

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

<b>BETWEEN:</b>	)	
	)	
<b>MARC-OLIVER BAROCH</b>	)	<i>Jonathan C. Lisus, Rahool P. Agarwal, and</i>
Plaintiff	)	<i>Michael A. Currie for the Plaintiff</i>
<b>- and -</b>	)	
	)	
<b>CANADA CARTAGE DIVERSIFIED</b>	)	
<b>GP INC., DIRECT GENERAL</b>	)	
<b>PARTNER CORPORATION and</b>	)	
<b>CANADA CARTAGE SYSTEM,</b>	)	
<b>LIMITED</b>	)	
	)	
Defendants	)	
	)	
Proceeding under the <i>Class Proceedings</i>	)	<b>HEARD:</b> In writing
<i>Act, 1992</i>	)	
	)	

**PERELL, J.**

**REASONS FOR DECISION**

[1] Pursuant to the *Class Proceedings Act, 1992*,<sup>1</sup> Marc-Oliver Baroch sued Canada Cartage Diversified GP Inc., Direct General Partner Corporation, and Canada Cartage System, Limited with respect to their obligations to pay overtime in accordance with federal law.

[2] In this certified and settled class action, Mr. Baroch, the Representative Plaintiff, now brings a consent motion for an order to amend the Distribution Protocol.

[3] The case was certified as a class proceeding on January 30, 2015.

[4] In June 2021, the parties settled the action. The defendants agreed to pay \$22.25 million (inclusive of legal fees, disbursements, taxes, and administration costs, and litigation funding expenses) to the Class.

[5] The settlement was approved on November 1, 2021.

[6] Along with Class Counsel, Cohen Hamilton Steger & Co. and RicePoint are responsible for administering the distribution of the settlement funds.

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<sup>1</sup> S.O. 1992, c. 6.

[7] The distribution protocol pursuant to the settlement agreement calls for two distributions.

[8] Class Members were notified of whether they were in the class, and if so, an estimate of their share of the proceeds. A feature of the distribution process is that it does not include a claims process. Instead, if the records indicate that a class member is entitled to a distribution over \$50, the class member will receive a cheque at the last known location provided by the defendants.

[9] There are approximately 7,300 Class Members, of whom about 4,600 were entitled to and were sent a First Distribution cheque.

[10] The first distribution cheques were sent in December 2022 and January 2023.

[11] After six months (in approximately late June and early July), the First Distribution cheques became stale. Class Counsel posted an announcement on the website inviting Class Members who had not received their First Distribution cheques to contact RicePoint before September 1, 2023, to request a reissue.

[12] In preparation for the second distribution, it then became apparent that there were a number of unforeseen problems or issues to resolve about additional funds to distribute; namely:

- a. Almost \$1.0 million was uncashed from the First Distribution.
- b. RicePoint paid \$273,241.96 in payroll taxes relating to the stale-dated first distribution cheques; RicePoint is seeking the return of those funds to the Class Fund from the tax authorities.
- c. The settlement fund has accrued interest of nearly \$350,000.
- d. Two Class Members contacted Class Counsel after September 1, 2023, advising that they did not cash their cheques from the First Distribution cheques and wished replacements.

[13] In bringing this motion, Class Counsel seeks to deal with the extra funds in the Second Distribution by requesting approval for amendments to the distribution protocol.

[14] If the extra funds are not incorporated into the Second Distribution, Class Counsel will need to re-attend before the Court in mid-2024 to request a third distribution in late 2024 or early 2025. This will be expensive and will delay distributing the funds to Class Members.

[15] Class Counsel seeks approval, pursuant to a Further Amended Distribution Protocol, to pay any remaining funds after the Second Distribution to any class members who did not cash their First Distribution cheques who come forward.

[16] Further Class Counsel finally seeks the Court's advance approval for a *cy-pres* order. Pursuant to this order any remaining funds after the Second Distribution and after distribution to any Class Members who did not cash their First Distribution cheques would be donated to SickKids Hospital and/or the OTA Education Foundation.

[17] The rationale for the motion now before the court was summarized in a letter to the court. The letter stated:

We write to request the Court's further direction on the second distribution for the Canada Cartage class action. Now that the first distribution has been complete (including the month grace period after first distribution cheques went stale), we have discovered the following outstanding issues.  
[...]

1. Reallocation of uncashed cheques: the total amount of uncashed cheques from the first distribution is over \$1 million. Moreover, pursuant to tax advice received by RicePoint, payroll taxes (e.g. CPP and EI) were paid on all cheques sent in the first distribution, including cheques that have not been cashed. We anticipate the CRA will return approximately \$275,000 from payroll taxes relating to class members who never cashed their cheques. The current distribution protocol does not contemplate what to do with these uncashed cheques and the remittances from the CRA;

2. Distribute accrued interest: the accrued interest in trust right now is approximately \$350,000. At the time of preparing the distribution protocol, interest rates were much lower than they are today. We had not included a process to distribute the interest in the original distribution protocol;

3. Distribution of remaining funds to class members who did not cash their first cheque: despite the team's best efforts, and despite the proposed reallocation, not every penny will be distributed in the second distribution. For funds remaining after the second distribution, we would like to have a court-approved process to send new cheques to class members who contacted us after the first distribution and who failed to cash their cheques. With any funds leftover, we would distribute those funds proportionately to those class members, who would otherwise have not been eligible for a payment. As of now, we have only had two class members who have contacted us notifying us that they failed to cash their first cheques, but there is a chance other class members will contact us or RicePoint in the coming months.

4. *Cy-pres*: we do not yet have directions from the Court on where any excess funds should be allocated after the second distribution. Our goal is to distribute as much of the funds as we can to Class Members in the second distribution, but we will inevitably have funds left over. We request the Court's approval now to distribute any leftover funds equally to the Hospital for Sick Children and to the OTA Education Foundation, which provides scholarships to "children of parents who work in Ontario's trucking industry."

[...]

Class Counsel believes it is an opportune time for this Court to address all the outstanding distribution-related issues such that it should not be necessary to come back to this Court to finish the administration of the settlement. Class Counsel's aim is to expeditiously commence the second distribution and to save the Court's time and resources by addressing the remaining issues now.

[18] The defendants do not oppose the motion.

[19] I am satisfied that it is appropriate to grant this motion as requested.

Perell, J.

Released: November 14, 2023

**CITATION:** Baroch v. Canada Cartage Diversified GP Inc., 2023 ONSC 6398  
**COURT FILE NO.:** CV-13-492525-00CP  
**DATE:** 20231114

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SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**MARC-OLIVER BAROCH**

Plaintiff

- and -

**CANADA CARTAGE DIVERSIFIED GP INC.,  
DIRECT GENERAL PARTNER CORPORATION  
and CANADA CARTAGE SYSTEM, LIMITED**

Defendants

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**REASONS FOR DECISION**

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PERELL J.

**Released:** November 14, 2023