

Federal Court



Cour fédérale

**Date: 20200310**

**Docket: T-1673-17**

**Citation: 2020 FC 322**

**Ottawa, Ontario, March 10, 2020**

**PRESENT: The Honourable Mr. Justice Phelan**

**CLASS PROCEEDING**

**BETWEEN:**

**CHERYL TILLER, MARY-ELLEN COPLAND  
AND DAYNA ROACH**

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**ORDER**  
**(Counsel Fees)**

**WHEREAS** this motion was made by the Representative Plaintiffs pursuant to  
Rule 334.3 of the *Federal Courts Rules*, SOR/98-106;

**AND WHEREAS** the Defendant takes no position on this motion having agreed to  
contribute Six Million Dollars (\$6,000,000) to counsel's fees;

**AND WHEREAS** this motion was heard on October 17, 2019;

**AND UPON HEARING** the submissions of counsel for the Representative Plaintiffs;

**AND UPON READING** the motion record of the Representative Plaintiffs;

**THIS COURT ORDERS that:**

1. The Class Counsel fees set out in the fee agreement between the parties executed on June 24, 2019 [the Fee Agreement], attached as Schedule A, are approved subject to amendment of Clause 1.04 to 7% and the consequential amendment in Clause 1.05 to 7%.
2. The Fee Agreement is incorporated by reference into this Order and the definitions set out in the Fee Agreement apply to this Order.
3. The Defendant will pay \$6,000,000.00, plus applicable sales taxes, to Class Counsel as a contribution towards Class Counsel fees.
4. Class Members will make a contribution towards Class Counsel fees in the amount of 7%, plus applicable taxes, of the individual compensation awarded to each eligible Class Member under the Settlement, excluding any amounts paid to her for reimbursement of out-of-pocket expenses incurred to obtain medical documentary evidence to support her claim and travel expenses when required to travel more than 50 kilometers from her residence to attend an in-person interview with the Assessor.
5. Pursuant to the Fee Agreement, 70% of the Class Counsel fees will be payable to Klein Lawyers LLP and 30% will be payable to Higgerty Law.
6. Within 10 days of the Approval Date, Klein Lawyers will provide the Defendant with an invoice for \$4.2 million plus applicable sales taxes and Higgerty Law will

provide the Defendant with an invoice for \$1.8 million plus applicable sales taxes representing the Defendant's respective contributions towards Class Counsel fees. These amounts will be paid by the Defendant within 30 days following the Approval Date, as defined in the Settlement Agreement.

7. Class Counsel will hold the amounts paid by the Defendant in trust pending the expiry of any appeal period for the Federal Court approval of the Settlement Agreement or the Federal Court approval of Class Counsel fees. If an appeal of the Settlement Agreement approval or the approval of Class Counsel fees is filed, Class Counsel will continue to hold the fees paid by Canada in trust pending the final resolution of the appeal(s). Class Counsel will only remove the amounts paid by the Defendant from trust, in satisfaction of their invoices, if no appeal has been filed and the period for appeal has expired, or if any appeal is unsuccessful and all further appeal periods have expired. If the Federal Court approval of the Settlement Agreement is overturned on appeal, Class Counsel will return to the Defendant the amount previously paid for Class Counsel fees. If the approval of Class Counsel fees is overturned or varied on appeal, Class Counsel will return to the Defendant any amount previously paid for Class Counsel fees which is not provided for in the final order of the Federal Court.
8. The Class Counsel fee payable by each Class Member will be calculated by the Administrator who will hold back the Class Counsel fee, plus applicable sales tax, from the compensation otherwise payable to the Class Member. The Administrator will remit 70% of the Class Counsel fee, plus applicable sales tax, to Klein Lawyers and 30% of the Class Counsel fee, plus applicable sales tax, to

Higgerty Law on the first business day of each month for all compensation paid to Class Members in the prior month.

9. Klein Lawyers and Higgerty Law will each provide the Defendant with an itemized list of their disbursements, together with receipts or other supporting documentation satisfactory to the Defendant, within 30 days of the issuance of this Order. The Defendant will pay the costs of Klein Lawyers' and Higgerty Law's reasonable disbursements, as agreed between the Parties or as assessed by the Court.
10. Each Party will bear their own costs of this application.

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"Michael L. Phelan"

Judge

SCHEDULE A

**CHERYL TILLER, MARY-ELLEN COPLAND, AND DAYNA ROACH,  
as class action representative plaintiffs**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA,  
represented by THE ATTORNEY GENERAL OF CANADA**

**WHEREAS:**

- A. The Plaintiffs, Cheryl Tiller, Mary-Ellen Copland and Dayna Roach, and the Defendant, the Attorney General of Canada (the "Parties"), have entered into an amended settlement agreement dated June 21, 2019 (the "Settlement Agreement" or "Settlement") which replaces an earlier settlement agreement dated April 24, 2019;
- B. The Parties entered into an agreement for the payment of Class Counsel fees dated May 1, 2019 and wish to replace that agreement with this Agreement;
- C. The Parties recognize that, pursuant to the *Federal Courts Rules*, SOR/98-106, Class Counsel fees must be approved by the Federal Court as fair and reasonable; and
- D. The Parties wish to ensure parity between the Class Members in this action and the Class Members in *Merlo and Davidson v. Her Majesty the Queen*, Federal Court Action Number T-1685-16, with respect to Class Members' contribution to Class Counsel fees.

**THEREFORE**, in consideration of the mutual agreements, covenants, and undertakings in this Agreement, the Parties agree as set out below:

**1.01 Legal Fees**

Subject to approval by the Federal Court of Class Counsel fees, including approval of the contribution to Class Counsel fees from Class Members in accordance with section 1.04 set out below, Canada will pay \$6,000,000.00 plus applicable PST and GST to Class Counsel as a contribution toward Class Counsel fees.

**1.02 Payment of Legal fees**

Within 10 days of the Approval Date, Klein Lawyers LLP will provide Canada with an invoice for \$4.2 million plus applicable sales taxes and Higgerty Law will provide Canada with an invoice for \$1.8 million plus applicable sales taxes representing Canada's contributions toward Class Counsel fees. Payment shall be made to Class Counsel within 30 days following the Approval Date as defined in the Settlement Agreement, in accordance with their invoices. Class Counsel will hold the amounts paid by Canada in trust pending the expiry of any appeal period for the Federal Court approval of the Settlement Agreement or the Federal Court approval of Class Counsel fees. If an appeal of the Settlement Agreement approval or the approval of Class Counsel fees is filed, Class Counsel will continue to hold the fees paid by Canada in trust pending the final resolution of the appeal(s). Class Counsel will only remove the amounts paid by Canada from trust in satisfaction of their invoices if no appeal has been filed and the period for appeal has expired or if any appeal is unsuccessful and all further appeal periods have expired. If the Federal Court Approval of the Settlement Agreement is overturned on appeal Class Counsel will return to Canada the amount previously paid for Class Counsel fees. If the approval of Class Counsel fees is overturned or varied on appeal, Class Counsel will return to Canada any amount previously paid for Class Counsel fees which is not provided for in the final order of the Federal Court.

**1.03 Disbursements**

Within 30 days of the approval of Class Counsel fees by the Federal Court, Class Counsel will provide Canada with an itemized list of disbursements, together with receipts or other supporting documentation satisfactory to Canada. Canada will pay reasonable disbursements to Class Counsel as agreed between the Parties or assessed by the Court.

**1.04 Contribution by Class Members**

Class Counsel will seek approval from the Federal Court of a contribution by Class Members towards Class Counsel fees. This contribution sought shall be 15%, plus applicable sales taxes, of the compensation awarded to each Class Member pursuant to the Settlement.

**1.05 Hold Back By Administrator**

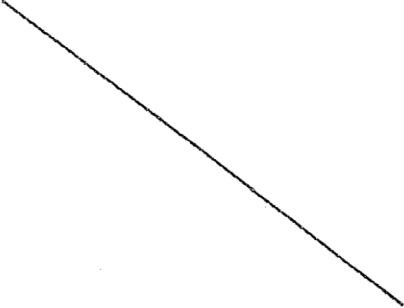
The 15% Class Counsel fees payable by each Class Member will be calculated by the Administrator, who will hold back the Class Counsel fees and applicable sales tax from the compensation otherwise payable to the Class Member. The Administrator will remit 70% of the Class Counsel fees plus applicable sales tax to Klein Lawyers LLP and 30% plus applicable sales tax to Higgerty Law on the first business day of each month for all compensation paid to Class Members in the prior month.

**1.06 Court Approval of Class Counsel Fees**

Class Counsel will seek approval from the Federal Court of Class Counsel fees on the basis of Canada and the Class Members making the contributions outlined in sections 1.01 and 1.04 above, on the basis that it represents a fee of approximately 21% of an assumed settlement fund of approximately \$100 million. The Parties acknowledge that this settlement is not capped and the \$100 million is an estimate of the value of compensation payable to Class Members.

**1.07 Interpretation**

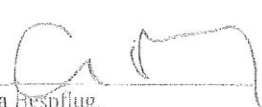
All terms in this Agreement are to be interpreted in accordance with the definitions set out in the Settlement Agreement.




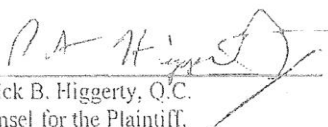
1.08 Counterparts

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which, taken together, will be deemed to constitute one and the same Agreement.

IN WITNESS WHEREOF the Parties have executed this Agreement this 24<sup>th</sup> day of June, 2019.

  
\_\_\_\_\_  
AngelaRESPflug,  
Counsel for the Plaintiffs,  
Cheryl Tiller and Mary-Ellen Copland

  
\_\_\_\_\_  
Donnaree Nygard,  
Counsel for the Defendant, the  
Attorney General of Canada

  
\_\_\_\_\_  
Patrick B. Higgerty, Q.C.  
Counsel for the Plaintiff,  
Dayna Roach