CITATION: Wright v. General Motors Financial of Canada, Ltd. et. al. 2026 ONSC 4760
COURT FILE NO.: CV-16-68643-CP
DATE: 2026 08 17

ONTARIO SUPERIOR COURT OF JUSTICE

RE: MATTHEW WRIGHT, Plaintiff

AND:

GENERAL MOTORS FINANCIAL OF CANADA, LTD., MOUSSA KANTE, CYNTHIA GILBERT and LINE PHARAND, Defendants

BEFORE: C. MacLeod RSJ

COUNSEL: Norman Mizobuchi, for the Plaintiff

Sandra Forbes, for the Defendant

HEARD: August 17, 2026 – by videoconference

APPROVAL OF SETTLEMENT

[1] This was a motion to approve the settlement of a class proceeding as well as the counsel fee and other related expenses. Although one class member appeared briefly, I am advised that there was only one opt out and no objections to the settlement. The motion was therefore on consent or unopposed. Nevertheless, it is important that the court is satisfied that all aspects of the settlement meet the statutory requirements and the interests of justice.

Background

[2] The corporate defendant or its predecessor (GM Financial) provides financial services for customers purchasing or leasing General Motors products in Canada. It appears that between 2012 and 2015 an employee or employees of GM Financial accessed the personal and financial information of GM Financial customers. That information was used, disseminated or sold in an identity theft scheme. In 2015 GM Financial became aware of the situation and notified more than 2,000 potentially affected customers. Subsequently, several individuals were arrested and prosecuted but in the interim, some customers were victims of identity theft and many more appeared to be at risk.

[3] This proposed class proceeding was launched the following year.[1] The essential question in relation to GM Financial would have been whether its failure to prevent the wrongful access to the personal information or to detect the misuse of that information, rendered GM Financial liable to its customers and, if so, how damages should be calculated. The plaintiff sought damages of over $60,000,000 and the cost of credit monitoring, identity theft insurance, out of pocket expenses and other damages. Upon being served with the Statement of Claim, G.M Financial served a Notice of Intent to Defend.

[1] The individual defendants did not defend and have been noted in default. Those defendants also pled guilty to possession of falsified identification in the names of certain members of the class.

[4] I am advised that in the intervening period, besides making mutual disclosure and discovery, the parties engaged in vigorous negotiation. A settlement was finalized in October of last year subject to obtaining court approval.

[5] Approval of a class proceeding settlement requires a number of steps. Firstly, the court was asked to certify the class proceeding for settlement purposes. Secondly, as part of that motion, the court was asked to approve a proposed plan of communication to the class members, time limits for opting out or objecting and to set a date for the approval motion. That took place on March 24, 2026, when I granted the certification motion and made the requested order. Ultimately that process brought the parties before the court today for approval of the settlement.

Notification & Response

[6] The class as set out in the certification order was defined as follows:

> Any person who provided personal information to the defendant General Motors Financial of Canada, Ltd. or its predecessor, FinanciaLinx Corporation, in the course of obtaining automobile financing solution services and who received notice in 2015 from General Motors Financial of Canada, Ltd. informing them of the Data Breach.

[7] The common issue was certified as follows:

> Did the Settling Defendant owe the Plaintiff and Class Members a duty of care in respect of the Data Breach? If so, was that duty of care breached and what damages, if any, did Settlement Class Members suffer?

[8] This is a fairly limited and identifiable class. It consisted of 2,164 individuals whose data was exposed or potentially exposed to the rogue employee. Nine of those (Group 1 class members) are known to have been victims of identity theft. Ultimately all class members were contacted by mail with 378 letters returned as undeliverable. Additional efforts were made to contact those class members. In addition, notice was published on the web site maintained by class counsel. I am satisfied that all reasonable efforts were made to contact class members in accordance with the Minutes of Settlement and the March 24, 2026 order.

[9] In response to the notice, it appears that one class member opted out of the class within the time provided in the notice. There was also one opt out notice received out of time and one letter expressing support for the settlement.

[10] As noted in the introduction, while the court date and the Zoom link were provided to the members of the class, only one class member appeared in court and did not remain after the introductory remarks from counsel. I am satisfied that there was appropriate notice to substantially all of the class, that no member of the class was opposed to the settlement and only one class member formally opted out.

The Settlement

[11] The Settlement Agreement was attached to the original certification order and will also be attached to the order approving the settlement. GM Financial has already provided each class member with one year of credit monitoring and identity theft insurance at a total cost of $200,000.00

[12] In addition, the settlement provides for a payment of $7,000 to the Group 1 class members and any other class members who can demonstrate that they were victims of identity theft as a

result of the data breach. This is available without proof of damages. Up to a further $5,000 per individual will also be available to these individuals if they had receipted out of pocket expenses flowing from the identity theft. Other members of the class will receive $85.00 each even though they did not suffer identity theft.

[13] The total value of the settlement is $898,930.00 but $200,000.00 of that amount was the cost of providing credit monitoring and identity theft insurance. Up to $327,000.00 will be set aside for the cost of administering the settlement or the compensation costs discussed below. The additional benefits to members of the class under the settlement will cost up to $371,930.00. Should submitted claims exceed this amount there would be a pro rata reduction but if the fund is not exhausted by payments to class members, any amount remaining will be paid out as a *cy pres* distribution to Pro Bono Ontario.

[14] Pursuant to the settlement agreement, the defendant commits to paying the full settlement amount but no more. That amount "represents the maximum amount that may be paid pursuant to this Settlement Agreement and shall be all-inclusive of all amounts, including without limitation, Class Counsel Fees, Class Counsel Disbursements, any distributed amounts to the Settlement Class, any *cy-pres* donations, the costs and interests of and relating to the Action, any honorarium payable to the Plaintiff, the Administration Expenses, and any applicable taxes."

[15] Counsel advised that the amounts negotiated for settlement and to be paid to the class members are consistent with damage awards in recent class proceedings relating to data breaches. While amounts awarded in individual cases are fact specific, and allowance must be made for the passage of time, it is still instructive to review those amounts. [2] This is one way to assess whether the proposed settlement is reasonable. I will return to this point momentarily.

Compensation

[16] There are three compensation components I am asked to approve. These include the expenses of the claims administrator in the amount of $71,191.70, an honorarium to the named plaintiff in the sum of $2,000.00 and the fees, disbursements and HST of class counsel in the total amount of $253,808.30. Counsel undertook this case on a contingency basis which I am also asked to approve.

[17] These compensation amounts are agreeable to the defendant and are approved by the representative plaintiff. They were disclosed in the settlement documents and are not opposed by any of the class members. Nevertheless, it is important to note that these payments form part of the settlement amount. To put that another way, the compensation costs are part of the value of the settlement.

[18] As described above, the maximum amounts payable to class members as "settlement benefits" will be $371,930 net of the compensation amounts and the amount already spent for the credit monitoring.

Criteria for Approving a Settlement

[19] This action was commenced in 2016 so certain amendments to the legislation made in 2020 do not specifically apply. The Act now specifically provides that the primary consideration in approving a settlement is that the proposed settlement is "fair, reasonable and in the best interests of the class". The moving party is required to provide certain specific evidence which the court

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[2] See for example *Evans v. The Bank of Nova Scotia*, 2014 ONSC 7249 (Div. Ct.) and *Karasik v. Yahoo! Inc.*, 2021 ONSC 1063 as well as the other cases set out in Schedule C to the Factum.

must review in reaching that conclusion.[3] While this is now codified in the statute and was not codified when this action was launched, the statutory amendments are consistent with previous jurisprudence.

[20] I adopt the analysis set out in *Cass v. WesternOne Inc*.[4] which summarized previous jurisprudence on the approval of settlements. It is largely consistent with the criteria now set out in the Act.[5] In particular the test was said to be whether the settlement is fair, reasonable and in the best interests of the class as a whole. Furthermore, the standard is one of reasonableness and not perfection. It is not the function of the court to rewrite the agreement between the parties but rather to determine that the settlement falls within a zone of reasonableness and can be rationally supported.

[21] It has been said that when analyzing the reasonableness of a settlement, the court engages in two analytical exercises. First, the court compares and contrasts the settlement with what would likely be achieved at trial, without making findings about the actual merits of the claims. In other words, the court undertakes a risk analysis of the advantages and disadvantages of the settlement over a determination on the merits. Second, the court undertakes a structural analysis to examine the fairness and reasonableness of the terms of the settlement and the scheme of distribution.[6]

[22] It is not necessary to set out a detailed analysis or extensively reinterpret the tests in every approval motion.[7] I would simply add that the court will always be alert for settlements that might appear to involve collusion to illegitimately foreclose the rights of members of a class. It is the purpose of the legislation to serve as a vehicle for justice in situations where class members might otherwise have no practical recourse and it is not the purpose of the legislation to close the door to individual claims for significant compensation.[8]

[23] Here the evidence is that the settlement was negotiated at arm's length following strenuous negotiation. There is liuttle likelihood that members of the class other than the 9 members who are currently known to have suffered identity theft would have achieved any compensation through a process other than this class proceeding. For those who can show that they did suffer identity theft, the settlement spares them the need to pursue and prove damages in Small Claims Court and the opt out process would have preserved the right of any party who did believe they had a strong individual case to do so. As noted, only one class member has opted out.

[24] I am satisfied that the amounts proposed to compensate class members who suffered identity theft on the one hand and class members who only suffered the risk of identity theft on the other, are not inconsistent with the approach taken by the court in other cases. In addition, because the events in question took place over 10 years ago, the court can be reasonably confident that any damage which was the result of the events in question has already occurred and class members who suffered specific acts of identity impersonation are in a position to self identify.

[25] The proposed settlement also provides for an expedited and streamlined claims process. It does not require class members to engage in a proof of claims process other than in respect of the out of pocket expenses available to those who suffered identity theft. This route to immediate compensation is also a settlement benefit.

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[3] *Class Proceedings Act, 1992,* S.O. 1992, c. 6, as amended, s. 27.1
[4] 2018 ONSC 4794 – see paras 85 – 91
[5] See *Dufault v. The Toronto-Dominion Bank*, 2024 ONSC 961
[6] See *Redublo v. CarePartners*, 2022 ONSC 1398 at para. 58
[7] See *Buis v. Keurig Canada Inc*., 2025 ONSC 6875
[8] *Forbes v. Toyota Canada Inc*., 2018 ONSC 5369 at para 16

[26] I am satisfied that the settlement is reasonable and is in the best interests of the class.

Compensation

[27] In cases cited above, there is discussion concerning the award of a modest honorarium to a representative plaintiff. Such compensation is not automatic but may be justified when the representative plaintiff has expended significant time, exposed themselves to risk or taken on arduous duties of instructing counsel and being the face of the litigation. I am satisfied that $2,000 is both modest and reasonable under the circumstances.[9]

[28] I have no difficulty with the fee charged by the claims administrator. This includes the work necessary to put the class members on notice, a report prepared for this motion and the work that will be required for distribution of the settlement funds. $71,191.70 is entirely reasonable.

[29] The most significant amount of the claim for compensation is the fee to be paid to class counsel. I note that there was a contingency fee retainer agreement. This is the common and usual way in which class counsel are compensated.[10] The retainer agreement must be approved by the court and notwithstanding the nature of the retainer, the fee must also be approved at the time of the settlement.

[30] I am approving the requested fee. Firstly, counsel advises that it is far less than the amount that would have been justified by the time spent on the file at counsel's normal hourly rates. The opportunity cost to counsel in pursuing the class proceeding is appropriately taken into account and the amount of time spent in pursuing the matter is also a consideration in determining if the proposed fee is reasonable. Secondly, counsel assumed the risk and the cost of pursuing this matter. The litigation was funded by the law firm. The result achieved is well short of the amount claimed in the statement of claim, but it must nevertheless be regarded as a significant and successful outcome. Fortunately, it appears that only a few of the defendant's clients suffered actual identity theft, but the extent of the losses would not have been apparent when the action was started.

[31] In my view the outcome is appropriate. Counsel demonstrated skill and diligence in pursuing the matter. The representative plaintiff approves of the fee which is consistent with the basis of the retainer. Finally, this amount was disclosed in the settlement documents and no member of the class has objected. The fee is approved.

Summary and Conclusion

[32] In conclusion, the settlement is approved along with the claims process and plan of distribution set out in the minutes of settlement. I have also approved the proposed compensation amounts.

[33] I have signed the draft order accordingly.

Digitally signed by C. MacLeod RSJ
Date: 2026.08.17 18:35:48 -04'00'

Justice C. MacLeod

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[9] See *Haikola v. The Personal Insurance Company,* 2019 ONSC 5982
[10] *Dufault, supra* at paras. 35 - 40