

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DARLENE WOODARD

Plaintiff
(Moving Party)

- and -

CANADIAN IMPERIAL BANK OF COMMERCE and CIBC TRUST CORPORATION

Defendants

Proceedings under the *Class Proceedings Act, 1992*

**FACTUM OF THE PLAINTIFF
(Motion to Approve Proposed Settlement Agreement,
Notice, Notice Plan and Plan of Allocation)**

Returnable: December 22, 2025

Date: December 17, 2025

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PART I - INTRODUCTION

1. The Plaintiff, Darlene Woodard, seeks two orders in connection with a proposed settlement with the defendants, CIBC Trust Corporation (“**CIBC Trust**”) and Canadian Imperial Bank of Commerce (“**CIBC**”, together with CIBC Trust, the “**Defendants**”):

- (a) an order approving the proposed settlement agreement and dismissing the action without costs and with prejudice; and
- (b) an order (i) approving the plan of allocation for the settlement funds; (ii) approving the notice to class members of settlement approval; (iii) approving the plan for disseminating the notice and the claim form; and (iv) appointing Verita Global Inc. as the claims administrator.

2. Ms. Woodard has filed a second factum on the motion for approval of class counsel fees and disbursements and an honorarium. This settlement approval factum should be read first.

PART II - OVERVIEW

3. The proposed settlement is a good result for the class and should be approved.

4. The settlement is the product of complex, multi-party negotiations overseen by Joel Wiesenfeld, a mediator with substantial experience in class action and financial-services matters.

5. In deciding this motion under the *Class Proceedings Act, 1992*, the Court must assess whether the settlement is fair, reasonable and in the class’s best interests. Among the relevant factors here is the unique circumstance that this Court recently approved a settlement in the 2018 Pozgaj Action, which was negotiated in parallel to the Woodard settlement.

6. A central litigation risk across the 2018 and 2022 Actions is the Defendants' limitation defence. Applying a two-year look-back analysis in relation to recoverable damages, on account of the limitations risk, demonstrates that this settlement delivers a slightly greater recovery to class members than the Pozgaj settlement (57% versus 55%), despite the materially higher limitations exposure faced by the Woodard Action.

7. The settlement also yields a significantly higher recovery to class members compared with the earlier Court-approved trailing-commissions settlement with TD Asset Management Inc. (10.4% of total trailers paid here vs. 1.4% in TDAM).

8. Additional factors also support Court approval, most importantly: (a) Class Counsel's deep familiarity with the facts and law, supported by expert evidence and substantial documentary production; (b) no objections or opt-outs have been filed; and (c) the settlement contains no structural features indicative of collusion or conflicts of interest.

9. Finally, the Defendants have agreed under the settlement to directly deposit settlement funds for current unitholders, ensuring a 100% take-up rate for current unitholders without any action required on their part.

10. The ancillary relief sought—approval of the notice and notice plan, the plan of allocation, and appointment of Verita as administrator—is necessary and appropriate to ensure fair and efficient distribution of the net settlement funds and should be approved.

PART III - FACTS

A. Background to the action

i. The commencement of the Woodard Action

11. Ms. Woodard commenced this action by Statement of Claim on November 17, 2022 (the “**Woodard Action**”). CIBC Trust is the trustee and CIBC is the manager for the CIBC mutual funds.

12. The Woodard Action continues claims originally pleaded in an omnibus proceeding brought by Michael Ciardullo against seven mutual fund managers and trustees. That proceeding was discontinued and replaced by the Woodard Action, plus six separate proposed class actions. Collectively (the “**2022 Actions**”), the seven proceedings assert claims on behalf of non-discount mutual fund unitholders against seven different managers and trustees. Kalloghlian Myers LLP (“**KM**”) is counsel to the plaintiffs in all the 2022 Actions.

ii. The Woodard Action case theory

13. The Woodard Action concerns payment of trailing commissions to discount brokers. The certified class consists of CIBC and Renaissance mutual fund unitholders who held their units other than through a discount broker.¹

¹ The certified class is: all persons, wherever they may reside or be domiciled, who held or hold, at any time on or prior to September 5, 2025, units of a CIBC Mutual Fund or a Renaissance Mutual Fund other than through a Discount Broker, except for the Excluded Persons. “Excluded Persons” means: (a) the Defendants and CAM; the past and present parents, subsidiaries, affiliates, officers, directors, senior employees, legal representatives, heirs, predecessors, successors and assigns of the Defendants and CAM; the past and present members of the independent review committee of each CIBC Mutual Fund and Renaissance Mutual Fund; or (b) any Person who would otherwise be a Class Member but who validly excluded themselves from the Action.

14. Each mutual fund is organized as a trust and governed by a declaration of trust under which CIBC Trust and CIBC serve as trustees and managers.

15. As trustee, CIBC Trust collected management fees from the fund trusts. Embedded within those fees were trailing commissions that CIBC, as manager, paid to brokers who sold the funds.²

16. Fund units were available through full-service brokers and through discount brokers. Full-service brokers, acting through investment advisors, provide ongoing investment advice and related services in addition to trade execution.

17. Discount brokers (also “DIY” or order-execution only brokers), typically operating online, are prohibited from providing financial advice under IIROC rules.

18. The Defendants have stated that trailing commissions were intended to compensate brokers for advice and services provided to clients who bought mutual fund units.³ Until June 1, 2022, both full-service and discount brokers received trailing commissions at the same or similar rates. On June 1, 2022, a prohibition on paying trailing commissions to discount brokers came into effect.

19. The Woodard Action alleges that the Defendants, in their roles as managers and trustees, breached fiduciary and trust duties by paying trailing commissions to discount brokers for advice and services that were not provided to class members. The claim alleges those payments dissipated fund assets and diminished the value of all fund units. Ms. Woodard also pleads a claim under s. 130 of the *Securities Act* for misrepresentations in Fund Facts and other disclosure documents.

² Affidavit of Garth Myers sworn December 18, 2025 (“**Myers Affidavit**”), paras. 13, Plaintiff’s Motion Record, Tab 6, p. 205.

³ Myers Affidavit, para. 13, Plaintiff’s Motion Record, Tab 6, p. 272

20. Ms. Woodard pleads that the misconduct injured all unitholders because each unit's value is determined by a *pro rata* share of the trust assets. Consequently, trailing commissions paid from trust assets were borne *pro rata* by all unitholders, irrespective of their purchase channel.

21. The Woodard Action is brought on behalf of investors who held units through full-service brokers because a parallel 2018 claim (conducted by Siskinds LLP) pursued the interests of investors who purchased through discount brokers.

22. The Defendants deny the allegations and make no admission of liability under the settlement agreement.

B. Other trailing commission class actions: the 2018 Actions and the Frayce Action

23. The background and procedural history of the Woodard Action and the other 2022 Actions are connected to two earlier sets of class actions. Although those proceedings also concern payment of trailing commissions to discount brokers, they advance different legal theories, represent different groups of class members and were commenced by separate plaintiffs and law firms.

i. The 2018 Actions against mutual fund trustees and managers on behalf of discount broker purchasers

24. The 2022 Actions mirror allegations made in seven class actions commenced in 2018 (the “**2018 Actions**”) against the same mutual fund defendants, including *Pozgaj v. Canadian Imperial Bank of Commerce et al.* (the “**Pozgaj Action**”). Siskinds LLP is class counsel in all 2018 Actions.⁴

⁴ Myers Affidavit, para. 24, Plaintiff's Motion Record, Tab 6, p. 275.

25. Although the Woodard Action and the Pozgaj Action raise similar issues, they differ in two critical respects

- (a) **Class definition:** Pozgaj's class is limited to purchasers who held units through discount brokers; and
- (b) **Case theory:** Pozgaj alleges only discount broker purchasers were -harmed.⁵

26. The Woodard Action contends that paying trailing commissions to discount brokers diluted the overall fund assets, reducing the value of all CIBC and Renaissance units. By contrast, Pozgaj's theory is that only discount broker purchasers were injured because the Defendants should have created a separate series for discount purchasers paying lower trailing commissions. Under that theory, damages flow solely to discount broker investors.⁶

ii. The Frayce Action against discount brokers on behalf of discount broker purchasers

27. Three additional proceedings were brought on behalf of classes limited to discount broker purchasers. Those actions targeted the discount brokers that sold the funds and received trailing commissions, not the banks acting as fund managers and trustees.

28. Koskie Minsky LLP, Bates Barristers and Investigation Counsel P.C. served as class counsel in those matters and consolidated their efforts under *Frayce v. BMO InvestorLine Inc. et al.* (the "**Frayce Action**"). Like Pozgaj, Frayce proceeded on the theory that only purchasers through discount brokers were harmed.

⁵ Myers Affidavit, paras. 26-27, Plaintiff's Motion Record, Tab 6, p. 275-276.

⁶ Myers Affidavit, para. 27, Plaintiff's Motion Record, Tab 6, p. 276

29. Frayce was denied certification by Belobaba J. in January 2023; the Divisional Court dismissed the appeal in January 2024; and the Court of Appeal refused leave to appeal in September 2024.⁷

30. The divergent liability theories advanced in Woodard, Pozgaj and Frayce materially increased the legal and strategic complexity and risk of the Woodard Action. As a result, Ms. Woodard faced opposition not only from the Defendants but also from plaintiffs pursuing the Pozgaj and Frayce cases, complicating both litigation and settlement negotiations.

C. Procedural history of Ms. Woodard's action

i. Application for funding to the Class Proceedings Fund

31. In September 2022, Ms. Woodard applied to the Class Proceedings Fund. Her application was heard January 18, 2023, and funding was approved. In return for reimbursing disbursements and indemnifying Ms. Woodard against adverse cost awards, the Fund is entitled to 10% of the settlement fund payable to class members (calculated after deduction of notice and administration costs, counsel fees and disbursements, and the plaintiff's honorarium).⁸

ii. The stay motions

32. In November 2022, the 2018 Action plaintiffs brought an omnibus motion to stay all 2022 Actions, including the Woodard Action, arguing substantial factual and legal overlap; the 2022 damages were indirect and derivative of the 2018 claims; the 2022 class members suffered no

⁷ Myers Affidavit, paras. 28-30, Plaintiff's Motion Record, Tab 6, p. 276.

⁸ Myers Affidavit, para. 31, Plaintiff's Motion Record, Tab 6, p. 277.

independent loss; and the two sets of actions were aligned on threshold issues (the propriety of paying trailing commissions to discount brokers), differing only on entitlement to recovery.⁹

33. The 2018 Action plaintiffs sought a temporary stay of the 2022 Actions until Phase I of the common issues trial in the 2018 Actions resolved the shared issues, with Phase II to address entitlement and other divergent issues—effectively bifurcating the common issues trial into two phases.

34. The stay motion was fully briefed, and the hearing began before Belobaba J. in March 2023, but was not completed. Case management for all 2018 and 2022 Actions was later reassigned to Justice Akbarali.¹⁰

35. At an April 2023 initial case conference before Akbarali J., the stay motion rehearing was scheduled for June 23. At the same time, the 2022 defendants brought summary judgment motions to dismiss the 2022 Actions on limitations grounds and asked to have those motions heard alongside the stay motion. After submissions, Akbarali J. declined the request and directed that the stay motion proceed first.¹¹

36. The rehearing occurred in June 2023. In August 2023, Akbarali J. issued an endorsement granting the motion, temporarily staying the 2022 Actions until Phase I of the bifurcated common issues trial in the 2018 Actions resolved the shared issues.¹²

⁹ Myers Affidavit, para. 32, Plaintiff's Motion Record, Tab 6, p. 277.

¹⁰ Myers Affidavit, para. 33, Plaintiff's Motion Record, Tab 6, p. 277.

¹¹ Myers Affidavit, para. 35, Plaintiff's Motion Record, Tab 6, p. 277.

¹² Myers Affidavit, para. 37, Plaintiff's Motion Record, Tab 6, p. 278.

37. The endorsement observed that the proposed relief did not specify all ancillary relief necessary to implement the temporary stay, and directed the parties to confer on the precise form of order, mindful of the need to bifurcate issues where the plaintiffs' interests diverged.¹³

38. Over the next four months KM and Siskinds engaged in extensive negotiations over the appropriate stay orders and their impact on existing certification orders. Two case management conferences with written submissions were held in October and November 2023 to resolve outstanding points. Justice Akbarali ultimately determined the final form of the order and directed required amendments to the common issues in the certified 2018 Actions, including the Pozgaj Action.¹⁴

iii. The lift stay motions

39. After the temporary stay orders were finalized for the 2022 Actions, the defendants (including the Defendants here) moved to lift those stays to proceed with summary judgment motions on limitations grounds.¹⁵

40. The lift stay motions were fully briefed and argued before Akbarali J. In December 2023, Her Honour granted the motions and lifted the temporary stays, permitting the defendants' summary judgment motions to proceed.¹⁶

¹³ Myers Affidavit, para. 39, Plaintiff's Motion Record, Tab 6, p. 278.

¹⁴ Myers Affidavit, paras. 39-40, Plaintiff's Motion Record, Tab 6, p. 278.

¹⁵ Myers Affidavit, para. 41, Plaintiff's Motion Record, Tab 6, p. 278.

¹⁶ Myers Affidavit, paras. 42-43, Plaintiff's Motion Record, Tab 6, p. 279.

iv. The summary judgment motions

41. At a January 2024 case conference, Akbarali J. scheduled the defendants' summary judgment motions to be heard together as an omnibus motion in late-October 2024.

42. The Defendants asserted the Woodard Action was statute-barred under the *Limitations Act, 2002*, contending Ms. Woodard had constructive knowledge of the material facts more than two years before commencing the action. That constructive knowledge argument relied on: the disclosure materials for the CIBC Trust and CIBC funds; publicity surrounding the 2018 Actions; and the knowledge of the plaintiffs' counsel (*i.e.* KM), which defendants argued should be imputed to the 2022 plaintiffs, including Ms. Woodard.¹⁷

43. Over the ensuing ten months, a substantial evidentiary record was assembled for the summary judgment motions. Ms. Woodard, with counsel's assistance, filed extensive responding affidavits and prepared for, and was cross-examined by counsel to the Defendants.¹⁸

44. Weeks before the scheduled hearing, after full briefing and voluminous materials had been filed, the 2018 Action plaintiffs sought leave to intervene in the summary judgment proceedings on the basis that the outcome of the motions could prejudice the prosecution of the 2018 Actions.¹⁹

45. In November 2024, Akbarali J. granted the intervention request and ordered the limitations summary judgment motions adjourned *sine die*, at least until the conclusion of the Phase I common issues trial, when the temporary stay will automatically expire.²⁰

¹⁷ Myers Affidavit, para. 45, Plaintiff's Motion Record, Tab 6, p. 279.

¹⁸ Myers Affidavit, paras. 47-48, Plaintiff's Motion Record, Tab 6, p. 279.

¹⁹ Myers Affidavit, para. 50, Plaintiff's Motion Record, Tab 6, p. 280.

²⁰ Myers Affidavit, para. 50, Plaintiff's Motion Record, Tab 6, p. 280.

D. Settlement negotiations

46. The proposed settlement was the culmination of hard-fought negotiations.

47. A significant portion of the negotiations were mediated by Joel Wiesenfeld, an experienced mediator in securities and financial-services class actions. Mr. Wiesenfeld conducted two rounds of formal mediation (three days in total) in July 2025.²¹

48. The mediations were supplemented by sustained direct negotiations, including numerous detailed written proposals and telephone conferences between counsel.²²

49. The first in-person mediation took place July 2 and 3, 2025 and included parallel negotiations in relation to both the Pozgaj Action and the Woodard Action. After that session, the Pozgaj Action settled. The Woodard Action did not.²³

50. Continued discussions between counsel resulted in a subsequent agreement to attend a second in-person mediation on July 17, 2025, which concluded with a signed term sheet. The parties executed a final settlement agreement on September 5, 2025.²⁴

E. The settlement agreement

51. Under the settlement agreement, the Defendants will pay \$11 million in exchange for a full and final release of all claims and dismissal of the Woodard Action with prejudice and without costs. In addition, CIBC Asset Management (“CAM”), an affiliate of the Defendants, will receive

²¹ Myers Affidavit, para. 53, Plaintiff's Motion Record, Tab 6, p. 280-281.

²² Myers Affidavit, paras. 54-55, Plaintiff's Motion Record, Tab 6, p. 281.

²³ Myers Affidavit, para. 54, Plaintiff's Motion Record, Tab 6, p. 281.

²⁴ Myers Affidavit, para. 56, Plaintiff's Motion Record, Tab 6, p. 281.

a full release of claims against it concerning the mutual funds for which it was trustee (the “**Renaissance Mutual Funds**”).

52. The \$11 million is non-reversionary and all-inclusive of legal fees, disbursements, taxes and administration costs.

53. Importantly, the Defendants will directly deposit settlement funds allocated to Current CIBC unitholders and Renaissance unitholders into the mutual fund trusts, ensuring an effective 100% take-up for those groups and reducing administration costs—benefits that materially enhance recoveries for class members.

F. Consent certification for settlement purposes and notice of the hearing to approve the proposed settlement agreement and ancillary relief

54. Justice Leiper certified this action for settlement purposes on September 12, 2025 and approved the plan to distribute the notice of certification, the opt-out process and the process to object or comment on the proposed settlement, class counsel fees, the honorarium and ancillary relief.²⁵

55. Notice of certification was disseminated in accordance with this Order.²⁶ No objections or comments on any of the relief sought were submitted.²⁷

PART IV - ARGUMENT

56. The issues to be decided on this motion are:

²⁵ Myers Affidavit, para. 155, Plaintiff’s Motion Record, Tab 6, p. 306.

²⁶ Myers Affidavit, para. 155, Plaintiff’s Motion Record, Tab 6, p. 306.

²⁷ Myers Affidavit, para. 157, Plaintiff’s Motion Record, Tab 6, p. 307.

- (a) Should the Court approve the proposed settlement agreement?
- (b) Should the Court approve the proposed notice and notice plan?
- (c) Should the Court approve the proposed plan of allocation, claim form and claims process, and appointment of Verita as the proposed claims administrator?

A. Settlement approval

i. The law

57. Under section 27.1 of the *CPA*, a class proceeding may be settled only with the approval of the court. To approve a settlement agreement, the court must find that it is fair, reasonable, and in the best interests of the class members.²⁸ The burden lies on the party seeking approval.²⁹

58. The principles set out below have been identified for the assessment of a proposed settlement agreement on a motion for settlement approval.

59. There is a strong presumption of fairness when a proposed class settlement, negotiated at arm's-length by counsel for the class, is presented for court approval.³⁰

60. Settlements need not be perfect—they are compromises.³¹ A settlement is not fair and reasonable only when it falls outside a range of reasonable outcomes.³²

²⁸ *Class Proceedings Act, 1992*, [S.O. 1992, c. 6](#), s. 27.1(5), *Plaintiff's Factum*, Schedule "B".

²⁹ *Robinson v. Medtronic, Inc.*, [2020 ONSC 1688](#), at para. 63. *Nunes v. Air Transat A.T. Inc.*, [2005 CanLII 21681](#) (ON SC), at para. 7.

³⁰ *Nunes v. Air Transat A.T. Inc.*, [2005 CanLII 21681](#) (ON SC), at para. 7.

³¹ *Lozanski v. The Home Depot, Inc.*, [2016 ONSC 5447](#), at para. 71.

³² *Nunes v. Air Transat A.T. Inc.*, [2005 CanLII 21681](#) (ON SC), at para. 7.

61. It is not for the court to re-write settlements. Its choice is limited to approving or not approving the settlement.³³

62. A court must be assured that the settlement secures appropriate consideration for the class in return for the surrender of its litigation rights against the defendants.³⁴ That said, it is not the court's function to substitute its judgment for that of the parties or attempt to renegotiate a proposed settlement. Nor is it the court's function to litigate the merits of the action, or, on the other hand, to rubber-stamp a settlement.³⁵

63. Where counsel is in possession of significant facts and knowledge of risks, the court is justified in assuming that counsel had a complete or almost complete understanding of the risks and rewards of further litigation, and the court will be more comfortable relying on class counsel's recommendation that the settlement is in the best interests of the class.³⁶

64. The court should consider whether there are any structural indicators that suggest collusion or conflict of interest,³⁷ such as agreements for non-monetary or conditional compensation that have optics suggesting the settlement is more favourable to class counsel.³⁸

³³ *Dabbs v. Sun Life Assurance Co. of Canada*, [1998 CanLII 14855](#) (ON SC), at para. 10.

³⁴ *Nunes v. Air Transat A.T. Inc.*, [2005 CanLII 21681](#) (ON SC), at para. 7.

³⁵ *Nunes v. Air Transat A.T. Inc.*, [2005 CanLII 21681](#) (ON SC), at para. 7.

³⁶ *Cannon v. Funds for Canada Foundation*, [2017 ONSC 2670](#), at paras. 5-10.

³⁷ *Leslie v. Agnico-Eagles Mines*, [2016 ONSC 532](#), at para. 8. *Green v. CIBC*, [2022 ONSC 373](#), at para. 17.

³⁸ *Smith Estate v. National Money Mart Co.*, [2010 ONSC 1334](#), at paras. 33 and 95, varied in part, [2011 ONCA 233](#). *Leslie v. Agnico-Eagles Mines*, [2016 ONSC 532](#), at footnote 10. *Brown v. Canada (Attorney General)*, [2018 ONSC 3429](#), at paras. 85-86

65. Other considerations include the recommendation and experience of counsel, the future expense and likely duration of litigation and risk and the number of objectors and nature of objections, if any.³⁹

66. Unlike the Pozgaj Action, which was started in 2018, the Woodard Action (started in 2022) is subject to the amendments to the *CPA* that came into force in 2020. Those amendments mandate that the Court must consider, in its overall assessment of whether a proposed settlement is fair and reasonable, a list of enumerated factors set out in section 27.1(5), including any risks associated with continued litigation; the range of possible recoveries in the litigation; and the method used for valuation of the settlement.⁴⁰

67. While consideration of the factors prescribed by section 27.1(5) was often done before the 2020 amendments, and the new provisions effectively codified the common law on class action settlement approval, the new provisions also include a mandatory requirement that “the moving party shall make full and frank disclosure of all material facts, including, in one or more affidavits filed for use on the motion, the party’s best information respecting [the enumerated factors].”⁴¹

68. For the present motion, and to discharge her obligation to make full and frank disclosure, Ms. Woodard relies on the evidence contained in an affidavit she has sworn for this motion; in affidavits and accompanying expert reports prepared by two experts retained in connection with the settlement approval motion (Dr. Sunita Surana and Prem Lobo); and in two affidavits from

³⁹ *Lozanski v. The Home Depot, Inc.*, [2016 ONSC 5447](#), at para. 73. *Nunes v. Air Transat A.T. Inc.*, [2005 CanLII 21681](#) (ON SC), at para. 7. *Robinson v. Medtronic, Inc.*, [2020 ONSC 1688](#), at para. 65.

⁴⁰ *Class Proceedings Act*, 1992, [S.O. 1992, c. 6](#), s. 27.1(5), Plaintiff’s Factum, Schedule “B”.

⁴¹ *Class Proceedings Act*, 1992, [S.O. 1992, c. 6](#), s. 27.1(5), Plaintiff’s Factum, Schedule “B”.

Garth Myers, a partner at KM and one of the lawyers who has acted on the Woodard Action from the start.

ii. The fairness and reasonableness of the proposed settlement

69. The proposed settlement is a fair and reasonable outcome for the class.

70. Class counsel's recommendation to Ms. Woodard is grounded in substantial experience in securities and investor protection class actions and a comprehensive assessment of the relevant factors summarized below and in Mr. Myers's first affidavit.⁴²

1. How the settlement was reached

71. As noted, the settlement resulted from complex, multi-party negotiations, assisted by experienced mediator Joel Wiesenfeld.

2. Information reviewed

72. The settlement was reached prior to certification. In such circumstances, concerns can arise about insufficient information to assess the applicable litigation risks. However, those concerns do not apply here. KM had a robust evidentiary foundation to assess liability and damages, including: (a) expert reports and analyses from Professor Eric Kirzner, Prem Lobo and Dr. Sunita Surana; (b) evidence filed in the summary judgment proceedings; (c) mediation data from the Defendants detailing trailing commissions paid to discount brokers; (d) industry reports and securities regulator filings, and the Defendants' public disclosures; (e) the evidence, arguments and reasons of Belobaba and Glustein JJ. in the TDAM and BMO certification proceedings; (f) the filings and

⁴² Myers Affidavit, para. 107-116, Plaintiff's Motion Record, Tab 6, p. 295-297.

reasons in the dismissal of the Frayce Action; and (g) thousands of documents produced in discovery in the parallel 2022 Actions.⁴³

73. These materials provided class counsel with a sufficiently complete factual and legal record to evaluate the settlement and recommend it to the class.

3. The litigation risks

74. The information described above allowed Class Counsel to understand both the potentially recoverable damages as well as the risks the action would face at trial.

75. Based on expert analysis of the data provided during mediation, Class Counsel calculated the total amount of trailing commissions paid by the Defendants to discount brokers from November 1, 2007 to June 1, 2022 (the Defendants' data window) was \$105.9 million.⁴⁴

76. The Defendants also provided data showing that an additional \$17.8 million in trailing commissions were paid to discount brokers from the Renaissance Mutual Funds during the same time period.⁴⁵

77. In addition to the general risks inherent in class action litigation, several case-specific risks were present, summarized below.

⁴³ Myers Affidavit, paras. 62-63, Plaintiff's Motion Record, Tab 6, p. 282-283.

⁴⁴ Myers Affidavit, para. 70, Plaintiff's Motion Record, Tab 6, p. 285.

⁴⁵ Myers Affidavit, para. 71, Plaintiff's Motion Record, Tab 6, p. 285.

(i) Risk that the Woodard Action would not be certified

78. Although the Pozgaj Action was certified as a class proceeding (on consent), and the 2018 actions against TD Asset Management Inc. and BMO Investments Inc. were certified on contested bases, a risk remained that the Woodard Action would not be certified because it rests on a different theory of liability and damages.

79. That risk was amplified by recent amendments to the *CPA*: s. 5(1.1) now requires the court at certification to consider superiority and predominance, raising the certification threshold for the Woodard Action.

(ii) Risk that Ms. Woodard would not succeed in establishing liability

80. The Defendants advanced multiple defenses that, if accepted, would have defeated liability, including that:

- (a) the payment of trailing commissions to discount brokers was lawful, industry standard, and known to regulators until prohibited in June 2022, such that no liability should attach (a defense that succeeded in Frayce);
- (b) the duties owed by the Defendants were defined and limited by the declaration of trust and the management agreement under which they operated, and that these governing documents do not impose the broad duties asserted in this action;
- (c) the declarations of trust and management agreements expressly authorized the management fee structure for the mutual funds, and that using a portion of that fee to pay trailing commissions to discount brokers was consistent with those governing documents and the disclosures made to unitholders;

- (d) unitholders cannot enforce any duties arising under the management agreements because they are not parties to that agreement and are not its intended beneficiaries;
- (e) s. 23.1 *Trustee Act* is procedural in nature and does not create a cause of action for beneficiaries, and the ability to challenge expenses under this section is superseded by the declarations of trust, which preclude any challenge to the trailer payments;
- (f) there was no misrepresentation under s. 130 of the *OSA* because the Defendants adequately disclosed the payment of trailing commissions to discount brokers in language that tracked prescribed regulatory language, and even if a misrepresentation existed, it could not reasonably be expected to have an impact on the market price or value of the units because the value is determined solely by the net asset value of each fund's underlying holdings;⁴⁶ and
- (g) Ms. Woodard's claim was brought out of time and is statute-barred.

(iii) Risk that Ms. Woodard would not establish damages

81. Ms. Woodard faced significant risk from both the Defendants and the plaintiff in the Pozgaj Action, all of whom argued that Ms. Woodard's case theory was flawed and that any recovery belonged solely to discount-broker unitholders.

82. The Defendants also contended that, under the funds' trust instruments, claims relating to a unit are released on its sale, which—if accepted—would limit recovery to losses on units still held. Based on Dr. Surana's analysis, this could reduce maximum recoverable damages by around 88%.⁴⁷

⁴⁶ Myers Affidavit, paras. 76-85, Plaintiff's Motion Record, Tab 6, p. 286-288.

⁴⁷ Myers Affidavit, para. 90, Plaintiff's Motion Record, Tab 6, p. 289.

83. The Defendants further argued that, even if discount brokers did not provide financial advice, the services they did provide conferred value equal to or exceeding the trailing commissions paid; acceptance of that argument would negate damages entirely.⁴⁸

84. Alternatively, the Defendants asserted that a 0.25% trailing commission (the current rate paid to discount brokers) is presumptively reasonable, such that recovery should be limited to commissions above that rate. On the available data and expert analysis, class counsel estimate acceptance of this theory could significantly reduce recoverable damages.⁴⁹

(iv) Risk associated with the Defendants' limitations defence

85. A principal risk was the Defendants' limitations defence. They maintained that class members had constructive knowledge of the alleged improper payments because, among other reasons, this was disclosed in the Defendants' prospectuses and Fund Facts documents, and because unitholders were informed of the fees associated with their investments at the time of purchase.

86. Under the Defendants' theory, the limitation period began at each class member's first mutual fund purchase, so only new purchases of mutual funds by class members within two years before July 2022 would survive. The Defendants also argued that class members, as clients of full service brokers, could inquire with their investment advisors regarding the payment of trailing commissions and the impact of payment of trailing commissions on mutual fund value.

⁴⁸ Myers Affidavit, para. 91, Plaintiff's Motion Record, Tab 6, p. 290.

⁴⁹ Myers Affidavit, para. 92, Plaintiff's Motion Record, Tab 6, p. 290.

87. Ms. Woodard contested imputing constructive knowledge to the class and, in the alternative, argued that any limitation periods are “rolling”—each trailing-commission payment gives rise to a fresh two-year limitation period—so that all commissions paid within the two-year look-back from July 2022 would remain recoverable.

88. If the Defendants’ imputation argument failed but Woodard established rolling limitation periods, recoverable damages in Woodard were estimated at approximately \$19.3 million; absent rolling periods, the recoverable figure would be a small fraction of that amount.⁵⁰

(v) Risk associated with the passage of time

89. Two practical considerations weigh in favour of settlement. First, many claims risk being effectively stale: the alleged misconduct spans over two decades, and early-period claimants may lack records (especially pre-electronic records) needed to prove losses. Even if liability were found, recoverable damages could be only a fraction of the theoretical maximum because proof will be unavailable for many class members.

90. Second, settlement delivers immediate, certain recovery. By resolving the action within three years of commencement, class members receive timely compensation rather than facing protracted litigation that could take a decade or more with uncertain outcomes.⁵¹

⁵⁰ Myers Affidavit, para. 89, Plaintiff’s Motion Record, Tab 6, p. 289.

⁵¹ Myers Affidavit, paras. 93-95, Plaintiff’s Motion Record, Tab 6, p. 290-291.

4. Release of claims relating to the Renaissance mutual funds

91. Because the class definition in the Woodard Action was tied to mutual funds for which CIBC Trust was the trustee, the Renaissance mutual funds (for which CAM was trustee), were not included within the scope of the initially pleaded claims.

92. During settlement discussions, the Defendants took the position that any settlement must include a release of claims against CAM relating to the Renaissance mutual funds. Class counsel advised that they would agree to such a release only if the total settlement payment adequately compensated Renaissance fund class members for their claims.

93. All of the risks and arguments set out in the previous section applied equally to claims concerning the Renaissance funds. However, whereas a successful limitation period defence in respect of the CIBC mutual funds would lower recoverable damages for those funds, the same defence would result in no recoverable damages in respect of the Renaissance funds because no trailing commissions were paid to discount brokers within the two-year limitation period applicable to Renaissance fund class members.⁵²

5. The allocation of the global settlement fund as between the Woodard Action and the Pozgaj Action

94. Many defenses in the Woodard and Pozgaj Actions were identical except for the differing impact of the limitations defence. Accordingly, comparing each settlement's value as a percentage of maximum recoverable damages under the defendants' two-year look-back framework is a useful fairness benchmark.

⁵² Myers Affidavit, paras. 96-98, Plaintiff's Motion Record, Tab 6, p. 291.

95. Excluding the “rolling” limitation theory, maximum recoverable damages in the Woodard Action under the two-year look-back were \$19.3 million. The \$11 million settlement represents approximately 57% of that figure.⁵³

96. By comparison, the Defendants’ payments to discount brokers in the post-April 2016 two-year look-back window in the Pozgaj Action were approximately \$47.3 million. The \$26 million recovery under the settlement of the Pozgaj Action equals roughly 55% of that amount.⁵⁴

97. The slightly higher proportional recovery here (57% versus 55%) supports class counsel’s conclusion that the Woodard settlement is fair and reasonable.

6. Comparison of Woodard (CIBC) and Aggarwal (TDAM) settlements

98. The settlement here compares favourably with the earlier settlement with TDAM in the Aggarwal Action (approved in January 2025) as the Woodard settlement represents a significantly greater recovery as a percentage of total trailing commissions, and is in the same range of recovery as a percentage of trailing commissions paid within the two-year lookback period:

⁵³ Myers Affidavit, para. 100, Plaintiff’s Motion Record, Tab 6, p. 292.

⁵⁴ Myers Affidavit, para. 101, Plaintiff’s Motion Record, Tab 6, p. 292.

	Aggarwal Action	Woodard Action (CIBC + Renaissance)	Woodard Action (CIBC only)
Total trailers paid	\$622 million	\$123.7 million (\$105.9 million (CIBC) + \$17.8 million (Renaissance))	\$105.9 million
Recovery as a percentage of total trailers paid⁵⁵	1.4% (\$8.5 million / \$622 million)	8.61% (\$11 million / \$123.7 million)	10.4% (\$11 million / \$105.9 million)
Recovery as a percentage of trailers paid in two-year lookback	61.6% (\$8.5 million / \$13.8 million)	57% (\$11 million / \$19.3 million)	57% (\$11 million / \$19.3 million) ⁵⁶

7. The Defendants' agreement to assist with in settlement administration

99. Under the settlement, the Defendants will directly deposit a portion of the settlement fund into the mutual fund trusts, increasing the NAV of units held by current unitholders. This delivers an immediate, no-action benefit to current holders, materially boosts take-up, simplifies administration, and substantially reduces implementation costs.

8. No objections or comments on the settlement agreement

100. Class counsel published the approved settlement notice as required. No objections or comments have been received.

⁵⁵ It's not a complete apples-to-apples comparison, however, in terms of the recovery as a percentage of total trailers paid in Aggarwal versus Woodard because the trailing fee data that was available in Aggarwal (based on TDAM records) started in 2003, whereas the trailing fee data that was available in Woodard (based on CIBC records) started in 2008.

⁵⁶ Myers Affidavit, para. 104, Plaintiff's Motion Record, Tab 6, p. 293.

9. Experience of class counsel

101. Class Counsel collectively have acted for plaintiffs in over 75 class actions, bringing extensive experience in class action strategy, settlements, damages methodology and the specific risks presented by investor-protection litigation.

102. For the reasons summarized above and in the accompanying affidavit evidence, Class Counsel believe the proposed settlement—its quantum, non-reversionary structure, and proposed allocation plan—is fair, reasonable and in the best interests of the class. It delivers a substantial, immediate recovery on claims facing significant legal, evidentiary and limitations risks.

10. No suggestion of collusion or conflict

103. The proposed settlement contains no structural features indicative of collusion or conflicts of interest.

104. For the reasons above and in the supporting affidavit evidence, the settlement falls squarely within the zone of reasonableness, is fair and reasonable, and should be approved.

B. Approval of the notice and notice plan

105. The notices of the settlement approval hearing were circulated in accordance with this Court's orders. The parties have agreed on the form of the second notice addressing settlement approval, counsel fees and disbursements, administrator appointment, claims process start date, claims deadline and claim procedures.

106. The proposed notice plan mirrors the plan previously approved by this Court. It requires dissemination of a short-form notice by: (i) posting on class counsel's webpage; (ii) emailing class

members who have requested updates (where possible); (iii) a bilingual news release via Canada News Wire; (iv) one publication in the national weekend business section of The Globe and Mail (English); (v) one publication in the business section of La Presse (French); and (vi) filing the release on SEDAR. The long-form notice will be posted on class counsel's webpage and promoted via a bilingual Google banner campaign (700,000 impressions nationwide for 30–35 days) and a 12-day sponsored news link on Stockhouse.⁵⁷

107. Under the proposed plan of allocation, current unitholders need not submit a claim.

108. The estimated cost of the notice program is approximately \$150,000.

109. This notice program—identical to the Court-approved prior plan—is robust, bilingual, proportionate to the settlement size, and appropriate to ensure notice to class members nationally.

C. Approval of the plan of allocation, claim form and appointment of the proposed administrator

i. Plan of allocation

1. Legal principles applicable to the approval of a plan of allocation

110. The test for approving a plan of allocation is analogous to the test for settlement approval: it must be fair and fall within a zone of reasonableness. This assessment allows for a variation between distribution plans depending on the subject matter of the litigation and the nature of the damages for which the settlement provides compensation.⁵⁸

⁵⁷ Myers Affidavit, para. 158, Plaintiff's Motion Record, Tab 6, p. 307.

⁵⁸ *Zaniewicz v. Zungui Haixi Corporation*, [2013 ONSC 5490](#), at para. [59](#).

111. A plan of allocation is reviewed on an objective standard, which recognizes the inherent difficulty in crafting a universally satisfactory distribution plan.⁵⁹ Distinguishing between different claimants is reasonable and appropriate.⁶⁰ That some class members may be over- or under-compensated, or not compensated at all, is not a bar to approving a distribution plan if the plan will otherwise result in a high take-up rate.⁶¹

2. The proposed plan of allocation and the claim form

112. The proposed plan of allocation sets out how the settlement fund will be allocated among class members. The plan was designed with a view to minimizing administration costs while maximizing the funds available for distribution.

113. A plan of allocation in a securities class action typically starts by requiring each class member to submit a claim form identifying when they acquired and disposed of their investments, accompanied by documentary support for each transaction. A claimant's submission would then be verified by a class action administrator, and then the net settlement fund would be distributed among valid claimants on a *pro rata* basis. Precision, however, comes with expense, which may be justified depending on the value of each claim and the size of the overall settlement fund.

114. One notable feature here is that the individual damages suffered by each claimant are low. While aggregate damages are large, many claimants would likely have suffered damages in the range of \$5 to \$10. Because individual damages are low, the cost of paying a claims administrator

⁵⁹ *Brazeau v. Canada (Attorney General)*, [2020 ONSC 7229](#), at para. [74](#).

⁶⁰ *Brazeau v. Canada (Attorney General)*, [2020 ONSC 7229](#), at para. [77](#), citing *Gould v BMO Nesbitt Burns Inc.*, [2007 CanLII 9239](#) (ON SC), at paras. [19-23](#).

⁶¹ *Dufault v. The Toronto-Dominion Bank*, [2024 ONSC 961](#), at paras. [31-33](#).

to verify each claimant's submission and review documentation could dwarf the compensation payable to each claimant, eating up a significant amount of the compensation fund.⁶²

115. On top of that, in class counsel's experience, individual damages in this range may influence the take-up rate. This is particularly true where class members must submit a claim form requiring information about their transactions, a time-consuming process with little corresponding reward in the form of compensation.⁶³

116. These concerns raised challenges requiring the development of a plan of allocation that balances fairness and reasonableness among class members while encouraging class member submissions through a straightforward claims process and minimizing administrative costs. To achieve these goals, class counsel developed a plan of allocation to encourage class members to make claims while not unnecessarily depleting the settlement fund through administration costs.

117. As described below, the development of this plan of allocation required significant work by class counsel, assisted by experts, to streamline and simplify the process for claimants to maximize take-up and minimize administration cost.

118. The proposed plan was designed from a starting point that categorized class members into four groups:

- (a) those that currently hold one or more units of CIBC mutual funds ("**Current CIBC Holders**");

⁶² Myers Affidavit, paras. 120-122, Plaintiff's Motion Record, Tab 6, p. 297-298.

⁶³ Myers Affidavit, para. 120, Plaintiff's Motion Record, Tab 6, p. 297.

- (b) those that no longer hold any units of CIBC mutual funds (**“Former CIBC Holders”**);
- (c) those that currently hold one or more units of Renaissance Funds (**“Renaissance Fund Holders”**); and
- (d) those that no longer hold any units of Renaissance Funds.

119. The settlement fund, after payment of class counsel fees, disbursements and taxes, the levy payable to the Class Proceedings Fund, and the payment of administration expenses (the **“Net Settlement Amount”**) will be distributed into three funds for each of the first three groups of class members listed above.

120. As discussed below, no amount of the settlement funds have been allocated under the proposed plan to the last category set out above—former unit holders of Renaissance mutual funds—because it is not possible to implement a cost-effective, proportionate claims process to administer the payment of such claims (which as set out below only represent 2% of the overall settlement funds).

121. **The plan of allocation for Current CIBC Holders and Renaissance Fund Holders:** Current CIBC unitholders and Renaissance Fund Holders will be compensated without having to do anything. The plan provides for a direct deposit by CIBC of a portion of the net settlement fund into the CIBC and Renaissance mutual fund trusts. This will, in turn, increase the value of all CIBC and Renaissance mutual fund units for current mutual fund unit holders. This allows current unitholders to be compensated without the need to subject them to a traditional claims process.⁶⁴

⁶⁴ Myers Affidavit, para. 128, Plaintiff's Motion Record, Tab 6, p. 299.

122. Direct deposit has significant benefits over a traditional claims process. It saves significant administration costs. For example, the proposed claims administrator has estimated that the administration cost for 25,000 claims would be \$276,940.⁶⁵ On top of that, it will lead to a 100% take-up rate for current holders. This is a major benefit under the proposed settlement agreement. Take-up in class actions can range as low as 5% and can be particularly low when the individual claim size is low. By depositing a portion of the settlement fund back into the mutual fund trusts, in effect, 100% take-up will be achieved for these groups of class members.⁶⁶

123. At the same time, these benefits must be measured against the drawback that by directly depositing a portion of the net settlement fund into the mutual fund trusts, some non-class members who purchased units after June 2022 (the date that discount brokers stopped receiving trailing commissions) will benefit. Additionally, because of redemptions, current unitholders will not be compensated exactly in accordance with the damages they have sustained.

124. That said, in class counsel's view, the benefits of a direct deposit—no administrative costs and 100% a take-up rate—far outweigh these drawbacks, and the plan of allocation for current holders results in a massive benefit to the class.

125. The plan of allocation requires class counsel to provide CIBC with a direction allocating the portion of the net settlement fund for Current CIBC Holders and Renaissance Holders among the CIBC and Renaissance mutual funds. Class counsel engaged Prem Lobo of Cohen Hamilton Steger to prepare this direction. Mr. Lobo delivered a report setting out his methodology, which is included in Ms. Woodard's motion record. In short, Mr. Lobo relied on data provided by CIBC

⁶⁵ Myers Affidavit, para. 128, Plaintiff's Motion Record, Tab 6, p. 299.

⁶⁶ Myers Affidavit, para. 129, Plaintiff's Motion Record, Tab 6, p. 299.

and reasonable assumptions to allocate this portion of the net settlement fund in proportion to the quantum of trailing commissions paid to discount brokers from each mutual fund trust.⁶⁷

126. **The plan of allocation for former CIBC mutual fund unitholders:** Unlike for current holders, CIBC has advised that there is no way to directly compensate former CIBC mutual fund unit holders.⁶⁸ For this reason, this group requires a traditional claims process where former unitholders must submit claims for compensation. Under the plan of allocation, each former holder that submits a valid claim will be entitled to a pro-rated amount of the portion of the net settlement fund allocated to former holders to a maximum of \$32. Then, any funds remaining after claims have been paid will be deposited directly into the CIBC mutual funds for the benefit of current holders, obviating any need for a *cy-près* distribution.

127. The claims process for former holders is designed to increase the take-up rate and decrease administration costs by being as straightforward and as minimally burdensome as possible. The claim form only requires claimants to provide basic information and allows a wide variety of documentation to establish ownership of a CIBC mutual fund. Claimants who no longer have access to documentation can explain the reason, and if found acceptable to the administrator, will have their claims accepted.

128. The plan of allocation also provides for compensation of \$32 to each successful claimant, a figure that is expected to be attractive enough to encourage claims. Finally, compensating each successful claimant with a flat \$32 each reduces the cost of administration because it obviates the

⁶⁷ Myers Affidavit, para. 143, Plaintiff's Motion Record, Tab 6, p. 304. Expert Report of Prem Lobo dated December 15, 2025, Exhibit "A" to the Affidavit of Prem Lobo, affirmed December 15, 2025, Plaintiff's Motion Record, Tab 8-A, p. 527.

⁶⁸ Myers Affidavit, para. 130, Plaintiff's Motion Record, Tab 6, p. 300.

need for the administrator to validate every aspect of each submission, a process that would otherwise be costly and time consuming.⁶⁹

129. The sections below explain the reasoning underlying the allocation between the three groups of claimants and the \$32 maximum compensation payable to Former CIBC Holders.

130. **Allocation between Current CIBC Holders, Former CIBC Holders, and Renaissance Fund Holders:** The proposed plan of allocation provides for the division of the net settlement fund as follows:

- (a) Current CIBC Holders: 38.11%
- (b) Former CIBC Holders: 59.05%
- (c) Renaissance Fund Holders: 2.84%.

131. To determine a fair and rational allocation of the settlement funds, class counsel first assessed the relative damages associated with current and former holders of the CIBC and Renaissance mutual funds. Based on data produced by CIBC, the total trailing commissions at issue for the CIBC mutual funds were approximately \$105.9 million. The corresponding figure for the Renaissance Funds was approximately \$17.8 million.

132. Relying on the expert evidence of Dr. Sunita Surana, class counsel then allocated these amounts between Current and Former CIBC holders using Dr. Surana's estimate that approximately 12% of the affected net asset value remained in the hands of current investors, while

⁶⁹ Myers Affidavit, paras. 137-138, Plaintiff's Motion Record, Tab 6, p. 302-303.

88% of the affected units had been redeemed. Applying these same proportions to the Renaissance figures resulted in a preliminary distribution of damages across the four groups.

133. The next step was to adjust these preliminary amounts to account for the relative litigation risks associated with the claims of each the four groups. While the claims of all groups faced litigation risks, there were certain risks that applied exclusively or disproportionately to the claims of Former CIBC Holders and both current and former holders of the Renaissance Funds:

- (a) **Release Defence:** CIBC's defence that any claims are released upon the redemption of a unit applied exclusively to those that have sold their units, *i.e.* former CIBC holders and former Renaissance holders;
- (b) **Stale-Claims Risk:** The risks associated with stale claims was higher for investors who purchased units earlier in the class period and therefore applied disproportionately to former CIBC holders and former Renaissance holders;
- (c) **Limitation Period Defence:** The limitation defence applied disproportionately to investors who purchased their units more than two years before the action was commenced, *i.e.* former CIBC holders and all Renaissance holders (because no action has yet been commenced on their behalf); and
- (d) **No Action Commenced:** There are additional procedural and substantive risks arising from the fact that no action exists on behalf of Renaissance holders.

134. Class counsel assigned a risk weighting for each of these four risks. Each of the four groups was then assigned an overall "risk adjustment factor" based on the combination of risks that applied to each, as follows:

Risk category	Former CIBC	Former Renaissance	Current Renaissance
Release defence	X	X	
Stale claims	X	X	
Limitation defence	X	X	X
No action commenced		X	X
Risk adjustment factor⁷⁰	21.125%	4.225%	13.000%

135. Applying these risk adjustments to the preliminary damages produced risk-adjusted values that reflected a reasonable litigation value for each group's claims. The risk-adjusted amounts for each group were then used to determine each group's proportionate share of the total \$11,000,000 settlement amount, calculated in reference to the overall risk-adjusted available damages of \$33,058,729, as shown below:

	Preliminary damages	Risk Adjustment Factor	Risk-Adjusted Damages	Allocation
CIBC current	\$ 12,600,000	-	\$12,600,000	38.11%
CIBC former	\$ 92,400,000	21.125%	\$19,519,500	59.05%
Renaissance current	\$ 2,135,419	13.000%	\$277,605	0.84%
Renaissance former	\$ 15,659,743	4.225%	<u>\$661,624</u>	2.00%
			\$33,058,729	

136. Class counsel concluded that it would be uneconomical to run a claims process for former Renaissance holders given the size of the settlement fund allocated to them and the anticipated administration costs relative to what would be very small individual claim amounts that could be paid out from the remaining former Renaissance settlement fund net of required administrative costs. Accordingly, the amount allocated above to the Renaissance former unit holders was

⁷⁰ The total "risk adjustment factor" represents the amount of the preliminary damage amount allocated to each group that remains after discounting that amount by each of the applicable risk categories for that group. For example, for the Former CIBC category, the total of the applicable risk categories was 78.875%, meaning that the preliminary damage amount needed to be discounted by 78.875%, which leaves 21.125% of the preliminary amount remaining—which is the total "risk adjustment factor" shown on the chart above.

combined into the amount allocated to current Renaissance unit holders, which claims can be direct deposited (and don't require a claims process) and thus require no administration expense.

137. **Rationale for maximum \$32 payment to Former CIBC Holders:** The plan of allocation provides for a maximum payment of \$32 to each former unitholder. The \$32 figure is class counsel's estimate of the damages suffered by the average class member. This figure was derived based on: (1) the estimated average per class member investment in CIBC mutual funds (\$25,000); (2) the estimated average length of investment (five years); and (3) the estimated average annual decline in value of a CIBC mutual fund unit from payment of trailing commissions to discount brokers (0.038%). As explained in the affidavit of Garth Myers, these estimates were all based on evidence available to class counsel.⁷¹

138. No objections to, or comments on, the plan of allocation were received.

ii. The proposed claims administrator

139. Verita is the proposed claims administrator for former unitholders. Verita and its predecessors have administered over 200 class action settlements in Canada and distributed more than \$5 billion across securities, price-fixing, medical, consumer and employment matters. Verita estimates administration costs of approximately \$150,000.

⁷¹ Myers Affidavit, paras. 139-141, Plaintiff's Motion Record, Tab 6, p. 303.

PART V - ORDERS REQUESTED

140. Ms. Woodard and class counsel request that the Court issue orders in the form of the two draft orders provided.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

Date: December 17, 2025

A handwritten signature in blue ink, appearing to read "Paul Guy / Serge Kalloghlian".

Paul Guy / Serge Kalloghlian

Lawyers for the Plaintiff

SCHEDULE “A” - AUTHORITIES

1. *Robinson v. Medtronic, Inc.*, [2020 ONSC 1688](#)
2. *Nunes v. Air Transat A.T. Inc.*, [2005 CanLII 21681](#) (ON SC)
3. *Lozanski v. The Home Depot, Inc.*, [2016 ONSC 5447](#)
4. *Dabbs v. Sun Life Assurance Co. of Canada*, [1998 CanLII 14855](#) (ON SC)
5. *Cannon v. Funds for Canada Foundation*, [2017 ONSC 2670](#)
6. *Leslie v. Agnico-Eagles Mines*, [2016 ONSC 532](#)
7. *Green v. CIBC*, [2022 ONSC 373](#)
8. *Smith Estate v. National Money Mart Co.*, [2010 ONSC 1334](#)
9. *Brown v. Canada (Attorney General)*, [2018 ONSC 3429](#)
10. *Zaniewicz v. Zungui Haixi Corporation*, [2013 ONSC 5490](#)
11. *Brazeau v. Canada (Attorney General)*, [2020 ONSC 7229](#)
12. *Gould v BMO Nesbitt Burns Inc.*, [2007 CanLII 9239](#) (ON SC)
13. *Dufault v. The Toronto-Dominion Bank*, [2024 ONSC 961](#)

SCHEDULE “B” – STATUTES

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

Settlement

27.1 (1) A proceeding under this Act may be settled only with the approval of the court.

Subclass

(2) A settlement may be concluded in relation to the common issues affecting a subclass only with the approval of the court.

Not binding without court approval

(3) A settlement under this section is not binding unless approved by the court.

Effect of settlement

(4) If a proceeding is certified as a class proceeding, a settlement under this section that is approved by the court binds every member of the class or subclass, as the case may

Settlement must be fair and reasonable

(5) The court shall not approve a settlement unless it determines that the settlement is fair, reasonable and in the best interests of the class or subclass members, as the case may be.

Differences not a bar

(6) The court may approve a settlement even if individual class or subclass members, including a representative party, are subject to different settlement terms.

Evidentiary requirements

(7) On a motion for approval of a settlement, the moving party shall make full and frank disclosure of all material facts, including, in one or more affidavits filed for use on the motion, the party's best information respecting the following matters, which the court shall consider in determining whether to approve the settlement:

1. Evidence as to how the settlement meets the requirements of subsection (5).
2. Any risks associated with continued litigation.
3. The range of possible recoveries in the litigation.

4. The method used for valuation of the settlement.
5. The total number of class or subclass members, as the case may be.
6. A plan for allocating and distributing the settlement funds, including any proposal respecting the appointment of an administrator under subsection (14), and the anticipated costs associated with the distribution.
7. The number of class or subclass members expected to make a claim under the settlement and, of them, the numbers of class or subclass members who are and who are not expected to receive settlement funds.
8. The number of class or subclass members who have objected or are expected to object to the settlement, and the nature or anticipated nature of the objections.
9. A plan for giving notice of the settlement to class or subclass members in the event of an order under section 19, and the number of class or subclass members who are expected to obtain the notice.
10. Any other prescribed information.

DARLENE WOODARD
Plaintiff
(Moving Party)

and

CANADIAN IMPERIAL BANK OF COMMERCE et al.
Defendants

Court File No.: CV-22-0000690374-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

FACTUM OF THE PLAINTIFF
(Motions to Approve Proposed Settlement
Agreement, Notice, Notice Plan and Plan of
Allocation)

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