

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE: COLLEEN UNDERHILL, ANGELO PAOLOZZI, and LINDA
PAOLOZZI, plaintiffs

AND:

MEDTRONIC CANADA, MEDTRONIC PLC, COVIDIEN
CANADA ULC, and SOFRADIM PRODUCTIONS, defendants

BEFORE: Justice Ranjan Agarwal

COUNSEL: Charles Wright and Jill McCartney, for the plaintiffs

Grant Worden, for the defendants

HEARD: August 17, 2026, in writing

ENDORSEMENT

- [1] The representative plaintiffs move for approval to discontinue this class action. The defendants consent to the order.
- [2] The representative plaintiffs started this class action in October 2021. They allege that the defendants designed, manufactured, and sold defective surgical stapler products (devices used to remove, cut through, or create connections in tissue during surgeries). The representative plaintiffs sought to represent a class of “similarly situated” individuals in Canada. There is an overlapping action in B.C., which was discontinued in July 2026. The action hasn’t been certified as a class proceeding. See *Underhill v Medtronic Canada*, 2023 ONSC 5919, for a discussion of the procedural history of this case.
- [3] The parties have since entered into an agreement that resolves the claims of all known class members and provides an opportunity for other class members to have

their claims considered by the defendants for resolution. The plaintiffs propose to give notice to the class of the claim being discontinued.

- [4] A proceeding under the *Class Proceedings Act, 1992*, SO 1992, c 6, may be discontinued or abandoned only with the approval of the court, on such terms as the court considers appropriate. See *CPA*, s 29(1). For court approval of a discontinuance, the central issue for determination is whether the class members may be harmed by the discontinuance of the class proceeding. To grant a dismissal, the court must be satisfied that:

- the interests of the class won't be prejudiced
- the proceeding wasn't started for an improper purpose
- if necessary, there's a viable replacement party so that class members aren't prejudiced
- the defendant won't be prejudiced

See *Underhill*, at para 12; *Sollen v Boehringer Ingelheim (Canada) Ltd.*, 2008 ONCA 803, at para 3.

- [5] In approving a discontinuance, the court shall consider whether notice should be given to the class. See *CPA*, s 29(2). In almost all cases, the court orders notice. See *Kamrani-Ghadjar v Anaergia Inc.*, 2025 ONSC 499, at paras 12-19.

- [6] Class counsel have identified less than 30 class members, despite four years of publicity around the action. The defendants have agreed to a monetary settlement for these known class members. For other class members, the limitation period for their individual claims remains suspended until 70 days after the publication of the discontinuance notice. These class members will have four weeks to make a claim to the defendants.

- [7] I find that the class members won't be harmed if this action is discontinued, especially where notice, which is satisfactory, is given to the class. The known class members have settled their claims. The unknown class members will get notice of the process for making a claim. Class Counsel will email any class members that contacted them, post the notice on their website, and publish the notice in three newspapers. Class members have four weeks to resolve claims with the defendants. They can also start an individual action within at least 70 days. There's no evidence that the plaintiffs' purpose in starting this claim was improper—it's not a strike suit.
- [8] As a result, I endorse an order in the form as requested by the plaintiffs. I have signed the order.

August 17, 2026

A handwritten signature in black ink, appearing to read 'Agarwal J', with a long horizontal stroke extending to the right.

Agarwal J