CITATION: Estate of Yvette Brauch v. Maryban Holdings Ltd., 2026 ONSC 1616
COURT FILE NO.: CV-22-00691555-00CP
DATE: 20260317

2026 ONSC 1616 (CanLII)

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JENNIFER PENNEY, as litigation administrator for THE ESTATE OF YVETTE BRAUCH, deceased, and JENNIFER PENNEY, personally, Plaintiff

– **and** –

MARYBAN HOLDINGS LTD., Defendant

BEFORE: Justice E.M. Morgan

COUNSEL: *Joel Rochon, Annelis Thorson, Golnaz Nayerahmadi, Pritpal Mann, Gary Will, and Gorden Marsden*, for the Plaintiffs

Deborah Berlach and Gaetana Campisi, for the Defendant

HEARD: Motion in writing

CLASS ACTION CERTIFICATION

[1] The Plaintiff seeks an order certifying this action under section 5(1) of the *Class Proceedings Act, 1992*, SO 1992, c. 6 ("*CPA*"). The Defendant has consented to certification, and the motion has therefore proceeded in writing.

I. Background and cause of action

[2] The action alleges that the Defendant was grossly negligent in the way that it responded to the COVID-19 pandemic in Oakwood Park, a licensed long-term care home which it owns and operates. The Plaintiffs claim that as a result of the Defendant's conduct, Oakwood Park experienced at least three outbreaks of COVID-19 from December 21, 2020 to March 30, 2023, resulting in at least 93 residents contracting COVID-19 infections and at least 35 residents passing away from COVID-19. The Plaintiffs represent classes of persons who allege that they have suffered serious and preventable harm due to the Defendant's delayed, piecemeal, and inadequate response to the COVID-19 pandemic in Oakwood Park.

[3] More specifically, despite widespread knowledge of the importance of the precautionary principle in addressing respiratory outbreaks, including COVID-19, the Defendant is alleged to have responded to COVID-19 in a reckless and arbitrary manner. The Plaintiffs' claim alleges that

the Defendant's delayed, piecemeal, and grossly deficient acts and omissions constituted a marked departure from the standard of care with respect to Infection Prevention and Control ("IPAC") and delivery of care to elderly and vulnerable populations.

[4] The claim further alleges that long-standing chronic deficiencies relating to the outdated, physically neglected and over-crowded facility, inadequate IPAC training and protocols, systematic failures to inspect and oversee the long-term care home's compliance with applicable regulatory and industry standards, along with the home's under-staffing, made Oakwood Park prone to outbreaks.

[5] The Plaintiffs contend that despite recognizing its obligations to follow appropriate guidance and best practices to prevent the exposure of elderly residents to infection and death, the Defendant adopted reactive and deficient measures rather than proactive and effective IPAC measures in Oakwood Park that failed to reflect the state of knowledge of the long-term care sector and the medical community regarding the nature of COVID-19 and its particular risks to elderly populations. The Plaintiffs also claim that the COVID-19 outbreaks in Oakwood Park were preventable, and that lives would have been saved, had the Defendant not breached their common law obligations to the class members in the years preceding and during the pandemic.

[6] In all, the Fresh As Amended Statement of Claim puts forward a reasonable cause of action in gross negligence. It cannot be said that there is no reasonable prospect that the Plaintiffs will succeed in their claim: *Atlantic Lottery Corp. Inc. v. Babstock*, [2020] 2 SCR 420, at para. 14.

[7] The claim therefore meets the cause of action requirement for certification under section 5(1)(a) of the *CPA*.

II. Recognizable class

[8] The proposed class definition mirrors the class definitions certified with respect to other similarly situated long term care homes in *Pugliese v. Chartwell*, 2024 ONSC 1135, in that the classes being certified are limited to residents and visitors who contracted COVID-19 and their family members. The class period begins on January 25, 2020 and ends on May 5, 2023, the date that the Public Health Agency of Canada issued a statement reflecting the World Health Organization's announcement that COVID-19 no longer constitutes a Public Health Emergency of International Concern.

[9] The class is defined by the Plaintiffs as follows:

> 'Residents', 'Resident Class' and 'Resident Class Members' mean all persons who were residents in, or received care at, Oakwood Park Lodge owned and operated by Maryban Holdings Ltd. ("Oakwood") who contracted COVID-19 between January 25, 2020 to May 5, 2023, or, where the person is deceased, the estate of that person;

2026 ONSC 1616 (CanLII)

> ‘Visitors’, ‘Visitor Class’ and ‘Visitor Class Members’ means all persons who were visitors at Oakwood between January 25, 2020 to May 5, 2023, who contracted COVID 19 or where the person deceased, the estate of that person; and
>
> ‘Family Class’ and ‘Family Class Members’ means all persons including, but not limited to, spouses, children, parents, and other relatives who, on account of a personal relationship to any one or more Resident Class Members and Visitor Class Members, have a derivative claim for damages under s. 61 of the *Family Law Act*, R.S.O. 1990, c. F.

2026 ONSC 1616 (CanLII)

[10] The definition is of a readily identifiable class. It is workable, not unduly vague, and overall meets the criteria for a certifiable class under section 5(1)(b) of the *CPA*.

III. Common issues

[11] The common issues proposed by the Plaintiffs are:

Gross Negligence

(1) Did the Defendant owe a duty of care to the members of the classes related to COVID-19 outbreaks at Oakwood?

(2) If the answer to 1) is ‘yes’, what was the applicable standard of care?

(3) If the answer to 1) is ‘yes’, did the Defendant breach the duty of care it owed to all or any of the members of the Classes? If so, when and how did the breach(es) occur?

(4) If the answer to 3) is ‘yes’, did any or all of the Defendant’s breach(es) amount to gross negligence?

Causation

(5) If the answer to 4) is ‘yes’, did any or all of the Defendant’s breaches cause or contribute to the harm(s) suffered and/or losses incurred by the Class Members

Damages and Remedies

(6) Are the members of the Classes entitled to general damages arising from the Defendant’s gross negligence?

(7) Are the Class Members entitled to disgorgement of the benefits and profits enjoyed by the Defendant as a result of their breaches?

> (8) Does the conduct of the Defendant warrant an award of aggravated, exemplary and/or punitive damages?
>
> (9) Can the Court make an aggregate assessment of all or some of the damages suffered by the Class Members pursuant to sections 24 and 25 of the CPA?

2026 ONSC 1616 (CanLII)

[12] The common issues requirement for certification is a low bar: *Cloud v. Canada (Attorney General)* (2004), 73 OR (3d) 401 (CA), at para. 52, leave to appeal refused, [2005] S.C.C.A. No. 50. That said, in order for any common issue to be approved, the Plaintiffs must show that there is some basis in fact for its consideration in common among the class members beyond a bare assertion in the pleadings: *Fulawka v. Bank of Nova Scotia* (2012), 111 OR (3d) 346, at para. 79, leave to appeal refused, [2012] S.C.C.A. No. 326.

[13] In order to be "common", a proposed common issue cannot be dependent on individual findings of fact relating to each claimant: *Williams v. Mutual Life Assurance Co. of Canada* (2000), 51 OR (3d) 54 (SCJ), at para. 39, aff'd *Kumar v. Mutual Life Assurance Company of Canada* (2003), 2003 CanLII 48334 (CA). For proposed common issues relating to causation or damages, the Plaintiff must demonstrate that there is a workable methodology for determining them on a class-wide basis: *Chadha v. Bayer Inc*. (2003), 63 OR (3d) 22 (CA), at para. 52, leave to appeal refused, [2003] S.C.C.A. No. 106.

[14] The Plaintiffs' record contains an expert report authored by Dr. Dick Zoutman, an Emeritus Professor in the Faculty of Health Sciences, Schools of Medicine and of Nursing at Queen's University. Dr. Zoutman has opined that the outbreaks of COVID-19 at Oakwood Park were for the most part preventable. He has presented a workable methodology for demonstrating that had the Defendant planned, prepared, trained, and exercised the available and accepted IPAC practices, the vast majority of the COVID outbreaks and the deaths that occurred at Oakwood Park would have been prevented.

[15] This methodology supports the Plaintiffs' proposal that issues of causation and damages – two aspects of tort claims that are frequently considered to require an individualized analysis in reference to each claimant – be considered on a common basis. This approach was recently adopted for certification purposes in *Head v. 859530 Ontario Inc*., 2025 ONSC 4817, based partly on my decision in *Levac v. James*, 2021 ONSC 5971, aff'd , 2023 ONCA 73.

[16] Although *Head* is currently under appeal, the Defendant has consented to certification, subject to the Court of Appeal for Ontario rendering a decision that directly applies to these common issues. I hasten to add that this is not a proposal for a conditional certification, which courts have been loathe to approve; rather, it is an acknowledgement that at some future point the Defendants may seek to set aside some or all of the common issues if there is a substantial change in the law that harks back to the matters at issue here.

[17] As the law currently stands, the common issues proposed by the Plaintiffs satisfy the requirement of commonality as set out in section 5(1)(c) of the *CPA*.

IV. Preferable procedure

[18] In the same way that there is some basis in fact for posing the above series of common issues questions, there is good reason to conclude that a class action is the preferable form of proceeding for resolving the issues raised in the Plaintiffs' pleading. The alternative would be individual actions by ever class member or their estate representatives, which would be a costly and cumbersome way to proceed, and would fail to advance the class action objectives of access to justice and judicial economy: *Western Canadian Shopping Centres Inc. v. Dutton*, [2001] 2 SCR 534, at paras. 27-29; *Hollick v. Toronto (City)*, [2001] 3 SCR 158, at paras. 15-16.

[19] The Plaintiffs's claim therefore satisfies the requirement in section 5(1)(d) of the *CPA* that a class action is the preferred way to proceed.

V. Representative Plaintiffs and litigation plan

[20] The record submitted by the Plaintiffs contains some basis in fact for concluding that the representative Plaintiffs can and will fairly and adequately represent the interests of the class (or classes). They appear to be capable of instructing counsel on the class members' behalf, and there is no indication that they have any interest in conflict with the interests of the class. They have produced a workable litigation plan.

[21] In all, the Plaintiffs have satisfied the requirements for certification set out in section 5(1)(e) of the *CPA*.

VI. Disposition

[22] The action is hereby certified under section 5(1) of the *CPA*. The Plaintiffs shall be the representative Plaintiffs, and Plaintiffs' counsel is appointed class counsel.

[23] The class is defined as in paragraph 9 above. The common issues are as set out in paragraph 11 above.

[24] There will be an Order to go as submitted by counsel for the Plaintiffs.

Date: March 17, 2026 **Morgan J.**

2026 ONSC 1616 (CanLII)