51); and,
- m) specific claims under the *ORA* (Common Issues 52–54).

[26] Lastly, the judge dismissed certain defendants' jurisdictional challenges and declined to find the court was *forum non conveniens*. Even though he said those defendants had made some valid points about factors favouring the litigation of the claims in other provinces, he found they had not met the burden of showing those provinces were clearly more appropriate forums to decide the case against them.

Issues on Appeal

[27] Broadly speaking, the appellants raise three main issues on appeal:

- a) Whether the judge erred in failing to identify and apply the correct test for the certification of common issues;
- b) Whether the judge erred in finding a class proceeding was the preferable procedure for resolving the common issues, and specifically, whether he failed to appreciate the extent of the individual issues in the preferable procedure analysis; and,
- c) With respect to LPG, whether the judge erred in failing to give effect to its jurisdictional objections.

[28] At the outset and before we engage in a detailed discussion of the alleged errors, we acknowledge the judge's careful and detailed analysis of the many issues raised in the certification and jurisdiction applications before him. Given the voluminous record in this case, these reasons should be read together with the certification judge's comprehensive judgment.

[29] We also recognize that even though each defendant has brought its own appeal, all adopt the arguments on commonality and preferability in the joint appellants' factum. The individual appellants each argue in their own factums that to

the extent there was specific evidence against them, it disclosed no basis in fact to warrant certification of the common issues. As noted, LPG raises its own arguments on jurisdiction, which it entwines with preferability.

[30] Our reasons take into consideration the joint nature of the issues raised as well as the nuances to some of the individual appellants' positions.

[31] We begin by outlining what we consider to be the settled approach to identifying whether proposed common issues should be certified. We then describe the nature of the Province's claim in more detail. We consider whether the judge erred in his understanding of the test for identifying common issues, and, if not, whether it was open to him to certify the common issues. We lastly address the issues relating to preferability and LPG's jurisdictional challenge.

Issue 1: Commonality

Legal Principles

Objectives of Class Proceedings and Certification of Common Issues

[32] One objective of class proceedings is to permit the resolution of the claims of multiple plaintiffs in circumstances where a series of individual trials is unrealistic or inefficient. The statutory criteria for certification reflect this objective and require, except for the existence of a cause of action, some evidentiary foundation demonstrating the criteria for certification have been met. This is what is referred to as the some basis in fact standard.

[33] Certification is a procedural step, which the *CPA* contemplates occurring at an early stage in the proceeding. The focus is on the form of the proceeding as collective rather than individual. The inquiry is not into the merits of the proposed action. Other procedural mechanisms exist to weed out claims lacking in merit, such as the availability of summary judgment.

[34] One objective of certifying a common issue is to ensure there is some, rather than no, evidence the issue can be decided in common across class members to

avoid unnecessary duplication of fact-finding or legal analysis: *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46 at para. 39 [*Dutton*].

[35] In our view, whether there is some basis in fact to certify a common issue is a practical, pragmatic, and functional exercise. The emphasis is on ensuring a common issues trial does not collapse at the merits stage because the common issues are not truly common. That is why it is necessary to go beyond the pleadings and require an evidentiary foundation for commonality.

[36] However, defining an evidentiary foundation for some basis in fact cannot be done in the abstract: *Pro-Sys Consultants v. Microsoft Corporation*, 2013 SCC 57 [*Pro-Sys*] at para. 104. A judge applying the some basis in fact standard should bear in mind the objectives of certification in order to apply the standard in a way that is responsive to the circumstances of the particular case.

“Common Issues” and Commonality

[37] “Common issues” is defined in the *CPA* as meaning either “(a) common but not necessarily identical issues of fact, or (b) common but not necessarily identical issues of law that arise from common but not necessarily identical facts”: s. 1.

[38] An issue will be “common” only where its resolution is necessary to the resolution of each class member’s claim. An issue will not be “common” unless the issue is a “substantial ingredient” of each of the class members’ claims: *Hollick v. Toronto (City)*, 2001 SCC 68 at para. 18. In other words, a question posed by a common issue will be answered for each class member. The answer may be positive or negative. It may spell success or failure in respect of that issue, and it does so for each class member.

[39] The Court in *Pro-Sys* summarized the key principles about commonality:

[108] In *Western Canadian Shopping Centres Inc. v. Dutton*, 2001 SCC 46, [2001] 2 S.C.R. 534, this Court addressed the commonality question, stating that “[t]he underlying question is whether allowing the suit to proceed as a [class action] will avoid duplication of fact-finding or legal analysis” (para. 39).

I list the balance of McLachlin C.J.'s instructions, found at paras. 39-40 of that decision:

- (1) The commonality question should be approached purposively.
- (2) An issue will be “common” only where its resolution is necessary to the resolution of each class member’s claim.
- (3) It is not essential that the class members be identically situated *vis-à-vis* the opposing party.
- (4) It not necessary that common issues predominate over non-common issues. However, the class members’ claims must share a substantial common ingredient to justify a class action. The court will examine the significance of the common issues in relation to individual issues.
- (5) Success for one class member must mean success for all. All members of the class must benefit from the successful prosecution of the action, although not necessarily to the same extent.

[40] However, there is a nuance. In *Vivendi Canada Inc. v. Dell’Aniello*, 2014 SCC 1 at paras. 45–46 [*Vivendi*], the Court clarified commonality is not a requirement that the resolution of a common issue means success for all class members. The answer to a common issue can also vary between class members: “It is enough that the answer to the question does not give rise to conflicting interests among the members”: *Vivendi* at para. 46. In other words, “success for one member must not result in failure for another”: *Vivendi* at para. 45.

[41] There must be an evidentiary foundation to satisfy each of the certification criteria. Simply put, it is not sufficient merely to plead a common issue. More is required. There is no dispute s. 4(1)(c) of the *CPA* requires “some basis in fact” to support a common issue: *Pioneer Corp. v. Godfrey*, 2019 SCC 42 at para. 27; *Pro-Sys* at paras. 99–100; *Hollick* at para. 25. This means there must be some basis in the evidence showing the issues are common to the class members. The certification stage is not meant to test the merits of the action: *Pro-Sys* at para. 99, citing *Hollick* at para. 16. The focus instead is on “whether there is a rational connection between the class as defined and the asserted common issues”: *Hollick* at para. 19. The class representative must show some basis in fact to support the certification order. The evidence on the application should be confined to the certification criteria: *Hollick* at para. 25. The focus, then, is on the certification criteria rather than the factual basis for the claim.

[42] In *Trotman v. WestJet Airlines Ltd.*, 2022 BCCA 22, Chief Justice Bauman reaffirmed the commonality inquiry is not a test of the merits of the claim:

[57] The certification judge is not to conduct an adjudication on the merits. There need only be some basis in fact for the proposition that the issue can be determined on a class-wide basis: see *Pro-Sys Consultants Ltd. v. Microsoft Corporation*, 2013 SCC 57 at para. 99 [*Pro-Sys*], citing *Hollick v. Toronto (City)*, 2001 SCC 68 at para. 25. The evidence at this stage “goes only to establishing whether these questions are common to all the class members”: *Pro-Sys* at para. 110. Said another way: “is there some evidence of class-wide commonality, that is some evidence that the proposed common issue can be answered on a class-wide basis”: *Grossman v. Nissan Canada*, 2019 ONSC 6180.

[Emphasis added.]

[43] Some basis in fact is a low threshold. The standard does not contemplate a detailed assessment of contested facts; it asks only whether there is some basis in the evidence to support certification: *AIC Limited v. Fischer*, 2013 SCC 69 at paras. 42–43. A defendant is allowed to respond to the plaintiff with its own evidence, but the court cannot engage in a detailed weighing of conflicting evidence: *Sun-Rype Products Ltd. v. Archer Daniels Midland Company*, 2013 SCC 58 at para. 68; *AIC Limited* at para. 40. This is because certification occurs at an early stage of proceedings when the court is “ill-equipped to resolve conflicts in the evidence or to engage in the finely calibrated assessments of evidentiary weight”: *Pro-Sys* at para. 102.

[44] As described in *Ewert v. Nippon Yusen Kabushiki Kaisha*, 2019 BCCA 187, leave to appeal to SCC ref’d, [2019] S.C.C.A. No. 311, the evidentiary threshold for establishing some basis in fact can be helpfully contrasted with there being no basis in fact:

[104] I take from this that some basis in fact is to be contrasted with no basis in fact (as in *Chadha*). It is required that a plaintiff lead some evidence that there is a plausible and realistic methodology to establish loss on a class-wide basis, but where the methodology consists of an econometric model, it is not necessary to build the model or identify with precision what information will be used to populate the model, as long as there is some evidence that information will be available to do so.

[45] It has been said that a plaintiff need only show there is a triable factual or legal issue that, once determined, will advance the litigation: *Sharp v. Royal Mutual Funds Inc.*, 2021 BCCA 307 at para. 103, leave to appeal to SCC ref'd, [2021] S.C.C.A. No. 374, citing *Service v. University of Victoria*, 2019 BCCA 474 at para. 59.

[46] While this language is helpful in indicating the threshold for showing an issue is common, it is important not to import into the analysis a test functionally equivalent to the test for summary judgment. The point in a certification application is to ensure there is some basis in the evidence to support certification viewed as a matter of form, not as a kind of concealed preliminary merits test. In other words, there should be some minimal factual basis that the claims are common to the class.

[47] Whether a common issue “advances the litigation” should be considered from the perspective of *the litigation*, not the plaintiff: *Pioneer Corp.* at para. 109. A common issues trial “has the potential to *either* determine liability *or* terminate the litigation”: *Pioneer Corp.* at para. 109. In other words, the litigation is “advanced” in that it is moved towards resolution, not that it is “advanced” in the plaintiff’s favour.

[48] In analyzing whether there is some basis in fact for a common issue, the court must consider the language of the proposed common issue, and whether there is some evidence that supports the argument it is a common issue across members of the class: *Nissan Canada Inc. v. Mueller*, 2022 BCCA 338 at para. 133 [*Nissan*], leave to appeal to SCC ref'd, [2022] S.C.C.A. No. 446.

[49] These propositions are not controversial. They formed the basis of the approach the certification judge took in evaluating the issues in the application: RFJ at paras. 574–593.

The Nature of the Province’s Claim

[50] At its core, the Province’s claim is about systemic, nation-wide conduct. The action brought against the different groups of defendants focuses on their alleged participation in causing or contributing to a national opioid crisis. Factually, it is

alleged the defendants, both individually, as part of corporate families, and in common with other defendants, contributed to creating the opioid crisis by manufacturing, distributing, and promoting the prescription of opioids by misrepresenting or failing to warn about their addictive characteristics and promoting their use for conditions to which they are not suited.

[51] The Province acknowledges opioids were originally and appropriately used to treat acute pain in terminally ill individuals or post-surgery, and they continue to have legitimate uses. However, it contends the use of opioids changed between 1996 and the mid-2010s because of the alleged wrongful conduct of the defendants.

[52] The Province's claim is against the various participants in the opioid industry and is based on their respective contributions to the opioid crisis through their alleged wrongful conduct. The alleged conduct varies according to the nature of the involvement these different groups of defendants had in the industry. Fundamentally, however, this conduct is alleged to be individual as well as systemic and industry-wide. The claims are also linked to the level of knowledge each of these groups of defendants had about the attributes and effects of opioids during the Class Period.

[53] The different segments of the industry (Manufacturer Defendants, Generic Manufacturers, and Distributor Defendants) played different roles in contributing to the systemic conduct, but each category of defendant is alleged to have acted similarly and in concert with one another.

[54] The Province pleads that each of these groups of defendants knew or ought to have known about the dangers of using Opioid Products to treat chronic non-cancer pain. It says each defendant should have worked to counter false information and to ensure these dangerous drugs were used only when necessary. Instead, each defendant chose to participate in the lucrative Opioid Products market, relying on, repeating, and endorsing misrepresentations and misleading information in the process. The Province alleges the dramatic surge in the public's consumption of Opioid Products has injured and unreasonably interfered with the public's health

and safety, causing a substantial detriment to the Class Members in the form of incurring the expense of treating those suffering from the consequences of opioid addiction.

[55] The judge observed:

[214] ...the Province's evidence suggests that every province and territory experienced a significant increase in the prescription of opioids between 1996 and the mid-2010s, followed by more reports of associated harms and an increased usage of non-prescription opioids. The cause of that increase in prescribing and the harms arising from it are the focus of this litigation. In particular, the alleged role that prescription opioids played in creating a demand for illicit opioids is strongly contested between the parties.

[56] The Province makes factual allegations about industry-wide and intra-corporate family systemic conduct having national consequences in causing or contributing to an opioid crisis that has forced the federal and provincial governments in Canada to respond to the damage caused to the health of individuals who have an opioid addiction. The Province alleges the characteristics of opioid medications are fungible and the consequences of their use for unsuitable conditions can be assessed on a common basis.

[57] Not every proposed common issue is raised against each defendant because certain common issues relate only to specific groups of defendants depending on their alleged role in the opioid industry. Hence, the allegations and evidence relating to the Manufacturer Defendants, Generic Manufacturers, and Distributor Defendants varies. It is clear from the judgment the certification judge appreciated these nuances.

ORA Context and Commonality

[58] A significant and unusual feature of this proposed class proceeding is found in the legislation enacted by Canadian governments. This is a critical contextual factor in assessing commonality. Each of the provincial and territorial governments has passed legislation parallel to the *ORA* which confers a direct and distinct cause of action facilitating targeted litigation to recover the cost of health care benefits incurred because of wrongful conduct by participants in the opioid industry.

[59] Each *ORA* statute intends to capture industry-wide conduct. This means issues of legal interpretation, for example, are common to the Class (i.e., the governments) and each jurisdiction has identical causes of action intended to facilitate the litigation of mass tort claims. The legislation contemplates actions will be founded on similar factual and legal allegations targeted at a particular type of product and a particular industry. The enactment of these *ORA* statutes indicates a legislative intention to support certification of common issues to facilitate a class proceeding.

[60] The legislatures have created a common framework for the prosecution of substantially identical cases raising substantially identical allegations of industry-wide mass torts. The legislation contemplates litigation by means of a class proceeding to resolve issues on behalf of all governments, and it creates the legal context for identifying and certifying issues common across all provinces as a means of advancing each Class Member's claims.

[61] In *Sanis Health Inc. v. British Columbia*, 2024 SCC 40 [*Sanis SCC*], the majority of the Court recognized the purpose of the *ORA* provision (s. 11) allowing the Province to bring an action on behalf of a class was “to create a procedural mechanism to promote litigation efficiency by joining the claims of consenting Canadian Crowns into a single proceeding, while ensuring that each Crown's claims will be decided in accordance with their own substantive law”: at para. 9.

[62] The *ORA* provides the Province with a direct cause of action to recover against opioid manufacturers, wholesalers or consultants on an aggregate basis for wrongful conduct that caused or contributed to opioid-related diseases, injuries, or illnesses in British Columbia (an “opioid-related wrong”). The *ORA* also provides the government of Canada with a similar cause of action.

[63] The *ORA* “significantly alters traditional substantive and procedural tort principles” to address breaches of duty that are mass torts affecting large numbers of individuals, and it shifts the cost of health care benefits that may not otherwise be recoverable onto manufacturers and distributors: *Valeant Canada LP/Valeant*

Canada S.E.C. v. British Columbia, 2022 BCCA 366 at para. 85 [*Valeant*], leave to appeal to SCC ref'd, [2023] S.C.C.A. No. 13.

[64] The *ORA* also contemplates a single action with multiple defendants assessing potential liability for systemic conduct that affects large numbers of British Columbians: *Valeant* at para. 86; see *ORA*, s. 5. The *ORA* permits an aggregate action relying essentially on statistical analyses related to populations of individuals; therefore, it “needs to be interpreted in light of its purpose to address alleged mass torts that are thought to be impossible, practically, to prosecute under traditional individual tort principles”: *Valeant* at para. 79.

[65] This is the context in which the certification judge applied the some basis in fact standard. It is also the backdrop against which we evaluate his reasons.

Alleged Errors on Commonality

[66] With that background in mind, it is helpful to explain the central propositions underlying the first ground of appeal. They are two-fold.

[67] First, the appellants contend the judge erred in characterizing the proposed issues as common rather than individual. The criticisms are directed at the judge’s treatment of differences among Opioid Products, differences between jurisdictions, and differences within and between the categories of defendants.

[68] We can dispose of this ground of appeal summarily. We see no merit in the suggestion the judge mischaracterized the proposed issues as common issues. In our view, the issues as articulated are capable of resolution in a way that advances the litigation. They are defined with sufficient precision and are not overly broad or common only in form.

[69] Second, most of these criticisms turn on a key alleged error in principle. The appellants say the judge erred in not applying what they assert to be a settled test that some basis in fact requires the plaintiff to show: (1) the common issue exists against each defendant, and (2) it is common to each class member’s claim. In their

submission, a judge must always (appellants' emphasis) first determine whether there is some basis in fact in the admissible evidence for the existence of each common issue against each defendant. Rather than make this determination, they say the judge focused exclusively on whether the alleged issues were common to all Class Members. They contend it is an error for a court to conclude a common issue exists merely by finding it could be decided across class members.

[70] To illustrate the appellants' argument, in their submission, the evidence required to support allegations of misrepresentation, failure to warn, and negligent design would need to:

- (1) be specific to each defendant with respect to each of its products;
- (2) be specific to what was known or ought to have been known by each defendant at material times about undisclosed risks and overstated benefits associated with opioid use;
- (3) show each product monograph for each Opioid Product was, at the time, deficient;
- (4) set out what was represented, disclosed or not disclosed about each Opioid Product by each defendant, when and to whom;
- (5) demonstrate there was a safer, equally effective pain-relieving medication that could have been made but was not; and,
- (6) establish each Opioid Product was distributed in quantities that exceeded a legitimate market, including an identification of what a legitimate market was or should be.

[71] Furthermore, the appellants say the Province did not advance any workable methodology to permit the evaluation of the impact of each defendant's alleged conduct on a common basis. In their view, the Province failed to establish the proposed common issues arising out of these claims existed; and, in the absence of this specific evidence, these issues should not have been certified.

[72] The appellants also argue there was no basis in fact for a number of related but equally sweeping allegations that facilitate the Province's central claims, including that every Manufacturer Defendant engaged in marketing and promoting Opioid Products, every appellant was part of a common design to unlawfully market, sell, and distribute Opioid Products in Canada, and every Opioid Product is "fungible" in the sense there are no meaningful differences between them with respect to the proposed common issues.

[73] In effect, the appellants contend there is a critical evidentiary gap in the record concerning the allegation of knowledge that undermines the proposition these issues exist at all. They say there was no evidence to support a basis in fact that each of the Manufacturer Defendants knew or ought to have known the risks of each Opioid Product were not adequately disclosed in the product monographs at the relevant time, or that the Distributor Defendants had any knowledge or control over the hazard and risks associated with the Opioid Products they distributed. They say the judge did not identify any evidence in the record providing a basis in fact for the assertions that representations made by any Manufacturer Defendant or warnings contained in their product monographs (or other documents) were untrue, or the appellants knew or ought to have known they were untrue at the times they were made, or at any time thereafter.

[74] The appellants advance similar propositions with respect to other common issues.

Analysis

[75] We do not agree with the appellants' primary argument for two principal reasons. First, we do not agree the judge erred in his analysis of the approach he was required to take to determine whether some basis in fact existed to certify the common issues. Second, the alleged error is not the consequence of whether the judge failed to apply a two-step test in deciding whether the certification criteria were satisfied. Rather, the purported error arises from what evidence the appellants say is necessary to establish a common issue for the purposes of certification.

[76] In our view, the appellants demand a degree of specificity and particularity in the evidence that goes well beyond what the cases demonstrate is sufficient to provide some basis in fact for a common issue.

[77] As we have observed, for example, one of the core allegations is that the defendants, as members of the pharmaceutical industry, engaged in systemic and industry-wide wrongful conduct in marketing Opioid Products. Accordingly, the plaintiff must tender some minimal evidence that this allegedly wrongful conduct, if it occurred, would be common across the plaintiff class. The evidentiary threshold is low, and it can be satisfied by inference: see *Infineon Technologies AG v. Option consommateurs*, 2013 SCC 59 at para. 94.

[78] In our view, to demonstrate some basis in fact that industry-wide wrongful conduct might or could have occurred does not require direct evidence specific to each defendant in relation to each Opioid Product, in respect of each statement made by each defendant about the attributes of its products, or direct evidence specific to each defendant about coordination with other defendants. Generalized expert evidence can be enough to show there is some factual basis for the common issues claims. Similarly, in our view, evidence illustrative of a more general claim may be sufficient.

[79] To require evidence of the level of detail, specificity, and particularity contended for by the appellants here would frustrate the purpose of the certification criteria as a preliminary, pre-discovery, early-stage procedural (non-merits) step designed to focus on the form of the proceeding and to advance the litigation and prevent a common issues trial from foundering at the merits stage.

[80] Courts have frequently recognized that much of the evidence necessary to address the merits of alleged common issues may well be unavailable to plaintiffs before discovery. It may come to light only after certification. This practical reality should not frustrate the certification of an otherwise legitimate class proceeding. Hence, for example, if the appellants are correct, then a brilliantly conceived and well-executed secret conspiracy might never be capable of certification if a plaintiff

had to demonstrate evidence of where agreements were reached, their exact terms, and among whom they were made. This is why it is sufficient to show some basis in fact that such agreements might or could have been made, grounded in inferences.

[81] In our view, conspiracy is an example of a cause of action where evidence that there was a conspiracy is relevant to the commonality assessment. There must be some minimal evidence that agreements “might or could have been made” to conclude that “the claims of the class members raise common issues” within the meaning of s. 4(1)(c) of the CPA. The certification judge found the Province had tendered such evidence.

[82] In large measure, the appellants’ arguments, both collectively and individually, proceed from an assumption the evidence they say is missing is necessary to ground some basis in fact for the existence of a common issue.

[83] In our view, that is a false premise. As a result, most of the specific alleged errors the appellants advance fall away. It is unnecessary for us to respond to them individually and we will not do so. We confine ourselves instead to a consideration of whether there was sufficient evidence in the record to support the judge’s certification of the common issues.

[84] One last word. Approaching the some basis in fact standard in this way does not mean theoretical commonality alone is enough to certify a common issue, or that the judge certified the common issues exclusively on the basis of commonality. He did not. Moreover, we are satisfied it was open on the record for the judge to conclude there was some basis in fact supporting the certification of common issues relating to systemic or industry-wide conduct. This is not a case in which, as the appellants submit, issues were certified against defendants solely on the basis they were participating in a particular industry.

The Two-Part Test

[85] The certification judge analyzed whether he was required to apply a two-part test to establish, first, the existence of a common issue and, second, commonality.

[86] Much ink has been spilled about this issue. In our view, the question of whether there is a one- or two-part test is a distraction and there is no utility in chambers judges in this province continuing to evaluate whether a two-part test is the test or is satisfied.

[87] The real issue is the practical application of the evidentiary standard in light of the issues raised in a claim and whether those issues can be usefully resolved on a common basis in a way that moves the litigation towards resolution. This is the approach the judge took. He concluded an analytical two-part test had not gained much traction in British Columbia, but in any event, and from a practical and functional perspective, not much turned on whether one or two steps were involved: RFJ at paras. 584–593. We agree. No legal error lies in his conclusion.

[88] The judge relied on this Court’s treatment of the approach to some basis in fact found in *Nissan, Trotman, and Mentor Worldwide LLC v. Bosco*, 2023 BCCA 127, as well as trial court decisions in *O’Connor v. Canadian Pacific Railway Limited*, 2023 BCSC 1371, and *Bowman v. Kimberly-Clark Corporation*, 2023 BCSC 1495. *Pro-Sys* (para. 110) also supports this analysis on commonality:

The multitude of variables involved in indirect purchaser actions may well present a significant challenge at the merits stage. However, there would appear to be a number of common issues that are identifiable. In order to establish commonality, evidence that the acts alleged actually occurred is not required. Rather, the factual evidence required at this stage goes only to establishing whether these questions are common to all the class members.

[Emphasis added.]

[89] We agree with the judge’s reasoning. The judge accurately described the development of the law in British Columbia. We reject the appellants’ proposition that in doing so, he departed from well-settled jurisprudence requiring the satisfaction of a two-part test.

Application of Some Basis in Fact Standard

[90] The real question on these appeals is what kind of evidence is sufficient to satisfy the some basis in fact standard as it relates to commonality. The various

formulations interpreting this phrase have been canvassed recently and helpfully by Justice Branch in *Moiseiwitsch* at paras. 111–114, 216.

[91] We identify a few examples to illustrate what evidence is sufficient to provide some basis in fact.

[92] We begin with *Nissan*. The argument advanced in *Nissan* closely resembles the appellants' arguments in these appeals. The claim in *Nissan* related to an alleged design and manufacturing defect in engines installed in a variety of vehicles over an extended period. Nissan contended that a two-part test for common issues required specific evidence of the defect and its dangerousness for each model subject to the claim.

[93] This Court expressly rejected the need for two analytically distinct types of evidence going to first, the existence of a common defect, and second, its dangerousness: *Nissan* at paras. 132. The plaintiff had some evidence the defect was common to the class. This Court held this provided some basis in fact that there were common issues relating to the engine defect: at paras. 132, 140.

[94] In our view, the application of some basis in fact in *Nissan* supports the proposition that the type of evidence and the requisite level of specificity and detail called for by the appellants in this case is not necessary.

[95] The appellants rely on *Ernewein v. General Motors of Canada Ltd.*, 2005 BCCA 540, leave to appeal to SCC ref'd, [2005] S.C.C.A. No. 545. However, it does not assist their position. *Ernewein* involved an allegation of a design defect in locating gas tanks outside the chassis rails, rather than inside the frame, of different pick-up trucks manufactured by General Motors over an extended period. The defendant led evidence to support the proposition the safety of gas tank location depended on a multiplicity of design characteristics. As a result, it was impossible to generalize about whether the location of the gas tank was unsafe across a variety of different trucks.

[96] The problem for the plaintiff in *Ernewein* was that a regulator's report opining about the existence of a common defect based on the location of the tank was ruled inadmissible. That conclusion was not appealed. Accordingly, the plaintiff had no evidence supporting its pleaded allegation there was some basis in fact of a common design problem based on location. In the absence of any admissible evidence, the plaintiff had failed to provide any basis in fact that the location of the gas tank could ground a common issue.

[97] It is clear from *Ernewein* that if there had been admissible evidence of the opinion of the regulator, then there would have been some basis in fact to support the certification of the common issue. Moreover, in the face of such an admissible opinion, the court would not need to resolve any conflicts between the opinion and the defendant's evidence as a precondition to certifying the issue. In short, this was simply a case establishing that a plaintiff has the burden of providing admissible evidence capable of satisfying the some basis in fact standard. The plaintiff in *Ernewein* failed to do so, and as a result, there was no basis to identify a common issue capable of being certified.

[98] *Charlton v. Abbott Laboratories, Ltd.*, 2015 BCCA 26, also provides no support for the appellants' argument. In *Charlton*, the uncontradicted evidence was that a risk of using certain medication only existed in patients with a pre-existing heart condition. The proposed class included consumers both with and without pre-existing conditions. In those circumstances, the resolution of the proposed common issue could not be extrapolated to all class members and, accordingly, it failed the commonality test.

[99] On the present appeals, the real question is whether the evidence before the certification judge was sufficient to establish some basis in fact for the issues he certified. The appellants do not dispute there was evidence before the judge touching on a variety of matters. Their point is the judge certified common issues in the absence of what they assert was the required specificity of evidence.

[100] As we have already observed, certification is intended to occur prior to discovery. We agree with the Province that much of the kind of evidence the appellants say is necessary is typically unavailable before discovery. This issue is of particular importance when allegations are advanced about internal corporate knowledge, inter-corporate family relationships, and alleged industry-wide common design. Accepting the appellants' interpretation of the some basis in fact standard would allow the court's gatekeeping function to frustrate the objectives of class proceedings, resulting in an incoherent interpretation of the *CPA*.

[101] We reject the appellants' interpretation of what evidence some basis in fact requires, and we turn to the question of whether the admissible evidence within the record before the judge was sufficient to certify the common issues.

Standard of Review

[102] The standard of review of a certification judge's decision on commonality is highly deferential. Section 4 of the *CPA* states an action "must" be certified if all the statutory criteria are satisfied. A certification judge is not exercising a discretionary power in granting or refusing certification, but the judge exercises discretion in assessing the statutory criteria. Accordingly, this Court will not interfere with this exercise of judicial discretion unless there is palpable and overriding error or an error in principle: *Trotman* at para. 54. If there is some basis in fact in the record to support a common issue, that decision is reviewed on a highly deferential standard on appeal: *Rorison v. Insurance Corporation of British Columbia*, 2023 BCCA 474 at para. 140; *Trotman* at para. 54.

[103] Unless there is an error of law or principle, this Court will not interfere with "the trial judge's determination that the resolution of an issue will move the litigation forward; the trial judge's assessment of the significance of the common issue to the cause of action as a whole; or the extent to which issues are common between class members. The degree of materiality and the interplay among the various common and individual issues are factors for consideration by the certification judge": *Jer v. Royal Bank of Canada*, 2014 BCCA 116 at paras. 61–62.

[104] Supervisory courts or case management judges “have wide discretion to make appropriate orders to ensure the fair and expeditious determination of class proceedings”: *Canada (Attorney General) v. Fontaine*, 2017 SCC 47 at para. 36. As a result, the approach to discretionary decisions attracts a high degree of deference and is “even more deferential” where the order is made by a case management judge: *Strohmaier v. K.S.*, 2019 BCCA 388 at paras. 20–22.

Finding Some Basis in Fact

[105] In this part of our reasons, we explain why it was open to the judge, on the evidence before him, to certify the common issues. Following brief introductory comments, we review the relevant expert evidence and consider the judge’s analysis of the foundational factual questions and specific common issues, including the duty to warn, misrepresentations, marketing practices, and common design. We then address the appellants’ argument that the judge erred in certifying the issues as common because of the differences among opioids, between jurisdictions, and between groups of defendants. Finally, we turn to the arguments advanced by certain defendants that there was no basis in fact to certify the action against them.

[106] The jurisprudence makes clear that some basis in fact must be assessed within the factual and legal context of the claim. Accordingly, it is helpful to recall the Province’s claim is both one directed to each defendant based on its alleged conduct acting alone, and a claim that defendants acted in a systemic manner. The claim focuses on alleged national and industry-wide wrongful conduct that caused and contributed to the existence of an opioid crisis. That wrongful conduct varies among the different types of defendants in the opioid market. But reduced to its simplest terms, the Province alleges the defendants misrepresented the attributes of opioids, representing them to be suitable for treating conditions for which they were not, and failed to warn users of the addictive qualities of opioids and the risks of prescribing them for the treatment of chronic conditions. These claims rest on factual foundations about the nature of Opioid Products, their characteristics, and what the defendants knew about them.

[107] As we have noted, the number of common issues certified may suggest a degree of factual and legal complexity that is misleading. The fundamentals of the Province's claim on behalf of Class Members are simple and premised on the following allegations:

- a) Opioid medications have critical generic characteristics that relate to the active ingredients and addictive effects of opioids;
- b) Opioids began to be promoted for the treatment of chronic pain, which led to addiction among opioid users;
- c) The opioids were not suitable for chronic pain, and their overprescription caused or contributed to the opioid crisis;
- d) The defendants' conduct had an influence on overprescription, and their wrongful conduct forms the basis for the allegations of negligent design, negligent and fraudulent misrepresentations, and breaches of the duty to warn; and,
- e) There was a common design within and between corporate families who acted in concert and across the industry to contribute to this crisis.

[108] The expert evidence discussed below supports each of these underlying claims. As we will discuss, it is relatively straightforward to find some basis in fact from the expert evidence because it goes to the characteristics of the Opioid Products, suitable and unsuitable uses, knowledge of the defendants, and the promotion practices of the industry participants.

[109] It is important to appreciate the judge understood the Province's claim rested on a series of general factual allegations which were common precursors to the legal issues. In the judge's view, the critical question was whether there was some basis in fact to support the view that these factual allegations could be answered in a way that could be extrapolated across each Class Member's claim and would advance the litigation. Several of the underlying questions are straightforward factual issues,

such as what are the properties of Opioid Products, are they generic, are they addictive, what conditions are they suitable to treat, what did the defendants know about them, and what did they say about them?

[110] These underlying factual questions, and whether there was some evidence about them, grounded much of the judge's analysis. He began his detailed analysis by noting:

[594] The Province submits that its allegations arise from national conduct with national impact. It submits that it would be inefficient and would result in duplication of fact-finding and legal analysis if each member of the Class was required to independently pursue the claims that are advanced against the defendants. For example, the Province says the common issues will resolve broad factual inquiries that are necessary to the resolution of each Class Member's claim, including the following:

- (a) what Opioid Products were manufactured and sold in Canada during the Class Period, the time period in which each Opioid Product was sold, and where in Canada the Opioid Product was sold;
- (b) whether the defendant made any Opioid Misrepresentations, and whether the Opioid Misrepresentations were made in relation to opioids generally or with respect to a specific Opioid Product;
- (c) where and when the Opioid Misrepresentation was made; and
- (d) the defendants' knowledge of the risks of Opioid Products and benefits of Opioid Products use at all material times.

[111] This comment reflects the judge's earlier conclusion with respect to the particular circumstances of certain defendants and that there is substantial commonality among the issues, particularly the factual issues: RFJ at para. 547.

[112] The judge's overview of the evidence about the opioid crisis earlier in his reasons is also a helpful starting point for our analysis:

[209] Much of the Province's evidence is directed at the existence of an opioid epidemic, its national impact, and the defendants' conduct in connection to it.

[210] Canadian courts have taken judicial notice of a crisis related to overdoses of opioids and their derivatives in numerous cases in the criminal context: *R. v. Parranto*, 2021 SCC 46 at paras. 59, 93-96, 98; *R. v. Harmes*, 2022 BCSC 663 at para. 41; *R. v. Cashman*, 2022 BCSC 1836 at para. 55; *R. v. Charles*, 2021 ONSC 5907 at para. 20; *R. v. Sekhon*, 2020 BCSC 2247 at paras. 38, 40; *R. v. Otto*, 2019 ONSC 6446 at para. 36; *R. v. Olvedi*, 2018 ONSC 6330 at para. 14.

[211] In the present case, the Province relies on official reports from the Government of Canada that show the growing number of opioid-related overdoses and deaths in every part of the country, as well as official statements characterizing the situation as a national public health crisis, to show there is an opioid epidemic in Canada.

[212] The Province further submits that there is some basis in fact that prescription opioids have played a key role in the opioid epidemic.

[213] The Province's evidence indicates generally that since the late 1980s there has been a considerable increase in the use of prescription opioids in Canada. Increased prescription use has been followed by a growth in reports of associated harms and an increased rate in the use of non-prescription opioids. The Province suggests that pharmaceutical opioids played a role in causing opioid-related adverse health outcomes in Canada during the Class Period, particularly prior to 2015 when fentanyl and fentanyl analogs were introduced to the illegal drug market.

[214] More specifically, the Province's evidence suggests that every province and territory experienced a significant increase in the prescription of opioids between 1996 and the mid-2010s, followed by more reports of associated harms and an increased usage of non-prescription opioids. The cause of that increase in prescribing and the harms arising from it are the focus of this litigation. In particular, the alleged role that prescription opioids played in creating a demand for illicit opioids is strongly contested between the parties.

[113] In our view, the evidence supports the judge's analysis.

[114] The Province relied on publicly available information to support the allegations made in its pleadings about the defendants' conduct and contribution to the opioid crisis. The judge summarized that information: RFJ at para. 215. We acknowledge not all the evidence referred to there was found to be admissible, although some was admissible by way of being properly authenticated as attachments to other affidavits. Much of the admissible evidence related to examples of connections between some defendants and medical professionals in the form of consulting arrangements, some defendants sponsoring pain conferences, and some defendants disseminating information on websites. In our view, much of this evidence illustrates the generalized evidence on the same subject matter provided by the Province's experts.

[115] The appellants say the judge failed to appreciate the differences among Opioid Products, between jurisdictions, between defendants, and between the

categories of defendants. The judge's reasoning concerning these potential obstacles to commonality is found principally at paras. 448–520 of the RFJ. That analysis focused on the extensive expert evidence before him.

[116] Before considering the judge's analysis of these differences, we highlight what he said near the outset of this section of his reasons:

[451] ...I have considered all of the defendants' objections, even if not specifically mentioned herein. Moreover, I have considered the individual submissions of the defendants, the sufficiency of the evidence, and their arguments that certification ought not apply in their unique situations.

[117] A number of appellants suggest the judge failed to consider their unique circumstances, and therefore he improperly certified common issues in relation to them. We owe it to the judge to take what he says at face value. We do not agree he overlooked the particular situation of any defendant and failed to account for it in his conclusions.

Specific Proposed Common Issues

[118] In this section, we first consider how the expert evidence provides some basis in fact for some of the certified common issues, then we discuss how the some basis in fact standard supports the judge's certification of the foundational factual questions. Finally we address key specific questions, including the duty to warn and misrepresentations, marketing practices, and common design.

Expert Evidence

[119] Among other matters, the expert reports canvassed the nature of Opioid Products, differences among Opioid Products, promotion practices, the feasibility of isolating effects of wrongful promotion on use, the impact of increased Opioid Product use on the incidence of opioid-related harm, methodology for calculation of alleged wrongs, and whether it is possible to assess these issues nationally in light of provincial variation.

[120] In our view, the expert evidence was more than sufficient to show some basis in fact because, contrary to the appellants' arguments, it did not need to be specific

to each defendant. It was enough for it to engage with the common issues and establish these were issues that could be determined across the Class Members.

[121] The Province submitted seven expert reports from four different experts: Dr. Robyn Tamblyn, an epidemiologist; Dr. Hakique Virani, an M.D. specializing in public health and addictions medicine; Dr. Aslam Anis, an economist specializing in public health; and Dr. Matthew Perri III, an academic specializing in pharmacy practice including marketing, statistics, and health care systems: RFJ at para. 250. The judge examined these expert reports and the appellants' opposing reports in considerable detail.

[122] Dr. Virani opined about the history of opioid use and the ability to determine, on a common basis, the diseases, injuries, or illnesses that can be caused or contributed to by exposure to Opioid Products. He gave evidence about the side effects associated with opioid therapy, including overdose; sleep-disordered breathing increasing the risk of adverse cardiovascular events; gastrointestinal issues; and immunosuppressant effects. He explained the concern that chronic use leads to disordered use (addiction), which can in turn lead to significant health and social morbidity. Dr. Virani noted the risks are disproportionate to the benefits, as data suggests Opioid Products may result in little or no difference in pain when compared to non-opioid medications. His opinion was it was possible to assess on a common basis what harms have resulted from chronic opioid exposure because even though each drug in the class of opioids has unique qualities, they can all cause or contribute to similar dysfunction, injury, and illness.

[123] As the judge concluded, this evidence provides some basis in fact to treat Opioid Products as having generic characteristics that permitted certification of common issues about those characteristics. He was not required to engage in a battle of the experts about this issue or to resolve contested evidence. That is a matter for a trial on the merits of the issue.

[124] Dr. Perri's report described various tactics used by brand name and generic pharmaceutical companies to capture market share and expand the overall size of

the market. These include the use of personal selling; advertising in research publications and medical journals; peer-to-peer marketing; continuing medical education; clinical practice guidelines; influence on formularies; direct-to-consumer marketing; and branded and unbranded marketing.

[125] Dr. Perri opined that a marketing analysis could be used to assess whether marketing by brand name and generic pharmaceutical manufacturers was linked to increased sales. A quantitative assessment of the correlation between marketing expenditures and sales could provide evidence of this linkage. Given the limitations of correlation, Dr. Perri suggested a case study approach to provide a linkage between marketing and sales. The Province submits this methodology is widely accepted and was employed in opioid cases in the United States.

[126] Dr. Perri's evidence was that the application of marketing principles and theories by the pharmaceutical industry do not significantly differ between Canada and the United States. When brand name manufacturers are successful in creating demand for a drug, it creates opportunities for future generic entry into the market. This occurred in the prescription opioid market after the introduction of OxyContin. Finally, Dr. Perri's opinion was that sales incentives work to help companies achieve their sales goals, but this comes at a cost to the objectivity of information provided by sales representatives to their customers.

[127] Dr. Perri's expert evidence provides some basis in fact to support claims relating to the marketing and promotion practices of pharmaceutical companies in general, as well as providing some basis in fact for a workable methodology to assess the impact of this alleged conduct. The evidence provides some basis in fact for establishing these common issues related to the Manufacturer Defendants and Generic Manufacturers in Canada.

[128] Whether the allegation is accurate is a merits issue to be resolved at trial. Equally, the various appellants' evidence denying engagement in the identified promotion and marketing practices is merits-based evidence. Some appellants may well demonstrate at a common issues trial that they have not engaged in those

practices, or, to the extent they have, that there is nothing unlawful about their conduct. Again, the question at this stage is whether there is some basis in fact for commonality, not whether there is some basis in fact for liability. As a general observation, we agree with the judge that many, if not most, of the appellants' evidentiary arguments are merits-based ones to be determined at a common issues trial or through a summary judgment or summary trial process.

[129] Dr. Anis, a professor of health economics in the School of Population and Public Health, Faculty of Medicine at the University of British Columbia, also provided evidence about a methodology that can be used to determine whether the combined effect of the manufacturers' marketing and promotion of prescription opioids since 1995 was a substantial contributing factor in increasing the use of opioids in Canada, and the quantum of that increase. He noted studies have found promotional messages from opioid pharmaceutical companies understated the drugs' adverse effects, particularly addiction. Studies have also found marketing has a more significant effect on physician prescribing than does scientific information.

[130] The judge accepted that quantifying damage may be a challenge and will depend on what, if any, promotional activity the trial court finds to be wrongful: RFJ at para. 297. He found there was sufficient commonality in Dr. Anis's proposed modeling, statistical methods, and variables and data to establish some basis in fact. This conclusion was open to the judge on the evidence, it does not rest on a palpable or overriding error, and there is no basis for this Court to intervene.

[131] Finally, Dr. Tamblyn, a professor in the Department of Medicine and the Department of Epidemiology, Biostatistics and Occupational Health at McGill University, gave evidence of a variety of methodological approaches that could be used to assess the relationship between an increase in the use of opioids in Canada since 1995 and the incidence and prevalence of opioid related harms or illnesses on a population-wide basis. Dr. Tamblyn acknowledged the data available by jurisdiction would vary, but she explained there are more commonalities than differences between available data sources. In her view, differences in the

prevalence of different types of opioids used in different provinces could be “readily accommodated”.

[132] In our view, the judge was entitled to conclude this opinion evidence established some basis in fact for the common issues to which it related. The fact the defendants’ experts challenged the opinion is of little persuasive assistance. Certainly, the judge needed to be persuaded the evidence provided a plausible methodology to address the issues at trial, but the jurisprudence discussed above makes clear the judge was not required to resolve the conflicting evidence.

Differences Among Opioids

[133] As noted, the judge had evidence from Dr. Virani about the history of opioid use and the ability to determine, on a common basis, the diseases, injuries, or illnesses that can be caused or contributed to by exposure to Opioid Products.

[134] The judge explained how the definition of Opioid Products in the *ORA* assists the Province in structuring its claim on the basis of Opioid Products as a fungible class: RFJ at para. 458. He also drew support for his conclusion from this Court’s analysis in the cause of action challenge in *Valeant*:

[462] ...After reviewing relevant provisions of the *ORA*, the Court in *Valeant* concluded as follows:

[97] These sections suggest that the scheme of the *ORA* contemplates that differences among types of opioid products are immaterial, or of limited relevance to the statutory cause of action: it is beside the point whether some defendants manufactured and sold opioid products in the form of patches and pills that were dispensed to individuals through pharmacies, while other defendants manufactured or sold injectable liquids that were sold to hospitals and administered to patients only in a hospital setting. The statutory cause of action can be read, arguably, as consistent with the fundamental nature of opioids, which to a person dependent on opioids are fungible.

[Emphasis added.]

[463] I agree with this passage and would apply the foregoing comments here in the present context. In my view, an arguable interpretation of the *ORA* is available that would make it irrelevant that the Opioid Products in question took different forms or were treated differently in different jurisdictions. I would not accede to the defendants’ suggestion that this class of drugs is not amenable to common issue treatment because it is possible to break down

the drug into further qualitative differences or differences in how it has been dealt with across jurisdictions. It follows that the Province may, if the evidence supports it, argue as a matter of law that the Opioid Products in question are sufficiently fungible such that they support the existence of the common issues.

[135] We agree with the judge's view of how the *ORA* could be interpreted. It was open to the judge to conclude claims about the characteristics of opioids could ground a common issue, even if there may be issues of fact arising from different Opioid Products that will need to be fleshed out at trial.

Factual Questions

[136] The Province proposed the following as common issues (RFJ at paras. 598–599):

2. Can use of or exposure to Opioid Products cause or contribute to disease, injury or illness?
3. If so, what are the diseases, injuries or illnesses that can be caused or contributed to by use of or exposure to Opioid Products?
6. During the Class Period, what Opioid Products were manufactured, marketed and/or sold in Canada by each Manufacturer Defendant?
7. During the Class Period, what Opioid Products were distributed, sold, or offered for sale in Canada by each Distributor Defendant?
8. With regard to each group of Defendants that is defined collectively in the Third Amended Notice of Civil Claim:
 - a) What is the relationship between each Defendant?
 - b) Are the relationships such that each is the agent of the other for the purposes of the manufacture, marketing and sale of Opioids in Canada and/or the distribution of Opioid Products in Canada?

[137] As the judge noted, these questions are foundational issues of fact addressing the nature of the alleged defect in Opioid Products, associated harm, and the defendants' relationship with Opioid Products. They are necessary inquiries underlying each Class Member's claim: at paras. 600–601. The judge found the questions were not too general, the answers would meaningfully advance the litigation, and there was some evidence the questions could be answered on a class-wide basis.

[138] We detect no error in principle in this analysis. These are important underlying common questions for which there is some basis in fact in the expert evidence. While the answers to some of these questions may vary from defendant to defendant, the answers will be capable of extrapolation to each Class Member.

[139] The proposed common issues also raised questions about the defendants' knowledge. Again, in large measure, these questions are factual, they are foundational to the case, and are key to each Class Member's claim. The proposed questions are (RFJ at para. 617):

13. At all material times, what was the state of knowledge of the medical and pharmaceutical community regarding the risks and benefits of opioid use?
14. Prior to entering the market for manufacturing, marketing and selling an Opioid Product, what steps did the Manufacturer Defendants take to research, investigate, and/or assess the risks and benefits of opioid use?
15. At all material times, what knowledge did the Manufacturer Defendants have of the risks and benefits of opioid use?
16. Prior to entering the market for manufacturing, marketing and selling a generic version of a brand name Opioid Product, what steps did the Generic Manufacturers take to research, investigate and/or assess the risks and benefits of opioid use?
17. At all material times, what knowledge did the Generic Manufacturers have of the risks and benefits of opioid use?
18. At all material times, what knowledge did the Distributor Defendants have of the risks and benefits of opioid use?
19. What data and/or knowledge did the Defendants have in relation to the distribution and sale of Opioid Products, including:
 - a) Volume of Opioid Products sold;
 - b) Location of purchase;
 - c) Prescribing doctor; and
 - d) Dispensing pharmacy.
20. At all material times, what knowledge did the Defendants have in relation to the behaviour of users who become addicted to or dependent on Opioid Products, including whether users would:
 - a) Purchase opioids on the illicit market;
 - b) Seek out multiple healthcare providers to write prescriptions;
 - c) Seek prescriptions for higher dosages;

- d) Seek prescriptions for higher quantities; and/or
- e) Seek out pharmacies that would fill opioid prescription on a 'no questions asked basis'.

21. At all material times, were the Defendants aware that their promotion, marketing, sale and distribution of Opioids would cause an increase in the consumption of Opioids?

[140] The judge provided a detailed analysis of these questions. In substance, he concluded they were appropriate factual questions underlying the key liability issues. We see no error in his analysis. In our view, the appellants' criticisms of the judge as having erred by not requiring direct and specific evidence applicable to each defendant before certifying these questions underscores the importance of not conflating evidence of some basis in fact with evidence of liability. It would be impossible for a representative plaintiff to tender such evidence at the certification stage, especially in a case such as this. It is obvious these questions are fundamental to the case however they are answered, and the answers will resolve important issues for each Class Member and defendant. It is equally obvious the defendants must have had knowledge of the properties of their products. The Manufacturer Defendants operate in a regulated environment in which they are required to know about such matters. What they knew is a key question. To the extent that some basis in fact is required to support these common issues, it is found in the evidence about the regulatory environment and in the expert evidence.

[141] As we have explained, the other common issues build on the answers to the underlying factual questions. It would serve no useful purpose to track the careful analysis of these issues undertaken by the judge merely to repeat our conclusion that the judge's findings were open to him and that a sufficient basis in fact existed to certify the common issues. It is, however, worthwhile to highlight a few of the common issues to reinforce our conclusions.

Duty to Warn and Misrepresentation

[142] The duty to warn is about the legal obligation of the Manufacturer Defendants to warn about the potential danger of their products. The evidence relevant to such an issue would include the regulatory environment, the knowledge the Manufacturer

Defendants had about the properties of the products (e.g., the active ingredients, their effects, and knowledge of their risks); what they said or did not say about those risks and effects; and what they knew about how the products were used and with what result.

[143] The judge had considerable evidence about the regulatory scheme for the approval of pharmaceuticals in Canada. It shows manufacturers had obligations to the regulators to disclose information and data about the properties of their products and to collect and report information about their use in the marketplace, including adverse consequences and contraindications, to ensure the disclosure of risks and warnings in product monographs was current and adequate. This provides some basis in fact for common issues relating to the duty to warn.

[144] The evidence of these obligations provides some basis in fact the Manufacturer Defendants knew or ought to have known about the efficacy, characteristics, risks, and suitability of each of their products to treat each condition for which it was said they were appropriate. It is a reasonable inference that each of the Manufacturer Defendants have within their knowledge information that is relevant to negligent design and failure to warn claims, because they are obliged to collect and assess it.

[145] Moreover, the samples of product monographs and the significant changes in the warnings and statements of contraindications over time also provide some basis in fact for the common negligent design and failure to warn claims. The changes in the representative monographs show some basis in fact that knowledge of risks and appropriate uses were changing over time and provide a foundation for raising a legitimate issue about whether what was disclosed was complete, timely, and accurate. The question of whether one or more Manufacturer Defendants was fully compliant with their obligations is a matter for trial.

[146] We reject the suggestion that product monographs need to be provided for each Opioid Product by each of the Manufacturer Defendants. The monographs are illustrative of the alleged common issue in a context where we know the

Manufacturer Defendants have obligations to produce product monographs and keep them current.

[147] In our view, this evidence supports issues related to the Manufacturer Defendants' knowledge and whether they discharged their legal obligations to warn, or whether they engaged in misrepresentations of the attributes of their products. We agree with the judge that whether the relevant defendants discharged their obligations or whether statements made by them in promoting their products amounted to misrepresentations are merits issues. These are matters for trial. In our view, it is sufficient to satisfy the some basis in fact standard that manufacturers are obliged to know about the attributes of their products, the risks of use, and the conditions for which they may be appropriately used. This factual substratum is sufficient to support common issues relating to duties to warn and misrepresentation.

Marketing Practices

[148] As the judge noted, Common Issues 9–11 raise factual questions about marketing practices. The judge was satisfied the investigation of these issues at a common issues trial would not break down into thousands of individual issues because there was some evidence the alleged representations were disseminated widely. The judge relied on expert evidence, explaining at para. 609:

...The evidence from the Province's expert, Dr. Perri, supports the submission that these issues are amenable to common resolution. In his report, Dr. Perri states that:

- a) Marketing is an "integrated process reflecting strategic and operational planning and implementation." Marketing practices are developed through macro-level information gathering, market-wide strategy, segmenting of customer groups and targeting of market segments.
- b) Pharmaceutical companies use a wide range of marketing methods to employ them including: personal selling by PSRs to deliver information and messaging creating for dissemination by companies; research, publications, & medical journal advertising, peer-to-peer marketing; CME and CPD programs; clinical practice guidelines; influence on formularies; direct-to-consumer marketing; and branded and unbranded marketing. All of these methods are employed based on the marketing strategies and messaging that

are carefully developed and implemented at the organizational level. The vast majority involve materials that are widely disseminated and may have been uniformly accessible across provinces, or even nationwide.

- c) Pharmaceutical manufacturers, including multinational companies, place a priority on consistency of all marketing messages, subject to differences in locally approved product information. While marketing may be manipulated between locales, the core principles, theory, strategies and tactics do not.

[Emphasis added.]

[149] The judge concluded the Province's evidence offered some basis in fact these proposed common issues are amenable to common resolution.

[150] Later in his reasons, the judge examined Common Issues 45–48 which framed legal questions about negligent and fraudulent misrepresentations. As he noted, these questions inquire into the knowledge and conduct of the Manufacturer Defendants. He again relied on Dr. Perri's evidence that pharmaceutical manufacturers prioritize the consistency of marketing messaging, marketing strategies are implemented at the organizational level, and the majority of these strategies involve widely disseminated material. He also noted a certain uniformity to the impugned representations since many were made through labelling and the product monographs of Opioid Products. He concluded Dr. Perri's evidence supported the proposition that while marketing variables may vary from location to location, the core messaging or content of the communication to customers is generally consistent.

[151] The judge went on to conclude that, based on the evidence of Dr. Anis, a workable methodology existed to analyze the effects of the defendants' marketing promotion on the use of Opioid Products in Canada.

[152] The judge's conclusions were open to him on the record.

Common Design

[153] The judge dealt with common design issues in two places: RFJ at paras. 551–556, 627–635. The allegations relate to certain defendant groups,

including within and between corporate families, the Manufacturer Defendants, and between Manufacturer Defendants and Distributor Defendants. The Province does not rely on common design as an independent cause of action, but as a pathway to joint or concerted action liability for other torts: at para. 628. The common issues relating to common design highlight the systemic nature of the claim. The allegation is the defendants were acting together (in “common design”) to develop, test, manufacture, seek regulatory approval, market, sell, and conduct post-market surveillance of opioids in Canada.

[154] The judge noted the evidence showed the interconnections between various defendants. Some defendants were clearly inter-related due to their corporate relationships. There was also evidence of cooperation in industry-related activities. The nature of these corporate relationships provided some basis in fact to support the common design allegations: at para. 553. The judge went on to find there was some evidence of possible harmonization and coordination of corporate activities. The defendants were “tied together through their corporate relationships, participation in the opioid industry, and through the instruments of marketing, promotion, and distribution of Opioid Products”: at para. 556. Similarly, there was evidence of “concerted conduct toward the common end of broad promotion and sale of Opioid Products”: at para. 556.

[155] Later, the judge rejected the defendants’ arguments there was nothing in the record to support the existence of a scheme with an unlawful purpose and no evidence of defendants providing substantial assistance in support of the unlawful object. The judge concluded:

[635] The Province has pointed to evidence supporting various connections between defendants. All were involved in manufacturing or distributing prescription Opioid Products to varying degrees. The context is alleged to be an industry-wide one where the defendants participated in a scheme to significantly increase the supply of prescription Opioid Products in the Canadian market during the Class Period. There is an open question as to whether the risks of Opioid Products were downplayed at different times and whether such behaviour was sufficiently coordinated to attract common design liability. Again, these are questions for trial. I assess, despite the presence of potential individual issues, that the above-mentioned common design-related issues raise issues common to Class Members as required by

the CPA, that they will help avoid duplication of fact-finding or legal analysis, and that their resolution will meaningfully advance the litigation.

[156] On the record, these conclusions were open to the judge. It bears repeating the threshold for some basis in fact is low. It is sufficient if the record shows some or all of the defendants might or could have engaged in the impugned conduct. This is not a case where there is simply no basis in fact for the allegation. Rather, it is clear the issue is common to each Class Member's claim. Bearing in mind the nature of the claims, the record contains sufficient indications of common conduct to support an inference of possible concerted action, an issue that appropriately calls for investigation at a trial of the merits.

Differences Between Jurisdictions

[157] The judge dealt with the defendants' arguments that differences between jurisdictions would require province-by-province determinations of the proposed common issues.

[158] The judge accepted the resolution of various issues could be affected by differences between the provinces relating to, among other matters, the supply and use of Opioid Products, potential marketing and promotion practices, and the policy choices of different jurisdictions, but he concluded these matters can be dealt with at trial:

[476] The individual differences across jurisdictions are a potential complicating factor, which I take into account. Overall, however, I find that inter-jurisdictional differences such as opioid use, effects, or formulary coverage are not fatal to a determination of the parameters of the proposed classes, and the significance of such differences is largely a matter that can be appropriately dealt with at trial.

[159] Again, this conclusion is one open to the judge on the record and one to which we must defer. The conclusion rests on the judge's evaluation of the evidence and his appreciation of whether emerging material differences can be addressed through case management and at trial. This judgment call was for the judge to make and not for us to reweigh.

Differences Between Defendants

[160] Differences between defendants was a central issue in the certification application because each of the defendants focused much of their argument on what was shown in the evidence, for example, about their specific conduct, knowledge, promotion practices, and sales. As the judge put it:

[477] The defendants argue that due to various differences in the business activities and practices of various defendants and differences in the types of misrepresentations provided to Class Members, the Province's case breaks down into individual assessments such that certification ought to be refused.

[478] Some of the defendants argued that they were uniquely situated and that their business practices differed. As such, they assert they should not be lumped in with the other defendants for the purposes of certification.

[479] In support of these submissions, some defendants filed evidence as to the nature of their businesses and their involvement with Opioid Products.

[161] The judge went on to outline the evidence of several defendants illustrating differences between them and making statements about their conduct based on the general allegations advanced by the Province. This shows the judge was alive to the differences between defendants. He evaluated the importance of those differences in light of the nature of the Province's and Class Members' claims against them:

[483] I accept that there are differences among defendants; however, as outlined in the TANCC and as discussed in *Valeant*, the Province's claim against the defendants is structured into groupings and corporate families....

...

[487] While individual differences among defendants exist, the fact remains that the Province raises similar claims requiring resolution of the same facts against the same grouping of defendants. To be sure, there may be individual defendant-specific issues following the resolution of the common issues. For instance, if it is established during a common issues trial that a defendant owed a certain duty, the determination of whether the defendant was in breach to a particular class member can be decided at the individual issues stage. Yet, I cannot find that such differences among defendants are so significant that they necessarily defeat the right of the plaintiff governments to proceed as a class based on the case as it has been structured.

[162] We see no error in the judge's analysis. The judge rests his conclusion on his understanding of the nature of the claim being advanced, most particularly under the *ORA*, and that what is being alleged is a systemic and flawed course of conduct in

the production and distribution of Opioid Products. It is also material to his analysis that defendant-specific issues can be dealt with at the individual issues stage.

[163] In this section we focus principally on the position of distributors and generic manufacturers as contrasted with the manufacturers who were the original developers and promoters of Opioid Products. We do so because the claims against distributors and generic manufacturers reflect the different roles they are alleged to have played in creating the opioid crisis and how they should be treated for the purpose of certification.

The Distributor Defendants

[164] The Distributor Defendants argued there was no evidence to show the existence of a duty to warn being a common issue. They also pointed to differences between them, such as their financial incentives to increase Opioid Product sales, whether they manage inventory, and whether agency and/or collaborative relationships exist between themselves and other entities. They argued they operate in a controlled system regulated by Health Canada, have no role to play in providing warnings to end-users of Opioid Products, do not market or promote products they distribute, do not sell to patients or individuals, do not influence sales volumes, and have no incentive to encourage increased prescribing.

[165] We address the significance of Health Canada approval further below as it is an argument advanced by different categories of defendants.

[166] We agree with the judge's conclusion that many of the arguments advanced are merits arguments for trial rather than arguments directed to whether the certification criteria have been satisfied. The Province was only required to show some evidence, as opposed to no evidence, to support its claim that the Distributor Defendants were the best informed about where opioid drugs were going and in what quantities, and that they had the ability to recognize and warn others of abuse. As noted by the judge, the Province's evidence did that:

[492] The Province's submissions regarding a number of proposed factual common issues, such as questions regarding the Opioid Products distributed

by each Distributor Defendant (common issue #6), where they distributed the products and during what time period (common issue #7), and the relationship between the Distributor Defendants' related entities and whether each is the agent of the other (common issue #8), are applicable to the Distributor Defendants and are common to the Class Members' claims.

...

[496] The Distributor Defendants clearly distributed Opioid Products in Canada during the Class Period. The evidence indicates that they were part of the chain of distribution that had access to information about where drugs were going and, arguably, the ability to recognize the signs of potential abuse and diversion. Evidence that the prescription Opioid Products they distributed may have been defective or dangerous, together with evidence of an oversupply and evidence about the sufficiency of actual warnings, provide some basis in fact for the common issues related to failing to warn of the known hazards and risks associated with such products, the full hazards of which may not have been known to end users.

[167] The Distributor Defendants have not shown the judge's identification of the evidence rests on palpable and overriding error, or that the judge misapprehended the evidence in any material way. It was open to the judge to conclude some basis in fact had been established on the evidence. We defer to his conclusions.

The Generic Manufacturer Defendants

[168] The Generic Manufacturers submitted there was no basis in fact to certify the common issues against them as a category of defendant. They pointed to differences between themselves and the Manufacturer Defendants. The judge summarized the core of their position:

[499] The Generic Manufacturer Defendants point out that they do not create or enhance the market for a drug. They enter the market later and do not advertise or promote their products to doctors or patients. As they come to the market years after the original manufacturers have already developed a new therapy, and then only with subsequent versions of established drugs already deemed to be safe, they cannot be held liable for an increased market caused by others. They further submit that they are constrained by their ability to make representations with doctors and patients, even if they wanted to, because of the regulatory regime in Canada which requires a notice of compliance for a new drug product.

[169] Again, the judge noted most of these arguments go to the merits of the claims. At certification, the only question is whether there is some evidence supporting the argument the common issues are common across Class Members.

The judge found there was such evidence, relying in part on the evidence of Dr. Perri:

[504] As noted by Dr. Perr[i], when brand name manufacturers are successful in creating demand for a drug, this creates opportunities for future generic entry in the market, which occurred in the prescription Opioid Products market after the introduction of OxyContin. He proposes research to describe the “how” and “why” of Manufacturer Defendants’ marketing process, strategies, tactics, and outcomes. The evidence from Teva indicates that it distributed OxyNeo educational materials at pharmacies. The Province also points to information from the Pharmacy Opioid Summit put on by the Canadian Pharmacists Association which states that member companies supported efforts to educate physicians on appropriate prescribing and to educate patients on appropriate use and safe storage to prevent diversion. The evidence thus establishes an opportunity for a flow of information from the generic manufacturers to physicians and, in turn, to end-users.

[505] The evidentiary record overall supports a basis for further exploration of the Province’s claims against the Generic Manufacturers based on the proposed common issues. This would include formulary submissions and communications with provincial formularies, communications with pharmacists about generic Opioid Products, communications with other pharmaceutical companies regarding Opioid Products, internal communications regarding the decision to sell generic Opioid Products, and internal communications reflecting knowledge of the Opioid Products epidemic and/or the risks associated with Opioid Products.

[506] The allegation against the Generic Manufacturer Defendants is that they repeated, endorsed, and sought to benefit from the misrepresentations of Manufacturer Defendants by selling generic versions of Opioid Products without regard for the potential risks to public health. The precise causal significance and factual extent of the defendants’ marketing activities and coordination with others is to be determined at trial, but I find based on the evidentiary record that there is some basis in fact for the common issues in relation to the Generic Manufacturer Defendants.

[170] Again, we see no reversible error in these conclusions.

Health Canada Approval Arguments

[171] Finally, the judge disposed of the argument that Health Canada regulation and approval of warnings undermined the common issues. The judge concluded these arguments were again merits arguments for trial, noting Health Canada approval or regulatory compliance is not determinative of liability for the Manufacturer Defendants, especially since the manufacturer bears responsibility for

the safety and efficacy testing of the product, including the duty to provide all necessary information to the user, as prescribed by law.

[172] We agree. The regulatory regime is part of the factual context of the proposed common issues and the legal implications of Health Canada approval and whether there has been compliance with regulations are clearly common issues.

[173] We see no error in the judge's conclusions.

Specific Defendants

[174] Certain defendants do not fall neatly within the three categories used by the Province to ground its claim. Two defendants do not sell, market or promote Opioid Products in British Columbia. Their markets are Newfoundland and Labrador and Ontario. Another defendant, Joddes Limited ("Joddes"), is an investment holding company whose subsidiary is Pharmascience Inc. ("Pharmascience"), one of the Generic Manufacturers. Joddes said it takes no part in control or direction of its subsidiary. Finally, the evidence about Noramco Inc. ("Noramco", a former subsidiary of Johnson & Johnson) is that it merely manufactures active pharmaceutical ingredients ("APIs"), which are incorporated into Opioid Products by manufacturers.

[175] The question is whether the judge erred in certifying common issues against them.

[176] We will deal first with defendants who say the uncontested evidence is they do not sell, market, or promote Opioid Products in this province. In our view, even accepting this, it does not follow that the common factual and legal issues certified against them fail to advance the litigation generally or in respect of the claims advanced by the provinces in which they do business.

[177] The common issues are not necessarily determinative of liability. As explained in *Vivendi*, the answer to common issues can vary among class members, provided it does not give rise to conflicting interests in the class: *Vivendi* at

paras. 45–46. It is apparent the judge was alive to this issue. As he acknowledged, there may be individual defendant issues following the resolution of the common issues. He gave this example: “For instance, if it is established during a common issues trial that a defendant owed a certain duty, the determination of whether the defendant was in breach to a particular class member can be decided at the individual issues stage”: RFJ at para. 487. Further, given the claims about systemic conduct and common design are most readily resolved in a common issues trial, it was open to the judge to certify the issues.

[178] Lastly, the judge expressly stated he had considered the unique circumstances of the defendants in reaching his conclusions, even if he did not expressly and specifically explain his conclusions against each of them: RFJ at para. 451. While discussing the unique position of a manufacturer or distributor who operated solely in Quebec, the judge commented there may well be spill-over effects resulting in harm in other provinces, such as when a person develops an opioid use disorder in one province and moves elsewhere. He also noted the common design allegations are not tied to conduct in one province: RFJ at para. 539.

[179] In the absence of reviewable error, we cannot interfere with the judge’s certification of the common issues against these two defendants who do not sell, market or promote Opioid Products in British Columbia.

[180] We turn now to Joddes, an investment holding company incorporated in Canada, whose subsidiary is Pharmascience, a Canadian pharmaceutical company based in Quebec. Pharmascience manufactures and sells generic Opioid Products containing butorphanol tartrate, fentanyl, hydromorphone hydrochloride, morphine sulfate, buprenorphine hydrochloride, oxycodone hydrochloride, and tramadol hydrochloride: RFJ at para. 52.

[181] There is no evidence Joddes has any day-to-day involvement in the business and operations of Pharmascience or that it manufactured, promoted, distributed, sold, marketed, advertised, or conducted any research respecting Opioid Products.

[182] Joddes submits none of the judge's reasons certifying the action against the Generic Manufacturers apply to it.

[183] We acknowledge the evidence specific to Joddes is very limited. It may well be that on the merits, there is no case against Joddes. However, in light of the nature of the claim and the circumstances of this case, we cannot say the judge's decision to certify the issues against Joddes rests on obvious error. The case is at an early pre-discovery stage. At this stage, evidence may not be available to the Province disclosing the nature of Joddes' involvement with Pharmascience.

[184] We do not think it was inconsistent with the judge's gatekeeping function to certify the issues against Joddes. As the case evolves, the certification order can be modified, developing issues can be case managed, or Joddes could bring a motion for summary judgment, as we understand the defendants had been invited to do in connection with the certification motion. We note Joddes has not made such an application but it remains available.

[185] The legal status of being a manufacturer for the purpose of the *ORA* is a matter of statutory definition. Section 1(1) of the *ORA* provides:

“manufacturer” means a person who manufactures or has manufactured an active ingredient or opioid product and a person who, in the past or currently,

- (a) causes, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of an active ingredient or opioid product,
- (b) for any fiscal year of the person, derives at least 10% of revenues, determined on a consolidated basis in accordance with generally accepted accounting principles in Canada, from the manufacture or promotion of active ingredients or opioid products by that person or by other persons,
- (c) engages in or causes, directly or indirectly, other persons to engage in promoting an active ingredient or opioid product, or
- (d) is a trade association primarily engaged in
 - (i) advancing the interests of manufacturers,
 - (ii) promoting an active ingredient or opioid product, or

- (iii) causing, directly or indirectly, other persons to engage in promoting an active ingredient or opioid product;

[Emphasis added.]

[186] Accordingly, Joddes' liability may be grounded in the statute and it would be unwise, in our view, to interfere with the certification order in these circumstances.

[187] Finally, we turn to Noramco. It is a Delaware company and was a subsidiary of Johnson & Johnson until 2016. It manufactures APIs for some opioids. It sells those APIs to Johnson & Johnson and other pharmaceutical companies, which they use to manufacture Opioid Products. Noramco has marketed its APIs to manufacturers, but it neither manufactures nor promotes finished Opioid Products.

[188] Noramco's position is that the judge erred in certifying common issues against it because it does not manufacture or sell any Opioid Products consumed by end-users. It also submits there are no certifiable common issues against it about opioid misrepresentations because it did not make any representations about Opioid Products. Its marketing activities were limited to marketing APIs to drug manufacturers. As the API supplier, Noramco also says it could not dictate the use of opioids as the active ingredient in Opioid Products; this was a choice made by manufacturers. All of this may be true, and if so, one might expect the answers to many of the common issues to be answered in ways favourable to it against each Class Member.

[189] Noramco's argument on appeal was that the certification judge erroneously concluded mere participation in the opioid industry and some evidence of interconnections between the various appellants provided a basis in fact for an alleged common design to promote opioid use. In large measure, this argument depends on an approach we have rejected; namely, a demonstration of the existence of each common issue in relation to each defendant in relation to all alleged conduct.

[190] The Province submits Noramco also meets the statutory definition of “manufacturer” in that it derives at least 10 percent of its revenue from sales to pharmaceutical companies that manufacture or promote opioids.

[191] We agree. Further, a slide deck in Noramco’s evidence shows its integration with the defendant Johnson & Johnson. There is some basis in fact Noramco provided a secure supply of opioid APIs to Johnson & Johnson, which enabled Johnson & Johnson to market and promote Opioid Products. For the same reasons as in relation to Joddes, we defer to the certification judge’s decision to certify the issues against Noramco.

[192] Although the fundamentals of this case are straightforward, as all the parties acknowledge, it also presents extraordinary complexities. We do not think it a prudent exercise of the powers of this Court to interfere with a judgment call of a certification judge who is intimately familiar with the intricacies of the case and alive to the imperatives involved in managing the case to a common issues trial. We think it would fail to show proper deference to the certification/case management judge to engage in a refined attempt to modify the common issues as certified by reference to possible differences of position among defendants, especially where the answers to questions posed in respect of any particular defendant can be resolved in respect of each Class Member’s claim.

Conclusion on Commonality

[193] In sum, the appellants have not identified any reviewable errors in relation to the issues raised on this first ground of appeal. The judge’s conclusions were open to him and are entitled to significant deference.

Issue 2: Preferability

[194] On the second ground of appeal, the appellants allege the certification judge’s preferability analysis is tainted in three ways.

[195] First, the appellants allege the judge’s cost-benefit analysis of the proposed class action versus individual actions is flawed because of several errors, including

his failure to understand the impact of the rebuttable causation presumption under s. 3(4) of the *ORA*. They say this misunderstanding prevented him from appreciating the full scope of the individual issues at play in this case and affected his assessment of whether common issues predominate over individual issues.

[196] Second, in assessing whether a class proceeding would advance the goals of class actions, the appellants argue the judge was required but failed to consider the impact of this proceeding on judicial economy and access to justice from “the perspective of other litigants in the BC justice system”. Further, they say he erred in law in his judicial economy assessment by relying on *obiter* comments from *Sandoz Canada Inc. v. British Columbia*, 2023 BCCA 306, and *Sanis SCC* instead of assessing the certification record.

[197] Finally, the appellants argue the judge erred in law when he determined jurisdictional issues related to non-resident defendants do not affect the preferability analysis. They say this error was based on the judge’s incorrect view that *Sanis SCC* resolved this type of jurisdictional dispute.

Legal Principles

[198] For a court to certify a class proceeding, the representative plaintiff needs to meet the statutory “preferability” requirement. This requires the plaintiff to show “a class proceeding would be the preferable procedure for the fair and efficient resolution of the common issues” in the action: *CPA*, s. 4(1)(d).

[199] The plaintiff’s burden in the preferability context requires them to show some basis in fact a class proceeding would be (1) a fair, efficient and manageable way to advance the claim, and (2) preferable to any other reasonably available way to resolve the class member’s claims. A defendant may lead evidence to rebut an inference of some basis in fact arising from the plaintiff’s evidence: *AIC Limited* at paras. 1, 42, 48.

[200] The preferability analysis involves a comparative exercise where the court considers the costs and benefits of a class proceeding compared to those of an

alternative proceeding. In this case, the potential alternative proceeding would be separate individual actions. In taking this “cost-benefit approach”, the court should “consider the impact of a class proceeding on class members, the defendants, and the court”: *AIC Limited* at para. 21; *Hollick* at para. 29. Further, the court should consider the common issues in the context of the entire action and in relation to the claims as a whole: *Hollick* at paras. 29–30; *AIC Limited* at para. 21.

[201] To determine if a class proceeding is the preferable procedure, the court must consider all relevant factors, including the statutory factors in s. 4(2) of the *CPA*:

- (a) whether questions of fact or law common to the members of the class predominate over any questions affecting only individual members;
- (b) whether a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate actions;
- (c) whether the class proceeding would involve claims that are or have been the subject of any other proceedings;
- (d) whether other means of resolving the claims are less practical or less efficient;
- (e) whether the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means.

[202] These factors do not need to be established “one way or another like a checklist”. Rather, they must be “considered and weighed”: *Good Guys Recycling Inc. v. 676083 B.C. Ltd.*, 2023 BCCA 128 at para. 85, leave to appeal to SCC ref’d, 40745 (14 December 2023) [*Good Guys*].

[203] The court must also analyze preferability through the lens of the three principal goals of class action proceedings—access to justice, judicial economy, and behaviour modification: *Hollick* at para. 27. A plaintiff is not required to show a class action will “*actually* achieve those goals” in their specific case: *AIC Limited* at para. 22. The court’s ultimate question is whether the class proceeding is preferable, not whether a class proceeding would fully achieve the three goals: *AIC Limited* at para. 23.

[204] Section 4(2)(a) of the *CPA* is central to the appeal. It requires the court to consider whether common issues of fact or law “predominate over any questions affecting only individual members”. Although significant in the analysis, preferability does not hinge on whether the common issues predominate: *Sharp* at para. 187; *Good Guys* at para. 85; *Hollick* at para. 30. In fact, in some cases, the court is not required to fully determine whether the common or individual issues predominate (e.g., where it is unable to do so after measured assessment): *Good Guys* at para. 85.

[205] Assessing the predominance factor in the preferability analysis also invites consideration of the tools the *CPA* provides for the fair and expeditious conduct of class proceedings, including for the determination of remaining individual issues after the resolution of the common issues: *CPA*, ss. 12, 27(1), 28; *Jiang v. Peoples Trust Company*, 2017 BCCA 119 at paras. 118–119 [*Jiang 1*]; *Jiang v. Vancouver City Savings Credit Union*, 2019 BCCA 149 at paras. 36–39 [*Jiang 2*], leave to appeal to SCC ref’d, [2019] S.C.C.A. No. 264.

[206] In *Jiang 1*, Chief Justice Bauman explained how the court, at the individual issues stage of a class proceeding, “enjoys access to many tools designed to assist in the timely and proportionate resolution of any issues”: at para. 118. He described these tools as “a critical advantage to the class proceeding”, noting “it is by the imaginative use of these tools that the objectives of the class proceeding regime—access to justice, judicial economy and behaviour modification—will be realized”: at para. 118.

Standard of Review

[207] A certification judge’s decision is entitled to “substantial deference”, and the preferable procedure conclusion is entitled to “special deference” as it requires the certification judge to weigh and balance many factors: *AIC Limited* at para. 65, citing *Pearson v. Inco Ltd.* (2006), 78 O.R. (3d) 641 at para. 43, 2006 CanLII 913 (C.A.).

[208] This Court “will not re-weigh the evidence and substitute its own conclusion for that of the judge”: *Good Guys* at para. 62. However, this Court does not owe

deference if there are errors in principle “directly relevant” to the judge’s conclusion: *AIC Limited* at para. 65.

Analysis

[209] As we explain below, the appellants have not persuaded us the judge erred in his preferability analysis. This Court owes deference to the judge’s conclusion that a class action is the preferable procedure in this case. We agree with the certification judge that the common issues are central in this case and a class action is the preferable procedure for their resolution.

Predominance of Common versus Individual Issues

[210] This ground of appeal largely relates to the judge’s analysis under s. 4(2)(a) of the *CPA*, which requires the certification judge to consider whether common issues predominate over individual issues, and how this affected his cost-benefit analysis. Essentially, the appellants argue the judge failed to appreciate the scope of the individual issues that would remain at the end of any common issues trial.

[211] An ongoing theme of the appellants’ complaints is the certification judge failed to appreciate complexity. While the judge did not have a perfect picture of the individual issues that would remain at the end of the common issues trial, this is not a requirement. We do not agree the certification judge erred in ways that fundamentally undermined his conclusion the common issues are at the heart of this case, and their common resolution would move the litigation forward in an efficient way.

[212] In our view, the certification judge did not err in principle in concluding the common issues overwhelm the individual issues. He did not make any of the other alleged errors. Therefore, his conclusion a class action is the preferable procedure is entitled to deference. We address the alleged errors in turn below.

[213] Since we have concluded the judge did not err in his certification of any of the common issues, these alleged errors have no bearing on the soundness of the judge’s preferability conclusion and we will not address them again.

[214] The appellants' main argument on this ground of appeal is the judge did not understand the structure of the rebuttable causation presumption in s. 3(4) of the *ORA*. Section 3(4) provides:

The amount of a defendant's liability assessed under subsection (3)(b) may be reduced, or the proportions of liability assessed under subsection (3)(b) readjusted among the defendants, to the extent that a defendant proves, on a balance of probabilities, that the breach referred to in subsection (1)(a) did not cause or contribute to the use or exposure referred to in subsection (2)(a) or to the disease, injury or illness or risk of disease, injury or illness referred to in subsection (2)(b).

[215] The appellants say the judge proceeded on the basis causation could be presumed, would be dealt with as a common issue, and would not lead to a significant number of complex individual issues. They maintain he did not understand s. 3(4) allows the defendants to rebut the causation presumption, necessarily leading to the trial of individual issues.

[216] The appellants say these individual causation issues are significant and complex. According to the appellants, they include disentangling legitimate versus illegitimate opioid use, dealing with differences in provincial regulatory schemes and prescribing practices, and assessing the degree of Purdue's (a former defendant's) liability.

[217] While it may have been preferable for the judge to set out explicitly how s. 3(4) of the *ORA* operates, and to explain how each defendant's share of the liability may be reduced or adjusted to the extent that defendant can prove their breaches did not cause or contribute to opioid use or harm, we do not agree this amounts to a material error.

[218] The judge's reasons disclose an awareness of the rebuttable presumption and the potential need for individual inquiries: see e.g., RFJ at paras. 470, 519–520. When his reasons are read in light of the arguments the appellants made at the certification hearing, we cannot conclude the judge was unaware of the rebuttable presumption or ignored the individual issues arising from it.

[219] The existence of the rebuttable presumption does not mean each defendant will seek to rebut the presumption and that a multitude of individual issues will materialize. At this stage, we do not and cannot know the extent of the individual issues that will arise from the presumption. This may be what the judge had in mind when he stated he accepted there may be individual or interprovincial issues of causation, but that he could not accept complications caused by the causation issues weigh heavily in favour of individual trials (meaning, we understand, individual actions): RFJ at para. 520.

[220] We agree, given the history and conduct of the litigation to date, these individual issues will likely be significant. However, the complexities associated with individual causation issues do not undermine the judge's finding that the common issues are central to this case. While they affect the predominance assessment, even assuming an individual causation trial by each Class Member will occur, it is not clear to us that the individual issues will predominate. Further, while predominance is a significant factor under preferability, common issues do not need to predominate for a class proceeding to be preferable: *Sharp* at para. 187; *Good Guys* at para. 85; *CPA*, s. 4(2)(a).

[221] The appellants assert a proper comparative analysis of a class proceeding versus individual actions requires a full appreciation of the nature and scope of both a class action with common and individual trial stages and the alternative of individual actions. We note, however, that a "full" appreciation or complete picture is impossible at this stage. The full scope of individual issues will not be known until certain common issues are resolved and will vary depending on the substantive and tactical decisions of individual litigants.

[222] This Court has upheld certification where a judge was unable to reach a conclusion on the predominance factor: *Good Guys* at para. 85. What matters is the judge is of the view a class action is preferable for the resolution of the common issues because it offers benefits that outweigh the benefits of individual actions. Predominance is but one factor.

[223] At multiple points in his reasons, the judge acknowledged the existence of individual issues, including “important” and “numerous valid and potentially complex” individual issues that would need to be resolved: see e.g., RFJ at paras. 520, 705, 709, 756. However, he determined the common issues were “central” and “at the heart of the claims advanced”: at paras. 705, 708.

[224] In his view, the questions of fact and law common to Class Members would not only predominate over individual issues, they would “overwhelm” the individual issues: at para. 709. We agree. The common issues will address the factual context of the claims, the involvement, knowledge, and actions of each defendant, as well as whether legal duties were owed and breached. As the judge explained, “[t]he substantial ingredients of the liability issues are central and can be resolved in a common way, thereby eliminating the need to litigate them for each class member”: at para. 706.

[225] We also agree with the certification judge the *CPA* provides tools to assist in the fair and timely resolution of individual issues left after the common issues trial: see *CPA*, ss. 12, 27, 28; *Jiang 2* at para. 39. While these tools do not reduce the number of individual issues, they offer an advantage over individual actions and are a relevant consideration in the predominance analysis.

[226] The appellants further allege the judge erred in his comparative analysis of the costs and benefits of a class action versus individual actions. Section 4(2)(e) required him to assess whether a class action would create greater difficulties than individual actions. They allege the judge did not understand his task was to compare a potential class action with individual actions in other jurisdictions, and he erroneously compared a class action in British Columbia against parallel class actions in other jurisdictions.

[227] The appellants point to a sentence where the judge stated: “Should parallel proceedings start afresh in another jurisdiction, I expect the road to certification to be similarly arduous”: at para. 725. We do not agree this sentence discloses reversible error. While the reference to “certification” is a misstatement, it is clear from earlier

paragraphs the judge was comparing a class proceeding with parallel individual proceedings in other jurisdictions. He explicitly states this: RFJ at paras. 716, 722. This Court must review reasons functionally, contextually, and as a whole. It is not our role to scrutinize reasons and find error based on “imperfect or summary expression”: *R. v. G.F.*, 2021 SCC 20 at para. 76.

[228] The certification judge’s point was that the road to certification in these proceedings has been arduous. It took five years to get to a certification hearing. There have been numerous pre-certification applications and several interlocutory appeals. The judge was concerned about delay. Based on this case’s lengthy procedural history, and the way the litigation has been conducted, he anticipated similar conduct would bog down potential alternative individual actions resulting in wasted time, resources, and inefficiency. This Court shares the judge’s concern.

Goals of Class Action Proceedings

[229] We do not agree with the appellants that the judge erred in his assessment of whether a class action would advance the three goals of class proceedings—access to justice, judicial economy, and behaviour modification.

[230] While it is necessary to consider all three goals of class proceedings, it is not necessary for a class action to advance more than one for a class proceeding to be preferable. Nor is it necessary for a plaintiff to show a class proceeding will actually achieve the three goals in a specific case: *AIC Limited* at para. 22. While the preferability analysis must be conducted through the lens of these goals, the ultimate question is whether the class action is the preferable procedure: at para. 23.

[231] With respect to whether a class proceeding would better meet the goals of access to justice and behaviour modification than individual actions, we do not agree the judge concluded these goals would not be furthered at all. His conclusions were more tempered. Although he found there were no significant access to justice barriers for the Class Members, he noted “smaller governments may face greater challenges” if these claims were to proceed as individual actions: RFJ at para. 728. Further, while he was not convinced a class action would further behaviour

modification with respect to the defendants “significantly more” than individual proceedings, he did find a class proceeding would offer some general deterrent benefits in relation to other potential wrongdoers: at paras. 729–732.

[232] In any event, the certification judge found judicial economy to be the primary goal at play. In his analysis of this goal, the judge did not err in considering the purpose and policy objectives of s. 11 of the *ORA* as explained by this Court in *Sandoz* and the Supreme Court of Canada in *Sanis SCC*. The policy objective of s. 11 is “to permit mass torts asserted by provincial governments and territories to be adjudicated in one or only a few jurisdictions rather than in every Canadian province and territory, and this brings about a more efficient and less expensive process”: *Sandoz* at para. 84.

[233] In *Sanis SCC*, Justice Karakatsanis stated the provision’s purpose is to “create a procedural mechanism to promote litigation efficiency by joining the claims of consenting Canadian Crowns into a single proceeding”: at para. 9. She further explained the goals of class proceedings are met “where governments cooperate with one another to have their claims litigated efficiently, in one action, before one province’s superior court, whose proceedings and judgment will be respected through the principle of comity in the other courts of our federation”: at para. 106.

[234] The judge did not ignore the certification record, as the appellants allege, when assessing judicial economy. While the judge did not specifically refer to the record in this section of his analysis, his view that a class proceeding would be a more efficient way of resolving the claims in this specific case is clear from other parts of his analysis. For instance, under his assessment of s. 4(2)(e), which asks whether a class proceeding would create greater difficulties than alternative proceedings, he noted that factor overlaps with judicial economy considerations: RFJ at para. 721. Further, he found parallel individual proceedings, with Crowns suing multiple defendants in multiple jurisdictions, would result in duplication and inefficiency: at para. 722.

[235] As referred to earlier, he also expressed concerns about delay if these claims were to proceed afresh as individual actions in jurisdictions across the country. He noted reducing delay is a constitutional imperative in criminal cases, but “also a broader concern in civil cases that should not be permitted to insidiously impair the timely administration of justice”: RFJ at para. 725. These findings were grounded in the specifics of this case, including its procedural history and the judge’s conclusion that the benefits of “a class proceeding in the present context” outweigh the costs: at paras. 723–726. This conclusion was founded on the judge’s view of the record.

[236] The Supreme Court of Canada has explained that all participants in the justice system must work together to achieve speedier trials: *R. v. Jordan*, 2016 SCC 27 at para. 116. While these comments were made in the context of the s. 11(b) right of accused persons “to be tried within a reasonable time”, access to timely justice is important across the justice system, and all parties should seek to ensure their litigation conduct does not undermine this goal. In the circumstances of this case, we could not agree more with the judge that it is time for the parties to “get on with it”: RFJ at para. 726.

[237] Finally, we do not agree with the allegation the judge failed to consider the impact of this class proceeding on the judicial system in British Columbia and its impact on access to justice for British Columbians. As the case management judge in this proceeding, and as a front-line trial judge, the judge was well-placed and aware of the obvious impact of a class proceeding of this nature on judicial economy and access to justice in British Columbia. In fact, his review of the extensive history of these proceedings, and his reference to it in the preferability analysis, demonstrate his awareness. He acknowledged there would be potential challenges with administering this class proceeding, including complexity, complications, and individual issues: see for example, RFJ at paras. 726, 757. Although he found the appellants overstated these concerns, he was aware of them and, in our view, did not unduly minimize them: at para. 757.

[238] The provincial legislature chose to facilitate this type of national proceeding, and other jurisdictions have done so as well. It was not an error for the judge to consider judicial economy in a more general sense, from a national perspective, given the nature of this proceeding. We cannot, when considering the reasons as a whole, conclude the judge ignored the impact these proceedings would have in British Columbia.

Jurisdictional Concerns

[239] There is also no merit to the appellants' arguments that the judge's preferability analysis was tainted by jurisdictional error.

[240] The appellants allege the judge failed to appreciate the court does not have territorial competence over the claims of non-resident Class Members against non-resident defendants, and the judge erroneously believed the common issues could provide a real and substantial connection to ground territorial competence.

[241] They say the judge wrongly relied on *Harrington v. Dow Corning Corp.*, 2000 BCCA 605, *Chalmers v. AMO Canada Company*, 2010 BCCA 560, and *Sanis SCC* for the proposition that common issues in a class action ground territorial competence in circumstances where non-resident Class Members have claims against non-resident defendants.

[242] The judge held that *Sanis SCC* resolved the question of whether common issues provided a real and substantial link between the forum and the claim: RFJ at para. 739. In *Sanis SCC*, Karakatsanis J. explained, in the context of s. 11 of the *ORA* and the *CPA*, that adjudicatory jurisdiction "arises from the court's plenary authority, anchored by the real and substantial connection from the plaintiffs' common issues": at para. 90. She noted: "This Court and many others across Canada have endorsed the idea that the common issues shared between the non-resident class plaintiffs and the resident representative plaintiff suffice to establish a real and substantial connection for adjudicatory jurisdiction over the class": *Sanis SCC* at para. 90. Justice Karakatsanis cites many cases in support of this proposition, including *Harrington*, where this Court held common issues ground

territorial competence over the claims of non-resident class members: *Harrington* at paras. 78, 97–99.

[243] The judge here concluded the appellants' jurisdictional argument was meritless, since *Sanis SCC* held s. 11 of the *ORA* "authorizes the Province to bring an action that maintains a meaningful connection to British Columbia through the common issues within that litigation, the court's jurisdiction over those issues, and the consent of all participating Crowns": RFJ at para. 740.

[244] The appellants, however, say that *Sanis SCC* was a constitutional case, and that it and the earlier cases did not squarely address the issue of whether common issues ground jurisdiction where there are claims between non-resident plaintiff class members and non-resident defendants. The earlier cases ruled only on the question of jurisdiction over the claims of non-resident plaintiffs, and the circumstances here are different.

[245] They also say the proposition that common issues can ground jurisdiction has been overtaken by developments in the law. They rely on *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 [*Van Breda*], and submit it requires territorial jurisdiction to be determined based on objective factors linking the forum to the legal situation or subject matter of the litigation, rather than factors that come about by way of judicial discretion, such as common issues.

[246] The non-resident appellants have not pursued applications to challenge the certification court's territorial competence. In our view, they cannot mount an indirect challenge under the preferability analysis. This is especially the case where this Court ordered two former defendants' territorial jurisdiction challenges be heard before the certification hearing: *British Columbia v. The Jean Coutu Group (PJC) Inc.*, 2021 BCCA 219 at para. 95. Those applications were heard and dismissed. The dismissal was upheld on appeal: *British Columbia v. Pro Doc Limitee*, 2023 BCSC 662, aff'd 2025 BCCA 80, leave to appeal to SCC ref'd, 41821 (11 December 2025). Rather, for the purpose of preferability, we agree with the certification judge's approach. He recognized non-resident appellants will face expense and

inconvenience that would not exist in their home jurisdiction. However, when considered alongside all the other factors, these impacts did not lead the judge to conclude individual actions were preferable.

[247] We acknowledge this proceeding has been, and will be, a burden for non-resident defendants. But we agree with the certification judge that the resolution of the common issues in this class proceeding nevertheless will provide efficiency, save expense, and promote judicial economy. We do not agree the certification of this proceeding creates insurmountable complexity or is fundamentally unfair to any of the appellants. The relevant perspective is that of the litigation, not the plaintiff or any of the defendants.

[248] When addressing LPG's separate jurisdictional challenge respecting the court's subject matter competence and *forum non conveniens*, the judge noted the "expense and inconvenience to out-of-province parties and witnesses in a British Columbia-based ... proceeding"; but he also considered how the reduction of multiple potential individual actions will lessen the need for witnesses to give similar evidence in multiple proceedings in multiple jurisdictions: RFJ at para. 411.

[249] Further, he determined "[d]ecoupling the Jurisdiction Applicants from this omnibus proceeding will add delay, inefficiency, and duplication to the proper resolution of the claim": at para. 402. The judge was alive to the effect of a class proceeding on non-resident defendants.

[250] One final point. While we deal with LPG's appeal of the judge's conclusion on subject matter competence and *forum non conveniens* below, LPG's arguments on *forum non conveniens* overlap with its arguments on preferability. In our view, LPG has not identified any reversible error with respect to preferability.

Conclusion on Preferability

[251] In our view, the certification judge did not err in concluding a class action is the preferable procedure. This is particularly so given how central the common issues are to resolving this case.

Issue 3: Jurisdiction

[252] Lastly, we turn briefly to address the issue of jurisdiction raised by LPG.

[253] LPG applied to the certification judge to dismiss the claim against it on the basis the court lacked subject matter jurisdiction. LPG also argued British Columbia was not a convenient forum in which to litigate the claim against it. The certification judge dismissed LPG's application, finding the court had subject matter jurisdiction and was a convenient forum within the meaning of s. 11 of the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 [CJPTA].

[254] On appeal, LPG treats subject matter jurisdiction, *forum non conveniens*, and preferable procedure as aspects of a single question, which it frames as follows:

...what makes the BC courts the right venue to adjudicate the (i) distinct claim by Ontario (ii) against an Ontario defendant (iii) related to conduct in Ontario allegedly breaching a duty owed to persons in Ontario which (iv) allegedly resulted in healthcare costs incurred in Ontario and paid for by Ontario?

[255] This conflates three distinct concepts, each of which must be considered in the correct order, applying the analytical framework established for each one. The question of whether a court has subject matter jurisdiction at all is primary. As this Court stated in *Campbell v. Capital One Financial Corporation*, 2024 BCCA 253 [Capital One], “[a] *forum non conveniens* analysis can only occur once subject matter jurisdiction is established and it has no relevance to the jurisdictional analysis itself”: at para. 114. By the same token, the question of preferability arises only after the court has determined that it ought not to decline jurisdiction. We have already addressed LPG's preferability argument.

Legal Principles: Subject Matter Jurisdiction

[256] Section 1 of the CJPTA defines subject matter jurisdiction (or competence) and territorial jurisdiction (or competence) as follows:

“subject matter competence” means the aspects of a court's jurisdiction that depend on factors other than those pertaining to the court's territorial competence;

“**territorial competence**” means the aspects of a court's jurisdiction that depend on a connection between

- (a) the territory or legal system of the state in which the court is established, and
- (b) a party to a proceeding in the court or the facts on which the proceeding is based.

[Emphasis added.]

[257] These definitions establish that territorial considerations are irrelevant in assessing whether a court has subject matter jurisdiction. The two are entirely different concepts: *Conor Pacific Group Inc. v. Canada (Attorney General)*, 2011 BCCA 403 at para. 38. LPG submits the certification judge “erred in finding that all territorial considerations were captured by territorial competence”, relying on *Cheng v. Glencore plc*, 2025 YKCA 8. In our view, LPG’s reliance on *Cheng* is misplaced as that case does not hold that subject matter jurisdiction has territorial elements.

[258] As the Supreme Court of British Columbia is a court of original or inherent jurisdiction, pursuant to s. 96 of the *Constitution Act, 1867*, it has subject matter jurisdiction unless the legislature has removed it by conferring exclusive jurisdiction on another decision-making body: *Capital One* at para. 109; *Tri-City Capital Corp. v. 0942317 B.C. Ltd.*, 2017 BCCA 179 at para. 17.

[259] The onus is on the defendant to establish the existence and extent of any derogation from the jurisdiction of a provincial superior court in “statutory terms that are clear, explicit, and unambiguous”: *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62 at paras. 42, 45. Such statutory language must be “clear and precise”: *Buchan v. Moss Management Inc.*, 2010 BCCA 393 at para. 29.

Analysis

[260] LPG submits s. 9(1) of the *Supreme Court Act*, R.S.B.C. 1996, c. 443 [SCA], does just that. The provision states:

The court continues to be a court of original jurisdiction and has jurisdiction in all cases, civil and criminal, arising in British Columbia.

[261] LPG argues that the words “arising in British Columbia” mean that s. 9(1) ousts the court’s subject matter jurisdiction over claims that are not connected to British Columbia. It also relies on s. 21(1) of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 [CLPA], which it says addresses “subject matter jurisdiction over proceedings against the federal Crown”.

[262] In our view, LPG’s argument fails for three reasons.

[263] First, it impermissibly conflates subject matter jurisdiction with territorial jurisdiction. Even if “arising in British Columbia” is interpreted as LPG submits, it could only relate to territorial jurisdiction, to which LPG has not objected.

[264] Second, s. 21(1) of the federal CLPA does not assist in the interpretation of s. 9(1) of the SCA. The section states:

In all cases where a claim is made against the Crown, except where the Federal Court has exclusive jurisdiction with respect to it, the superior court of the province in which the claim arises has concurrent jurisdiction with respect to the subject-matter of the claim.

[265] The clear and unambiguous meaning of this provision is to oust the subject matter competence of a provincial superior court where the federal court has exclusive jurisdiction over the subject matter of a claim. As it does not deal with the same subject matter, does not have the same purpose, and does not use similar words as s. 9(1) of the SCA, this cross-jurisdictional comparison is unhelpful: Ruth Sullivan, *The Construction of Statutes*, 7th ed. (Toronto: LexisNexis Canada Inc., 2022) at 415.

[266] Third, LPG’s interpretation of s. 9(1) as limiting the court’s subject matter jurisdiction to claims arising in the physical territory of British Columbia would give the provision a meaning inconsistent with s. 2 of the CJPTA, which provides that the territorial competence of a court is to be determined solely by reference to the CJPTA. Such an interpretation would violate the presumption that the body of legislation enacted by a legislature does not contain contradictions or

inconsistencies: *Friends of Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 at 38, 1992 CanLII 110.

[267] In *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, the Supreme Court reaffirmed that the words of a legislative provision must be read “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament”: at para. 117. We see no error in the certification judge’s interpretation of the phrase, “has jurisdiction in all cases, civil or criminal, arising in British Columbia” as meaning a court proceeding that is commenced in British Columbia: RFJ at para. 376.

[268] We conclude the certification judge did not err in dismissing LPG’s jurisdictional argument.

Legal Principles: *Forum Non Conveniens*

[269] Section 11 of the *CJPTA* codifies the common law framework for the *forum non conveniens* analysis:

Discretion as to the exercise of territorial competence

- 11(1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.
- (2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including
 - (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
 - (b) the law to be applied to issues in the proceeding,
 - (c) the desirability of avoiding multiplicity of legal proceedings,
 - (d) the desirability of avoiding conflicting decisions in different courts,
 - (e) the enforcement of an eventual judgment, and
 - (f) the fair and efficient working of the Canadian legal system as a whole.

[270] In oral argument, LPG asserted territorial jurisdiction remains a live issue despite having sought to have the claim against it dismissed based on *forum non conveniens*. Although this issue was not addressed in the court below or in written argument, we consider it unlikely a party can reserve the right to argue that a court lacks territorial competence after invoking *forum non conveniens*. As the heading of s. 11 implies, the exercise of judicial discretion to decline to exercise territorial jurisdiction only arises after it is settled that the court has territorial jurisdiction: see also *Nordmark v. Frykman*, 2019 BCCA 433 at para. 44.

[271] The burden is on the party invoking *forum non conveniens* to show another forum is “clearly more appropriate” for the action: *Breeden v. Black*, 2012 SCC 19 at para. 23; *Van Breda* at paras. 108–109.

[272] In *Haaretz.com v. Goldhar*, 2018 SCC 28, Justice Côté explained the purpose of this doctrine:

[32] The purpose of the *forum non conveniens* analysis is to temper any potential rigidity in the rules governing the assumption of jurisdiction and “to assure fairness to the parties and the efficient resolution of the dispute” (*Van Breda*, at para. 104). This is necessary given this Court’s recognition that jurisdiction “may sometimes be established on a rather low threshold” (*Van Breda*, at para. 109). By focusing “on the contexts of individual cases”, the *forum non conveniens* stage plays an important role in striking a balance between order and fairness (*Van Breda*, at para. 105).

[273] The certification judge’s *forum non conveniens* decision is discretionary, attracting a deferential standard of review. This Court will not intervene absent an error of law or a clear and serious error in the determination of the relevant facts: *Lerner v. Lerner Estate*, 2017 BCCA 408 at para. 18; *Van Breda* at para. 112.

[274] As we have said, LPG’s arguments that British Columbia is not a convenient forum are intertwined with its arguments on preferability. In substance, it submits Ontario is a clearly more appropriate forum because LPG is an Ontario company with no ties to British Columbia and the primary claim against it is by the Ontario government under the Ontario *ORA*.

Analysis

[275] Even assuming these propositions are accurate, it does not follow that Ontario is a clearly more appropriate forum. That is because the vantage point for assessing whether there is a clearly more appropriate alternative forum is not that of the moving party, but as s. 11(2) states, “the circumstances relevant to the proceeding action as a whole”. The interests of all parties must be considered along with efficiency and fairness of the proceedings themselves: *Van Breda* at para. 105; *Lapointe Rosenstein Marchand Melançon LLP v. Cassels Brock & Blackwell LLP*, 2016 SCC 30 at para. 55.

[276] The certification judge assessed *forum non conveniens* in this way. He considered the interests of the applicants before him, which included LPG and two other parties who did not take part in the hearing before this Court. While he recognized “individualized domestic proceedings” may be in the interests of those parties, he had to consider the interests of all parties and the ends of justice overall: RFJ at para. 402. He considered each of the six factors in s. 11(2), as well as residual common law factors, giving reasons why the factors overall favour British Columbia as an appropriate forum: at paras. 407–431.

[277] LPG has not pointed to any reversible error that would justify interfering with the judge’s exercise of discretion. Contrary to LPG’s submission, this is not analogous to a case where Ontario has elected to sue an Ontario company under an Ontario statute in British Columbia. It is a national action in which 14 Canadian governments have chosen to participate in a class action proceeding in British Columbia, with the government of British Columbia as their representative plaintiff. They have enacted legislation permitting them to do so. Assessed from that perspective, as the certification judge did, his conclusion that Ontario is not a clearly more appropriate forum is unassailable.

[278] Accordingly, in our view, LPG has not identified any reviewable error.

Disposition

[279] In light of the foregoing, the appeals are dismissed.

“The Honourable Chief Justice Marchand”

“The Honourable Mr. Justice Harris”

“The Honourable Justice Iyer “

Appendix A —Common Issues Certified by the Certification Judge**A. Opioid Related Disease, Injury or Illness**

2. Can use of or exposure to Opioid Products cause or contribute to disease, injury or illness?
3. If so, what are the diseases, injuries or illnesses that can be caused or contributed to by use of or exposure to Opioid Products?

C. The Defendants and their Opioid Products

6. During the Class Period, what Opioid Products were manufactured, marketed and/or sold in Canada by each Manufacturer Defendant?
7. During the Class Period, what Opioid Products were distributed, sold, or offered for sale in Canada by each Distributor Defendant?
8. With regard to each group of Defendants that is defined collectively in the Third Amended Notice of Civil Claim:
 - a) What is the relationship between each Defendant?
 - b) Are the relationships such that each is the agent of the other for the purpose of the manufacture, marketing and sale of Opioids in Canada and/or the distribution of Opioid Products in Canada?

D. The Manufacturer Defendants' Opioid Misrepresentations

9. Did the Manufacturer Defendants, or any of them, make one or more of the Opioids Misrepresentations?
10. If the answer to common issue #9 is yes:
 - a) Which Manufacturer Defendants and in relation to which Opioid Products?
 - b) Were any of the Opioid Misrepresentations made by the Manufacturer Defendants untrue, inaccurate or misleading?
 - c) Were any of the Opioid Misrepresentations made by the Manufacturer Defendants false?
11. Did the conduct of the Manufacturer Defendants, in making the Opioids Misrepresentations, cause an increase in the prescription of Opioid Products in Canada?

F. The Defendants' Knowledge

13. At all material times, what was the state of knowledge of the medical and pharmaceutical community regarding the risks and benefits of opioid use?
14. Prior to entering the market for manufacturing, marketing and selling an Opioid Product, what steps did the Manufacturer Defendants take to research, investigate, and/or assess the risks and benefits of opioid use?
15. At all material times, what knowledge did the Manufacturer Defendants have of the risks and benefits of opioid use?
16. Prior to entering the market for manufacturing, marketing and selling a generic version of a brand name Opioid Product, what steps did the

Generic Manufacturers take to research, investigate and/or assess the risks and benefits of opioid use?

17. At all material times, what knowledge did the Generic Defendants have of the risks and benefits of opioid use?
18. At all material times, what knowledge did the Distributor Defendants have of the risks and benefits of opioid use?
19. What data and/or knowledge did the Defendants have in relation to the distribution and sale of Opioid Products, including:
 - a) Volume of Opioid Products sold;
 - b) Location of purchase;
 - c) Prescribing doctor; and
 - d) Dispensing pharmacy.
20. At all material times, what knowledge did the Defendants have in relation to the behaviour of users who become addicted to or dependent on Opioid Products, including whether users would:
 - a) Purchase opioids on the illicit market;
 - b) Seek out multiple healthcare providers to write prescriptions;
 - c) Seek prescriptions for higher dosages;
 - d) Seek prescriptions for higher quantities; and/or
 - e) Seek out pharmacies that would fill opioid prescription on a 'no questions asked basis'.
21. At all material times, were the Defendants aware that their promotion, marketing, sale and distribution of Opioids would cause an increase in the consumption of Opioids?

G. Common Design

22. With regard to each group of Defendants that is defined collectively in the Third Amended Notice of Civil Claim, did the Defendants act pursuant to a common design to develop, test, manufacture, seek regulatory approval, market, sell, and conduct post-market surveillance of Opioids in Canada?
23. Did the Manufacturer and Distributor Defendants share market data, sales data, sales forecast, marketing plans and demand estimates between each other?
24. Did the Manufacturer and Distributor Defendants engage in a common design to maximize the sale of Opioids in Canada?
25. Did Bristol-Meyers act pursuant to a common design with Endo Pharmaceuticals Inc. and Endo International PLC to market opioid products developed by the Endo corporate entities in Canada?
26. Did Teva and Purdue act pursuant to a common design to manufacture, distribute, market and sell OxyNeo in Canada?

27. Did the Manufacturer Defendants engage in a common design to overcome resistance in the medical community to the use of prescription Opioids for patients experiencing chronic non-cancer pain, and thereby generate and encourage long-term patient consumption of Opioids?
28. Are the Defendants jointly and severally liable for any damage caused by their common design?

I. Unjust Enrichment

35. Were the Manufacturer Defendants enriched as a result of making one or more of the Opioids Misrepresentations?
36. If yes, what was the amount of the enrichment, and did the Class Members suffer a corresponding deprivation?
37. If yes, was there a juristic reason for the defendants' enrichment?

J. Breach of the *Competition Act*

38. If the Court determines that any of the Manufacturers Defendants made any false or misleading Opioid Misrepresentations, did those Manufacturer Defendants breach duties owed pursuant to s. 52 of the *Competition Act*?

ORA CLAIMS ADVANCED ON BEHALF OF ORA SUBCLASS MEMBERS

39. Are the Defendants, or any of them, a 'manufacturer' and/or 'wholesaler' of an opioid product, as defined in the *ORA*?

Food and Drugs Act

40. Did the Manufacturer Defendants breach duties owed pursuant to s. 9 of the *Food and Drugs Act* in relation to their Opioid Products?

Negligent Failure to Warn

41. Did the Manufacturer Defendants owe a duty to directly or through prescribing physicians warn end users of Opioids of the risk of addiction, dependency, adverse side effects, and death attendant upon Opioid use?
42. Did the Manufacturer Defendants breach their duty to warn by failing to make reasonable efforts to communicate the risks and dangers of using their Opioid Products to prescribing physicians and end users?
43. Did the Distributors Defendants owe a duty to end users of Opioids to directly or through prescribing physicians warn of the known risks of addiction, dependency, adverse side effects, and death caused by the Opioids they distribute and sold during the Class Period?
44. Did the Distributor Defendant breach their duty to warn by failing to warn prescribing physicians and end user of the known hazards and risks associated with Opioids?

Negligent Misrepresentations

45. Did the Manufacturer Defendants know, or ought to have known, that the Opioid Misrepresentation were untrue, inaccurate or misleading?
46. Did the Manufacturer Defendants act negligent in making the Opioid Misrepresentations?

Fraudulent Misrepresentation/Deceit

47. Did the Manufacturer Defendants make the Opioid Misrepresentations knowing them to be untrue, or without belief in their truth?
48. Were the Manufacturers Defendants reckless as to whether the Opioid Misrepresentations were true or false?

Negligent Design

49. Did the Manufacturer Defendants owe end users of opioids a duty to exercise reasonable care in manufacturing, marketing and selling opioids?
50. If the answer to common issue #49 is yes, what was the standard of care owed by the Manufacturer Defendants?
51. Did any of the Manufacturer Defendants breach the duty by defectively designing their Opioid Products?

K. *ORA* Claims

52. Did the Defendants breach any common law, statutory or equitable duties owed to insured persons who have used or been exposed to or might use or be exposed to an Opioid Product pursuant to s. 3(1)(a) of the *ORA*?
53. If the answer to common issue #52 is yes, can using the Opioid Product cause or contribute to disease, injury or illness, pursuant to s. 3(1)(b) of the *ORA*?
54. If the answer to common issue #53 is yes, was the Opioid Product that was manufactured or promoted by the Defendant offered for sale in Canada during all or part of the breach, pursuant to s. 3(1)(c) of the *ORA*?