CITATION: Buis v. Keurig Canada Inc., 2025 ONSC 6875
COURT FILE NO.: CV-22-88299-CP
DATE: 2025 12 08

SUPERIOR COURT OF JUSTICE – ONTARIO
Action pursuant to the Class Proceedings Act, 1992, S.O. 1992, c. 6

RE: Nancy Buis, Plaintiff

AND:

Keurig Canada Inc., Defendant

BEFORE: Regional Senior Justice Calum MacLeod

COUNSEL: Jeff Orenstein & Lawrence David, for the Plainitff

Sandra Forbes & Chenyang Li, for the Defendant

HEARD: December 8, 2022

REASONS – APPROVAL OF SETTLEMENT

[1] This is a motion to approve the settlement of a class proceeding pursuant to s. 27.1 of the Ontario class proceedings legislation. [1] As set out below, the action was certified as a national class proceeding and the settlement is intended to benefit and bind members of the class wherever they reside in Canada.

Background

[2] The defendant is the distributor of Keurig coffee brewers and "K-cup" single use coffee pods. The litigation involved allegations that certain pods sold in Canada were misleadingly labelled as "recyclable". The representation was said to be misleading because in reality few if any municipal recycling programs were actually able to recycle the pods. The allegations have been summarized in previous reasons. [2] There was similar litigation in the United States.

[3] When this matter came before the court for the first time, there were three other proposed class proceedings in Canada. There had also been regulatory action by the Competition Bureau alleging that the representation the pods were recyclable was exaggerated, greenwashing, and misleading. That had resulted in an agreement between the Defendant and the Commissioner for

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[1] *Class Proceedings Act, 1992,* S.O. 1992, c. 6 as amended to June 3, 2021
[2] See 2023 ONSC 87 and 2022 ONSC 3652.

Competition. The other class proceedings included a second Ontario proceeding ("the Gordon action") a proposed class proceeding in British Columbia ("the Dolo action") and a proceeding before the Federal Court ("the Finch action").

[4] The Gordon action was stayed by me following a carriage motion.[3] I am advised that the Dolo action has never been formally served and has not moved forwards towards certification in B.C. It is intended that if this settlement is approved, counsel in the Finch action will seek leave to discontinue that class proceeding. In short, I am asked to approve a national settlement which would benefit class members wherever they reside in Canada.

[5] This motion was scheduled as a result of the parties reaching a negotiated resolution earlier this year. The proposed settlement was similar to the settlement reached in the United States but with necessary modifications to reflect the much smaller size of the Canadian market and the regulatory action already undertaken by the Competition Bureau. The latter made it unnecessary to include injunctive relief in the Canadian settlement. I was provided with a consent motion in writing to certify the action for settlement purposes. The court certified the action and approved the plan of communication leading up to this motion to approve the settlement. A formal order to that effect was issued on October 22, 2025.

[6] As certified, the "Settlement Class" includes all persons in Canada other than Excluded Persons (defined in the agreement) who purchased a pod or a brewer that was sold in any packaging representing that pods could be recycled between June 8, 2016 and the date of this motion. The common issues would have been whether the representations breached the defendant's statutory or common law duties. If so, the second issue would have been whether the members of the class suffered any damages.

[7] The proposed settlement is without admission of any intention to mislead on the part of the defendant. It sets up a fund and provides nominal compensation to anyone who purchased pods or brewers. There is a small amount available without any proof of purchase and a slightly larger amount available to class members who have receipts. This would include receipts that may be reproduced or recovered from large retailers such as Costco, Canadian Tire, Best Buy or Walmart.

[8] The nominal damages are reflective of the fact that the only damage actually suffered by purchasers of pods or brewers would be any premium paid for recyclable pods or perhaps the choice of a Keurig brewer rather than a competitor's single brew system. It is important to understand that a class proceeding does not create liability where none would exist or expand the type of damage claims that would otherwise be available to individual litigants. A class proceeding does make it practical to seek collective recourse where individual small claims actions would not be practical.

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[3] 2023 ONSC 87, supra

[9] Following the certification order, class counsel used various forms of communication to reach members of the class and advise them of their rights to opt out, to object or to appear at this hearing. Apparently, 17 class members opted out and no one filed a notice of objection using the procedure set out in the notice. There was one class member who sent an objection to counsel in the Fitch action. That was to the effect that the settlement was "a joke" because the amount available to the members of the class was so low as to be hardly worthwhile. I will address that issue momentarily. No class member appeared in court or on zoom.

[10] The estimated size of the class is between 300,000 and 600,000. It should be noted that if the amount to be paid by the defendant to the class is not exhausted during the claims period, the settlement provides for the balance to be donated to a charity to be agreed by the parties and approved by the court.

Analysis

[11] The primary statutory requirement in approving a settlement is that the court must be satisfied the settlement is fair and reasonable and in the best interests of the class. [4] There is also a statutory requirement that particular evidence be submitted "which the court shall consider in determining whether to approve the settlement".[5] The decision of this court in *Nunes v. Transat* is generally considered to be the leading case.[6]

[12] A primary consideration in approving a settlement is to compare the result with what class members might have achieved had they litigated individually. This is appropriate because approval of the settlement not only brings the action to a halt, but it also forecloses the right of class members to litigate unless they opt out of the settlement prior to the approval motion. Here, there would have been real difficulty in class members proving any significant right to damages or compensation. Nominal compensation without proof of damages or even proof of purchase is a superior result for the class than pursuing individual claims.

[13] In reviewing the claim, I am influenced by the fact that this is an arms length settlement negotiated between experienced class counsel, that it is generally similar to the settlement achieved in the United States based on similar allegations, the opinion of class counsel, and the real challenge if not impossibility of class members pursuing individual claims for compensation against the defendant. Moreover, any class member who had a particular claim based on particular provable reliance on the representation and particular damages worth pursuing had the opportunity to opt out of the settlement. As noted, 17 class members opted to do so although the reasons for opting out are unclear.

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[4] S. 27.1 (5) of the Act
[5] S. 27.1 (7) of the Act
[6] *Nunes v. Air Transat A.T. Inc.,* 2005 CanLII 21681 (ON SC). See for example, *Robinson v. Medtronic, Inc.*, 2020 ONSC 1688 and *Pozgaj v. CIBC,* 2025 ONSC 6412

[14] I am satisfied that the settlement is fair and reasonable and in the best interests of the class. Even accepting the objection as properly before the court, I do not agree that access to nominal compensation for class members in these circumstances is "a joke" or is in anyway unfair. There is no reason to believe that there would be entitlement to substantial compensation for the majority of class members under any other process.

[15] Besides considering if the settlement is objectively fair, settlement must be weighed against the alternative which would not be reversion to an individual claims process but rather continuation of the class proceeding. Settlements are assessed by comparing the proposed settlement to the risk, cost duration and expense of ongoing litigation on the one hand and by objective considerations mentioned above on the other.[7] There is no benefit to prolonging the litigation by forcing the parties to continue litigation against an uncertain outcome. The opinion of class counsel is bolstered in this case by the fact that a similar settlement was approved in the United States for very similar reasons. The settlement falls within a zone of reasonableness. The settlement is approved.

[16] Turning to the question of the fees, the factors to be considered are well established in the jurisprudence.[8] The court must be satisfied that the proposed fee is reasonable having regard to a variety of factors including the risk undertaken by counsel, the amount of work done by counsel, the benefits to the class, the complexity of the matter and the results achieved. In this case there was a contingency agreement, but the proposed fee is very similar to what it would have been if it was calculated at normal hourly rates (multiplier of less than 1.5%). The amount of time invested in pursuing this action would have been a substantial lost opportunity cost for class counsel if the action had concluded unsuccessfully or had there been no resolution.

[17] I recognize the importance of ensuring that class proceedings are accomplishing the objectives of the legislation and that those objectives do not focus on provision of lucrative employment for lawyers. On the other hand, as the caselaw establishes, for class proceedings to be viable, depends on the willingness of entrepreneurial lawyers to take these cases on and to pursue them competently and vigorously. Approval of counsel fees is not automatic but where the amount is reasonable having regard to the factors outlined in the jurisprudence and summarized above, there is no justification for the court to engage in gratuitous or arbitrary reductions of the amount agreed to by the plaintiff. Granted, the members of the class did not individually approve the contingency fee agreement, but they were aware of it and no class member has objected to the fee proposal. Overall, measured against the settlement, the proposed fees are reasonable and are approved.

[18] Turning finally to the proposed honorarium for the nominal plaintiff. This is also not a matter to be automatically approved by the court although it has become increasingly common. In my view a modest honorarium encourages plaintiffs to take their responsibility as litigants

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[7] *Cannon v. Funds for Canada Foundation,* 2017 ONSC 2670
[8] See *Duvault v. The Toronto-Dominion Bank,* 2024 ONSC 961 and *Austin v. Bell Canada,* 2021 ONSC 5068

seriously.[9] In this case, besides the steps that would ordinarily have involved the nominal plaintiff's time and attention, she also had to swear and affidavit and instruct counsel in connection with the carriage motion. I am satisfied that the proposed honorarium of $7,500 is justified.

Conclusion and Summary

[19] In conclusion, the proposed settlement is approved, the proposed counsel fee is approved, and the proposed honorarium is approved. I have signed the draft order.

[20] I note that the parties have also reached agreement with counsel in the Fitch action to settle the Federal Court class proceeding. The members of the class in the Federal Court proceeding are intended to be included in the class to be benefitted by this settlement and there has been agreement with class counsel in that proceeding regarding payment of their costs. It is, however, for the Federal Court to decide whether to permit that action to be withdrawn. Approval of settlement of this proceeding is not contingent on what the Federal Court may decide.

[21] Counsel are to advise this court of the outcome in the Federal Court and also if there is any further activity in the action in B.C.

December 8, 2025

Digitally signed by C. MacLeod RSJ
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Justice C. MacLeod

[9] See *Forbes v. Toyota Canada Inc.,* 2018 ONSC 5369 @ para.s 31 - 33