

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**ELAINE QUINTE, JOHN QUINTE and 1358896 ONTARIO INC. (CARRYING ON
BUSINESS AS HUNGRY JACK'S)**

Plaintiffs/Moving Parties

-and-

**EASTWOOD MALL INC., BOB NAZARIAN, THE CORPORATION OF THE CITY OF
ELLIOT LAKE, M.R. WRIGHT & ASSOCIATES CO. LTD., R.G.H. WOOD, G.J.
SAUNDERS, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, ALGOMA
CENTRAL PROPERTIES INC., CORESLAB STRUCTURES (ONT) INC., JOHN
KADLEC, JAMES KEYWAN, NON-PROFIT RETIREMENT RESIDENCES OF
ELLIOT LAKE INC. (CARRYING ON BUSINESS AS RETIREMENT LIVING), AND
1425164 ONTARIO LTD. INC. (CARRYING ON BUSINESS AS NORDEV)**

Defendants/Responding Parties

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**PLAINTIFFS' FACTUM
(MOTION FOR FEE APPROVAL & HONORARIUM)**

Date: April 3, 2026

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PART I – OVERVIEW

1. This factum addresses Class Counsel’s fee request, request for honoraria for the Representative Plaintiffs as well other proposed payments and holdbacks for the various disbursements and administrative expenses associated with this settlement.

2. In the event the Settlement Agreement is approved, Class Counsel seeks court approval of their retainer agreement with the Representative Plaintiffs and requests a contingency fee of \$2,443,066.62 (plus taxes), which equates to 25% of the total settlement of \$10 million, net of approximately \$227,733 (including taxes) in unrecovered disbursements.¹ The Representative Plaintiffs understood and approved of Class Counsel’s proposed fee at the time the retainer agreement was signed and support Class Counsel’s fee request on this motion.

3. In reaching the Settlement Agreement, Class Counsel have incurred fees exceeding \$5 million in straight time (with a further \$300,000 in expected future fees to see the case through the settlement phase),² while carrying the approximate \$230,000 noted above in disbursements.³ The requested fees equate to a multiplier of approximately 0.5 on the straight time incurred to date.

4. The time expended to date was required to advance the case against thirteen Defendants with varying roles and degrees of involvement in the complicated matrix of factual and legal issues at the heart of this Class Action. Over the course of nearly fourteen years, Class Counsel were determined to pursue this case through certification, appeals, production issues, numerous procedural motions and an extended mediation against highly skilled defence counsel. Class

¹ Affidavit of J. Adam Dewar, sworn March 17, 2026, (“**Dewar Fee Approval Affidavit**”) at para. 27, *Plaintiff’s Motion Record* (“*PMR*”), TAB 3.

² Dewar Fee Approval Affidavit, paras. 30-31, *PMR*, TAB 3.

³ Dewar Fee Approval Affidavit, para. 34, *PMR*, TAB 3.

Counsel's proposed fee represents fair and reasonable compensation for the work required to reach the proposed settlement.

5. In addition to the approval of their fee, Class Counsel seeks, as set out below, approval of: unrecovered disbursements, payments to OHIP and the Class Proceedings Fund (the "CPF"), and the retention of a prior \$140,000 cost award.

6. Importantly, Class Counsel also requests that the Court approve a \$15,000 honorarium for each of the Representative Plaintiffs, Elaine and Jack Quinte (the "Quintes"). Despite the devastating effect that the Collapse of the Mall had on the Elliot Lake community, the Quintes were highly visible points of contact for Class Members who relived the trauma of the Collapse to spare other Class Members from having to do so.⁴ Despite numerous health and financial challenges, they were intimately involved in the advancement of the Class Action and the mediation process that ultimately resulted in the proposed Settlement Agreement. As the Representative Plaintiffs during this class action's nearly fourteen-year duration, the Quintes have made exceptional contributions and merit the award of a comparatively modest honorarium.

PART II – THE FACTS

7. In 2012, the Plaintiffs and Class Counsel entered into a Retainer Agreement, clause 11 of which provides that, if the action is resolved following a contested certification, Class Counsel would be paid 25% of the amounts recovered (less any disbursements for which Class Counsel had not been paid).⁵

8. The history of this case, from its inception in 2012 to the signing of the Settlement Agreement at the beginning of 2026, is discussed in detail in the factum in support of settlement

⁴ Affidavit of Elaine Quinte, sworn March 18, 2026 ("Quinte Affidavit"), para. 27, *PMR*, TAB 4.

⁵ Dewar Fee Approval Affidavit, Exhibit A: Retainer Agreement, provision 11, *PMR*, TAB 3.

approval, as is a more detailed discussion of the complexity and risks of this litigation. More specific facts relevant to the determination of Class Counsel’s reasonable fees and the honoraria for the Representative Plaintiffs are discussed below.

PART III – ISSUES & THE LAW

A. Honorariums for Elaine Quinte and Jack Quinte

9. This first section of this factum addresses why, in Class Counsel’s submission, the Plaintiffs should be awarded a honorarium to recognize their contributions to the success of this class proceeding. Class Counsel respectfully request that the Quintes each be awarded an honorarium of \$15,000 (\$30,000 in total) in recognition of their exceptional contributions to the successful resolution of this action.

10. Courts will approve the payment of an honoraria to a representative plaintiff(s) where they have made significant contributions to bringing the litigation to a conclusion in the best interests of the class. Compensation may be awarded if the representative plaintiff(s) have made exceptional contributions that have resulted in success for the class.⁶ The range of honoraria approved by Ontario courts generally ranges between \$5,000 and \$15,000.⁷

11. An honorarium is not a reward but a recognition that the “representative plaintiffs meaningfully contributed to the class members’ pursuit of access to justice.”⁸ The payment of honoraria should be reserved for cases where the contribution of the plaintiffs have gone well above and beyond the call of duty.⁹

⁶ *Fresco v. Canadian Imperial Bank of Commerce*, [2023 ONSC 3335 \(CanLII\)](#), at para. [140](#), affirmed in *Fresco v. Canadian Imperial Bank of Commerce*, [2024 ONCA 628 \(CanLII\)](#).

⁷ *Rabbat v. Nadon*, [2025 ONSC 5187 \(CanLII\)](#) at para. [73](#).

⁸ *Toth v. Canada*, [2019 FC 125 \(Fed. Ct.\)](#), at para. [95](#).

⁹ *Baker Estate v. Sony BMG Music (Canada Inc.)*, [2011 ONSC 7105](#), at paras. [93 and 95](#).

12. Of particular significance to this case are the numerous decisions holding that an honorarium may be appropriate where the representative plaintiff puts their personal experience forward, reliving their trauma, while relieving other class members from having to do so.¹⁰ In the recent decision of *Rabbat v Nadon*¹¹ this court approved \$15,000 honoraria where the representative plaintiffs spared the class from reliving past trauma:

[75] In my view the role of the representative plaintiffs has been exceptional. N.T. shared her lived experience of being sexually assaulted by Dr. Nadon in front of all decision makers attending the pre-trial, which assisted the parties in reaching a resolution after years of litigation. Both representative plaintiffs participated in examinations for discovery which required them to re-live their trauma. In doing so, they spared scores of other victims from having to do the same.

[76] Ultimately, in addition to their ongoing involvement assisting counsel as the litigation proceeded, these women exposed themselves to re-traumatisation for the benefit of all Class members.

13. In this case, the Quintes spared several hundred class members from having to relive the trauma of the Collapse by volunteering to act as plaintiffs and remaining as plaintiffs over a prolonged period of time.

14. There is no doubt that the Collapse and its aftermath were traumatic events for the Class Members and for the Quintes. Elaine Quinte was working in the Mall that day, at the counter in her restaurant Hungry Jack's in the food court, and witnessed the building collapsing in front of her.¹² Mrs. Quinte suffered physical injuries to her shoulder, back and legs during the Collapse

¹⁰ *Doucet v. The Royal Winnipeg Ballet*, 2023 ONSC 2323 (CanLII), at paras. 57-58 and 92.

Faiz v. Canadian All Care Inc., 2025 ONSC 3217 (CanLII), at para. 45.

Dadzie v. Ontario, 2025 ONSC 6342 (CanLII), at paras. 197-201.

Rabbat v. Nadon, 2025 ONSC 5187 (CanLII), at paras. 75-76.

Brazeau v. Attorney General (Canada), 2019 ONSC 4721 (CanLII), at para. 35.

¹¹ *Rabbat v. Nadon*, 2025 ONSC 5187 (CanLII), at paras. 75-76.

¹² Dewar Fee Approval Affidavit, para. 41, PMR, TAB 3.

and was taken to the hospital that day.¹³ To this day, she continues to struggle with the physical and psychological injuries caused by the Collapse.¹⁴

15. Jack Quinte had just left the Mall minutes before it collapsed but immediately returned when he heard of the Collapse to search for Elaine. He was racked with worry and distress before they were reunited in the parking area. Since the Collapse, Jack has continued to experience (having had a heart transplant before the collapse) many health issues that have required significant intervention and medical assistance (including a kidney transplant).¹⁵

16. Greater detail of the health effects and issues experienced by Mrs. and Mr. Quinte are set out in the second Affidavit of Mr. Dewar and in Mrs. Quinte's own affidavit.

17. In addition to health issues, the Collapse destroyed the sole source of income for the Quintes, the restaurant Hungry Jacks. The Quintes were and are not wealthy individuals. The Collapse was economically devastating.¹⁶ As the action progressed, the Quintes continued to experience personal financial constraints.¹⁷ The Quintes picked up available hourly or piecework jobs to make ends meet, at times with Elaine taking on more than one job. Even with those troubles, the Quintes set aside time – away from work and thus not earning wages – to attend the certification hearing in Toronto in November 2013 because they felt that that was part of the responsibility that they took on as representative plaintiffs and they wanted to do their job well.¹⁸ As well, they similarly felt compelled – and forewent wages again – to attend the 3-day mediation session in Toronto in January 2015 and another multi-day mediation session in Toronto in October 2015.¹⁹

¹³ Dewar Fee Approval Affidavit, para. 42, *PMR*, TAB 3.

¹⁴ Quinte Affidavit, para. 23, *PMR*, TAB 4.

¹⁵ Quinte Affidavit, para. 24, *PMR*, TAB 4.

¹⁶ Dewar Fee Approval Affidavit, para. 46, *PMR*, TAB 3.

See also Quinte Affidavit, para. 25, *PMR*, TAB 4.

¹⁷ Quinte Affidavit, paras. 21 and 25, *PMR*, TAB 4.

¹⁸ Quinte Affidavit, para. 4(g), *PMR*, TAB 4.

¹⁹ Dewar Fee Approval Affidavit, para. 47, *PMR*, TAB 3.

See also Quinte Affidavit, paras. 4(i) and 10, *PMR*, TAB 4.

18. Despite their own physical, psychological and financial issues, the Quintes stepped up and agreed to become representative plaintiffs. In doing so, the Quintes realized that they would be asked to recount and relive the traumatizing effects of the Collapse as part of this case.²⁰ They knew that they would be asked to do so on various occasions, including in affidavits and in examinations.²¹ Elaine even gathered the strength to give evidence in late July and early August 2013 about the Collapse and the events leading up to the Collapse (including her own experiences and concerns over the years with the Mall, including at one point concrete pieces falling into her restaurant) at the public Inquiry.²²

19. Many representative plaintiffs are relatively, or in some cases literally, anonymous.²³ In this case, the Quintes were the face of the class action for Elliot Lake's residents and businesses and were regularly and understandably asked by residents of Elliot Lake about the state or status of the case.²⁴ On occasion, they have had to face questions about – and effectively take and uncomfortably bear responsibility for - what appeared to the outside world to be a lack of movement or progress but could not provide such details given the privileged nature of settlement discussions.²⁵ The Quintes were often required to deal with questions in their daily life and daily activities in ways that other representative plaintiffs do not.²⁶ Despite all of this, the Quintes did not complain – rather, they simply moved forward without complaint. More recently, they have

²⁰ Quinte Affidavit, para. 22, *PMR*, TAB 4.

²¹ Quinte Affidavit, para. 4(e), *PMR*, TAB 4.

²² Dewar Fee Approval Affidavit, para. 49, *PMR*, TAB 3.

See also Quinte Affidavit, para. 4(c), *PMR*, TAB 4.

²³ *C.S. v. Ontario*, [2021 ONSC 6851](#) at para 73.

²⁴ Dewar Fee Approval Affidavit, para. 50, *PMR*, TAB 3.

See also Quinte Affidavit, para. 26, *PMR*, TAB 4.

²⁵ Quinte Affidavit, para. 27, *PMR*, TAB 4.

²⁶ Dewar Fee Approval Affidavit, para. 51, *PMR*, TAB 3.

See also Quinte Affidavit, para. 26, *PMR*, TAB 4.

finally acknowledged that the process was “quite difficult” and challenging personally over many years.²⁷

20. The Quintes made themselves available whenever Class Counsel needed to consult with them. This was even the case if one of them was currently experiencing health or in the hospital.²⁸ The Quintes themselves sought updates and provided their input on many, many occasions, often over long phone conversations well into the evening. Their input and comments were valuable. Most recently, for example, the Quintes offered constructive comments on the Distribution Plan.²⁹

21. Class Counsel notified the Class of the proposed honoraria for each of the Quintes in the Court-approved Notice of Proposed Settlement and Settlement Approval Hearing.³⁰ As of the date of this factum, and as in *Rabbat*, no Class Member has opposed the payment of an honorarium to the Plaintiffs.³¹

22. Class Counsel very strongly recommends and commends this Court to award an honorarium of \$15,000 to be approved for each of the Quintes.³² In fact, Class Counsel believes that the Quintes efforts, fortitude and contributions would justify a greater honoraria for each of them. In the experience of Class Counsel, the Quintes are unique in facing so much personally (health), financially and socially for so long (all without complaint) and still finding a consistent focus on providing real input into the best way forward. They are exceptional and the Class Members were well served by them.³³

²⁷ Dewar Fee Approval Affidavit, para. 52, *PMR*, TAB 3.
See also Quinte Affidavit, paras. 20, 23-25 and 27, *PMR*, TAB 4.

²⁸ Dewar Fee Approval Affidavit, para. 53, *PMR*, TAB 3.

²⁹ Dewar Fee Approval Affidavit, para. 54, *PMR*, TAB 3.
See also Quinte Affidavit, para. 4(m), *PMR*, TAB 4.

³⁰ Affidavit of J. Adam Dewar, sworn March 13, 2026 (the “**Dewar Settlement Approval Affidavit**”), Exhibit P: Notice of Proposed Settlement, *PMR*, TAB 2.

³¹ *Rabbat v. Nadon*, [2025 ONSC 5187 \(CanLII\)](#), at paras. 73-74.

³² Dewar Fee Approval Affidavit, para. 57, *PMR*, TAB 3.

³³ Dewar Fee Approval Affidavit, para. 56, *PMR*, TAB 3.

B. Relevant Factors to Assess Class Counsel Fees

23. Under ss. 32 and 33 of the *Class Proceedings Act, 1992* (“CPA”),³⁴ class counsel’s fee agreement must be judicially approved. The court will approve the fee agreement if it is “fair and reasonable.”³⁵ Fair and reasonable compensation must be sufficient to provide a real economic incentive to lawyers to take on a class proceeding and to do it well.³⁶ Contingency fees are well-established features of class actions and contingency fees of 33% of recovery have been held to be presumptively valid.³⁷ If the agreement is not approved, then under s. 32(4)(a), the court may determine the appropriate amount.

24. Factors relevant in assessing the reasonableness of the fees of Class Counsel include: (a) the factual and legal complexities of the matters dealt with, (b) the risk undertaken, including the risk that the matter might not be certified, (c) the degree of responsibility assumed by Class Counsel, (d) the monetary value of the matters in issue, (e) the importance of the matter to the Class, (f) the degree of skill and competence demonstrated by Class Counsel, (g) the results achieved, (h) the ability of the Class to pay, (i) the expectations of the Class as to the amount of the fees, and (j) the opportunity cost to Class Counsel in the expenditure of time in pursuit of the litigation and settlement.³⁸ The relevant factors in this case are generally discussed below.

C. The Factual and Legal Complexities of the Matters Dealt With

25. This action involved a considerable degree of factual and legal complexity. The events leading up to the Collapse of the Mall occurred over a lengthy period of time, from the design and

³⁴ *Class Proceedings Act, 1992*, S.O. 1992, c. 6.

³⁵ *Lavier v. MyTravel Canada Holidays Inc.*, 2013 ONCA 92, at para. 27.

³⁶ *Faiz v. Canadian All Care Inc.*, 2025 ONSC 3217 (CanLII), at para. 42(ii).

³⁷ *Faiz v. Canadian All Care Inc.*, 2025 ONSC 3217 (CanLII), at para. 42(i).

See also *Dadzie v. Ontario*, 2025 ONSC 6342 (CanLII), at para. 190.

³⁸ *Faiz v. Canadian All Care Inc.*, 2025 ONSC 3217 (CanLII), at para. 42(iii).

construction of the Mall in 1979 through its Collapse some 32 years later in 2012. This lengthy history gives rise to varied legal issues, arguments, analysis and theories regarding the potential liability for any of the Defendants in connection to the Collapse in 2012.³⁹

26. The factual matrix of this class action includes thirteen Defendants connected to the Collapse in different, and often distinct and historically different, ways. In addition to the successive owners of the Mall, the Defendants included varying professionals, public bodies, and a supplier. The specific role of each Defendant required a unique and/or nuanced analysis and approach by Class Counsel, taking into account standards and statutes that varied over the Mall's thirty-two year history.⁴⁰

27. The nature of the Collapse also involved various engineering and highly technical issues, and the effectiveness of various steps to address the leaking over the years. Class Counsel had to immerse themselves in the foregoing technical and expert issues.⁴¹

28. Additionally, many legal, factual and statutory issues relating to the recovery of certain damages and the quantification of damages were raised and addressed over the years. Various of those issues were the subject of significant analysis and debate in the mediation before Justice Goudge, and would have been live issues on either a summary judgment motion or at a common issues trial.⁴²

D. The Risk Undertaken, Including the Risk that the Matter Might Not Be Certified

29. Contingency actions are inherently risky. The law firms that act on such actions take the risk that the case would not be successful, with the result that their time and disbursements would

³⁹ Dewar Fee Approval Affidavit, para. 8, *PMR*, TAB 3.

⁴⁰ Dewar Fee Approval Affidavit, para. 9, *PMR*, TAB 3.

⁴¹ Dewar Fee Approval Affidavit, para. 10, *PMR*, TAB 3.

⁴² Dewar Fee Approval Affidavit, para. 11, *PMR*, TAB 3.

be lost. For example, while Roy O'Connor LLP has achieved success in some class proceedings, it has also experienced losses where all of the time spent and fees incurred have been lost. Similarly, there have been cases where a successful resolution has resulted in only a small fraction of the value of the time spent being recovered.⁴³

(i) Certification Phase

30. There was some limited risk that this action would not be certified. Various Defendants challenged aspects of the certification test. Ontario, for example, challenged the asserted causes of action (particularly in light of the caselaw and principles applicable to the actions and decisions of governments), the proposed common issues, and preferability requirement.⁴⁴ There was also risk when various Defendants appealed from the Certification Decision.⁴⁵

(ii) Risk of losing on the merits

31. The risk associated with this case was moderate in the sense that it appeared that at least some person(s) or entity (entities) must be at least in part responsible for the Collapse because buildings are not designed or expected to structurally fail.

32. However, the task of advancing this class action against thirteen Defendants who had different roles and connections with the Mall over many years, with as noted above changing and often unique standards of care, changing factual issues and changing debates about causation and foreseeability, was not simple. Class Counsel were required to advance claims against many Defendants (each represented by counsel, with the exception of Mr. Kadlec) who each denied liability.

⁴³ Dewar Fee Approval Affidavit, para. 12, *PMR*, TAB 3.

⁴⁴ Dewar Fee Approval Affidavit, para. 13(a), *PMR*, TAB 3.

⁴⁵ Dewar Settlement Approval Affidavit, Exhibit I: Endorsement of Justice Kitley dated April 3, 2014, *PMR*, TAB 2.

33. Class Counsel would have had to address and seek determinations of various legal issues or questions that alone likely would have led to appeals and potential motions for leave to appeal to the Supreme Court of Canada (and if leave was granted, appeals to the SCC).⁴⁶

34. Even with the work of Justice Bélanger at the Inquiry, the Inquiry Report did not make any findings about what causes of action were available to Class Members, and expressly did not make any findings of civil liability against any party and did not assign any degrees of fault to any party.⁴⁷ Moreover, the Inquiry Report was not admissible in evidence at any motion or trial. Class Counsel had to build the case, and synthesize the evidence against each Defendant, without the benefit of Justice Bélanger's analysis and findings.⁴⁸

(iii) Risks on damages

35. Beyond issues of liability, Class Counsel knew that the damages recoverable for each Class Member would only be dealt with following any decision at trial or at a summary judgment motion on liability.⁴⁹ The determination of individual damages, including the process to be debated and decided with the Defendants about resolving those individual issues, and any appeals of either the process or the individual damage assessments themselves, could take many more years and would likely involve many factual and legal arguments.⁵⁰ In addition, Class Counsel had no information when the case was started about the actual damages suffered by the Class and no idea which individuals and Class Members would opt out of the proceeding and pursue their own actions.⁵¹

E. The Degree of Responsibility Assumed by Class Counsel

⁴⁶ Dewar Fee Approval Affidavit, para. 13(b), *PMR*, TAB 3. See also Quinte Affidavit, para. 6, *PMR*, TAB 4.

⁴⁷ Dewar Settlement Approval Affidavit, para. 14, *PMR*, TAB 2.

⁴⁸ Dewar Fee Approval Affidavit, para. 13(b), *PMR*, TAB 3.

⁴⁹ Quinte Affidavit, para. 6, *PMR*, TAB 4.

⁵⁰ Quinte Affidavit, para. 13, *PMR*, TAB 4.

⁵¹ Dewar Fee Approval Affidavit, para. 13(c), *PMR*, TAB 3.

36. Class Counsel assumed significant responsibility in advancing this class action. In short, Class Counsel have:

- i. drafted the pleadings in this action;⁵²
- ii. prepared for and successfully obtained the certification of this action, including retaining an engineering expert as a potential expert, reviewing extensive records by various Defendants opposing certification, and opposing a motion for leave to appeal from the certification decision;⁵³
- iii. designed and distributed the certification notice and subsequently oversaw the opt-out process;⁵⁴
- iv. obtained and reviewed thousands of pages of documents and transcripts, including documents and transcripts from the Inquiry, and documents and information from Class Members (through interviews, calls and in-personal/virtual meetings);⁵⁵
- v. engaged in the lengthy mediation process, including preparing volumes of submissions of Class Members' damages and attending successive sessions, calls, and meetings with the mediator and Defendants' counsel;⁵⁶
- vi. prepared for and successfully argued motions concerning the admissibility of the evidence and transcripts from the Inquiry, including resisting the resulting appeal, and the examination of Robert Nazarian;⁵⁷

⁵² Dewar Fee Approval Affidavit, paras. 5(a)-(b), *PMR*, TAB 3.

⁵³ Dewar Fee Approval Affidavit, paras. 5(c)-(j), *PMR*, TAB 3.

⁵⁴ Dewar Fee Approval Affidavit, para. 5(k), *PMR*, TAB 3.

⁵⁵ Dewar Fee Approval Affidavit, paras. 5(l)-(o), *PMR*, TAB 3.

⁵⁶ Dewar Fee Approval Affidavit, paras. 5(p)-(q), *PMR*, TAB 3.

See also Quinte Affidavit, paras. 4(i)-(j) and 10, *PMR*, TAB 4.

⁵⁷ Dewar Fee Approval Affidavit, paras. 5(r)-(t), *PMR*, TAB 3.

- vii. had innumerable calls discussions and exchanges with the Quintes to seek their input and instructions;⁵⁸
- viii. attended many case conferences;⁵⁹
- ix. prepared for a summary judgment motion on the common issues, involving the review of thousands of pages of the Defendants' productions and the Inquiry evidence and transcripts;
- x. analyzed the Defendants' offer to settle, negotiated with Foodland;
- xi. drafted and negotiated the Settlement Agreement;⁶⁰ and
- xii. drafted the Notice Program for the proposed Settlement Agreement, the proposed Distribution Plan and prepared the materials to seek Court approval of the settlement and Class Counsel's fee.⁶¹

37. If the Settlement Agreement is approved, Class Counsel will additionally be responsible for procedural steps specifically arising from the settlement of this class action. Class Counsel will of course attend and make submissions at the settlement approval hearing.⁶² Additionally, if the Settlement Agreement is approved, Class Counsell will be required to:

- i. prepare and oversee publication of Notice of Settlement Approval;⁶³
- ii. interview, select, propose, finalize and seek approval of a Settlement Administrator, Adjudicator, and Appeals Officer;⁶⁴
- iii. field Class Member inquiries about the proposed Distribution Plan, if it is approved;⁶⁵

⁵⁸ Dewar Fee Approval Affidavit, para. 5(u), *PMR*, TAB 3.

See also Quinte Affidavit, paras. 3, 4(a)-(b), (d), (f), (h), (k)-(m), and 5, *PMR*, TAB 4.

⁵⁹ Dewar Fee Approval Affidavit, para. 5(w), *PMR*, TAB 3.

⁶⁰ Dewar Fee Approval Affidavit, paras. 5(y)-(aa), *PMR*, TAB 3.

⁶¹ Dewar Fee Approval Affidavit, paras. 5(aa)-(cc), *PMR*, TAB 3.

⁶² Dewar Fee Approval Affidavit, paras. 6(a)-(c), *PMR*, TAB 3.

⁶³ Dewar Fee Approval Affidavit, para. 6(d), *PMR*, TAB 3.

⁶⁴ Dewar Fee Approval Affidavit, para. 6(e), *PMR*, TAB 3.

⁶⁵ Dewar Fee Approval Affidavit, para. 6(f), *PMR*, TAB 3.

- iv. compile, select and forward information received about Class Members' claims to the Adjudicator;⁶⁶
- v. design and seek Court approval of a new distribution plan, if the proposed Distribution Plan is not approved;⁶⁷
- vi. deal with issues relating to the interpretation and implementation of the distribution of the settlement funds (including seeking Court directions if necessary), if and as they arise;⁶⁸
- vii. report to the Court on the outcome of the distribution process, if necessary;⁶⁹ and
- viii. deal with any issues that may arise with respect to residual funds left over following the distribution of the settlement amount.⁷⁰

F. The Monetary Value & Importance of the Matters in Issue

38. The monetary value of, and matters at issue in, this action are significant for the Class.⁷¹ Subject to the outcome of the proposed claims adjudication process, some Class Members may have damages that run into the hundreds of thousands of dollars (and for a limited few larger businesses, more than a million), while others may only have a claim for hundreds or thousands of dollars for minor property damage.⁷²

39. The loss of businesses and employment – the loss of income - was understandably fundamental for many Class Members.⁷³ Further, the personal injuries suffered by many Class Members, while not seemingly catastrophic (fortunately), were deeply impacting, with some

⁶⁶ Dewar Fee Approval Affidavit, para. 6(g), *PMR*, TAB 3.

⁶⁷ Dewar Fee Approval Affidavit, para. 6(h), *PMR*, TAB 3.

⁶⁸ Dewar Fee Approval Affidavit, para. 6(i), *PMR*, TAB 3.

⁶⁹ Dewar Fee Approval Affidavit, para. 6(j), *PMR*, TAB 3.

⁷⁰ Dewar Fee Approval Affidavit, para. 6(k), *PMR*, TAB 3.

⁷¹ Quinte Affidavit, paras. 9 and 12, *PMR*, TAB 4.

⁷² Dewar Fee Approval Affidavit, para. 14, *PMR*, TAB 3.

⁷³ Quinte Affidavit, para. 21 and 25, *PMR*, TAB 4.

injuries and effects still resonating today.⁷⁴ These sort of injuries and their effects are deeply personal and are distinctly different from cases about less personally impactful potential damages such as fractional miscalculations on interest or financial charges (without diminishing the value of such class action claims to achieve justice).⁷⁵

G. The Degree of Skill and Competence Demonstrated by Class Counsel

40. Class Counsel has experience relating to, among other things, employment, personal injury and commercial litigation.⁷⁶ Each member of the Class Counsel team applied their skills and experience to the advancement of the class action.⁷⁷

41. This class action has involved a unique level of individual class member analysis, requiring Class Counsel to engage in the onboarding of hundreds of claims and the evaluation and mediation of those claims. In this way, while still having to argue and debate about liability issues, Class Counsel effectively leap-frogged over the liability issues and took on an individual claims advocacy and analysis role.⁷⁸ Class Counsel believe that this was necessary and that no settlement would have been potentially achievable otherwise due to the factual and legal complexities at issue in this class action.⁷⁹

H. The Results Achieved

42. The proposed settlement is a very good result for the Class. Many Class Members will receive material compensation without further litigation and without being subject to the

⁷⁴ Quinte Affidavit, paras. 21 and 23-24, *PMR*, TAB 4.

⁷⁵ Dewar Fee Approval Affidavit, para. 15, *PMR*, TAB 3.

⁷⁶ Dewar Fee Approval Affidavit, para. 16, *PMR*, TAB 3.

⁷⁷ Dewar Fee Approval Affidavit, paras. 17-19, *PMR*, TAB 3.

See also Quinte Affidavit, paras. 18-19, *PMR*, TAB 4.

⁷⁸ Dewar Fee Approval Affidavit, para. 20, *PMR*, TAB 3.

⁷⁹ Dewar Fee Approval Affidavit, para. 21, *PMR*, TAB 3.

Defendants challenging each of their individual claims.⁸⁰ The total \$10 million may be as much or more compensation than the Class might have seen at the end of a contested common issues trial and potentially years of individual assessments.⁸¹

43. The \$10 million amount is 85% of the \$11.7 million that Justice Goudge assessed the total damages to be during the mediation process and within the range of what he advised should be accepted, if offered.⁸² Chief Justice Winkler also urged Class Counsel to accept the offer.⁸³ It represents a compromise to account for the fact that the establishment of liability against any or all of the Defendants was not guaranteed, that there was no guarantee of a higher damages award if liability were established, and that continued litigation would involve potentially years of further delay before any Class Members received compensation.⁸⁴

I. The Ability of the Class to Pay and Expectations of the Class as to the Amount of the Fees

44. As noted above, Class Counsel entered into a contingency retainer agreement with the Representative Plaintiffs that provides that Class Counsel shall be entitled to a 25% contingency fee in the event of recovery for the Class following a contested certification hearing, as took place in 2013, plus the fee portion of any court awarded costs in the proceeding.⁸⁵

45. The 25% contingency fee in this action is less than the contingency rate in many class actions, where rates of 30% or 33% are common. Contingency rates in that range have been held to be presumptively valid and approved by courts in Ontario.⁸⁶

⁸⁰ Dewar Fee Approval Affidavit, para. 23, *PMR*, TAB 3.

See also Quinte Affidavit, paras. 7, and 12-14, *PMR*, TAB 4.

⁸¹ Dewar Fee Approval Affidavit, para. 24, *PMR*, TAB 3.

⁸² Dewar Settlement Approval Affidavit, para. 49, *PMR*, TAB 2.

⁸³ Dewar Fee Approval Affidavit, para. 22, *PMR*, TAB 3.

⁸⁴ Quinte Affidavit, paras. 12-14, *PMR*, TAB 4.

⁸⁵ Dewar Fee Approval Affidavit, para. 26, *PMR*, TAB 3.

See also Quinte Affidavit, paras. 16-17, *PMR*, TAB 4.

⁸⁶ *Faiz v. Canadian All Care Inc.*, 2025 ONSC 3217 (CanLII), at para. 42(i).

See also *Dadzie v. Ontario*, 2025 ONSC 6342 (CanLII), at para. 190.

46. The Representative Plaintiffs support Class Counsel's requested fees.⁸⁷

47. The Notice of Proposed Settlement published on March 2, 2026 states that Class Counsel will be requesting a contingency fee of 25% plus disbursements and taxes.⁸⁸ As of the date of this factum, no objections to Class Counsel's requested fees have been received.⁸⁹

J. The Opportunity Cost to Class Counsel in the Expenditure of Time in Pursuit of the Litigation and Settlement

48. The time and resources risked on this case represent time and resources that Class Counsel could not render on or apply to other files. That is a real investment of time and money for any firm, and particularly for smaller firms like Broadbent Law and Aubé Law Office (both firms with one or two lawyers), and Roy O'Connor LLP (with 7 lawyers).⁹⁰

49. Class Counsel have incurred fees nominally exceeding \$5 million. This represents thousands of hours of time.⁹¹

50. Class Counsel will spend more time and incur more fees if this action settles or continues to be litigated. If this Court approves the proposed settlement, Class Counsel will, as noted above, have responsibilities going forward pursuant to both the proposed Settlement Agreement and proposed Distribution Plan. Class Counsel estimate that the work necessary to implement the settlement (if it is approved) will total approximately \$300,000.⁹²

⁸⁷ Quinte Affidavit, para. 16, *PMR*, TAB 4.

⁸⁸ Settlement Affidavit, Exhibit P: Notice of Proposed Settlement, *PMR*, TAB 2.

⁸⁹ Dewar Fee Approval Affidavit, para. 29, *PMR*, TAB 3.

⁹⁰ Dewar Fee Approval Affidavit, para. 33, *PMR*, TAB 3.

⁹¹ Dewar Fee Approval Affidavit, para. 30, *PMR*, TAB 3.

⁹² Dewar Fee Approval Affidavit, para. 31, *PMR*, TAB 3.

K. Disbursements Sought

51. As of March 1, 2026, the disbursements incurred total approximately \$227,733. A detailed chart of Class Counsel's disbursements is set out as Schedule "C" to this Factum.⁹³

L. OHIP Subrogated Claim

52. When compensation is received for injuries caused by another's negligence or wrongdoing, the Ministry of Health and Long-Term Care (OHIP) will typically be entitled to recover its costs for health care and medical treatment provided to the injured party from the wrongdoer.⁹⁴

53. OHIP's subrogated claim totals \$58,086.23. On March 26, 2026, OHIP confirmed that it has agreed to settle its claim for the all-inclusive sum of \$29,043.12. The intent is that the amount to cover OHIP's subrogated claim will be paid out of the settlement fund effectively as a disbursement before the Net Settlement Fund available for the Class Members is determined or calculated.⁹⁵

M. Class Proceedings Fund Levy

54. The Plaintiffs were approved for funding by the CPF. Pursuant to s. 10(1) of O. Reg. 771/92, the CPF is entitled to the repayment of its funded disbursements and 10% of the amount of the award or settlement funds payable to the Class Members.⁹⁶ The CPF's 10% levy applies to the Net Settlement Fund (as defined in the Settlement Agreement)⁹⁷ remaining after all deductions are made for Class Counsel's disbursements (including the amount to settle OHIP's subrogated claim), Class Counsel fees, repayment of CPF covered expenses and settlement Administration Expenses.⁹⁸

⁹³ Dewar Fee Approval Affidavit, Exhibit B: Class Counsel's Unrecouped Disbursements, *PMR*, TAB 3.

⁹⁴ *Rabbat v. Nadon*, 2025 ONSC 5187 (CanLII) at para. 65.

⁹⁵ Dewar Fee Approval Affidavit, para. 58, *PMR*, TAB 3.

⁹⁶ *Class Proceedings*, O Reg 771/92, s. 10(1).

⁹⁷ Dewar Settlement Approval Affidavit, Exhibit A: Settlement Agreement, para 1(u), *PMR*, TAB 2.

⁹⁸ Dewar Fee Approval Affidavit, para. 36, *PMR*, TAB 3.

55. In this case, the CPF has covered \$51,885.27 (inclusive of taxes) of the Plaintiffs' litigation expenses (largely for some of the mediation costs).⁹⁹

N. Administrative Expenses

56. Class Counsel proposes to reserve \$700,000 for the payment of all Administration Expenses relating to the settlement. The foregoing reserve is Class Counsel's conservative estimate of the future administrative expenses in this proceeding. The final actual Administration Expenses may be lower. Class Counsel are in the process of retaining, subject to future court approval, a number of individuals to act in the various settlement adjudication and/or administration roles provided for in the Settlement Agreement and Distribution Plan.¹⁰⁰

O. Costs Award

57. Class Counsel's retainer agreement provided that they shall be entitled to a 25% contingency fee, plus the fee portion of any court awarded costs in the proceeding. Various Defendants agreed to or were ordered to pay \$140,000.00 to Class Counsel in 2014 for the costs of the certification hearing. Class Counsel respectfully request they retain that 2014 costs award or payment by the Defendants in addition to the requested 25% contingency fee.

58. While the current *Solicitors Act* permits a lawyer to be paid a contingency fee in addition to costs awards,¹⁰¹ at the time the retainer was executed in 2012, s. 28.1(8) (now revoked) of the *Solicitors Act* only permitted such an arrangement with leave.¹⁰²

⁹⁹ Dewar Fee Approval Affidavit, para. 37, *PMR*, TAB 3.

¹⁰⁰ Dewar Fee Approval Affidavit, para. 1, *PMR*, TAB 3.

¹⁰¹ Former s. [28.1\(8\)](#) which permitted such an arrangement only with leave of the court was revoked. In its place, ss. [1 and 2](#) of [O. Reg. 563/20](#), "Contingency Fee Agreements", now provide that only disbursements must be deducted from the award or settlement before application of the contingency fee.

¹⁰² Then applicable s. [28.1\(8\)](#):

59. If leave is required, Class Counsel respectfully requests that this Honourable Court grant leave for Counsel to retain the fee portion of the prior costs awards. Support for leave being granted may be found in the principle or doctrine of “exceptional circumstances” that applied to former s. 28.1(8) of the *Solicitors Act*.

60. In *Hodge v. Neinstein*,¹⁰³ Justice Perell addressed the concept of exceptional circumstances under s. 28.1(8) in part as follows:

[37] [Section 28.1\(8\)](#) of the *Solicitors Act* precludes a solicitor from recovering both a proportion of the client’s award and also costs unless the court approves. A contingency fee agreement cannot provide for both the payment of costs received from the defendant and a percentage based on damages recovered, unless the court is satisfied that there are exceptional circumstances and the court approves the inclusion of the costs: *Williams (Litigation Guardian of) v. Bowler* (2006), [2006 CanLII 19466 \(ON SC\)](#), 81 O.R. (3d) 209 (S.C.J.); *Séguin v. Van Dyke*, [2013 ONSC 6576](#).

...

[39] The exceptional circumstances referred to in s. 28.1(8) include assuming an extraordinary risk that would justify the solicitor charging a premium for his or her work; *Williams (Litigation Guardian of) v. Bowler, supra*. In the *Williams* case, the contingency fee was approved where counsel's assumption of significant and unusual risk, together with complications arising from feuding plaintiffs, amounted to extraordinary circumstances that justified granting approval. See also: *Re Cogan*, [2010 ONSC 915](#); *Oakley & Oakley Professional Corp. v. Aitken*, [2011 ONSC 5613](#).

Agreement not to include costs except with leave

(8) A contingency fee agreement shall not include in the fee payable to the solicitor, in addition to the fee payable under the agreement, any amount arising as a result of an award of costs or costs obtained as part of a settlement, unless,

- (a) the solicitor and client jointly apply to a judge of the Superior Court of Justice for approval to include the costs or a proportion of the costs in the contingency fee agreement because of exceptional circumstances; and
- (b) the judge is satisfied that exceptional circumstances apply and approves the inclusion of the costs or a proportion of them.

¹⁰³ *Hodge v. Neinstein*, [2014 ONSC 4503 \(CanLII\)](#), rev'd on other grounds, [2015 ONSC 7345 \(CanLII\)](#).

[40] In authorizing the court to allow a lawyer to obtain both a contingency fee and to recover the costs awarded to his or her client in "exceptional circumstances," the Legislature recognized that there will be cases where having regard to the nature of the litigation and the associated risks, a contingency fee alone would not fairly compensate the lawyer for taking on the case: *Oakley & Oakley Professional Corp. v. Aitken*, *supra* at para. [17](#).

[41] In determining whether there are "exceptional circumstances" under [s. 28.1\(8\)](#) of the *Solicitors Act*, the court needs to know how much of a premium is being sought over by the solicitor and the solicitor should provide the court with his or her dockets or time records: *Re Cogan*, [2010 ONSC 915](#).

61. The following factors provide a basis for finding that the requirement of exceptional circumstances, if it applies to this case, is met:

- a. the real risks assumed by Class Counsel, as described above;
- b. the value of compensation secured for Class Members;
- c. the fact that even with the retention of the fee portion of the costs awards in this case, Class Counsel will still recoup well less than straight time; and
- d. the fact that Class Counsel will need to perform additional work going forward to implement and oversee the settlement through to its completion.

62. As supporting precedent, Class Counsel notes that, without expressly addressing the principle of exceptional circumstances, Justice Perell approved class counsel retaining or being paid costs in addition to their percentage contingency fee in *Mancinelli v. Royal Bank of Canada*, [2020 ONSC 7285 \(CanLII\)](#) at paras. [21 and 22](#), *Farkas v. Sunnybrook & Women's College Health Sciences Centre*, [2009 CanLII 44271 \(ON SC\)](#) at paras. [63-68](#) and *Lipson v Cassels Brock and Blackwell* (unreported) at paragraph 95. In *Farkas*, Justice Perell specifically noted that the total fees (including the costs award) were still less than the straight time incurred by class counsel.

PART IV- ORDER SOUGHT

63. Class Counsel respectfully requests an Order and Directions from this Court that:

- a. approve the Retainer Agreement;

- b. fix and direct that Class Counsels' disbursements and fees be paid from the Settlement Fund as follows:

| | |
|---|-----------------------|
| Gross Settlement Amount: | \$10,000,000 |
| less | |
| (Class Counsel Disbursements, incl. of HST) | (\$227,733.53) |
| <u>Subtotal:</u> | <u>\$9,772,226.47</u> |
| (Class Counsel's Requested 25% Fee) | (\$2,443,066.62) |
| (HST on Fees) | (\$317,598.66) |

- c. fix and direct that honoraria of \$15,000 be paid to each of the representative plaintiffs out of Class Counsel's approved fee;
- d. direct that the Administration costs be paid as a next, subsequent charge on the remainder after deduction of Class Counsel's disbursements and fees, inclusive of taxes;
- e. direct that the Class Proceedings Fund be repaid the sum of funded expenses in the amount of \$51,885.27; and,
- f. direct that the Class Proceedings Fund's be paid its 10% levy calculated on the remainder after deduction of all of the foregoing.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of April, 2026.


Per: _____

Roy O'Connor LLP | Aubé Law Office | Broadbent Law


SCHEDULE “A”

1. *Baker Estate v. Sony BMG Music (Canada Inc.)*, [2011 ONSC 7105](#).
2. *Brazeau v. Attorney General (Canada)*, [2019 ONSC 4721 \(CanLII\)](#).
3. *C.S. v. Ontario*, [2021 ONSC 6851](#).
4. *Dadzie v. Ontario*, [2025 ONSC 6342 \(CanLII\)](#).
5. *Doucet v. The Royal Winnipeg Ballet*, [2023 ONSC 2323 \(CanLII\)](#).
6. *Faiz v. Canadian All Care Inc.*, [2025 ONSC 3217 \(CanLII\)](#).
7. *Farkas v. Sunnybrook & Women’s College Health Sciences Centre*, [2009 CanLII 44271 \(ON SC\)](#).
8. *Fresco v. Canadian Imperial Bank of Commerce*, [2023 ONSC 3335 \(CanLII\)](#).
9. *Fresco v. Canadian Imperial Bank of Commerce*, [2024 ONCA 628 \(CanLII\)](#).
10. *Gilchrist v. Just Energy Group*, [2025 ONSC 6275 \(CanLII\)](#).
11. *Hodge v. Neinstein*, [2014 ONSC 4503 \(CanLII\)](#).
12. *Hodge v. Neinstein*, [2015 ONSC 7345 \(CanLII\)](#).
13. *Lavier v. MyTravel Canada Holidays Inc.*, [2013 ONCA 92](#).
14. *Mancinelli v. Royal Bank of Canada*, [2020 ONSC 7285 \(CanLII\)](#).
15. *Rabbat v. Nadon*, [2025 ONSC 5187 \(CanLII\)](#).
16. *Toth v. Canada*, [2019 FC 125 \(Fed. Ct.\)](#).

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date April 3, 2026


Signature

SCHEDULE “B”

1. Class Proceedings Act, 1992, [SO 1992, c 6.](#)

Fees and disbursements ([hyperlink](#))

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

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

Court to approve agreements

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

Fees must be fair and reasonable

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

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

Same

- (2.2) In considering the degree of risk assumed by the solicitor, the court shall consider,
- (a) the likelihood that the court would refuse to certify the proceeding as a class proceeding;
 - (b) the likelihood that the class proceeding would not be successful;
 - (c) the existence of any other factor, including any report, investigation, litigation, initiative or funding arrangement, that affected the degree of risk assumed by the solicitor in providing representation; and
 - (d) any other prescribed matter. 2020, c. 11, Sched. 4, s. 29 (1).

Same

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

Priority of amounts owed under approved agreement

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

Determination of fees where agreement not approved

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

Considerations

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

Holdback

- (6) The court may determine and specify an amount or portion of the fees and disbursements owing to the solicitor under this section that shall be held back from payment until,
- (a) the report required under [subsection 26 \(12\)](#) or [27.1 \(16\)](#), as the case may be, has been filed with the court and the court is satisfied that it meets the requirements of that subsection; and

(b) the court is satisfied with the distribution of the monetary award or settlement funds in the circumstances, including the number of class or subclass members who made a claim for monetary relief or settlement funds and, of them, the number of class or subclass members who did and who did not receive monetary relief or settlement funds. 2020, c. 11, Sched. 4, s. 29 (3).

Agreements for payment only in the event of success ([hyperlink](#))

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

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

Definitions

(3) For the purposes of subsections (4) to (7),

“base fee” means the result of multiplying the total number of hours worked by an hourly rate; (“honoraires de base”)

“multiplier” means a multiple to be applied to a base fee. (“multiplicateur”) 1992, c. 6, s. 33 (3).

Agreements to increase fees by a multiplier

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

Motion to increase fee by a multiplier

(5) A motion under subsection (4) shall be heard by a judge who has,

(a) given judgment on common issues in favour of some or all class members; or

(b) approved a settlement that benefits any class member. 1992, c. 6, s. 33 (5).

Idem

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

Idem

(7) On the motion of a solicitor who has entered into an agreement under subsection (4), the court,

(a) shall determine the amount of the solicitor’s base fee;

(b) may apply a multiplier to the base fee; and

(c) shall determine the amount of disbursements to which the solicitor is entitled, including interest calculated on the disbursements incurred, as totalled at the end of each six-month period following the date of the agreement. 1992, c. 6, s. 33 (7); 2020, c. 11, Sched. 4, s. 30 (3).

Idem

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

Same

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

2. *Solicitors Act*, [RSO 1990, c. S.15](#) (version in force between 2009-12-15 and 2013-12-11)

Agreements not to include costs except with leave

S. 28.1 (8) A contingency fee agreement shall not include in the fee payable to the solicitor, in addition to the fee payable under the agreement, any amount arising as a result of an award of costs or costs obtained as part of a settlement, unless,

(a) the solicitor and client jointly apply to a judge of the Superior Court of Justice for approval to include the costs or a proportion of the costs in the contingency fee agreement because of exceptional circumstances; and

(b) the judge is satisfied that exceptional circumstances apply and approves the inclusion of the costs or a proportion of them. 2002, c. 24, Sched. A, s. 4.

3. *Contingency Fee Arrangements*, [O. Reg. 563/20](#)

Contingency fee not to exceed award or settlement

1. A solicitor for a client who is a claimant shall not recover more in fees under a contingency fee agreement than the amount recovered by the client under an award or settlement from the party or parties against whom the claim was made, including any costs but excluding disbursements and taxes.

Certain disbursements to be excluded

2. A contingency fee agreement that provides that the fee is determined as a percentage of the amount recovered by the client under an award or settlement shall exclude any amount that is

specified as being in respect of disbursements that a court allows or would allow as recoverable from an adverse party.

4. Class Proceedings, O Reg 771/92

10. (1) This section applies in a proceeding in respect of which a party receives financial support from the Class Proceedings Fund. O. Reg. 771/92, s. 10 (1).

(2) A levy is payable in favour of the Fund,

(a) when a monetary award is made in favour of one or more persons in a class that includes a plaintiff who received financial support under section 59.3 of the Act; or

(b) when the proceeding is settled and one or more persons in such a class is entitled to receive settlement funds. O. Reg. 771/92, s. 10 (2).

(3) The amount of the levy is the sum of,

(a) the amount of any financial support paid under section 59.3 of the Act, excluding any amount repaid by a plaintiff; and

(b) 10 per cent of the amount of the award or settlement funds, if any, to which one or more persons in a class that includes a plaintiff who received financial support under section 59.3 of the Act is entitled. O. Reg. 771/92, s. 10 (3).

(4) Revoked: O. Reg. 535/95, s. 1.

SCHEDULE "C"

DETAILED LIST OF CLASS COUNSEL UNBILLED DISBURSEMENTS

| FIRM | ROY ELLIOTT O'CONNOR LLP | ROY O'CONNOR LLP | ROLAND AUBÉ | FEIFEL BROADBENT GUALAZZI | BROADBENT LAW | TOTALS |
|---|-------------------------------------|-----------------------------|--------------------|--|--------------------------|---------------------|
| PHOTOCOPIES AND PRINTING | | \$6,526.35 | | | \$556.93 | \$7,083.28 |
| LONG DISTANCE PHONE CALLS AND CONFERENCE CALLS | | \$1,127.56 | | | | \$1,127.56 |
| POSTAGE | | \$7.95 | \$288.15 | | \$1,741.23 | \$2,037.33 |
| FAX | | \$277.35 | | | | \$277.35 |
| PROCESS SERVER | | \$993.95 | | | | \$993.95 |
| COURIER | | \$2,880.45 | \$207.09 | | \$395.13 | \$3,482.67 |
| MEDIATION FEES | | \$106,919.50 | | | | \$106,919.50 |
| TRAVEL | | \$4,748.54 | \$3,775.12 | | \$5,422.94 | \$13,946.60 |
| MEALS | \$424.20 | \$3,170.28 | | | \$784.78 | \$4,379.26 |
| RESEARCH SERVICES | | \$4,043.60 | | | | \$4,043.60 |
| ELECTRONIC DOCUMENT MANAGEMENT | | \$25,900.00 | | | | \$25,900.00 |
| WEBSITE AND COMMUNICATIONS | | \$820.25 | \$234.93 | | | \$1,055.18 |
| COURT AND ADMINISTRATIVE FILING FEES | | \$339.00 | | | | \$339.00 |
| COURT REPORTING SERVICES | | \$7,198.60 | | | | \$7,198.60 |
| SEARCHES | | \$168.00 | | | \$1,074.00 | \$1,242.00 |
| RECORDS | | | | | \$18,754.05 | \$18,754.05 |
| ENGINEERING REPORT | | | | \$10,089.49 | | \$10,089.49 |
| OTHER | | | | | \$330.00 | \$330.00 |
| FIRM TOTALS | \$424.20 | \$165,121.38 | \$4,505.29 | \$10,089.49 | \$29,059.06 | \$209,199.42 |
| HST ON DISBURSEMENTS | \$55.15 | \$15,420.01 | \$78.00 | \$1,311.63 | \$1,669.32 | \$18,534.11 |

| | | | | | | |
|--|-----------------|---------------------|-------------------|--------------------|--------------------|---------------------|
| TOTAL DISBURSEMENTS & HST | \$479.35 | \$180,541.39 | \$4,583.29 | \$11,401.12 | \$30,728.38 | \$227,733.53 |
|--|-----------------|---------------------|-------------------|--------------------|--------------------|---------------------|

QUINTE et al.

-and-

EASTWOOD MALL et al.

Plaintiffs

Defendants

Court File No. CV-12-458218-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

PLAINTIFFS' FACTUM
(FEE APPROVAL & HONORARIUM)

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