

**Schedule A – Settlement Hearing Notice**  
**ATHLETIC TRUST OF CANADA TIMESHARE PROGRAM CLASS ACTION**  
**NOTICE OF PROPOSED SETTLEMENT**

**TO: ALL CLASS MEMBERS IN *LIPSON v. CASSELS BROCK AND BLACKWELL LLP***  
**COURT FILE NO.: CV-09-376511-00CPA1**

This Notice is directed to all Class Members in this certified class proceeding. The Plaintiff and the Defendant, Cassels Brock and Blackwell LLP (“Cassels”), (together, the “Parties”) have agreed to settle this class action for the all-inclusive amount of \$8.25 million. The settlement was reached following extensive negotiations between the parties and with the assistance of a retired judge (mediator).

This Notice is published by Order of the Ontario Superior Court of Justice and explains the proposed settlement and how Class Members may comment (in support of or, in opposition to) the proposed settlement. The agreement to settle this matter does not imply any such liability, wrongdoing, or fault on the part of Cassels, none of the allegations against Cassels have been proven and Cassels expressly denies any liability, wrongdoing, or fault.

**History of this Class Proceeding**

As set out in the Notice of Certification published in 2014 and 2015, Jeffrey Lipson was appointed to act as the Representative Plaintiff for the following Class:

All individuals who applied and were accepted to be beneficiaries of the Athletic Trust in 2000, 2001, 2002 and/or 2003 and received Timeshare Weeks from the Athletic Trust and donated them, together with a cash donation, to one or more of the RCAAAs (the “Class Members”).

The Class was notified of the certification of this class action in 2014 and 2015 and given the opportunity to exclude themselves (opt-out) from this class action. Anyone remaining in this class action following the close of the opt out period agreed to be bound by any decision at trial or court-approved settlement in this action.

In this action, the Plaintiff alleged that Cassels was, among other things, negligent in the preparation of its legal opinions relating to the Athletic Trust Timeshare Program, pursuant to which Class Members acquired and donated Timeshare Weeks to athletic charities (the “Program”).

The lawsuit claimed general compensatory damages and special damages for other potential expenses as well as expenses for prosecuting this action.

Following several years of litigation, including the completion of an extensive discovery process, the exchange of various expert reports, preparations for a contested 35-day trial to start in January 2023, and a mediation before a retired judge, the Parties reached the proposed settlement summarized below.

**The Proposed Settlement**

The \$8.25 million Settlement Fund includes all compensation to the Class Members for any potential damages arising from their participation in the Program as well as all other expenses or costs, including all court-approved legal fees and related disbursements (including taxes), the costs of administration and distribution of money to Class Members, and a 10% statutory levy (as discussed further below) to the Class Proceedings Fund (all such other costs and expenses collectively referred to below at times as the “Total Expenses”). In exchange for its \$8.25 million payment, Cassels will receive a full release of all claims and any potential claims that Class Members may have against Cassels relating to, among other things, the Program, the donation of Timeshare Weeks and any tax consequences or damages arising therefrom.

The compensation paid to Class Members will be paid from the amount of money remaining after deducting the Total Expenses from the \$8.25 million (the “Net Settlement Fund”). The money to be distributed to the Class Members is intended to reimburse them for some of portion of their cash (out-of-pocket) donations to the charities pursuant to the Program, less the amount of the tax credits on the cash donations made available by CRA in settlement of CRA’s challenges to the tax credits claimed by Class Members relating to donated Timeshare weeks.

In general terms, the settlement will be paid out of the Net Settlement Fund in two stages following the approval of the settlement. The first stage payments will be based on the Class Members’ *pro rata* or proportionate share of the total cash donations made to the Program by all Class Members. The second stage of payments will distribute *pro rata* any remaining balance or residue of funds to Class Members who cashed cheques in the first stage.

The Representative Plaintiff and Class Counsel recommend the settlement because it will provide monetary compensation to Class Members in the near future, weighed against the delays, significant risks, unknown results, and potential unfavorable findings if the case proceeds to a contested trial and any steps thereafter. The reasons in support of the settlement will be further explained and set out in materials to be filed with the Court and made available for your review through a posting or link on [www.timesharesttlement.ca](http://www.timesharesttlement.ca). Those materials should be posted on [www.timesharesttlement.ca](http://www.timesharesttlement.ca) in advance of the Settlement Approval hearing (as described below). A full copy of the Settlement Agreement is available now for your review through the same posting or link.

### **Motion for Settlement Approval**

The settlement is subject to the approval of the Court, which will decide whether the settlement is fair, reasonable, and in the best interests of Class Members. The Court will hold a hearing, via Zoom, to decide whether to approve the settlement in Toronto on January 20, 2023.

The Court will decide whether to approve or reject the settlement. It does not have the authority to unilaterally change the material terms of the settlement. If the Court does not approve the settlement, the lawsuit will continue. If the lawsuit continues, it may take several more years to complete the pre-trial procedures, trial, and possible appeals. The Class may or may not be successful at trial and, even if successful, the trial of the common issues would not result in payments of any compensation to Class Members. Any compensation available to Class Members would be addressed and decided in the individual issues phase of this proceeding after the trial. Any compensation that was awarded to any Class Member may not necessarily be greater than the compensation available under this proposed settlement.

### **How to Comment on the Proposed Settlement**

Class Members may, but are not required to, attend the Settlement Approval hearing. Please contact Class Counsel as set out below for instructions on how to access the Zoom hearing.

Class Members are also entitled, but not obligated, to express their opinions about the settlement and whether it should be approved. If you wish to make a submission to the Court supporting or objecting to the proposed settlement, you must send the submissions in writing (by mail or email) to Class Counsel, at the address below, and ensure they are received no later than January 6, 2023. Objections to the proposed settlement must be personally signed by the Class Member. Please note that Class Counsel will provide all submissions to the Court and the Defendant in advance of the hearing, and the submissions may be referred to publicly. The written submissions should include:

- a. Your name, address and telephone number;
- b. A brief statement of the reasons that you support or oppose the proposed settlement terms; and
- c. Whether you plan to attend the virtual (Zoom) Settlement Approval hearing.

## **Updating Class Member Contact Information**

In order to communicate with you better and, in the event this settlement is approved, to be able to mail you a cheque for your share of the Settlement Fund, Class Members are requested to confirm or update their contact information by sending an email to the proposed settlement administrator RicePoint Administration at [timesharesttlement@ricepoint.com](mailto:timesharesttlement@ricepoint.com) or through the change of address link or portal at [www.timesharesttlement.ca](http://www.timesharesttlement.ca).

## **Class Counsel's Motion for Fee Approval**

The law firm of **Roy O'Connor LLP** is Class Counsel and represents the members of this Class in this action for the last 13 years of the litigation. Roy O'Connor LLP can be reached as set out below.

Class Members will not have to personally pay for the legal work done or for the disbursements incurred over the years since this case began. The proposed class action was initially commenced in April 2009 by a different law firm in Toronto, namely, Davies Ward Phillips and Vineberg ("Davies"). The fees, disbursements and taxes of Davies totaling approximately \$320,000 were paid personally by the Representative Plaintiff and nine other Class Members (Davies was not prepared to be retained on a contingency basis and required timely payment for its fees and disbursements.) When Roy O'Connor LLP (Class Counsel) assumed carriage of this action from Davies in the latter half of 2009, the Representative Plaintiff entered into a contingency fee agreement with Class Counsel, which provided that legal fees and disbursements are to be paid by the Class Members only in the event of a successful settlement or trial judgment and then such fees and disbursements are only recoverable from the amounts paid by the Defendant. In that way, Class Members (other than those who had already personally paid Davies for its services at the outset of this case) would not have to pay out of their own pocket for any legal costs incurred to prosecute this case.

The contingency fee agreement with Class Counsel set out that Class Counsel would be asking the Court to approve legal fees of 25% of any settlement funds, plus their disbursements and applicable taxes. The contingency fee agreement also set out that the Court would be asked to approve reimbursement to the specific Class Members who personally paid the costs of Davies out of their own pockets, so that those specific Class Members would not be responsible for a greater (disproportionate) share of the total legal costs incurred if this case was prosecuted to a successful conclusion. If the fees requested by Class Counsel (Roy O'Connor LLP) and sought for reimbursement for the fees paid to Davies are both approved, the approved legal fees will in total represent 27.8% of the \$8.25 million settlement funds.

Approval of the Settlement Agreement *will not* be contingent upon the court approval of legal fees. For clarity, and to repeat, any approved legal fees and disbursements (and related taxes) will be paid out of the \$8.25 million settlement funds.

In this case, the Plaintiff has received financial support from the Class Proceedings Fund (the "Fund"), which is a body created by statute and designed to allow access to the courts through class actions in Ontario. The Fund agreed to reimburse the Plaintiff for some disbursements incurred in pursuing this action. The Fund would also have been responsible for costs that may have been awarded against the Plaintiff in this case. In exchange, the Fund is entitled to recover, from any court award or settlement in favour of the Class Members, the amounts it has reimbursed the Plaintiff for disbursements as well as 10% of any amounts payable to Class Members.

## **Interpretation**

This Notice contains only a general summary of some of the terms of the Settlement Agreement. As stated above, a full copy of the Settlement Agreement can be found at [www.timesharesttlement.ca](http://www.timesharesttlement.ca). If there is a conflict between the provisions of this Notice and the Settlement Agreement, the terms of the Settlement Agreement shall prevail.

**More Information**

For more information about the class proceeding lawsuit, you may contact:

**ROY O'CONNOR LLP**

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Toronto, Ontario  
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**Attn: James Katsuras**

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**PLEASE DO NOT CALL CASSELS BROCK AND BLACKWELL LLP, THE COURTHOUSE, OR THE REGISTRAR OF THE COURT ABOUT THIS ACTION. THEY WILL NOT BE ABLE TO ANSWER YOUR QUESTIONS ABOUT THE LAWSUIT OR SETTLEMENT.**

This Notice is published pursuant to the Ontario *Class Proceedings Act* and was approved by the Court.