

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Rorison v. Insurance Corporation of British
Columbia*,
2026 BCSC 1039

Date: 20260515
Docket: S202406
Registry: Vancouver

Between:

Robert Rorison and Brayden Methot

Plaintiffs

And

**Insurance Corporation of British Columbia and His Majesty the King in Right
of the Province of British Columbia**

Defendants

Brought under the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

Before: The Honourable Justice Branch

Oral Reasons for Judgment (Settlement Approval)

In Chambers

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Place and Date of Hearing:

Vancouver, B.C.
May 14-15, 2026

Place and Date of Judgment:

Vancouver, B.C.
May 15, 2026

[1] **THE COURT:** This is an application for approval of two proposed class action settlements. The history of this proceeding has been long and difficult, and is reviewed in a series of reported decision, being: 2020 BCSC 1965, 2022 BCSC 624, 2023 BCCA 474, 2024 BCSC 834; and 2025 BCSC 1597.

[2] I will not repeat the facts set out in those decisions and will use the same defined terms.

[3] I have reviewed the test for settlement approval in a series of prior decisions, including *Wilson v. Depuy International Ltd.*, 2018 BCSC 1192 at paras. 56-61, aff'd 2019 BCCA 440; *Krishnan v. Jamieson Laboratories Inc.*, 2021 BCSC 1425 at paras. 11-13; and *Irving v. Western Digital Corp.*, 2022 BCSC 108; as well as in Chapter 17 of my text, *Class Actions in Canada*, 2nd ed (Toronto: Thomson Reuters 2019) (loose-leaf updated 2026).

[4] In relation to the certified Ratepayer Class, I find that the proposed \$12.2 million settlement is fair and reasonable, with certain limited adjustments allowed for by the agreement. I arrive at this conclusion for the following reasons:

- a) The Ratepayer Class faced extreme risk on liability as a result of the passage of the *Attorney Generals Statutes Amendment Act (No. 2)*, 2025 S.B.C. 2025, c. 25, which purported to immunize the defendants completely from the plaintiffs' unconstitutional tax claim. Following the passage of this legislation, the only arguments left available were extremely novel and were set to be subject to an early application to strike.
- b) Only one opt-out notice was received indicating that there is little interest on the part of the class in continuing this long and difficult fight.
- c) Experienced class counsel are recommending acceptance of the settlement.

d) Counsel's analysis underlying their acceptance of the settlement amount is logical. Their review of the available documents suggest that the maximum claim value was around \$300 million. They assessed their prospects for success at 5% or less, yielding a logical settlement figure of perhaps \$15 million. However, the top-line potential recovery may have been reduced further by applying limitation period arguments to the payments made by the class prior to 2014, in which case the total exposure would only be \$96.4 million, yielding an expected value of \$4.8 million applying the same 5% estimate. Given these risks, \$12.2 million is fair and reasonable.

[5] In terms of the decision to provide for a *cy-près* distribution of this settlement fund, the test for appropriateness was recently expressed as follows by the Court in *Regan v. Masonite International Corporation.*, 2025 FC 721:

[60] The first question to consider is whether, in all the circumstances, a *cy-près* payment is an appropriate mechanism to distribute settlement funds: *Chartrand v Google LLC*, 2021 BCSC 7, at paras 45-50. Typically, when a *cy-près* payment is used, there is a practical concern that funds cannot be economically distributed to individual class members: *Breckon*, at paras 53-54; *Sorenson*, at para 26. There may be a large class and a modest settlement amount, so that identification of class members and distribution of funds to them is too expensive in relation to the settlement funds available for distribution. Or there may be tiny settlement amounts on a *per capita* basis: see e.g., *Cronk v LinkedIn Corporation*, 2023 BCSC 2165, at paras 24-25, 39; *Chartrand*, at para 48.

[6] In this case, I find that this test is clearly met. There were approximately 5.6 million persons in the class. Applied to the settlement recovery, the maximum theoretical average recovery was just over \$2. The cost of distributing the funds was estimated to be approximately \$5 per physical cheque, or \$1.50 per Interac e-transfer, both of which would virtually negate the potential net recovery even if the Court also disregards the need for a reasonable fee award.

[7] Once it is determined that a *cy-près* distribution is appropriate, the Court must then consider whether the proposed beneficiaries are appropriate in light of the "nature of the claim", which here relates to a challenge to the accounting practices

that were said to have improperly enhanced the insurance premiums paid by British Columbia drivers.

[8] In terms of the appropriate test, the plaintiffs cite *Chartrand v. Google LLC*, 2021 BCSC 7 at paras. 51-52, where the Court stated that this “involves a consideration of whether the proposed donation will indirectly benefit the class and/or have the consequence of behaviour modification.”

[9] With the greatest of respect for my colleague, I believe this quote is an example of the hazards of the dreaded “and/or” formulation: *Bell Bros. Transport v. Cummins Diesel Power*, 35 D.L.R. (2d) 775, 1962 CanLII 369 (A.B.S.C.A.D.) at p. 778. To the extent that the utilization of this phrase implies that a court could look exclusively to the behaviour modification benefits without necessarily having regard to the extent to which the distribution will provide an indirect benefit to the class, I disagree. In my view, the parties and the Court, faced with the practical need to make a *cy-près* distribution, must always make every effort to find a landing point for the funds most likely to provide the necessary indirect benefit to the class. The indirect benefit does not necessarily need to be financial. It may be sufficient for the distribution to align with either the wishes of the class or the objectives of the action.

[10] In this case, most adults in BC are members of the class, but their common link is that they paid insurance premiums to drive a vehicle. As noted, the objective of the action was to benefit drivers by reducing their effective insurance premiums.

[11] I appreciate counsel’s efforts to locate charitable donees who meet the test. They have proposed eight, to whom they propose to give 12.5% of the residue each. However, in my view, not all of those proposed charities meet the relevant test.

[12] I accept that Mothers Against Drunk Driving and Parachute Leaders in Injury Prevention meet the test since they are focussed on reducing injuries on the road, which is the closest, clearest and most direct tie possible to a class of drivers on the road. However, in my view, the remainder of the charities proposed have only the most tenuous connection to the class or the action’s objectives. Several are poverty-

alleviation-focused. Counsel attempted to draw a link by arguing that the impact of the allegedly artificially inflated insurance premiums, which are largely fixed and not means-tested, falls disproportionately on low-income drivers. While true, this would be the case in every fixed-fee based case. In my view, where a better tie is available, it is preferable to approve charities with that better tie. Others proposed were healthcare-based, which counsel suggested are adequately tied because some of the healthcare provided is provided to individuals who are injured in motor vehicle accidents. Again, this is less a tie than statistical inevitability. Finally, there were certain charities for which class counsel had done work or made material donations. Without implying any impropriety on the part of class counsel in the present case, in my view, counsel should be scrupulous to avoid any perception that the donees proposed are counsel's "pet charities". The proposal of *cy-près* targets is an area where class counsel have heightened discretion, albeit always subject to client instructions. As such, it is an area where the Court must be correspondingly scrupulous to ensure that justice is not just done, but is seen to be done. Hence, if there are other appropriate targets, it will generally be preferable to avoid those with whom counsel have a strong connection.

[13] Thankfully, counsel had the foresight to anticipate that the Court may have concerns about their proposed list, and they agree that if the Court removed any charity from the list, the percentage for the remainder would simply be increased *pro rata*. As such, the two surviving my application of the test will now each receive 50%.

[14] The next issue is counsel fees. Counsel proposes a fee of 30% on the amount recovered. I have no hesitation approving this figure. It was the amount set out in the original retainer. It is within the general range of fees approved by the Court in similar cases. No class member objects to the fee request. In terms of cross-checking the fee against the multiplier that will be obtained over their recorded hours, it will only yield a multiplier of 1.49 for class counsel, which is well below the usual range. In this case, counsel did not just file and sit back, awaiting a settlement offer. They were required to litigate aggressively at every turn. They were under

threat of legislative action to negate the action from the outset to the conclusion of the case. The risk was high at the outset, and it became real with the legislation imposed at the end. They have more than earned their fee. I say without reservation that they did an excellent job extracting anything from the defendants, let alone the \$12.2 million obtained.

[15] The last substantive issue was a proposed \$5,000 honorarium for the representative plaintiff. This was structured in a somewhat unusual way. The proposal is that the Province pay that amount directly, outside the settlement or class counsel's fee award. This raised a small theoretical red flag in that it raises the spectre of the defendant "paying for the client's signature" on a deal that is not in the broader class's best interest. However, based on the facts of this case, I do not believe that is what occurred here. I have already indicated my view that this settlement was a tremendous result in the circumstances. Furthermore, Mr. Rorison has clearly earned this payment, given the years he has spent stickhandling this complex litigation. That said, I would caution counsel generally that this is not the preferred structure for an honorarium. It is far better to treat it either as compensation from the class to the representative by deducting it from the global award, or for counsel to acknowledge the work performed, with which they would be the most familiar, by proposing that the honorarium come out of their fee.

[16] I find that the proposed notice and its distribution are acceptable.

[17] With those small adjustments, I approve the proposed settlement and fee for the Ratepayer Class proceeding.

[18] Turning to the proposed Accident Victim Class settlement, I have already discussed the general history of this litigation in my approval of the conjoined Ratepayer Action. On this application, counsel seek approval of the settlement negotiated. In my view, it is clearly fair and reasonable. The class is set to receive 100% of their claim, as well as a thousand dollars general damages and interest. As such, there is clearly no basis to challenge its adequacy. There is a *cy-près* element, but it is only payable as a fallback if payments cannot reach actual class members.

In such a situation, in my view, the Court's assessment of the reasonableness of the *cy-près* award can be somewhat more relaxed. The proposal is for 50% to go to ICBC's Community Grants Program, which is reasonably tied to the class's interests, and 50% to the Law Foundation, which is tied to the action's general quest for improved access to justice. Counsel have enhanced the settlement's obvious adequacy by agreeing not to charge a fee on any amounts that will be paid, a commendable concession.

[19] Once again, I find that the proposed notice and distribution method is reasonable. On the notice distribution method, although not in the agreement, counsel confirmed that it will be published on ICBC's website along with the other documents previously published in this action.

[20] Hence, I approve this second settlement in the terms proposed.

[21] In conclusion, I commend counsel on all sides for the professional way in which this difficult litigation was managed. Any residual issues?

[22] CNSL M. SOBKIN: Just one matter. I do not believe you mentioned the disbursements, and that amount was set out in the notice of application for fee approval.

[23] THE COURT: Yes, you can assume that the word "fee" was meant to cover fees and disbursements.

"The Honourable Mr. Justice Branch"