

CITATION: Faiz v. Canadian All Care Inc., 2025 ONSC 3217
COURT FILE NO.: CV-23-00709415-00CP
DATE: 20250529

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: ELIAS FAIZ, Plaintiff

AND:

CANADIAN ALL CARE INC. operating as CANADIAN ALL CARE COLLEGE,
Defendant

BEFORE: Justice Glustein

COUNSEL: *Sean Brown, Laura Bassett and Christopher Lupis* for the plaintiff

Sarah Jones for the defendant

HEARD: May 27, 2025

REASONS FOR DECISION

NATURE OF MOTION AND OVERVIEW

[1] The plaintiff, Elias Faiz (“Faiz”) and Class Counsel (Flaherty McCarthy LLP) bring this motion to:

- (i) approve the Settlement Agreement entered into between the parties on March 18, 2025,
- (ii) approve the Contingency Fee Agreement as between Faiz and Class Counsel,
- (iii) fix and approve Class Counsel fees and disbursements in the amount of \$457,360.38 for legal fees, \$59,456.85 for HST applicable to legal fees and \$14,059.46 for disbursements inclusive of HST, which are a first charge upon the “Settlement Amount” of \$1,400,000, and may be deducted by Class Counsel from the Settlement Amount before transferring the net Settlement Amount,
- (iv) approve the payment of an honorarium of \$7,500 to Faiz,
- (v) appoint RicePoint Administration Inc. dba Verita Global (“Verita”) as the Claims Administrator,
- (vi) approve a claims deadline for September 25, 2025, and

- (vii) approve the form and content of the Settlement Approval Notice and related Notice Plan.

[2] Following the hearing, I granted the order (with reasons to follow) and allowed all of the relief sought except the honorarium sought for Faiz as the representative plaintiff.

FACTS

Nature of the action

[3] The present action is a certified class proceeding by the plaintiff and class members against Canadian All Care College (“CACC”).

[4] Class Members are comprised of all students who were enrolled in the Diagnostic Medical Sonography (“DMS”) program at CACC between November 4, 2019 and November 9, 2022.

[5] The Class Members sought recovery from CACC as a result of allegations based on breach of contract and negligent misrepresentation, as it pertains to the accreditation status of CACC’s DMS program.

[6] The deadline for class members to deliver a notice of Opt-Out lapsed on April 8, 2025, and no class members opted out.

Mediation and settlement

[7] Class Counsel and counsel for CACC engaged Justice Todd Archibald (retired) to mediate this dispute. The mediation took place on March 18, 2025. CACC’s insurer also sent two representatives. The mediation lasted almost 8 hours. A settlement was reached that day which is subject to approval by this court.

[8] Justice Archibald described the mediation as extremely hard fought.

[9] Under the Settlement Agreement, the Settlement Amount is \$1,400,000, with \$1 million to be paid by CACC’s insurer and \$400,000 by CACC. Each class member will be entitled to receive a minimum of approximately \$450 per month enrolled in the DMS Program.¹ This approach ensures that those who were enrolled for longer periods—such as 24 months—will receive proportionally greater compensation than those who were only enrolled for a short time, such as 6 months.

[10] Each student has already received a full refund of tuition and related fees from CACC following the program’s closure. Accordingly, this settlement reflects compensation for non-tuition losses, including costs for school supplies, transportation to and from the college, and a

¹ The calculation assumes a 100% take-up rate so the amount would increase if this take-up rate does not take place.

modest component for lost income opportunities associated with the disruption in academic and professional progression.

[11] Members of the class were provided with notice of (i) the present motion and (ii) their right to object to the proposed settlement, in accordance with my earlier order dated March 25, 2025. No class member has delivered a notice of objection to the proposed settlement.

[12] Class Counsel recommends the proposed settlement.

Settlement challenges

[13] The availability of insurance coverage was uncertain. Although CACC's insurer initially took an off-coverage position (for reasons never disclosed), it ultimately agreed to contribute \$1,000,000 toward settlement. This represents 50% of the policy limit of \$2,000,000.

[14] CACC's ability to satisfy a judgment was highly uncertain. CACC is a private career college with limited assets. There was little prospect of recovering a judgment from CACC alone. Class counsel considered but ultimately rejected attempts to pierce the corporate veil as being unlikely to succeed. Nonetheless, CACC agreed to contribute an additional \$400,000 to the settlement.

[15] There were meaningful litigation risks. CACC asserted that students were fully informed of the program's probationary accreditation status, voluntarily assumed those risks, and received tuition refunds following program revocation. Damages would have been difficult to prove for many students who withdrew early, pursued alternate careers, or qualified under Sonography Canada's alternative pathways.

[16] CACC also raised strong arguments concerning causation, reliance, and mitigation, which would have posed a significant barrier to liability and to certification of aggregate damages.

The Proposed Notice and Notice Plan

[17] The proposed Notice sets out the essential terms of the settlement, identifies who is eligible to claim, describes Verita's role, and explains how to make a claim, including the availability of payment by e-transfer or cheque. The notice also clarifies that class members who do not submit a claim will not receive compensation but will still be bound by the settlement.

[18] The Notice Plan was developed in consultation with Verita, and provides for: (i) direct email delivery of notice, including a secure claim ID and PIN for each class member, (ii) a dedicated website containing the Notice, relevant court documents, and access to Verita's secure claims portal, (iii) administration of a 90-day claims period, with technical and administrative support for class members, and (iv) monitoring and reporting to the parties and the court.

Appointment of Verita

[19] Class Counsel supports the appointment of Verita as the Claims Administrator for this settlement. Verita is a reputable and experienced class action claims administrator. They have administered numerous similar settlements across Canada and have the infrastructure necessary to support a timely, user-friendly, and secure online claims process.

[20] Verita has confirmed its willingness and ability to act as Claims Administrator in this proceeding and has provided a detailed Services and Fee Estimate dated May 7, 2025 for approximately \$30,000, which outlines its role, responsibilities, and anticipated costs. Verita's services will include:

- (i) establishing a secure online claims portal,
- (ii) verifying class member eligibility using Claim IDs and PINs,
- (iii) communicating with class members to support claims processing,
- (iv) issuing one-time payments to eligible claimants, and
- (v) providing final reports to Class Counsel and, if necessary, the court.

Class counsel fees

[21] The representative plaintiff retained Class Counsel under a contingency fee agreement entitling Class Counsel to 33% of any recovery, plus HST and disbursements.

[22] Class Counsel agreed to indemnify the representative plaintiff and hold him harmless should there be any award of costs against the plaintiff.

[23] The following lawyers have been actively prosecuting this class action: Sean A. Brown (called to the Bar in 1999), Laura Bassett (called to the Bar in 2020), and Christopher Lupis (called to the Bar in 2020).

[24] Class Counsel has incurred over 250 hours of time to date on this matter, including but not limited to: intake of class members, analysis of program accreditation and licensing standards, document review, preparing the certification record, mediation, and the drafting of settlement and approval materials.

[25] Significant additional time will be spent after settlement approval, which includes time to: (i) finalize the settlement approval order, (ii) communicate with class members to address any questions and/or remedy deficiencies in a claim form, (iii) direct Verita with respect to the payment of valid claims, and (iv) final reporting to the parties and the court.

[26] Class Counsel estimates that approximately another 50 to 100 hours may be spent by lawyers and law clerks in completing this settlement and administering the claims process.

[27] Class Counsel also incurred disbursements in the amount of \$14,059.46, inclusive of taxes. These disbursements include court filing fees, courier charges, and the retainer of an economic loss expert.

Support of the representative plaintiff

[28] Faiz supports the Settlement Agreement, the proposed model for distributing compensation to class members, the appointment of Verita as the claims administrator and the approval of Class Counsel fees.

Honorarium

[29] Class counsel provided affidavit evidence that Faiz (quoted *verbatim*):

- (i) agreed to act as Representative Plaintiff on behalf of approximately 100 of his classmates,
- (ii) was involved in the certification process and reviewed the draft affidavit used in support of the motion [and] was prepared to be cross-examined, had the Defendant required it,
- (iii) remained in contact with Class Counsel throughout the litigation and was kept apprised of settlement discussions,
- (iv) While he did not attend the mediation itself, he supported the settlement and reviewed the draft Settlement Agreement, and
- (v) The settlement would not have been possible without his cooperation and leadership.

[30] Faiz filed affidavit evidence and stated (quoted *verbatim*):

- (i) I am the Representative Plaintiff in this class proceeding.
- (ii) I have been involved in the class proceeding from the outset. I provided information to Class Counsel about my experience in the DMS Program, reviewed materials prepared in support of the certification motion and reviewed a draft of the affidavit that was prepared on my behalf. I was prepared to be cross-examined if the certification motion had proceeded on a contested basis.

- (iii) I was advised by Class Counsel of the outcome of the mediation held on March 18, 2025, and of the proposed settlement that resulted from that process. I reviewed the proposed terms with Class Counsel and indicated that I agreed with the settlement. I instructed Class Counsel to enter into the formal settlement agreement on behalf of the class.
- (iv) I respectfully request that the Court approve an Honorarium for me in the amount of \$7,500. I understand that such payments are discretionary. I believe the proposed amount is fair and proportionate in recognition of my time, involvement, and commitment in assisting Class Counsel and representing the class throughout this proceeding.

ANALYSIS

Settlement Approval

[31] I first address the applicable law and then apply that law to the present case.

The applicable law

[32] I summarize the general principles on settlement approval as set out in the plaintiff's factum:

- (i) Under s. 27.1 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, a settlement must be approved by the court in order to be binding on the class.
- (ii) To approve a settlement of a class proceeding, the court must find that in all circumstances the settlement is fair, reasonable, and in the best interests of those affected by it: *Maggisano v. Skyservice Airlines Inc.*, 2010 ONSC 7169, at para. 17; *Sayers v. Shaw Cablesystems Ltd.*, 2011 ONSC 962, at para. 26.
- (iii) In determining whether to approve a settlement, the court, without making findings of facts on the merits of the litigation, must examine the fairness and reasonableness of the proposed settlement. The court must examine whether it is in the best interests of the class as a whole, having regard to the claims and defences in the litigation and any objections raised to the settlement: *Maggisano* at para. 18, *Sayers* at para. 27.
- (iv) When considering the approval of negotiated settlements, the court may consider, among other things: (a) the likelihood of recovery or likelihood of success, (b) amount and nature of discovery, evidence or investigation, (c) settlement terms and conditions, (d) recommendation and experience of counsel, (e) future expenses and likely duration of litigation and risk, (f) recommendation of neutral parties, (g) number of objectors and nature of objections (if any), (h) the presence of good faith,

arms-length bargaining and the absence of collusion, (i) the degree and nature of communications by counsel and the representative parties with class members during the litigation, and (j) information conveying to the court the dynamics of and the positions taken by the parties during the negotiation: *Maggisano*, at para. 19, *Sayers*, at para. 28.

- (v) A settlement must fall within a zone of reasonableness. Reasonableness allows for a range of possible resolutions and is an objective standard that allows for variation depending upon the subject-matter of the litigation and the nature of the damages for which the settlement is to provide compensation. A settlement does not have to be perfect, nor is it necessary for a settlement to treat everybody equally: *Goyal v. Niagara College of Applied Arts and Technology*, 2020 ONSC 739, at para. 34.
- (vi) The determination of what is fair and reasonable generally involves two analytical exercises. First, the court must use the factors above to compare and contrast what would likely be achieved at trial. The court must make an analysis of the desirability of the certainty and immediate availability of a settlement over the probabilities of failure or of a whole or partial success later at a trial. Second, the court must use the factors to examine the fairness and reasonableness of the terms and the scheme of distribution under the proposed settlement: *Goyal*, at para. 35.
- (vii) Public policy favours the settlement of complex disputes. There is a strong presumption of fairness where a settlement has been negotiated at arms-length. Experienced class counsel is in a unique position to assess the risks and rewards of the litigation, and his or her recommendation is given considerable weight by the reviewing court: *Vitapharm Canada Ltd. v. F. Hoffman-La Roche Ltd.* (2005), 74 O.R. (3d) 758 (S.C.), at paras. 111-113, 144.
- (viii) The court cannot re-write the settlement. The court can only approve or reject the settlement: *Parsons v. Canadian Red Cross Society*, 2016 ONSC 4809, at paras. 60-62.

Application of the law to the present case

[33] I find the proposed settlement to be fair, reasonable, and in the best interests of the class.

[34] I have set out the evidence of the settlement challenges at paragraphs 13-16 above. In summary, there were significant concerns as to (i) the availability of insurance (with the insurer taking an off-coverage position), (ii) CACC's ability to satisfy a judgment when there was little prospect of piercing the corporate veil and (iii) CACC's available defences when CACC maintained that students were fully informed of the program's probationary status and voluntarily assumed the risks, raising difficulties in proving damages for many students who withdrew early or qualified as sonographers via an alternative pathway.

[35] Consequently, there was a real possibility that if this action proceeded to a common issues trial, the class members would struggle to recover from CACC if their insurer's off-coverage position succeeded and since CACC does not have the means to respond to a substantial judgment. This also presupposes that the class would have succeeded at a common issues trial on the substantive issues, in the face of CACC's defences.

[36] Finally, both Class Counsel and Justice Archibald support the settlement which arose out of hard-fought and principled negotiations.

[37] For the above reasons, I approve the Settlement Agreement.

Approval of Verita as Claims Administrator

[38] I approve of Verita as claims administrator. I rely on the evidence as set out at paragraphs 19-20 above, which I summarize as follows:

- (i) Verita is an experienced administration company that routinely oversees and administers claims arising from class proceedings.
- (ii) Verita has provided Class Counsel with a reasonable fee proposal for the services Verita will render.
- (iii) The process proposed by Verita will efficiently manage claims by class members.

[39] Consequently, I am confident in Verita's ability to administer the claims for this proposed settlement.

Approval of the Notice, Notice Plan and Claims Deadline

[40] Based on the evidence at paragraphs 17 and 18 above, I find that the Notice and Notice Plan are clear, accessible, and fair. They represent a reasonable and effective way to ensure that class members are informed of their rights and provided with an efficient mechanism to participate in the settlement within a reasonable claims deadline of September 25, 2025.

Approval of contingency fee agreement and Class Counsel fees and disbursements

[41] I first review the applicable law and then apply the law to the present case.

The applicable law

[42] I summarize the general principles on settlement approval as set out in the plaintiff's factum:

- (i) Contingency fees are a well-established feature of class action litigation. The courts approve of this approach on the theory that it increases access to justice and gives lawyers the necessary economic incentive to take the case in the first place and do it well. In general, a contingency fee of 33% of the recovery has been held to be presumptively valid: *Emond v. Google LLC*, 2021 ONSC 302, at para. 41; *Rizzi v. Handa*, 2021 ONSC 1004, at para. 24.
- (ii) 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: *Maggisano*, at para. 23, *Sayers*, at para. 37.
- (iii) 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: *Maggisano*, at para. 24, *Sayers*, at para. 38.
- (iv) Relevant factors in the court's exercise of discretion when making an order for costs generally include: (a) novel legal issues, (b) public interest, (c) success, (d) the importance of the issues, and (e) the overall fairness of making costs payable forthwith as opposed to making costs payable to the successful party in the cause: *Speers v. Reader's Digest Assn. (Canada) ULC*, 2009 CanLII 38491 (ON SC), at paras. 12-15.

Application of the law to the present case

[43] I approve the Contingency Fee Agreement and conclude that the fees and disbursements sought are reasonable. In summary:

- (i) Class Counsel bore a significant financial risk by taking on this class proceeding. As part of the Contingency Fee Agreement, Class Counsel agreed to fully indemnify Faiz in the event that this action was ultimately unsuccessful.
- (ii) There were significant litigation challenges including recovery issues which increased the risk assumed by Class Counsel.
- (iii) Class Counsel spent a considerable amount of time to achieve this proposed settlement and there is still more work to do.

- (iv) The disbursements incurred by Class Counsel of \$14,059.46, inclusive of taxes, are reasonable. These disbursements include court filing fees, courier charges, and the retainer of an economic loss expert.

Honorarium

[44] I first review the applicable law and then apply the law to the present case.

The applicable law

[45] I summarize the relevant legal principles as follows:

- (i) Payment of an honorarium is “exceptional and rarely done”. “[C]ompensation should not be awarded simply because the representative plaintiff has done what is expected of him or her. It should be reserved for cases...where the contribution of the representative plaintiff has gone well above and beyond the call of duty”: *Baker Estate v. Sony BMG Music (Canada Inc.)*, 2011 ONSC 7105, at paras. 93, 95; *Fresco v. Canadian Imperial Bank of Commerce*, 2024 ONCA 628, at para. 110.
- (ii) “[I]t is not generally appropriate for a representative plaintiff to receive a payment for fees or for time expended in the pursuit of the action”: *McCarthy v. Canadian Red Cross Society*, 2007 CanLII 21606 (ON SC), at para. 20.
- (iii) Factors that might qualify as exceptional circumstances could include exposure to a real risk of costs or significant personal or financial hardship in connection with the prosecution of the action: *Fresco*, at para. 111; *Doucet v. The Royal Winnipeg Ballet*, 2023 ONSC 2323 (Div. Ct.), at para. 92.
- (iv) A representative plaintiff should be committed to fulfilling their responsibilities without seeking added compensation. One of those responsibilities is being actively involved in every step of the litigation, including the settlement of the litigation. An additional payment should be available only where the representative plaintiff can demonstrate a level of involvement and effort that is “truly extraordinary”: *Doucet*, at paras. 70-71, 92; *Fresco*, at para. 112.
- (v) An honorarium may be appropriate in cases where the representative plaintiff puts their personal experience forward, reliving their trauma, while relieving other class members from having to do so: *Doucet*, at paras. 57-58, 92.
- (vi) An honorarium may be appropriate where the case is about money such that complete success would lead to only a tiny monetary remedy for each class member or none at all: *Doucet*, at paras. 59, 92.

- (vii) The quantum of the requested payment, if any of the above criteria are met, must be modest both in general terms and in relation to the remedies available to the class members in the settlement: *Doucet*, at para. 92.

Application of the law to the present case

[46] I rely on the evidence set out at paragraphs 29 and 30. That evidence does not support a payment of an honorarium to Faiz.

[47] There is no dispute that Faiz acted responsibly and diligently as a representative plaintiff. He is to be commended for taking on the important role as a representative of the class members.

[48] However, there is no evidence of any personal or financial hardship (let alone at a significant level) to Faiz in acting as a representative plaintiff. The action is commercial in nature and does not lead to any trauma in providing evidence. The recovery of \$450 per month is not “tiny”. He was not at risk of an adverse costs award. There is no evidence of “extraordinary” work as a representative plaintiff.

[49] Under the established law in *Fresco* and *Doucet*, Faiz is not entitled to an honorarium solely for being a thorough and competent representative plaintiff. The exceptional circumstances outlined in *Fresco* and *Doucet* do not arise in the present case.

[50] For the above reasons, I do not order the payment of an honorarium to Faiz.

ORDER AND COSTS

[51] For the above reasons, I grant all of the relief sought except the payment of an honorarium to Faiz.



Justice Glustein

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REASONS FOR DECISION

Justice Glustein

Released: May 29, 2025