

## **Information for Self-Represented Class Members Attending a Class Action Settlement, Distribution and/or Fee Approval Hearing in Ontario**

This document is intended to provide information to self-represented class members about the settlement, distribution and fee approval hearing in Ontario. The notice of the approval hearing will provide additional information so please read it carefully.

### **1. What matters are typically addressed at an approval hearing?**

Settlements of class actions are subject to court approval. A settlement approval hearing is held to assist the court in determining whether the settlement is fair, reasonable, and in the best interests of the settlement class (the group of people affected by the proposed settlement). At a settlement approval hearing, the court can either approve the settlement or not approve the settlement. The court does not have jurisdiction to *amend* the terms of a settlement.

At the settlement approval hearing, the court may also be asked to approve a protocol for the distribution of the settlement funds to settlement class members and/or to approve class counsel fees. Class counsel are the lawyers appointed by the court to represent the class.

Class members have the right to make submissions about the settlement agreement, the distribution protocol and class counsel fees.

### **2. Where can I find details about the proposed settlement, distribution of settlement funds, and class counsel fees?**

The notice of the approval hearing provides a summary of the proposed settlement, the proposed protocol for the distribution of settlement funds (if applicable), and class counsel's proposed fees. You are encouraged to review the full settlement agreement and protocol. These documents should be posted on class counsel's website. Review the notice of approval hearing carefully as it may also provide direction about how the hearing will be conducted.

### **3. Are class members required to attend an approval hearing?**

No, class members are not required to attend an approval hearing, but may choose to do so.

### **4. How long is an approval hearing?**

The length of the hearing typically varies from 15 minutes (for example: where a judge has reviewed the settlement approval materials and requires limited submissions) to several hours. In exceptional circumstances, the approval hearing may last one or more days (for example: where a settlement is complex or where there are multiple class members making submissions). If the hearing is scheduled for several days, you should attend on the first day, in case the full time is not required.

## **5. Can I make submissions (speak) at an approval hearing?**

If you are a class member, you may provide submissions at the approval hearing. You may provide submissions in writing and/or in person. The notice of approval hearing will typically provide a deadline for providing written submissions and/or for indicating that you wish to make submissions in person. The notice of approval hearing will also set out the requirements for objecting to the proposed settlement, the proposed distribution protocol (if applicable), and/or class counsel's proposed fees. For example, in some cases, the notice of approval hearing may require that class members who object must provide written submissions in advance of the hearing. Advance notice of the objections to be raised and/or the intention to make submissions at the hearing enables the lawyers and the court to better plan for the hearing.

Written submissions can be provided in English or French. If necessary, class counsel will prepare an unofficial translation of the written submissions for the judge.

**Do not write directly to the Court or the Judge.**

Typically, class counsel will make submissions regarding the settlement, proposed distribution protocol (if applicable), and class counsel's proposed fees, followed by any submissions by counsel for the settling defendants. Thereafter, any class member who has indicated they wish to make submissions may be invited to speak. Class counsel and defence counsel may make further submissions responding to the comments raised by class members.

It is important to remember that the judge ultimately controls the proceedings and may prescribe the agenda for the day including any breaks as well as the time allotted to the various parts of the proceeding.

## **6. What is a virtual approval hearing?**

A virtual approval hearing is a hearing conducted using an online video platform, i.e., Zoom.

## **7. Can I attend and/or participate in a virtual approval hearing?**

Class members may attend and/or participate in a virtual approval hearing. Class members wishing to attend and/or participate in a virtual approval hearing should check the notice of approval hearing for details about the hearing (i.e., the Zoom meeting ID and password) or who to contact for details about the hearing.

Class members seeking to attend and/or participate in the virtual approval hearing should log into the hearing at least 10 minutes in advance. Class members will be asked to identify themselves to the court registrar, indicate whether they will be making submissions, and use their full name as the "participant" name.

During the hearing, when you are not speaking, you should remain muted and you may (or may be directed to) turn off your video. When speaking, you should unmute yourself and, if you turned off your video, turn your video back on.

You should conduct yourself, and select your attire, in the same manner as if you were attending court in-person. More information about etiquette in virtual hearings is available [here](#).

**8. Can I attend and/or participate in an in-person approval hearing?**

Class members may attend and/or participate in an in-person approval hearing. Class members wishing to attend and/or participate in an in-person approval hearing should check the notice of approval hearing for details about the hearing (i.e., court address and start time) or who to contact for details about the hearing.

Class members seeking to attend and/or participate in an in-person approval hearing should arrive in sufficient time to locate parking, go through court security and find the correct court room. Class members should arrive at the court room at least 10 minutes in advance. Class members will be asked to identify themselves to the court registrar and indicate whether they will be making submissions.

**9. What if I wish to make submissions, but am unable to attend the approval hearing?**

You may elect to provide written submissions instead (in accordance with the instructions contained in the notice of approval hearing). These will be provided to the Judge presiding over the approval hearing.

Alternatively, or in addition, you can contact class counsel to discuss whether alternative arrangements can be made (i.e., appearing on a different date or by video or teleconference). Class counsel will coordinate with the court to determine whether alternative arrangements can be made. Ultimately, it will be for the Judge to decide whether other arrangements can be made.

**Do not write directly to the Court or the Judge.**

**10. Can I opt-out (exclude myself from) the class action if I am not satisfied with the outcome of the approval hearing?**

In some cases, the deadline to opt-out of the class action will have already passed before the approval hearing takes place. In some cases, the opt-out deadline might have passed in the context of an earlier settlement in the action (in a case involving multiple defendant groups) or in the context of a contested certification (certification is the motion where the court is asked to decide if the case can appropriately proceed as a class action). In any of these circumstances, there will usually be no further opportunity to opt-out of the class action.

In other cases, the deadline to opt-out of the class action may be after the approval hearing. In these circumstances, you can exercise the right to opt-out as long as you do so before the opt

out deadline. In such cases, the process for opting out of the class action will be included in the notice approving the settlement.

#### **11. What if I still have questions?**

If you still have questions about the approval hearing, the settlement itself, the proposed distribution of the settlement funds (if applicable), class counsel's proposed fees, and/or the right to opt out of the class action, you should contact class counsel. You can find their name and contact information in the notice of approval hearing. **Do not contact the Court or the Judge.**