**CITATION:** Wintercorn v. Global Learning Group Inc., 2026 ONSC 5992
**COURT FILE NO.:** CV-17-00583573-00CP
**DATE:** 20261023

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** LYNN WINTERCORN, PETER NEWMAN and ALEX KEPIC, Plaintiffs

**– and –**

GLOBAL LEARNING GROUP INC., GLOBAL LEARNING TRUST SERVICES INC., as TRUSTEE OF GLOBAL LEARNING TRUST (2004), ROBERT LEWIS, IDI STRATEGIES INC., JDS CORPORATION, ESCROWAGENT INC., JAMES PENTURN, RICHARD E. GLATT, DENIS JOBIN, ALLAN BEACH, MORRIS KEPES & WINTERS LLP, FASKEN MARTINEAU DUMOULIN LLP, CASSELS BROCK & BLACKWELL LLP, WISE, BLACKMAN LLP, EVANS & EVANS INC., GRAHAM TURNER, ROBERT KEPES and MORRIS & MORRIS LLP, Defendants

**BEFORE:** Justice E.M. Morgan

**COUNSEL:** *Margaret Waddell, Karine Bédard, and David Fogul*, for the Plaintiffs

*Richard B. Swan, Gannon G. Beaulne, and Ethan Schiff*, for the Defendants, Allan Beach and Fasken Martineau DuMoulin LLP

*Paul-Eric Veel, Bonnie Greenaway, and Militza Boljevic*, for the Defendant, Cassels Brock & Blackwell LLP

*Katie Newman and Nikita Rathwell*, for the Defendant, Evans & Evans Inc.

*Neil Rabinovitch*, for the Defendants, IDI Strategies Inc., James Penturn and Richard E. Glatt

**HEARD:** October 21, 2026

## ENDORSEMENT

[1] Three sets of Defendants in this class action brought summary judgment motions: Cassels Brock & Backwell LLP ("Cassels"), Fasken Marineau DuMoulin and Allan Beach ("Fasken"), and Evans & Evans Inc. ("Evans"). Another Defendant – IDI Strategies Inc. ("IDI") – has brought its own summary judgment motion which has been held in abeyance until the other three motions ran their course.

2026 ONSC 5992 (CanLII)

[2] The claim is brought by the donors to a charitable tax shelter scheme for which Cassels gave a tax opinion, Fasken provided certain corporate services, and Evans provided certain accounting services. I issued my decision on July 3, 2026, in which I granted summary judgment in favour of Cassels and Fasken and denied the summary judgment sought by Evans. The parties now seek to have a formal Judgment approved, but disagree on what should be included in the Judgment with respect to the Cassels motion.

[3] It is to be noted that the Plaintiff and Cassels have reached an agreement on costs. Cassels will forgo its right to the costs of it successful motion from the Plaintiff. At the same time, the Plaintiff will forgo its right to seek appeal of the summary judgment decision in favour of Cassels.

[4] By contrast, no such agreement has been struck between the Plaintiff and Fasken. The Plaintiff is pursuing an appeal of the summary judgment ruling in favour of Fasken. Counsel for Fasken points out that this situation leaves open the possibility that the ruling in favour of Fasken will be overturned on grounds that would have also applied to Cassels – e.g. that a solicitor owes a duty to third parties in addition to the duty that the solicitor owes to his or her client – but that Cassels will not share that exposure with Fasken because Cassels has been let out of the action and there is no more claim against it.

[5] At present, there are no cross-claims between Cassels and Fasken for contribution and indemnity or for any other causes of action. However, there is an agreement between those two parties to toll the limitation period such that a claim by Fasken for contribution and indemnity could conceivably be brought which would effectively bring Cassels back into the action despite having defeated the Plaintiff's claim and dispensed with any appeal.

[6] The parties have not yet taken out a formal Judgment from the summary judgment motion. Fasken's proposed solution to the asymmetry it faces with respect to Cassels is to incorporate into the Cassels Judgment certain terms that are reminiscent of Pierringer agreement settlements. This includes terms going to Cassels potentially providing evidence in the ongoing action, and that Cassels not be made the subject of any contribution or indemnity claim. Most importantly, Fasken's proposed additions to the Order also include a term confirming that in the event that the Fasken summary judgment ruling is overturned and the matter proceeds to a common issues trial, the trial judge will be free to determine what Cassels' proportionate share of liability would have been had the Plaintiff appealed its Cassels' summary judgment ruling and been successful in the appeal.

[7] Fasken's version of the draft Judgment in the Cassels motion contains the following clauses 5 through 9 embodying its proposal:

> 5. THIS COURT ORDERS that if any other defendant would have the right to make a claim for contribution and indemnity against Cassels Brock & Blackwell:
>
> > (a) the Plaintiffs and/or members of the Class shall not claim or be entitled to recover from the other defendants that portion of any damages, costs or interest awarded in respect of any claim(s) that correspond to the proportionate liability of Cassels Brock & Blackwell as proven at trial; and

2026 ONSC 5992 (CanLII)

> (b) the Court shall have full authority to determine the proportionate liability at the trial or other disposition of the Action as if Cassels Brock & Blackwell was a party to the Action and any such finding by the Court in respect of Cassels Brock & Blackwell's proportionate liability shall only apply in this Action and shall not be binding upon Cassels Brock & Blackwell in any other proceedings.

6. THIS COURT ORDERS that, for greater certainty, to the extent that Cassels Brock & Blackwell is found to have any liability to any of the other defendants for contribution and indemnity arising from or related to amounts for which the other defendants are found liable to the Class, the Class members' recovery from the other defendants shall be reduced by the amount(s) for which Cassels Brock & Blackwell is found liable to the other defendants.

7. THIS COURT ORDERS that, if the Plaintiffs are successful in reversing, limiting, or affecting prior privilege determinations of this Court or prior privilege positions taken by Cassels Brock & Blackwell in this Action, through appeal or otherwise (a "Future Ruling"), Cassels Brock & Blackwell will, upon request by a party to this Action, make such further documentary production as Cassels Brock & Blackwell would have been required to make consistent with that Future Ruling as if Cassels Brock & Blackwell continued to be a defendant in this Action, while reserving Cassels Brock & Blackwell's right to seek further direction from the Court in this regard.

8. THIS COURT ORDERS that, if requested by the Plaintiffs or the other defendants, Cassels Brock & Blackwell will send a representative to attend as a witness at the trial of this Action without the need to be served with a summons to witness, and the Plaintiffs and the other defendants may cross-examine the representative.

9. THIS COURT ORDERS AND DECLARES that, should it be necessary, this Court has full authority to determine the proportionate liability of Cassels Brock & Blackwell at the trial or other disposition of the Action, whether or not a representative of Cassels Brock & Blackwell appears at the trial or other disposition of this proceeding, and the proportionate liability of the other defendants shall be determined as if Cassels Brock & Blackwell is party to the Action and any determination by the Court in respect of the proportionate liability of Cassels Brock & Blackwell shall only apply in the Action and shall not be binding on Cassels Brock & Blackwell in any other proceedings.

[8] Cassels takes no issue with these clauses except for the proposed paragraph 9. I understand why it may make a party uncomfortable for a trial judge to determine its hypothetical proportional share of liability in a case in which it has been released and therefore in which it has not participated in the trial. The fact is, however, Cassels suffers no practical prejudice from any such finding. For greater certainty, the proposed clause 9 it does not purport to give the trial judge authority to make a finding of liability against Cassels; that would be impossible since Cassels is no longer a

2026 ONSC 5992 (CanLII)

defendant in the Plaintiff's action. It simply permits the trial judge to determine what Cassels proportionate share of liability would have been had it remained in the action.

[9] The point of the clause is to allow the trial judge the freedom to determine Fasken's several liability, if any, and not to blend Fasken's liability with Cassels as if Cassels never participated in the transactions at issue. Fasken may therefore be found less than 100% liable for the classes' losses, even though the party representing another portion of the liability – Cassels – is absent from the trial and there can be no judgment against it.

[10] It would also be possible, of course, for the trial judge to determine that Fasken is 100% liable regardless of any theoretical liability of Cassels. But the trial judge would have to make that determination on the merits after having turned their mind to the respective role actually played by Fasken.

[11] As for the other parties, Evans and IDI agree with Fasken's proposed clauses. The Plaintiff does not agree with them. It is the Plaintiff's view that the clauses do not flow from the summary judgment ruling and that they are not necessary.

[12] More specifically, the Plaintiff submits that the agreement to forego an appeal against Cassels, and Cassels' agreement to forego any request for costs, is not a settlement of the action which has to be approved or commented upon by the court. While the Plaintiffs have no particular opposition to the bar language in Fasken's clauses 5 through 8, they view the proportionate share language in clause 9 as overreaching my ruling and the type of Judgment that should flow from that ruling.

[13] Technically speaking, all of clauses 5 through 9 are beyond what I actually decided in my summary judgment decision. If the Judgment in the Cassels motion were to stick strictly to the contents of my reasons for decision, it would say nothing more than that the claim against Cassels is dismissed.

[14] However, in fashioning the terms of the Judgment, I do not have to adhere strictly to the specifics of my decision on the motion. As case management judge, I have broad discretion under section 12 of the *Class Proceedings Act, 1992*, to fashion any order that furthers a fair and expeditious proceeding.

[15] Just as class action settlements may engage protections in the nature of bar orders and proportionate liability provisions for non-settling defendants, the Judgment ensuing from this multi-party class action summary judgment decision, with its different results and different approaches to appeal of those results, calls for an approach that incorporates those protections: *McCartney v. CDSPI Advisory Services Inc*, 2026 ONCA 578, at paras. 26-33, aff'g 2025 ONSC 4250. Ensuring that those protections are in place for the sake of fairness going forward is within the scope of the case management judge's discretion.

[16] In my view, Fasken's proposed Judgment in respect of the Cassels motion, including clauses 5 through 9, reflects a fair representation of the summary judgment ruling and its ongoing implications for the action. Those terms do not prejudice any party, but rather leave all options open to the trial judge except for the option of actually ordering any liability against Cassels as the one party against whom the action has been dismissed and the appeal dropped.

2026 ONSC 5992 (CanLII)

[17] I would ask counsel for either Cassels or Fasken to email my assistant a clean copy of its draft Judgment in the Cassels motion in Word format for my signature.

**Morgan J.**

**Date:** October 23, 2026

2026 ONSC 5992 (CanLII)