

CITATION: Bandola v. Ontario Teachers' Pension Plan Board, 2025 ONSC 7171
COURT FILE NO.: CV-24-730786-00CP
DATE: 20251222

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: LISA BANDOLA

Plaintiff

AND:

ONTARIO TEACHERS' PENSION PLAN BOARD

Defendant

BEFORE: Leiper J.

COUNSEL: *John Archibald & Paul Bates*, for the Plaintiff

Linda Plumpton & Gillian Dingle, for the Defendant

HEARD: December 19, 2025

ENDORSEMENT

Motion for Discontinuance pursuant to the *Class Proceedings Act, 1992*

Introduction

[1] The plaintiff and the Ontario Teachers' Pension Board (the "Board") have agreed to settle the Plaintiff's proposed class action against the Board which arose from the Board's decision to invest USD\$95 million of the pension plan's assets into FTX, a cryptocurrency exchange business. Within a year of the Board's decision to invest, FTX filed for bankruptcy and the investment resulted in a total loss. The public came to learn that FTX managers had misappropriated billions of dollars in customer deposits. The plaintiff's claim alleged failings by the Board in deciding to invest in FTX.

[2] This class proceeding has not been certified. The plaintiff delivered her certification record and on receipt of the Board's responding material on the motion for certification, the parties negotiated a settlement. The terms of that settlement are that the plaintiff will discontinue this action, and the Board will agree to pay class counsel's fees and disbursements. There will be no release of individual class members claims. The Board will publish a statement to pension plan members in the Plan's 2025 Annual Report that will:

- i. confirm that there have been no changes to plan members' contributions or benefit entitlements arising out of the write-down of the FTX investment;
- ii. confirm the plan's ongoing strong funded status;
- iii. confirm that the Board conducted a review of the FTX investment following the write-down;
- iv. describe the due diligence conducted by the Board in relation to those investments;
- v. identify the types of third-party consultants or experts who were relied upon;
- vi. provide an overview of findings arising from the FTX Review and enhancements made to Board investment policies and procedures, including any systemic changes that have been, or that will be made, to the Board's investment processes and functions; and
- vi. confirm that this litigation has been resolved.

[3] This motion was first returnable before me on November 17, 2025. At that time, the parties had not agreed on the quantum of counsel fees until shortly before the return of the motion. Specifically, the Board did not agree to pay fees for more than time spent on the file, or to full indemnification of class counsel's fees. I adjourned the motion to December 19, 2025, to enable class counsel to file further material in support of the fees sought, and for notice to interested potential class members to be posted on class counsel's website.

[4] The parties now seek approval of the settlement, on the terms set out above. Class counsel seeks approval of the agreement to have the Board pay fees to class counsel in the amount of \$540,000 and disbursements in the amount of \$112,915.72, from the Ontario Teachers' Pension Plan's pension fund (the "Fund").

[5] The Board consents to the discontinuance of the proposed action in accordance with the terms of the Discontinuance Agreement. Although the Board has agreed to pay the fees and disbursements in the amounts described above, the Board takes no position on whether the Court should approve the quantum of the fees and disbursements sought by class counsel.

[6] For the reasons below, I approve the settlement proposed, the discontinuance and the payments for fees and disbursements, to be authorized by the Board.

Discussion

[7] The negotiated discontinuance agreement provides for both the discontinuance of the action and the provision that the Fund will pay from the plan the fees and disbursements of class counsel, in an amount to be agreed and approved by the court, or in the event of no such agreement, to be fixed by the Court having regard to section 33 of the *Class Proceedings Act* and other applicable law.

[8] A proposed class action shall only be discontinued with leave of the court and on such terms as the court finds to be appropriate: *Class Proceedings Act, 1992*, S.O. 1992, c.6, s.29(1).

[9] The court will consider whether the interests of the class members are prejudiced by the discontinuance, i.e. whether a viable action is being abandoned, or whether the litigation is sufficiently risky that discontinuance on terms is a good outcome. Court approval also aims to deter the bringing of meritless suits by ensuring that such lawsuits are not rewarded: *Parker v Pfizer Canada Inc.*, 2017 ONSC 2418 at paras. 16-19.

[10] I am satisfied that the interests of the class will not be prejudiced by approving the discontinuance proposed in this action. The suit was launched in the wake of investigations into the FTX management failures leading to the collapse of the crypto company and losses to investors, including the Fund. The plaintiff alleged the Board failed in its due diligence by approving the investment and sought to have it reimburse the Fund as part of the relief claimed. On receiving the Board's responding materials on certification, the plaintiff learned, among other things, that the Board was not insured against the loss claimed, meaning that the Fund itself would be responsible for paying for any damages arising from a successful claim. This led to negotiations and the proposed discontinuance on terms that include communications in the Board's 2026 publications concerning enhancements it plans to make to its processes particularly around founder-managed companies. In short, the class would not have benefited from an order for reimbursement, and the Plan would have been put to the expense of litigation. The discontinuance and the terms are a practical solution to this litigation.

[11] The communications from the Board in the 2025 annual report will describe the outcome of the litigation, the Board's response to the lost investment and enhancements to its investment due diligence processes. This is an objectively reasonable response and is in the interests of the parties. The agreement resolves potentially complex litigation. A settlement may be a positive outcome, even where any benefits are non-monetary: *Devries v. Espar Inc.*, 2021 ONSC 4338 at para. 18.

[12] I turn next to the fees and disbursements sought by class counsel and agreed to by the Board. On the return of the motion, counsel provided dockets in support of the fee request, as well as supplementary written argument. The amount sought is less than the time docketed for work on the file. Class counsel posted notice of the proposed fee on November 20, 2025, and have not received any objections or comment on the proposed fee payment.

[13] The Board is permitted under the plan's partners' agreement, to pay the any amount approved by the court out of the Fund. Section 18 of the partners' agreement gives the Board "every power necessary" to administer the pension plan and manage the Fund. Section 19 lists the responsibilities of the Board, which include managing the Fund to do all things possible so that the obligations of the plan will be met.

[14] The rationale for the Board approving payment of class counsel's fees to achieve the settlement is consistent with the plan's objective to avoid further expenditure in defending this

claim. Counsel on behalf of the Board submits that the Board has considered its duties under the *Pension Benefits Act* and at common law.

[15] The fees now sought represent a significant reduction from those amounts previously sought by class counsel and objected to by the Board. The plaintiff initially sought approval of class counsel fees of \$900,000 plus HST, which included a 1.4% multiplier on class counsel's docketed and anticipated fees of \$647,640, as well as \$112,915.72 in disbursements. The fee amount has now been reduced to \$540,000.

[16] Class counsel have also justified the sourcing of a U.S. expert on cryptocurrency exchanges for their certification materials. They explain that they attempted to identify individuals in Canada with the requisite expertise and who did not have "business conflicts", presumably because the Board is one of Canada's largest asset managers. They looked to the retained U.S. expert who had years of experience in cryptocurrency investigations and on issues of due diligence. His experience included being engaged by the Unsecured Creditors Committee in the FTX bankruptcy. Class counsel submits that he was the "ideal expert." I accept that the disbursements were reasonable and should be included in the amounts to be paid.

Conclusion

[17] I am satisfied that the settlement, discontinuance and payment of fees and disbursements should be approved, and so order.

Leiper, J.

Leiper J.

Date: December 22, 2025