

FEDERAL COURT

PROPOSED CLASS PROCEEDING

BETWEEN:

CHERYL TILLER, MARY-ELLEN COPLAND AND DAYNA ROACH

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

DEFENDANT'S MOTION RECORD

**Responding to the Plaintiffs' Motion to
Approve a Protocol for Auxiliary Constables**

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Court File No: T-1673-17

FEDERAL COURT
CLASS PROCEEDING

Between

CHERYL TILLER, MARY-ELLEN COPLAND AND DAYNA ROACH

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

AFFIDAVIT OF DEANNA WISSMAN

I, Deanna Wissman, Paralegal, of the Department of Justice, of Suite 900 – 840 Howe Street, Vancouver, British Columbia, SWEAR THAT:


1. I am employed as a paralegal by the Government of Canada at the Department of Justice British Columbia Regional Office and I am assigned to assist the Defendants' in the above noted proceeding. I was also assigned to the *Merlo-Davidson* settlement and release in the same capacity. As such, I have personal knowledge of the matters and facts set out in this affidavit, except where stated to be based on information and belief, in which case I believe them to be true.


Merlo-Davidson Class Action Settlement

2. I worked as a paralegal on another RCMP class action, *Merlo and Davidson v. Her Majesty the Queen*, Federal Court file number T-1685-16 [*Merlo/Davidson*] and as such have knowledge of the documents described in this affidavit.

3. On December 30, 2016 a Notice of Motion was filed to certify the *Merlo/Davidson* proceeding as a class action proceeding. In support of that motion and attached as **Exhibit A** is the body of the Affidavit of Whitney Santos sworn December 23, 2016. Exhibit E to the December 23, 2016 Whitney Santos Affidavit is the September 27, 2013 Affidavit of James Lea which I attach as **Exhibit B**.
4. Also in the *Merlo/Davidson* class action, during the settlement approval motion the Plaintiffs filed a further Affidavit of Whitney Santos. Attached as **Exhibit C** is a true copy of the body of sworn Affidavit of Whitney Santos dated May 11, 2017. Also attached as **Exhibit D** is a true copy of Exhibit BB to the May 11, 2017 Whitney Santos Affidavit titled "Schedule A – Appendix 2; Notice of Settlement."
5. As part of the notice plan in *Merlo/Davidson* class counsel posted information on their websites. Attached as **Exhibit E** is a printout of information which I obtained from the Klein Lawyer's website (<https://www.callkleinlawyers.com/class-actions/settled/rcmp/>) setting out who was eligible in the *Merlo/Davidson* settlement.

SWORN before me at the City of)
 Vancouver, in the Province of British)
 Columbia this 30 day of June, 2021)


 A Commissioner for taking affidavits in the)
 Province of British Columbia)


 Deanna Wissman

Andrew Eyer
 Barrister & Solicitor
 Department of Justice
 900 - 840 Howe Street
 Vancouver, BC V6Z 2S9

This is Exhibit "**A**" referred to in the
Affidavit of Deanna Wissman
Sworn before me at Vancouver in the
Province of British Columbia this
30th day of June, 2021

A handwritten signature in blue ink, consisting of a stylized 'D' followed by a horizontal line and a small loop.

A Commissioner for taking affidavits
within British Columbia

Court File No: T-1685-16

FEDERAL COURT
PROPOSED CLASS PROCEEDING

BETWEEN:

JANET MERLO and LINDA GILLIS DAVIDSON

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

Brought pursuant to the *Federal Court Rules*, SOR/98-106

AFFIDAVIT OF WHITNEY SANTOS

I, Whitney Santos of 400 - 1385 West 8th Avenue, Vancouver in the Province of British Columbia, MAKE OATH AND SAY THAT:

1. I am a paralegal with the law firm Klein Lawyers, counsel for the Plaintiff, Janet Merlo, in this action. As such, I have knowledge of the facts and matters deposed to in this affidavit. Where facts are not within my personal knowledge, I have stated the source of information and I believe those facts to be true.

2. This Federal Court action is a consolidation of claims that were brought by Janet Merlo and Linda Gillis Davidson in British Columbia and Ontario respectively. The action was filed in Federal Court for the purpose of facilitating a national settlement of the litigation. If the settlement is approved by the Federal Court, the suits filed by Ms. Merlo and Ms. Davidson in British Columbia and Ontario will be discontinued.

History of the Litigation

3. Janet Merlo's action was filed on March 27, 2012 in the Supreme Court of British Columbia. An Amended Notice of Civil Claim was filed on June 17, 2015. Attached as Exhibit A is a copy of the Amended Notice of Civil Claim.

4. The Defendants brought an application to strike portions of Ms. Merlo's claim. In response to that application, Ms. Merlo brought an application for directions requesting that the Defendants' strike application be heard at the same time as Ms. Merlo's certification application. On June 25, 2013, Madame Justice Gropper held that the applications should be heard at the same time and set a schedule for the delivery of materials. That decision is reported at *Merlo v. Canada (Attorney General)*, 2013 BCSC 1136.

5. The parties to the Merlo action delivered their application materials and concurrently engaged in settlement negotiations. Those negotiations were unsuccessful. Ms. Merlo's certification application and the Defendants' strike application were heard before Madame Justice Gropper on June 1 – 5, 2015 and November 26 – 27, 2015. Madame Justice Gropper reserved her decision.

6. Ms. Davidson's action was filed on March 25, 2015 in the Ontario Superior Court. Attached as Exhibit B is a copy of the Statement of Claim.

7. As in British Columbia, the Defendant in the Davidson action brought an application to strike the claim. The application was heard by Justice Perell on December 10, 2015. Justice Perell struck the claim in contract but otherwise dismissed the Defendant's motion. The decision is reported at *Davidson v. Canada (Attorney General)*, 2015 ONSC 8008.

8. The hearing of Ms. Davidson's certification application was held on February 29, 2016 but was adjourned for procedural reasons. The certification hearing was rescheduled to May 26, 2016 but did not proceed as the parties had entered into a tentative agreement to settle the litigation.

The Settlement

9. I am informed by David A. Klein, counsel for Ms. Merlo, that in January 2016, counsel for the parties to both the Merlo and Davidson actions met in Toronto to resume settlement negotiations. Over the ensuing five months, counsel engaged in intensive negotiations. They had approximately eight in-person negotiation sessions in Toronto and Ottawa as well as numerous telephone conference calls and e-mail exchanges. In or around April of 2016, Canada secured the services of the Honourable Michel Bastarache, CC, QC to assist the parties in the development of claims assessment protocols. Thereafter, Justice Bastarache attended all of the in-person negotiation sessions and was party to many of the conference calls and e-mails. The negotiations culminated in an Agreement in Principle (the "AIP") that was signed by the parties on May 25, 2016. The AIP was subject to approval by the required authorities within the Government of Canada and required the preparation of a final settlement agreement to give effect to the provisions of the AIP.

10. From June 2016 through to October 2016, the parties negotiated the terms of the final settlement agreement as well as the various protocols and forms, which are attached as schedules to the agreement. Attached as Exhibit C is the Settlement Agreement. The Settlement is subject to approval by the Federal Court. Subject to approval of the court, Justice Bastarache has agreed to serve as the court appointed Assessor of claims made pursuant to the Settlement.

11. The Settlement includes a host of change initiatives aimed at eliminating workplace harassment and discrimination in the RCMP and a claims process for compensating class members who experienced gender or sexual orientation based harassment or discrimination while working in the RCMP.

12. The Settlement was announced at a press conference in Ottawa on October 6, 2016. In attendance were RCMP Commissioner Bob Paulson, Ms. Merlo and her counsel, Ms. Davidson and her counsel, Justice Bastarache, Public Safety Minister Ralph Goodale and Labour Minister MaryAnn Mihychuk. Commissioner Paulson announced the Settlement and read a statement of apology to women in the RCMP. Attached as Exhibit D is the statement of apology. The news

conference received extensive media coverage. The statement of apology is posted on the RCMP's website.

13. A first step to court approval of the Settlement is certification of the action as a class proceeding. The Defendant is consenting to a conditional certification of the action as a class proceeding for the purpose of Settlement.

Class Definition and Class Size

14. Article 1 of the Settlement Agreement defines the Class for settlement purposes. The Class is composed of Primary Class Members and Secondary Class Members:

"Primary Class Members" means female current and former living Regular Members, Civilian Members and Public Service Employees (who are appointed by the Commissioner of the RCMP under the delegated authority of the Public Service Commission pursuant to the *Public Service Employment Act*, R.S.C., 1985, c. P-32; amended S.C. 2003, c. 22, ss.12, 13) who worked within the RCMP during the Class Period, who experienced and/or continue to experience gender and/or sexual orientation based harassment and discrimination while working in the RCMP during the Class Period, and who have not opted out or are not deemed to have opted out of the Class Action on or before the expiry of the Opt Out Period. For the purposes of the Settlement only, "Regular Members" includes Regular Members, Special Constables, Cadets, Auxiliary Constables, Special Constable Members, and Reserve Members. For the purposes of the Settlement only, "Public Service Employees" includes Temporary Civilian Employees who, prior to 2014 were appointed under the now-repealed subsection 10(2) of the *RCMP Act*, R.S.C., 1985, c. R-10.

"Secondary Class Members" means all persons who have a derivative Claim, in accordance with applicable family law legislation, arising from a family relationship with a Primary Class Member;

15. In the Merlo action, Dr. James Lea, of the human resources sector of the RCMP filed an affidavit with information as to the number of women currently and formerly working within the RCMP as at April 1, 2013. His affidavit is attached as Exhibit E. Based on the information in Dr. Lea's affidavit, it appears that over 20,000 women may qualify as Primary Class Members.

Representative Plaintiffs

16. Ms. Merlo and Ms. Davidson have diligently advanced the interests of class members. They each filed detailed affidavit evidence in support of the certification applications in British Columbia and Ontario respectively. I am informed by Mr. Klein that Ms. Merlo and Ms. Davidson participated in extensive discussions with their respective counsel regarding the terms of the Settlement throughout the negotiations. They each read statements as representatives of the Class at the news conference on October 6, 2016, answered questions from reporters, and gave subsequent interviews to the media regarding the settlement.

17. Ms. Merlo and Ms. Davidson have entered into contingency fee agreements with their respective counsel in this action. Attached as Exhibit F is a copy of Ms. Merlo's agreement. The agreements will be superseded by class counsel's fee application, which will be brought concurrently with the application for settlement approval.

Notice of Certification and Settlement Approval Hearing

18. The parties have agreed that the office of the Independent Assessor (Justice Bastarache) will be responsible for disseminating the required Notices to class members. The first will be a Notice of Certification and Settlement Approval Hearing. This Notice will inform class members of the certification of the action as a class proceeding, their right to opt out, and their right to express their views on the Settlement. If the Settlement is approved by the court, there will then be a Notice of Settlement to inform class members of how they may submit claims.

19. Justice Bastarache retained Versailles Communications to prepare a Notice Plan, which is attached Exhibit G. Attached as Exhibit H is the Curriculum Vitae for Guy Versailles, the principal of Versailles Communications. As set out in his CV, he has years of experience on large communication projects including developing communication strategies for reaching target audiences, media logistics, website creation/revision, and document drafting. The Notice Plan provides for Notice to be distributed by:

- direct mail to potential class members

- posting on a settlement website, class counsel's websites, and the RCMP website and intranet
- publication of the Notice in major Canadian newspapers
- an advertising campaign on Facebook
- posting in all RCMP physical premises

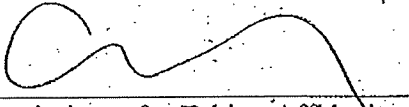
20. The Settlement Agreement is already on the websites of class counsel, Klein Lawyers and Kim Orr, and on a settlement website created by the office of the Independent Assessor.

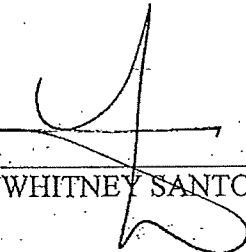
21. To facilitate the direct mail notice program, the Defendant has agreed that the RCMP and other federal government departments and agencies will make reasonable efforts to identify and provide to the RCMP Designated Contact referred to in Article 3.03(2)(a) of the Settlement Agreement, the names and last known address or other contact information of women who were female Regular Members, Civilian Members or Public Service Employees, as defined in the Settlement Agreement, who worked within the RCMP from September 16, 1974 to the date of certification, except where disclosure of such information is prohibited by law. The Designated Contact will provide this information to the Independent Assessor for notice by direct mail.

22. The proposed Notice of Certification and Settlement Approval Hearing is found at Appendix 1 of Schedule A of the Settlement Agreement (Exhibit C).

23. I know of no fact material to the motion that has not been disclosed in my affidavit.

SWORN BEFORE ME in the
City of Vancouver, in the
Province of British Columbia
this 23rd day of December, 2016.


A Commissioner for Taking Affidavits
In the Province of British Columbia


WHITNEY SANTOS

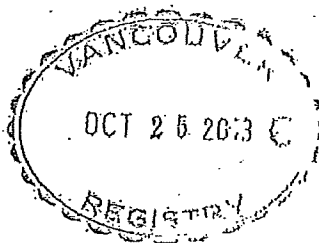
ANGELA J. BESPFLUG
Barrister & Solicitor
400-1385 West 8th Avenue
Vancouver, BC V6H 3V9

This is Exhibit "**B**" referred to in the
Affidavit of Deanna Wissman
Sworn before me at Vancouver in the
Province of British Columbia this
30th day of June, 2021

A handwritten signature in blue ink, consisting of a stylized 'D' followed by a horizontal line.

A Commissioner for taking affidavits
within British Columbia

-227-



This is Exhibit E 192 related to in the
affidavit of William Santos
sworn before me, this 23
day of December 2013

This is the 1st affidavit
of James Lea in this case
and was made on 21 / Sep / 2013

NO. S122255
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

Janet MERLO

PLAINTIFF

AND:

THE ATTORNEY GENERAL OF CANADA and
THE MINISTER OF JUSTICE OF BRITISH COLUMBIA

DEFENDANTS

Brought under the *Class Proceedings Act*, RSC 1996, c. 50

AFFIDAVIT OF JAMES LEA

I, Dr. James Lea, 73 Leikin Dr., in the City of Ottawa, Province of Ontario, of the Human Resources Sector of the Royal Canadian Mounted Police ("RCMP") AFFIRM THAT:

1. I am the former Director of Assessment and Research in the Human Resources Sector of the RCMP. In this position, I was responsible for overseeing the analysis and reporting of demographic statistical information concerning the RCMP and, as such, have personal knowledge of the facts contained in this affidavit except where otherwise stated in which case I verily believe them to be true.

2. On April 1, 2013, there were 11,842 women engaged in the following positions in or on behalf of the RCMP including:

- (a) 3,923 regular members;
- (b) 1,891 civilian members;

2

- (c) 667 temporary civilian employees;
- (d) 4,938 indeterminate public service employees, and
- (e) 423 determinate public service employees.

3. On April 1, 2013, there were also 12,914 women engaged in the following roles in or on behalf of the RCMP:

- (a) 75 cadets;
- (b) 1,533 commissionaires;
- (c) 3,008 municipal employees;
- (d) 362 auxiliary constables;
- (e) 8 reserve members;
- (f) 5 special constables;
- (g) 1 supernumerary special constable;
- (h) 2,790 volunteers;
- (i) 803 women on secondment from other agencies/forces, and
- (j) 4,329 contractors or consultants.

4. Between April 1, 1970 and April 1, 2013 the number of women departing from the following categories with the RCMP was as follows:

- (a) 1,624 regular members;
- (b) 2,016 civilian members; and
- (c) 7,276 temporary civilian employees.

5. Reliable electronic records concerning the above categories of employees are not available for any period of time before April 1, 1970.

6. Between April 1, 1998 and April 1, 2013 a total of 12,384 women left public service employee positions with the RCMP, broken down as follows:

(a) 4,066 indeterminate public service employees, and

(b) 8,218 determinate public service employees.

7. Reliable electronic records concerning public service employees are not available for any period of time before April 1, 1998.

8. The total number of women who previously held positions with the RCMP may be lower than the total number of departures indicated above. This is because a particular individual (holding a temporary position for example) may have departed more than once from positions within the RCMP.

9. As of April 1, 2013, 85% of civilian members were engaged in one of the following classifications:

(a) 1,123 Computer programmers ("CP")

(b) 705 Telecom operators ("TO")

(c) 686 Administration ("ADM")

(d) 201 Intercept Monitors ("IM")

(e) 165 Forensic Scientists ("FS")

(f) 157 Fingerprint Technicians ("FL")

(g) 104 Forensic Technologists ("FT")

(h) 80 General Technicians ("GT")

10. As of April 1, 2013, the indeterminate public service employees engaged with the RCMP fell into the following main classifications:

(a) 3,060 Clerical and Regulatory ("CR")

(b) 1,658 Administrative Services ("AS")

(c) 229 Program Administration ("PM")

(d) 216 Financial Management ("FM")

(e) 140 Personnel Administration ("PE")

- (f) 84 Purchasing and Supply ("PG")
- (g) 79 Economist/Social Scientist ("EC")
- (h) 74 Information Services ("IS")
- (i) 52 General Technical ("GT")
- (j) 50 Engineer ("EG")
- (k) 47 Computer Systems ("CS")
- (l) 45 Executive ("EX")

11. As of April 1, 2013 regular members ("RM"), indeterminate public service employees ("PSE") and civilian members ("CM") of the RCMP were engaged as follows:

- (a) British Columbia (B Division)
 - RM: 6,423
 - CM: 697
 - PSE: 1,086
- (b) Alberta (K Division)
 - RM: 2,891
 - CM: 284
 - PSE: 416
- (c) Saskatchewan (F Division)
 - RM: 1,281
 - CM: 141
 - PSE: 259
- (d) RCMP Training Academy (Depot Division)
 - RM: 129
 - CM: 26
 - PSE: 174
- (e) Manitoba (D Division)
 - RM: 1,073
 - CM: 133
 - PSE: 232
- (f) Ontario (O Division)
 - RM: 1,219
 - CM: 126

- PSE: 177
- (g) National Capital Region--operational (A Division)
 - RM: 432
 - CM: 63
 - PSE: 54
- (h) Quebec (C Division)
 - RM: 1,002
 - CM: 133
 - PSE: 172
- (i) New Brunswick (J Division)
 - RM: 889
 - CM: 87
 - PSE: 158
- (j) Nova Scotia (H Division)
 - RM: 1,010
 - CM: 82
 - PSE: 163
- (k) Prince Edward Island (L Division)
 - RM: 134
 - CM: 16
 - PSE: 25
- (l) Newfoundland and Labrador (B Division)
 - RM: 514
 - CM: 57
 - PSE: 108
- (m) Yukon (M Division)
 - RM: 133
 - CM: 22
 - PSE: 33
- (n) Northwest Territories (G Division)
 - RM: 187
 - CM: 32
 - PSE: 32
- (o) Nunavut (V Division)
 - RM: 128
 - CM: 12
 - PSE: 12

6

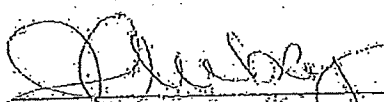
- (p) Pacific Region
 - RM: 11
 - CM: 15
 - PSE: 56
- (q) Central Region
 - RM: 89
 - CM: 85
 - PSE: 308
- (r) National Headquarters
 - RM: 1,218
 - CM: 1,661
 - PSE: 2,037
- (s) Atlantic Region
 - RM: 87
 - CM: 66
 - PSE: 201
- (t) Northwest Region
 - RM: 100
 - CM: 62
 - PSE: 413

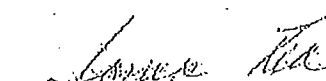
12. The RCMP provides provincial and municipal police services in all provinces in Canada except Ontario and Quebec and in all three territories.

13. As of April 1, 2013, there were 773 female regular members serving in communities with fewer than 5000 people.

14. I make this affidavit in support of the Defendant's certification response and for no other or improper purpose.

AFFIRMED BEFORE ME at Ottawa,
Ontario on September 27, 2013.


A commissioner for taking
Affidavits for Ontario (LSC # 401377)


JAMES LEA

This is Exhibit "C" referred to in the
Affidavit of Deanna Wissman
Sworn before me at Vancouver in the
Province of British Columbia this
30th day of June, 2021

A handwritten signature in blue ink, appearing to be 'Dee', is written above a horizontal line.

A Commissioner for taking affidavits
within British Columbia

Court File No.: T-1685-16

FEDERAL COURT

CLASS PROCEEDING

BETWEEN:

JANET MERLO and LINDA GILLIS DAVIDSON

Plaintiffs

- and -

HER MAJESTY THE QUEEN

Defendant

Brought pursuant to the *Federal Courts Rules*, SOR/98-106

AFFIDAVIT OF WHITNEY SANTOS

I, Whitney Santos of 400 - 1385 West 8th Avenue, Vancouver in the Province of British Columbia, MAKE OATH AND SAY THAT:

1. I am a paralegal with the law firm Klein Lawyers LLP (formerly Klein Lyons), counsel for Janet Merlo, a representative plaintiff in this action and, as such, have personal knowledge of the facts and matters deposed to in this affidavit. Where facts are not within my personal knowledge, I have stated the source of the information, and I verily believe that information to be true. This affidavit is supplemental to my prior affidavit sworn in this action.

2. I make this affidavit in support of a motion to approve the settlement of this action as set out in the settlement agreement, including the recitals, schedules and appendices (collectively the "Settlement" or "Settlement Agreement"); to approve the proposed form, content and manner of distribution of the notice of settlement approval (the "Notice"); to approve the requested class counsel fees; to approve the requested honoraria payable to Ms. Merlo and Linda Gillis Davidson; and to obtain an order that Rule 334.21(2) of the *Federal Courts Rules*, SOR/98-106 does not apply to either Ms. Merlo or Ms. Davidson and that neither is excluded from this proceeding. The plaintiffs claim without prejudice settlement privilege in this affidavit, and do not consent to the use of this affidavit for other purposes.

Experience and Recommendation of Counsel

3. Klein Lawyers has specialized in the area of class actions for more than 20 years. We were plaintiffs' counsel in the first class action certified in British Columbia, the first class action certified in Manitoba, and the first class action certified in Newfoundland & Labrador. Our managing partner, David A. Klein, is a past-president of the Trial Lawyers' Association of British Columbia. He is listed in Best Lawyers in Canada in the area of class action litigation, as Repeatedly Recommended by Lexpert in the field of class action litigation, and as a Local Litigation Star by Benchmark Canada. In 2014, Global Legal Experts named our lawyers as Appellate Law Firm of the Year in Canada. A copy of Mr. Klein's *curriculum vitae*, which details our class action experience, is attached as Exhibit A.

4. Kim Orr Barristers P.C., counsel for Ms. Davidson, has specialized in the area of class actions for more than 20 years. Its co-lead counsel, Won J. Kim and Megan B. McPhee, have extensive experience representing plaintiffs in major class actions. Mr. Kim is listed as Most Frequently Recommended by Lexpert in the field of class action litigation, and appears in Benchmark Canada and the Lexpert Guide to the Leading US/Canada Cross-border Litigation Lawyers. In 2011, Mr. Kim, together with Ms. McPhee, launched the Kim Orr Class Action Monitor, a bi-weekly reporter that provides updates and commentary on developments in the Canadian class actions bar. A copy of Mr. Kim's and Ms. McPhee's biographies, which details Kim Orr's class action experience, is attached as Exhibit B.

5. We have diligently litigated this case for more than five years. Ms. Merlo's action was filed on March 27, 2012 in the Supreme Court of British Columbia. An Amended Notice of Civil Claim was filed on June 17, 2015. Attached as Exhibit C is a copy of the Amended Notice of Civil Claim. Ms. Davidson's action was filed on March 25, 2015 in the Ontario Superior Court. Attached as Exhibit D is a copy of the Statement of Claim.

6. The parties agreed that to facilitate the Settlement, the plaintiffs would file a consolidated claim in Federal Court. The claim was issued on October 6, 2016. The parties have agreed that the British Columbia and Ontario actions will be discontinued if the Settlement is approved by this Court.

7. The lawyers on this file at Klein Lawyers and at Kim Orr are leading lawyers in the field of class action litigation in Canada. They have recommended the Settlement to Ms. Merlo and Ms. Davidson. Ms. Merlo and Ms. Davidson each accepted that recommendation and authorized Mr. Klein and Mr. Kim to sign the Settlement Agreement on their behalf.

Terms of the Settlement

8. The Settlement seeks to achieve the goals described in clauses B and C of the Settlement Agreement:

B. The Plaintiffs and the Defendant ("the Parties") recognize and acknowledge that gender and sexual orientation based harassment, gender and sexual orientation based discrimination, and sexual assault, including physical assault in the course of conduct constituting harassment have no place in the RCMP and wish to enter into this Settlement Agreement to:

- (a) restore confidence in the RCMP as an organization that values equity and equality;
- (b) implement measures to eliminate workplace harassment and discrimination in the RCMP; and
- (c) resolve the Claims of Primary Class Members who experienced and/or continue to experience gender and/or sexual orientation based harassment and discrimination (as defined below) while working in the RCMP during the Class Period;

C. The Parties agree to: a) implement change initiatives and best practices aimed at eliminating Harassment in the RCMP and increasing equality and b) compensate Class Members who suffered injury as a consequence of that Harassment.

Class Membership and the Class Period

9. The Settlement provides compensation to living female Regular Members, Civilian Members and Public Service Employees who experienced and/or continue to experience gender and/or sexual orientation based harassment and discrimination while working in the RCMP during the Class Period. For the purposes of the Settlement, Regular Members is expansively defined to include Regular Members, Special Constables, Cadets, Auxiliary Constables, Special Constable Members and Reserve Members. Public Service Employees includes Temporary

Civilian Employees who, prior to 2014 were appointed under the now-repealed subsection 10(2) of the *RCMP Act*, RSC, 1985, c R-10.

10. The Class Period runs from September 16, 1974, the date on which women were accepted as Regular Members in the RCMP, to the date the Settlement is approved by the Court. This time frame is a substantial benefit to the class as it will include claims that could otherwise be time barred due to the expiry of limitation periods.

11. As described in detail below, the Settlement provides six levels of compensation ranging from \$10,000 to \$220,000. For women whose claims are assessed at levels 5 and 6, compensation in an aggregate total of up to 10% of the claimant's award will be awarded to their spouses and children.

Compensation Levels

12. The Settlement provides six levels of compensation. Each level sets out a non-exhaustive list of culpable conduct and effect on the victim. The multiple levels recognize that there are many different forms of gender and sexual orientation based harassment and discrimination, and each will have a unique impact on the victim.

13. The amount of compensation paid for each level reflects the recoveries class members might recover at trial with some compromise to take into account potential litigation risks (defences, statutory bars, limitation periods, contributing causes, etc.) and the fact that the adjudication process under the Settlement is confidential and non-adversarial. There is also, of course, the benefit of receiving compensation now rather than having to wait for the uncertain outcome of a trial and potential appeals.

14. The Compensation Levels and criteria are in Schedule B, Appendix 6 of the Settlement Agreement and are as follows:

Level 1 – \$10,000

<i>Culpable conduct includes but is not limited to:</i>	<i>Effect on victim:</i>
Sexualized comments	Anxiety, nightmares, occasional panic attacks

Sexualized jokes Inappropriate questioning regarding the complainant's personal life Exhibitionism Bullying causing psychological harm, anxiety Mockery by various means Communication of a sexual or romantic nature	Rage, feeling of humiliation Loss of self esteem Feelings of degradation and discomfort Note: No substance abuse or work interruption, no ongoing psychological damage
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Level 2 – \$35,000

<i>Culpable conduct includes but is not limited to:</i>	<i>Effect on victim:</i>
Kissing Touching with a sexual purpose or intention Simulating sexual intercourse or masturbation Physical aggression causing harm Mockery by various means Bullying causing psychological harm, anxiety Persistent communication of a sexual or romantic nature Exposure to pornography (other than pornography in the context of a criminal investigation)	Physical wound Temporary incapacity forcing medical attention Post-traumatic stress, not severe Auto condemnation, feeling culpable Loss of confidence in others Anxiety, nightmares, occasional panic attacks Rage, feeling of humiliation Mild depression Minor work disruption Note: No Psychiatric Condition, no troubling substance abuse, no permanent psychiatric affliction

Level 3 – \$70,000

<i>Culpable conduct includes but is not limited to:</i>	<i>Effect on victim:</i>
Gender-based putdowns Persistent kissing or touching with sexual intention Exposure of genitals to complainant Sexual advances Constant intimidation in front of others	Severe stress affecting the complainant's health Auto-condemnation Loss of confidence in others Severe anxiety Frequent panic attacks

Intimidation by using rank	Severe nightmares
Mockery with intent to degrade	Sexual dysfunction
Incessant communications of a romantic or sexual nature	Mild drug or alcohol abuse
Persistent exposure to pornography (other than pornography in the context of a criminal investigation)	Wound making permanent mark
Reprisals related to work environment	Temporary work disruption
	Loss of self-esteem
	Loss of desire to communicate feelings of love or desire

Level 4 – \$100,000

<i>Culpable conduct includes but is not limited to:</i>	<i>Effect on victim:</i>
Persistent or ongoing gender-based putdowns	Severe stress affecting the complainant's health
Touching of complainant's genitalia	Post-traumatic stress
Forcing oneself on victim physically	Diminished professional status or reputations
Physical aggression causing wound	Drug or alcohol abuse
Exposure to violent pornography (other than pornography in the context of a criminal investigation)	Absenteeism
Harassment towards vulnerable complainant	Suicidal ideation
	Diminished physical health or well-being

Level 5 – \$150,000

<i>Culpable conduct includes but is not limited to:</i>	<i>Effect on victim:</i>
Persistent intimidation, bullying, aggressions	Severe stress affecting the complainant's health
Acts to denigrate and humiliate in front of others	Post-traumatic stress
Diminishing value of Member to the RCMP by assigning menial tasks below the Member's abilities	Obsessional tendencies
Acts meant to affect working conditions or career development	Substance abuse
Acts causing interpersonal problems	Problems with interpersonal relationships
Acts intended to cause emotional stress	Suicidal thoughts
	Wound leaving a permanent mark
	Feeling culpable, auto-condemnation

Using rank to denigrate Repeated Sexual advances Harassment towards complainant with moderate vulnerability Forcing complainant to perform non-penetrative sex acts	Loss of confidence and self-esteem Loss of desire to communicate feelings of love or desire Some work disruption
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Level 6 – \$220,000

<i>Culpable conduct includes but is not limited to:</i>	<i>Effect on victim:</i>
Continuous intimidation, bullying, aggressions Forcing complainant to engage in penetrative sex acts Harassment towards complainant with heightened vulnerability Acts to isolate from other members Acts to denigrate and affect career development Sexual advances Using rank to denigrate Acts meant to cause emotional stress	Severe stress affecting the complainant's health Severe post-traumatic stress Disorganized behaviour Personality problems Suicidal thoughts or attempts Sexual dysfunction Chronic psychiatric condition Substance abuse Inability to work

The Claims Process

15. The Settlement creates a confidential, non-adversarial procedure for assessing claims that is based on document review and claimant interviews. The process is designed to be a safe environment for class members to tell their stories.

16. To make a claim, the class member completes a claim form (Schedule B, Appendix 1 of the Settlement Agreement), providing particulars of the alleged harassment and identifying the injuries caused. The claimant must certify that she has not received prior compensation for the harassment or discrimination. After submitting her claim form together with any supporting documents to the office of the Assessor, the Assessor may make inquiries of the claimant to request additional information or documentation to clarify any concerns, ambiguities or inconsistencies in the claim to the extent possible.

17. The claimant also provides written consent to the release of documents in the possession of the RCMP, medical practitioners, hospitals, government health authorities and other relevant third parties (Schedule B, Appendix 2 of the Settlement Agreement). As outlined below, any request the Assessor makes for such documents will be conducted in a manner that preserves the confidentiality of the claims process and the identity of claimants.

18. When a claim is received, a review of the paperwork is conducted to place the claim into one of two categories: (a) Levels 1 or 2, or (b) Level 3 or above. For Level 1 or 2 claims, the Assessor will conduct a paper review of the claim form and all supporting documentation to determine whether the claimant satisfies the criteria for compensation under the Settlement and, if so, the amount of compensation the claimant should be awarded. Thus, for the less severe claims, the claimant need only complete a claims package.

19. For Level 3 to 6 claims, the Assessor will review the claim form and all supporting documentation and will then conduct an in-person interview with claimant. The claimant may bring a friend, family member or treating health care professional to the interview for the purpose of providing emotional support. The Assessor will then determine whether a claimant satisfies the criteria for compensation under the Settlement and, if so, the amount of compensation the claimant should be awarded.

20. Claimants will be reimbursed for out-of-pocket expenses incurred to obtain documentary evidence in support of the claim and for travel of more than 50 kilometers from the claimant's residence to attend an interview with the Assessor.

21. A claimant assessed at Level 2 who feels her claim should be assessed at a higher Level, may request reconsideration by completing the Reconsideration Form at Schedule B, Appendix 8 of the Settlement Agreement. Aside from the Level 2 request for reconsideration, there is no right of appeal or judicial review from the Assessor's decisions.

22. Other than to verify class membership and provide documents and payments, as described below, the RCMP does not participate in the claims process.

23. The parties are asking that that the Court appoint the Honourable Michel Bastarache, C.C., Q.C. to act as the Assessor to administer the Settlement and determine the claimants'

eligibility for compensation under the Settlement. Among his many accomplishments, Justice Bastarache conducted individual interviews and assessments to determine compensation in an out of court settlement for victims of sexual abuse by Catholic priests in the Diocese of Bathurst and Archdiocese of Moncton, New Brunswick. I am informed by Mr. Klein that Justice Bastarache was a neutral participant in the settlement negotiations from April 2016 onward. Attached as Exhibit E is Justice Bastarache's *curriculum vitae*. The defendant has agreed to pay the costs of administration of the Settlement.

Confidentiality

24. The Settlement incorporates numerous safeguards to protect the privacy of claimants and to maintain confidentiality in the claims process. Confidentiality was a significant concern for class members, many of whom had experienced retaliation while working within the RCMP after making complaints that they experienced harassment and/or discrimination. The Settlement incorporates multiple measures to protect the identity of claimants, thereby encouraging class members to feel safe when making claims under the Settlement.

25. The Assessor and his office are independent from the defendant and will maintain their independence throughout the Settlement claims process. The RCMP has provided the Assessor with a list of class members so that the Assessor can verify class membership without revealing which class members have or have not filed claims. The list includes, where available, each class member's name while working within the RCMP, current name, date of birth, dates of service within the RCMP, regimental number, current address information, and whether the class member was a Regular Member, Civilian Member, or Public Service Employee. Where a claimant's name does not appear on the List, the Assessor will request evidence of class membership from the claimant. Providing the Assessor with the class member list avoids the need for the Assessor to verify class membership through the RCMP, which would involve disclosing the names of claimants to the RCMP and thereby lack the confidentiality sought by class members.

26. There may be circumstances in which the Assessor will require information or documents from the RCMP to assist with the assessment of a claim. To maintain confidentiality, the Settlement creates a "Designated Contact", a confidential contact within the RCMP who

responds to requests for information and records from the Assessor. The office of the Designated Contact will be a stand-alone office located in a secure area of the RCMP National Headquarters in Ottawa. The office will have no interior windows or glass doors. No sign or other information identifying the purpose of the office will be posted on the door of the office or elsewhere. Access to the office will require a security card reader; a personal RCMP Chip Identification will be required to access the door. All cabinets, desks and other storage items in the office will be locked. An alarm system will be installed for the office and the Designated Contact will have a unique personal code for the alarm.

27. The Designated Contact may not make multiple copies of any accessed documents, and may not create or maintain any kind of internal RCMP records about which files/documents are accessed. Any documents sent from the Designated Contact to the Assessor will be sent by registered mail or courier to the office of the Assessor in a sealed envelope marked "Confidential – To Be Opened By Addressee Only". The Designated Contact will not create a cover sheet or any other record identifying which files are being sent to the Assessor. No correspondence will be sent by or to the general RCMP mailroom.

28. The Settlement provides that the Designated Contact keep confidential any information provided or obtained in the settlement claims process and provides that the Designated Contact will not use the information for any purposes other than the settlement claims process.

29. Once the Assessor has determined that a claimant should be awarded compensation under the Settlement, his office will request funds for the payment of this compensation by providing the Director General, RCMP Corporate Accounting, Policy and Control with a copy of the Assessor's decision (which sets out only the compensation level determined and the amount of compensation to be paid) and a brief summary of the Assessor's justification for the decision. The claimant's name will be redacted and replaced by a numerical pseudonym.

30. To satisfy government financial accountability and audit requirements, the Assessor will provide a document to the Director General that identifies the names of claimants that corresponds with the unique numerical pseudonyms. The document will be kept in a locked safe in a location to which only the Director General will have access. Only the Director General will have the combination to the safe. Where the Director General is unavailable or unable to carry

out these responsibilities, the Settlement Agreement allows the RCMP Chief Financial and Administrative Officer to do so. The Director General will not disclose the names of claimants within the RCMP. The only exception will be in the event of a financial audit or other required process, in which case disclosure will be made to the auditor to show compliance with government financial accountability and audit requirements.

31. Although the RCMP is required, under paragraphs 64(1) and 64(2)(b) of the *Financial Administration Act*, RSC 1985, c F-11 to provide the Public Account with the name of an individual recipient of compensation, the RCMP will seek the permission of the Public Account Committee to withhold these names. I am informed by Mr. Klein that there is precedent for this in other class action settlements with the Government of Canada.

Change Initiatives

32. Throughout the settlement negotiations, class counsel pushed hard for a settlement that would do more than financially compensate class members for harm they suffered while working within the RCMP. It was of vital importance to our clients that the Settlement also have a lasting impact on the culture of the RCMP by helping to reduce the incidents of gender and sexual orientation based harassment and discrimination within the RCMP. The parties acknowledge in the Settlement Agreement that the RCMP has implemented or is in the process of implementing many change initiatives.

33. The Settlement Agreement includes a host of change initiatives with an underlying goal of building and reinforcing organizational trust within the RCMP's membership and the community at large.

34. The RCMP has agreed to take steps to strengthen and support anti-harassment training during the Cadet Training Program. It will provide mandatory training on harassment for all persons working within the RCMP, and completion of the course will be a consideration for any potential promotion or advancement in the RCMP. The RCMP will further develop the respectful workplace component in its supervisor and management development program, including training on inclusive leadership, accountability, and bias awareness training. With respect to harassment awareness, training and policies, the RCMP will continue to review its harassment

policy in line with Treasury Board Policy and Directives and will establish support resources to assist supervisors in resolving harassment problems within their units.

35. To address the underrepresentation of women in all ranks and roles within the RCMP, the RCMP has set a goal to make the proportion of women in Regular Member positions equal to at least 30% by 2025. In addition, the RCMP will set a goal to make the proportion of women in officer and executive positions at all levels equal to at least 30% by 2025. If these goals are met, the RCMP will continue to set reasonably attainable goals to reach gender parity (including parity of meaningful workplace opportunities). The RCMP has committed to improving the design and content of its recruitment materials to include more women and more inclusive language. The RCMP has also committed to soliciting input on its recruitment materials on a regular basis from all persons working within the RCMP.

36. To continue its efforts to eliminate harassment within the RCMP, the RCMP has committed to establishing a National Gender and Harassment Advisory Committee and, in each Division, a local Gender and Harassment Advisory Committee. The National Committee will serve as an advice giving forum to the Commissioner on matters involving issues of gender, sexual orientation, harassment, equity and inclusivity. The Divisional Committees will each provide similar advice to the Commanding Officer of the Division and the content of the advice will be reported annually to the National Committee. The National Committee and the Divisional Committees will act as vehicles through which the Commissioner and the Commanding Officers are advised of developments with respect to workplace harassment.

37. The National Committee will be named by the Commissioner and will be composed of 8 to 12 individuals, 75% of whom will be persons currently working within the RCMP who are reflective of the diverse composition of the RCMP and 25% of whom will be RCMP managers. The National Committee will meet at least annually. It will receive and consider reports of the Divisional Committees and will have access to and obtain advice from one or more external experts on human resources and inclusive workplaces. The National Committee will issue a written report annually. The report will be made publicly available. The RCMP will review the report and will provide a written response. The RCMP's response report will be made publicly available.

38. Each of the Divisional Committees will be named by the Commanding Officer for the Division and will be composed of 8 individuals, 75% of whom will be persons currently working within the RCMP who are reflective of the diverse composition of the RCMP and 25% of whom will be RCMP managers. Meetings of the Divisional Committees will take place bi-annually. Each year, each Divisional Committee will prepare a written report, which will be provided to the National Committee prior to that Committee's annual meeting. The reports of the Divisional Committees will be made publicly available.

39. The change initiatives that have been incorporated into the Settlement Agreement will provide a lasting benefit to class members – and society at large. They are the product of years of intense negotiation between the parties and achieve significant benefits for class members that could not have been achieved through litigation. The change initiatives reflect the recommendations for best practices of a leading expert in organizational behavior and are an invaluable component of the Settlement Agreement – and one of high importance to the plaintiffs and class members.

Apology and Scholarship Fund

40. A term of the Settlement is that the Commissioner of the RCMP provide class members with an apology. This public acknowledgement is an important part of the conciliation between class members and the RCMP. The Settlement was announced at a press conference in Ottawa on October 6, 2016. In attendance were RCMP Commissioner Bob Paulson, Ms. Merlo and her counsel, Ms. Davidson and her counsel, Justice Bastarache, Public Safety Minister Ralph Goodale and Labour Minister MaryAnn Mihychuk. Commissioner Paulson announced the Settlement and read a statement of apology to women in the RCMP. Attached as Exhibit F is a copy of the statement of apology. The news conference received extensive media coverage. The statement of apology is posted on the RCMP's website.

41. A term of the Settlement is that the RCMP will establish a scholarship fund with the objective of recognizing outstanding work in the area of anti-harassment and the promotion of anti-harassment principles.

Claims-Made Settlement

42. This is a claims-made settlement, meaning that all approved claimants will be paid the amounts stipulated in the Settlement regardless of how many claimants come forward. This is distinguished from a “lump sum” settlement in which a defendant pays a global amount that must be divided among class members in some way.

43. There are potential downsides to a lump-sum approach, which this claims-made Settlement avoids. A lump sum settlement can create inordinate delays for class members, and put class members at the risk of proration. In a typical lump sum settlement, all claims must be adjudicated before payments are made so that the administrator can determine how much each class member can receive. For example, I am informed by Mr. Klein that the Vioxx class action settlement, which was a lump sum settlement, took three years to adjudicate individual claims with a corresponding delay in the distribution of payments to class members. The Celebrex/Bextra settlement, which was also lump sum, was significantly over-subscribed resulting in a drastic *pro rata* reduction of compensation awarded to successful claimants.

44. Under the Settlement Agreement, class members will begin receiving compensation soon after the Settlement is approved by the Court; each class member can be paid as soon as her claim has been assessed, without the need to wait on the adjudication of all other class members’ claims. Further, class members who are awarded compensation pursuant to the claims process will be paid the applicable compensation amounts with no *pro rata* reductions from any over-subscription to the Settlement.

45. I am informed by Mr. Klein that our best estimate as to the total compensation likely to be paid under the settlement is about \$89 million. This estimate is based on 1,000 successful claims with the following distribution among the six levels:

Level 1	200	\$10,000	\$2,000,000
Level 2	200	\$35,000	\$7,000,000
Level 3	150	\$70,000	\$10,500,000

Level 4	150	\$100,000	\$15,000,000
Level 5	200	\$150,000	\$30,000,000
Level 6	100	\$220,000	\$22,000,000
	1,000		\$86,500,000
Level 5 & 6 Spouses and Children		Estimate 5% of Level 5 & 6	\$2,600,000
		Total	\$89,100,000

46. The total will be different, of course, if the number of claimants or distribution among levels differs from the above estimates. If one adds the defendant's contribution to class counsel fees, the total value of the settlement is about \$101 million.

The Negotiations – How We Arrived at these Terms

47. I am informed by Mr. Klein that the defendant expressed an interest in exploring the possibility of settling the litigation at a meeting in Vancouver in the early part of 2014. Negotiations continued until April 2015 and then resumed in January 2016 culminating in the Settlement Agreement, which was signed by all parties on October 6, 2016. There were ten in-person negotiation sessions (3 in Vancouver, 3 in Toronto and 4 in Ottawa) as well as numerous conference calls and scores of e-mail exchanges.

48. An important first step to the settlement negotiations was to establish a mutual understanding as to the nature of the gender based harassment and discrimination class members experienced while working at the RCMP.

49. Soon after taking on this case in 2012, Klein Lawyers developed a detailed questionnaire that was sent to each potential class member who contacted the firm. By the time settlement talks started in 2014, about 150 women had filled out and returned their questionnaires. Unfortunately, many were incomplete or lacking in detail. So in May 2014, we hired two law students for the summer to personally call all of these individuals. Using the information from

these personal interviews, we prepared charts illustrating the types of harassment experienced by 147 class members, the effects of that harassment, and the experiences of class members after reporting such behaviour to the RCMP. Copies of the charts are attached as Exhibits G, H and I. These were provided to the defendant. Several class members had sent us extensive documentation regarding their personal experiences with harassment and discrimination within the RCMP. The students reviewed the documents, conducted lengthy interviews with those class members, and prepared in-depth file summaries outlining the harassment experienced and the effects of that harassment. Twenty-three lengthy summaries were prepared and disclosed to the defendants, at their request, to provide context and direction for the settlement negotiations.

50. By the time we finalized the settlement negotiations, there had been several reports written looking into the issue of gender harassment within the RCMP. These also provided us with information as to the nature of the harassment problem in the RCMP and the steps that would be required to address the problem. Attached as Exhibits J, K, L and M are copies of a report by Division Diversity Strategist CM Simmie Smith dated April 17, 2012 and titled *Summary Report on Gender Based Harassment and Respectful Workplace Consultations "E" Division*, a report by the Commission for Public Complaints Against the RCMP dated February 2013 and titled *Public Interest Investigation Into RCMP Workplace Harassment*, and two RCMP action plans outlining objectives for addressing gender inequality in the force and for defining a respectful workplace culture - *Gender and Respect Action Plan* and *Building & Sustaining a Respectful Workplace Preliminary Action Plan* (December 2013).

Dr. Daylen

51. Our interviews with class members revealed that the primary consequence of the harassment and discrimination was psychological trauma. Klein Lawyers retained Dr. Judith Daylen, a clinical and consulting psychologist, to assist in the development of injury categories and assessment protocols. It was important to have a claims process that would not be traumatizing for class members. Dr. Daylen is a member of the Canadian Psychological Association, the British Columbia College of Psychologists and the International Society for Traumatic Stress Studies. Dr. Daylen has helped to develop and implement assessment protocols for several class action lawsuits pertaining to sexual and/or physical abuse. A copy of her *curriculum vitae* is attached as Exhibit N.

52. Dr. Daylen proposed that individual assessments of class members be conducted to determine the extent of the psychological harm they experienced due to gender based harassment in the workplace and from which class members' entitlement to compensation under the settlement could be decided. She proposed several categories of psychological disorders: transient psychiatric symptoms, mild psychiatric symptoms, moderate psychiatric symptoms, significant symptoms of ongoing psychiatric disorder, and chronic/severe psychiatric symptoms. She also identified indicia for determining a claimant's category of psychological disorder: intimate relationships, substance abuse, general social relationships, and work impact. Dr. Daylen believed that the extent of a claimant's psychological harm could be assessed by observing a claimant's (in)ability to maintain healthy intimate and social relationships, her (in)ability to work, and the presence or absence of substance abuse and, if present, the functional or social impairment it caused the claimant.

53. Using the assessment process and categories of harm set out above, Dr. Daylen proposed that the assessor assign a claimant to one of five compensation levels. Dr. Daylen's insights and recommendations informed the negotiations, and many of her suggestions were ultimately integrated into the Settlement. Dr. Daylen's suggested five levels of psychological disorders/injury became six levels in the Settlement, as the parties decided to break level 3 (moderate or intermittent psychiatric symptoms) into two separate categories: low moderate injury and upper moderate injury).

Professor Llewellyn

54. Many class members suffer from post-traumatic stress disorder (PTSD), depression and/or anxiety. We were repeatedly told by class members that they did not want to participate in an adversarial process that would be emotionally exhausting, trigger past psychological injuries and/or aggravate current psychological injuries. In sum, class members did not want to be re-victimized by the claims process.

55. To help us develop a non-traumatizing claims assessment process, Klein Lawyers retained Professor Jennifer Llewellyn, a Viscount Bennett Professor of Law at the Schulich School of Law at Dalhousie University. I am informed by Mr. Klein that Professor Llewellyn played a vital role in shaping the structure of the Settlement claims process. She has an LLB

from the University of Toronto and an LLM from Harvard University. Professor Llewellyn's teaching and research are focused in the areas of relational theory, restorative justice, human rights law, constitutional law and feminist legal theory. She was the Director of the Nova Scotia Restorative Justice Community Research Alliance, a collaborative research partnership between the university and community partners focused on the institutionalization of restorative justice. A copy of her *curriculum vitae* is attached as Exhibit O.

56. I am informed by Mr. Klein that, throughout the settlement negotiations, Professor Llewellyn helped us understand the need for a Settlement and a claims process that were relational and restorative. She advised that an adversarial claims process would cause class members to suffer further injury and would be detrimental to the defendant by undermining the positive impact of other elements of the Settlement, such as the change initiatives and the public apology. Professor Llewellyn opined that if the structure of the claims process was adversarial and hostile, class members – and the public generally – would be skeptical about the RCMP's stated desire to truly reduce and eliminate gender and sexual orientation based harassment in the workplace. I am informed by Mr. Klein that many of these principles were reiterated by Justice Bastarache when he joined as a neutral participant in the negotiations in April 2016.

Dr. Berdahl

57. In April of 2013, Klein Lawyers retained Dr. Jennifer Berdahl, an expert in organizational behavior and specifically workplace based discrimination and harassment. Dr. Berdahl is the Montalbano Professor of Leadership Studies (Women and Diversity) at the Sauder School of Business at the University of British Columbia. Prior to joining UBC, Dr. Berdahl was an Associate Professor of Organizational Behaviour at the University of Toronto's Rotman School of Management. Before joining the University of Toronto, she was an Assistant Professor of Organizational Behaviour at the University of California Berkeley's Haas School of Business. Dr. Berdahl has studied workplace discrimination and harassment for over 24 years. She has over 40 publications and her research has been cited in more than 2,300 other publications. A copy of her *curriculum vitae* is attached as Exhibit P.

58. Klein Lawyers originally retained Dr. Berdahl to prepare a report for the certification application in the British Columbia action. Dr. Berdahl's report, dated May 26, 2013 is attached as Exhibit Q.

59. The need for confidentiality in the claims process, particularly for class members still working within the RCMP, is explained in the Berdahl Report at pages 10-11:

Victims of gender-based discrimination and harassment often experience it at the hands of those to whom they report and in units that condone or somehow reward the behavior (e.g., from laughing at it to joining in, and/or viewing the target in a demeaning light).... Leaders and managers often hesitate to go against the grain of unit norms and culture, and are timid about investigating or penalizing their friends and coworkers for bad behavior (the so-called foxes-guarding-the-chicken-coop problem). Victims (and bystanders) are aware of this and therefore hesitate to stand up against or make formal complaints. Ironically, this means that units with particularly high rates of gender-based discrimination and harassment often witness the fewest formal complaints....

Retaliation for reporting gender-based discrimination and harassment is gender-based discrimination and harassment in and of itself, and adds to and compounds the problem. The main reason victims do not seek help or come forward with their experiences of gender-based discrimination and harassment is their fear of retaliation, making it critical for organizations to prevent and have zero tolerance for any retaliatory consequences to victims who seek help or to complain.

60. The Berdahl Report also notes the effects of gender based discrimination and harassment and helps to explain the psychological injuries that class members suffered and, in many cases, continue to suffer. The Berdahl Report therefore evidences the need for a claims process that is non-adversarial and one that minimizes the harm that is likely to be experienced by a class member who chooses to make a claim. In her report, Dr. Berdahl describes in detail the possible consequences of gender-based discrimination and harassment at pages 5-7:

Gender-based discrimination and/or harassment has been shown to have the following effects on targets:

- Diminished professional status and reputation
- Impaired concentration and performance
- Decreased motivation, job satisfaction, and organizational commitment
- Increased work withdrawal, tardiness, absenteeism, and turnover
- Social rejection and isolation
- Deterioration of personal relationships
- Depression, suicidal ideation, and attempted suicide
- Post-traumatic stress disorder (PTSD)
- Alcohol and substance abuse
- Diminished physical health and well-being

Gender-based discrimination and harassment can directly diminish a target's professional status and reputation by encouraging others to view the target in a demeaning light. It can also indirectly diminish a target's status and reputation by interfering with the target's concentration and performance... as targets attempt to cope with the threat of being devalued, humiliated, and unable to control or prevent their experiences of negative treatment and outcomes in the workplace. This impaired concentration and performance, in turn, has cascading effects on the target's confidence and others' evaluations of the target's worth and abilities. The effects of gender-based discrimination and harassment thus end up providing justification for the mistreatment and its continuation....

Targets of gender-based discrimination and harassment are also likely to experience social rejection and isolation in their work environments as other employees distance themselves from these devalued and stigmatized targets. The stress and negative effects of discrimination and harassment often spill over into employees' personal lives and well-being. Personal relationships deteriorate as targets bring their stress into the home and their personal lives. Gender-based discrimination and harassment has been linked to depression, suicidal ideation, post-traumatic stress disorder, alcohol and substance abuse, and lowered physical health and well-being.

These effects of gender-based discrimination and harassment are likely to be exacerbated when discrimination and harassment is ongoing, complaints do not lead to meaningful action or cessation of the behavior, and particularly if attempts to stand up to the discrimination and harassment result in retaliation.

61. Klein Lawyers asked Dr. Berdahl to make recommendations aimed at advancing positive cultural changes in the RCMP, recruiting and retaining women on the force, and more thoroughly tracking and understanding problem areas within the RCMP. Dr. Berdahl identified four main areas that the RCMP needed to address: 1) organizational trust, 2) harassment awareness, training and policies, 3) the underrepresentation of women in all ranks and roles within the RCMP, and 4) tracking organizational culture and behaviour over time. Dr. Berdahl also recommended steps by which the RCMP can achieve these goals through best practices. The change initiatives in the Settlement Agreement, set out at Schedule E, address the four objectives raised by Dr. Berdahl and incorporate many of her recommended steps for achieving those objectives.

The Costs, Risks and Duration of Continued Litigation

62. If the Settlement is not approved, the parties will continue the litigation in the British Columbia and Ontario actions.

63. The defendants brought an application to strike all or portions of Ms. Merlo's claim in the BC action. In response to that application, Ms. Merlo brought an application for directions requesting that the defendants' strike application be heard at the same time as Ms. Merlo's certification application. On June 25, 2013, Madam Justice Gropper held that the applications should be heard at the same time and set a schedule for the delivery of materials. That decision is reported at *Merlo v. Canada (Attorney General)*, 2013 BCSC 1136.

64. The defendants' submissions supporting their strike application and opposing Ms. Merlo's application for certification raised numerous defences to complex legal issues. A copy of the defendants' factum in support of its motion to strike Ms. Merlo's claim, filed February 28, 2013, is attached as Exhibit R. A copy of the defendants' factum opposing certification, dated April 4, 2014, is attached as Exhibit S.

65. Klein Lawyers spent a substantial amount of time preparing Ms. Merlo's application materials, which included facta detailing complex legal arguments. We retained two experts, Professor Bruce Feldthusen and Professor Denise Reaume, to assist with legal issues related to torts, Crown law, discrimination law and human rights law. Professor Feldthusen is a professor of law at the University of Ottawa where he was Dean of the Common Law Section for several years. Professor Feldthusen has authored numerous legal books and was one of the first legal academics to study and write about civil remedies for victims of sexual assault. A copy of his *curriculum vitae* is attached as Exhibit T. Professor Reaume was appointed to the University of Toronto's Faculty of Law in 1982 and was promoted to full professor in 1996. She holds law degrees from the University of Oxford and Queen's University. She teaches in the areas of tort law and discrimination law. Professor Reaume has published numerous articles on feminist issues in tort law. A copy of her *curriculum vitae* is attached as Exhibit U.

66. Ms. Merlo's certification application and the defendants' strike application were heard before Madam Justice Gropper on June 1 – 5, 2015 and November 26 – 27, 2015. Prior to the conclusion of the June hearing, Ms. Merlo provided the Court and the defendants with Ms. Merlo's Amended Notice of Civil Claim and revised common issues. The defendants filed an amended Notice of Application to strike Ms. Merlo's amended claim. Following the November hearing, Madam Justice Gropper reserved her decision.

67. On or about July 20, 2015, Madam Justice Gropper directed the parties to file supplemental submissions on the amended claim, the revised common issues and two relevant Supreme Court of Canada decisions that were delivered by the Court following the adjournment of the June hearing. The defendants' submissions once again raised numerous defences to complex legal issues. A copy of the defendants' supplemental factum, filed August 28, 2015, is attached as Exhibit V. A copy of the defendants' reply factum, filed October 8, 2015, is attached as Exhibit W.

68. Ms. Davidson's action was filed on March 25, 2015 in the Ontario Superior Court.

69. As in British Columbia, the defendant in the Davidson action brought an application to strike the claim. The application was heard by Justice Perell on December 10, 2015. Justice Perell struck the claim in contract but otherwise dismissed the defendant's motion. The decision is reported at *Davidson v. Canada (Attorney General)*, 2015 ONSC 8008.

70. Kim Orr invested a significant amount of time preparing Ms. Davidson's certification materials. The hearing of Ms. Davidson's certification application was scheduled for February 29, 2016 but was adjourned for procedural reasons. The certification hearing was rescheduled to May 26, 2016 but did not proceed as the parties had entered into a tentative agreement to settle the litigation.

71. As noted above, the certification hearing has taken place in the British Columbia action, and Madam Justice Gropper has reserved her decision (which the parties asked her not to release). If the Settlement is not approved, the parties would write to Madam Justice Gropper and ask her to issue her decision. In the Ontario action, the parties would resume their certification hearing, following which Justice Perell would issue his decision.

72. Once Madam Justice Gropper and Justice Perell release their decisions in the certification motions, it is likely that either or both of the parties would appeal. There are, in fact, appeals pending from Justice Perell's December 10, 2015 decision. These would delay the common issues trials by a year or two. Thereafter, appeals to the Supreme Court of Canada are possible. Such appeals, if heard by the Supreme Court, might not be resolved for years.

73. There is, obviously, a risk that the British Columbia action or the Ontario action may not get certified, in which case many class members would be without recourse for the harms they suffered. Assuming the British Columbia and Ontario actions are certified, the parties would proceed with the time consuming process of preparing for the common issues trial in each case.

74. Documentary discoveries and oral discoveries would take place, both of which would be expensive and involve a significant investment of time. There would likely be hundreds of thousands of documents to review. The discovery stage would involve detailed and time intensive work and, accordingly, would be expensive. The parties would need to retain several experts to prepare reports to be exchanged and relied on at the common issues trial. This step would therefore also be expensive and time consuming.

75. We would expect, subject to the Courts' availability, that a common issues trial in each of Vancouver and Toronto would be held no sooner than the fall of 2018, and later if appeals of the certification decisions take place. The length of the trials would likely be 3 to 4 months.

76. The outcome of the common issues trials is uncertain. While we believe in the plaintiffs' cases and the need for redress for all class members, we recognize that there is a risk the plaintiffs would not be able to prove that the defendant is liable to class members, particularly given the potential statutory bars to class members' claims, or that some class members would not be able to prove causation and damages at the individual damage assessment trials that would follow - or would have their claims barred by applicable limitations period legislation.

77. Following the common issue trials, one or both parties could appeal. This could delay the individual assessment trials by a year or two. Thereafter, appeals to the Supreme Court of Canada are possible. Such appeals, if heard by the Supreme Court, might not be resolved for years.

78. Once the appeals were resolved and assuming the plaintiffs were successful at the common issues trials and any appeals, it would be necessary to deal with individual damages assessments. If the matter were fully litigated, there would likely be a thousand or more mini-trials to conduct across the country. Assuming 8 mini-trials could be done per month, it could take over 10 years to complete these mini-trials. There is a right of appeal from each of these mini-trials.

79. As noted above, many class members suffer from psychological injuries. For some class members, their psychological injuries are aggravated by this litigation. Further, the median age of class members continues to increase. Years of further litigation is not in the best interests of class members.

Notice of Hearing and Views of Objectors

80. We implemented a very successful notice program advising class members of the certification of the action and the upcoming settlement approval hearing through the issuance of a Notice of Certification and Settlement Approval Hearing.

81. Madam Justice McDonald certified this action on January 13, 2017 for settlement purposes. Included in the certification order (the "Certification Order") was an order approving the Notice of Certification and Settlement Approval Hearing and the manner of distribution of that Notice. A copy of Madam Justice McDonald's Certification Order and Reasons is attached as Exhibit X.

82. The Certification Order also required the RCMP and other federal governments to make reasonable efforts to identify and provide to the RCMP Designated Contact the names and last known address or other contact information of class members, except where the disclosure of such information was prohibited by law. The Designated Contact was ordered to provide that information to, and only to, the Assessor. On or about January 30, 2017, the office of the Assessor sent the Notice of Certification and Settlement Approval Hearing (in both English and French) by direct mail to approximately 11,000 class members. On January 27 through 29, 2017, the Notice of Certification and Settlement Approval Hearing was published in major and local newspapers throughout the country. On or about January 27, 2017, an advertising campaign on Facebook commenced. On or about January 27, 2017, the Notice of Certification and Settlement Approval Hearing was posted on the Assessor's website, class counsel's websites, and the RCMP's website and intranet. The Notice was also posted on all RCMP physical premises. The Notice of Certification and Settlement Approval Hearing is available in both English and French.

83. Based on our professional experience, we believe that the notice program was highly effective. In particular, the notice program:

- (a) notified class members of the class action and their right to participate in the action;
- (b) notified class members of the proposed settlement and the terms of the proposed settlement;
- (c) advised class members of the definitions of primary class members and secondary class members and advised who was entitled to participate in the settlement and the settlement approval hearing;
- (d) notified class members of their right to opt out of the class proceeding, the procedure for opting out and the opt out deadline, being March 29, 2017; and
- (e) advised class members of the financial consequences of not opting out.

84. To date, Klein Lawyers has been contacted by about 1000 women who advise they are class members wishing to participate in the Settlement. Prior to the opt out deadline, class counsel received opt outs from 1590 women. Copies of all of the opt outs were sent to defence counsel. From our review of the opt outs, it appears that the vast majority of the opt outs are from women who advise they did not experience harassment and do not, therefore, intend to make a claim.

85. In the Notice of Certification and Settlement Approval Hearing, class members were asked to tell us if they objected to the proposed Settlement Agreement. While there are approximately 34,000 class members potentially affected by the Settlement, we received only two objections to the terms of the Settlement. The first objection was from a woman who is not a class member. Although she worked in the Yorkton RCMP Detachment as a stenographer, she was a municipal worker employed by the City of Yorkton and is not, therefore, a class member as defined in the Certification Order. She objects to the Settlement "as it pertains to the definition of who is eligible to participate as Primary Class Members". A copy of her objection is attached as Exhibit Y.

86. The second objection was from a class member who wanted "a better compensation outcome" than what the Settlement Agreement currently provides for. The class member advised: "From my calculations if I won my case the settlement wouldn't even come close to the financial loss we have incurred, let alone the pain, suffering and devastation it has caused to our family. My calculations would be in a few million dollars at the very least". Klein Lawyers

responded to the class member by way of letter. Attached respectively as Exhibits Z and AA are copies of the objection and the response letter and its attachments.

The Notice of Settlement

87. The proposed Notice is found at Schedule A, Appendix 2 of the Settlement Agreement. A copy of the Notice is attached as Exhibit BB.

88. The parties have agreed that if the Settlement is approved by the Court, the office of the Assessor will be responsible for disseminating the required Notice to class members. The Notice will inform class members of how they may submit claims.

89. Justice Bastarache retained Versailles Communications to prepare a Notice Plan, which is attached as Exhibit CC. Attached as Exhibit DD is the *curriculum vitae* for Guy Versailles, the principal of Versailles Communications. As set out in his CV, he has years of experience on large communication projects including developing communication strategies for reaching target audiences, media logistics, website creation/revision, and document drafting. The proposed manner of distribution for the Notice is the same as the manner of distribution that was approved by the Court for the Notice of Certification and Settlement Approval Hearing, namely:

- (a) direct mail to potential class members;
- (b) posting on a settlement website, class counsel's websites, and the RCMP's website and intranet;
- (c) publication of the Notice in major Canadian newspapers;
- (d) an advertising campaign on Facebook; and
- (e) posting in all RCMP physical premises.

90. The Settlement Agreement and Schedules (including the draft claim form) is already on the websites of class counsel and on a settlement website created by the office of the Assessor.

91. As set out in paragraph 4.01 of the Settlement Agreement, the defendant has agreed to pay the costs of distributing the Notice to class members.

Rules 55 and 334.21(2)

92. The plaintiffs are requesting the Court to make an order, pursuant to *Federal Courts Rules*, SOR/98-106, Rule 55, that Rule 334.21(2) does not apply to Ms. Merlo and Ms. Davidson and that neither is excluded from this proceeding despite not having discontinued the British Columbia action and the Ontario action. I am advised by Mr. Klein that as the representative plaintiffs in this action, they wish to participate in the Settlement but could not discontinue the actions within the opt-out period or prior to a decision by this Court on settlement approval since they would be without recourse if the Court does not approve the Settlement. Ms. Merlo and Ms. Davidson made the prudent decision not to discontinue the British Columbia and the Ontario actions unless and until the Court has approved the Settlement.

Honoraria

93. We also ask that the Court award an honorarium to each of Ms. Merlo and Ms. Davidson in the amount of \$15,000. These amounts would be paid out of class counsel fees.

94. Ms. Merlo and Ms. Davidson have diligently advanced the interests of class members. They each filed detailed affidavit evidence in support of the certification applications in the British Columbia and Ontario actions respectively, and they each filed detailed affidavits in support of the consent certification motion before this Court. I am informed by Mr. Klein that Ms. Merlo and Ms. Davidson participated in extensive discussions with their respective counsel regarding the terms of the Settlement throughout the negotiations. They each read statements as representatives of the class at the news conference on October 6, 2016, answered questions from reporters, and gave subsequent interviews to the media regarding the settlement. They regularly communicate with and provide updates to other class members and have each devoted countless time and energy to advancing these claims and getting this matter settled.

Fees

95. We ask that the Court approve the requested class counsel fees given the significant effort, time, money and risk that class counsel invested in this case on behalf of the plaintiffs and other class members.

96. Ms. Merlo and Ms. Davidson entered into contingency fee agreements with their respective counsel in this action. Attached as Exhibits EE and FF respectively are copies of Ms. Merlo's¹ and Ms. Davidson's agreements². The agreements provide for a legal fee of one-third (33.33%) of the amounts recovered by the class. This is consistent with legal fees awarded in other class proceedings.

97. However, class counsel were able to negotiate a significant contribution toward legal fees from the defendant. The Settlement Agreement requires the defendant to pay class counsel fees in the amount of \$12 million plus applicable sales taxes within 30 days following the Court's approval of the Settlement Agreement. The sum of \$6 million plus applicable sales taxes would be paid to each of Klein Lawyers and Kim Orr.

98. As a result of the defendant's contribution toward legal fees, class counsel is requesting that the Court approve a payment by each class member of a class counsel fee of only 15%, plus applicable sales taxes, of the individual compensation paid to the class member under the Settlement rather than the 33.33% stipulated in the representative plaintiffs' fee agreements. The 15% class counsel fee is not payable on amounts paid to class members for reimbursement of out of pocket or travel expenses. The fee would be calculated by the Assessor who will hold back the class counsel fee and applicable sales tax from the compensation otherwise payable to the class member. The Assessor will then remit 50% of the class counsel fee to Klein Lawyers and 50% to Kim Orr on the first day of each month for all payments made to class members in the prior month.

99. Below, I address each of the 10 enumerated factors that courts typically consider when reviewing fees. These factors are:

- (i) the results achieved;
- (ii) the risks undertaken;
- (iii) the time expended;
- (iv) the complexity of the matter;
- (v) the degree of responsibility assumed by counsel;

¹ Ms. Merlo signed two retainer agreements with our firm: the first on February 6, 2012 with Klein Lyons and, following our firm's name change, again on January 5, 2015 with Klein Lawyers.

² Ms. Davidson signed two retainer agreements with Kim Orr: the first in 2015 (in relation to the Ontario action) and the second on December 16, 2016 (in relation to this Federal Court action).

- (vi) the importance of the matter to the client;
- (vii) the quality and skill of counsel;
- (viii) the ability of the class to pay;
- (ix) the clients and the class' expectations; and
- (x) fees in similar cases.

The Results Achieved

100. After approximately two years of intense negotiations, we were able to achieve the Settlement on behalf of the class. As set out above, we believe the Settlement is reasonable and fair and in the best interests of class members.

Risk Undertaken

101. This was risky and complex litigation from the outset. Some of the factors demonstrating this risk include the following:

- (a) Klein Lawyers was the first law firm to commence litigation in Canada with respect to gender based harassment in the RCMP, commencing the British Columbia Action in 2012 on behalf of Ms. Merlo. Kim Orr issued the Ontario Action on behalf of Ms. Davidson in 2015, alleging both gender and sexual orientation based harassment in the RCMP. No other Canadian firms filed parallel actions, indicating that this matter was seen by other firms as highly complex and unlikely to succeed.
- (b) Accurate information as to the extent of the harm caused by gender and sexual orientation based harassment in the RCMP was unavailable when the British Columbia and Ontario actions were commenced, and it was up to class counsel to try and certify or settle the action and thereafter design (in concert with others) an effective notice program to obtain information as to the extent of the problem in Canada.
- (c) We understood from the outset that years of contested litigation would likely be required to obtain the evidence from class members that we needed to advance a winning case, both through discoveries and through an effective notice program.
- (d) There was a risk that the cases would not be certified as class actions. Although the British Columbia and Ontario actions focused on the systemic nature of the

harassment, the harassment took place over many years, in multiple locations, with thousands of different victims, perpetrators and incidents. In sum, there was a risk that the Courts may have found that the cases should not be certified as class actions given the plethora of individual issues involved.

(e) The defendants vigorously opposed certification in the British Columbia Supreme Court. As set out above, the defendants' submissions raised numerous defences to complex legal issues (see Exhibits R, S, V and W).

(f) The defendant also vigorously opposed certification in the Ontario Superior Court of Justice. As set out in the affidavit of Ms. Mandy Ng, the defendant filed several affidavits in opposition to certification, and raised many of the complex legal arguments raised in the British Columbia action. Both parties appealed/sought leave to appeal from Justice Perell's motion to strike/s. 5(1)(a) order.

(g) This litigation involves complex expert evidence in the areas of organizational behaviour, gender based harassment, psychology, psychiatry, sociology, human resources and regulatory affairs. Such evidence is expensive and time consuming to obtain.

(h) There was a risk that Ms. Merlo, Ms. Davidson, and the class would not succeed at the trial of the common issues. At the time that the British Columbia action was filed, no class actions involving workplace harassment had previously been filed and very few individual actions involving workplace harassment had been filed. There was only limited judicial experience and case law for class counsel to draw upon in this practice area. There had been a few individual harassment lawsuits by members of the RCMP. Fewer than half were successful.

(i) There were numerous potential statutory bars to maintaining a successful case against Canada. Section 9 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 ("CLPA") bars a claim against the federal Crown if a pension has been paid or is payable "in respect of the death, injury, damage or loss in respect of which the claim is made". Accordingly, a class member's claim against the Crown could be barred if she was receiving a disability pension for workplace harassment pursuant to section 32 of the *Royal Canadian Mounted Police Superannuation Act*, RSC 1985, c R-11 and section 21(2)(a) of the *Pension Act*, RSC 1985, c P-6. And section 111 of the *Pension Act*, RSC

1985, c P-6 provides that an action that is not barred by virtue of section 9 of the CLPA “shall, on application, be stayed until an application for a pension in respect of the same disability or death has been made and pursued in good faith” by or on behalf of the plaintiff and “a decision to the effect that no pension may be paid to or in respect of that person in respect of the same disability or death has been confirmed by an appeal panel of the Veterans Review and Appeal Board”. There was a risk that either or both of the British Columbia and Ontario actions could have been stayed until all class members who were eligible had applied for a pension for workplace harassment had such an application been brought by Canada. There was also a risk that the Courts would refuse to find the defendant liable because of the effect of section 9 of the CLPA or the combined effect of section 9 of the CLPA and section 111 of the *Pension Act* (see the defendants’ submissions at Exhibits R and S).

(j) There were also risks that the Court would find that the defendants were not directly or vicariously negligent, that Canada did not have a contractual relationship with class members (as Justice Perell had found in the Ontario action when he struck Ms. Davidson’s claim against Canada for breach of contract) or that a term of any such contract was not breached, that Canada did not breach class members’ section 15 *Charter* rights, and that, with respect to class members resident in Quebec, Canada did not commit fault giving rise to extra-contractual liability (see the defendants’ submissions at Exhibits R, S, V and W).

(k) Even if the cases were successful at the common issues stage, individual class members may not have been successful in proving causation and damages at the individual issues stage, given the time that has passed, the loss of evidence and the lack of reporting often associated with gender and sexual orientation based harassment and discrimination. The claims of numerous class members may also have been barred by limitations legislation.

102. Accepting Ms. Merlo’s retainer in February of 2012, as we did, meant accepting a great deal of risk and uncertainty. There was much we did not know in 2012, and we may have only discovered answers after years of contested litigation. These conditions, and associated risks, were also in place when Kim Orr filed the Davidson action in Ontario in 2015. Our retainer

agreement with Ms. Merlo, and Kim Orr's retainer agreement with Ms. Davidson, sought to account for such uncertainties and the anticipated years of work.

Time Expended

103. We did not keep contemporaneous time dockets on this file. Our firm's usual method for billing clients is on a percentage contingency fee basis.

104. We are not a large firm. The firm has grown over time. We currently have 14 lawyers and about 40 support staff between our Vancouver and Toronto offices. We have worked on this file for more than 5 years. During that time, we assigned Mr. Klein (year of call 1980), Angela Bessflug (year of call 2008) and Jason Murray (no longer with the firm; year of call 2003) to work on this file. We dedicated several staff members and paralegals to this file, and we hired personnel specifically for this litigation.

105. Upon settling the matter, we dedicated numerous additional support staff to work directly with class members, given the volume of inquiries that we receive about the Settlement and the claims process.

106. This was and continues to be a significant commitment of resources for our firm on this one case. We typically commence only 1 or 2 new class actions each year, so as to ensure that the cases are adequately staffed and resourced. I am advised by Mr. Klein that in 2012, the RCMP litigation was one of only two new class actions our firm accepted that year. Each year there are many prospective clients who approach us with proposed class actions that we must turn away because of our existing caseload. In a very real sense, agreeing to take on the RCMP case meant that we turned away other potentially lucrative files.

107. In prosecuting this action, we undertook the following work:

- (a) An initial investigation into the alleged wrongs, including discussions with Ms. Merlo and another potential representative plaintiff, a review of Ms. Merlo's medical records, a review of publicly available literature on gender based harassment in the workplace and organizational psychology, and a review of the relevant law;
- (b) Drafting and filing of the Notice of Civil Claim;

- (c) Service of the claim;
- (d) Finding class members who were willing to be part of an “advisory committee” that we could use as a resource to ensure that we understood the needs and wants of class members throughout the course of the litigation and to inform settlement discussions;
- (e) Participating in numerous conference calls with the advisory committee throughout the litigation and during the settlement negotiations;
- (f) Attendance at preliminary case management conferences with Madam Justice Gropper;
- (g) Hundreds of interviews of class members regarding the types of harassment they experienced and the effects of that harassment;
- (h) Compilation of information as to the types of harassment experienced by class members, the effects of that harassment and their experiences after reporting such behaviour to the RCMP;
- (i) Preparation of a detailed summaries regarding the types of harassment experienced by class members, the effects of that harassment, and the experiences of class members after reporting such behaviour to the RCMP;
- (j) Preparation and argument for Ms. Merlo’s application for directions and a schedule for next steps in the litigation;
- (k) Substantial legal research, including the review of applicable legislation, numerous cases and secondary sources and the preparation of numerous legal memoranda;
- (l) Identifying and retaining experts, including Dr. Berdahl, Dr. Daylen, Professor Llewellyn, Professor Reaume and Professor Feldthusen;
- (m) Meeting and corresponding with these experts and reviewing their reports/opinions;
- (n) Engaging in extensive settlement negotiations, which initially proved to be unsuccessful;

- (o) Preparation and argument for class certification and the defendants' strike application;
- (p) Attendance at the June 2015 certification/strike application hearing;
- (q) Preparation of an Amended Notice of Civil Claim;
- (r) Service of the amended claim;
- (s) Preparation of revised proposed common issues;
- (t) Preparation and argument for the continuation of the class certification hearing and the defendants' strike application;
- (u) Attendance at the November 2015 certification/strike application hearing;
- (v) Reviewing the Statement of Claim in the Ontario action and the certification materials prepared in the Ontario action;
- (w) Engaging in continued settlement discussions, including attending multiple in-person meetings in Vancouver, Ottawa and Toronto and participating in numerous conference calls and e-mail exchanges;
- (x) Multiple drafts of the Agreement in Principle and the Settlement Agreement including numerous protocols attached as Schedules and Appendices, and engaging in extensive negotiation in connection with the preparation of those documents;
- (y) Preparation of the claim in the within action;
- (z) Service of the claim;
- (aa) Preparation and argument for the certification and notice approval application;
- (bb) Attendance at the January 2017 certification hearing;
- (cc) Extensive e-mail correspondence and conference calls with counsel for the parties and with the office of the Assessor regarding the notice program;
- (dd) Reviewing and revising the draft Notice of Certification and Settlement Approval Hearing and letters that were being sent by direct mail to class members;
- (ee) Responding to inquiries from 1,034 class members;

- (ff) Interviewing class members who contact us and are contemplating filing claims under the Settlement;
- (gg) Conducting detailed interviews of class members who have retained us and reviewing their documentation;
- (hh) Making arrangements to preserve evidence for class members;
- (ii) Providing notice of the proposed Settlement to class members, and explaining the terms of the Settlement;
- (jj) Receiving and reviewing 1590 opt outs received by our offices and sending the same to defence counsel; and
- (kk) Keeping clients and class members informed throughout.

108. Neither Klein Lawyers' nor Kim Orr's work on this matter ends with the Court's approval of the Settlement. Both firms will continue to expend time and resources in relation to the Notice and on issues that arise regarding the administration of the Settlement, both with respect to the claims process and the implementation of the change initiatives.

Complexity

109. This was extremely complex litigation. It involved 1) the procedural complexity of class actions, 2) substantive legal complexity given the novel nature of the action and the causes of action alleged, 3) the regulatory complexity of having Canada as a defendant and the corresponding legislative complexity, which added another layer of complexity to the alleged causes of action, 4) the medical and organizational complexity that arose from the professional disciplines engaged by this litigation, including organizational and industrial psychology, psychiatry, and the study of gender dynamics and gender and sexual orientation based harassment and discrimination, 5) the need/desire of class members to have the RCMP publicly apologize for the harassment experienced by class members, 6) the need/desire of class members to see initiatives and changes being implemented within the RCMP to reduce and eliminate harassment (which needs could only be met through settlement), and 7) the complexity of designing of a settlement that would accommodate the needs of class members who had undergone psychological trauma.

The Degree of Responsibility Assumed by Counsel

110. Both Klein Lawyers and Kim Orr assumed huge amounts of responsibility in this case. Both firms invested significant amounts of time and money in the case, and had made substantial progress, by the time the Settlement was reached. Both firms contributed significantly to the beneficial Settlement that was achieved for class members.

The Importance of the Matter to the Client

111. As detailed in the affidavits of the representative plaintiffs and as discussed above, this case involved psychological injuries which impacted the lives of our clients and class members in many diverse and significant ways. We view this litigation as highly important to our clients and class members.

The Quality and Skill of Counsel

112. The skill and experience of class counsel is apparent from the work undertaken and results achieved.

The Ability of the Class to Pay

113. Given the expense and complexity of this litigation, it was not economically viable for class members to retain us on a fee for service basis. A contingency fee agreement was the only viable economic model for this litigation.

114. Class counsel did not seek any third party litigation financing in this case, whether from public or private organizations in Canada who offer such funding for plaintiffs in class actions. In doing so, our firms incurred added financial risk, but we saved money for class members. For example, if we had sought financing from the Ontario Class Proceedings Fund, this would have cost class members 10% of their net recovery in exchange for such financing. Private companies charge similar rates for such assistance.

The Client and the Class' Expectations

115. Since class counsel was able to obtain a contribution from the defendant toward class counsel fees, the amount coming out of each class member's compensation for class counsel fees

116. A one third contingency is our usual fee for complex litigation. It is a fee which Canadian courts have approved in several other class actions in which we have been class counsel including *Jones v. Zimmer*, 2016 BCSC 1847, *Stanway v. Wyeth Canada Inc.*, 2015 BCSC 983 and *Schroeder v. DJO Canada Inc. et al*, order of Chief Justice Popescul of the Saskatchewan Court of Queen's Bench, dated May 3, 2016.


117. Pursuant to section 11.03 of the Settlement Agreement, the defendant has agreed to pay “reasonable disbursements to Class Counsel as agreed or assessed by the Court”. Summaries of Klein Lawyers’ and Kim Orr’s disbursements to date are attached respectively as Exhibits HH and II.

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Whitney Santos

ANGELA J. BESPFLUG
Barrister & Solicitor
400-1385 West 8th Avenue
Vancouver, BC V6H 3V9

This is Exhibit "D" referred to in the
Affidavit of Deanna Wissman
Sworn before me at Vancouver in the
Province of British Columbia this
30th day of June, 2021

A handwritten signature in blue ink, appearing to be 'Deanna', is written over a horizontal line.

A Commissioner for taking affidavits
within British Columbia

This is Exhibit "BB" referred to in
the Affidavit of Whitney Santos
sworn before me, this 11 day of
May 2017.



A Commissioner of taking Affidavits
in the Province of British Columbia

ANGELA J. BESPFLUG
Barrister & Solicitor
400-1385 West 8th Avenue
Vancouver, BC V6H 3V9

SCHEDULE A – APPENDIX 2

NOTICE OF SETTLEMENT

RCMP Gender Harassment and Discrimination Class Action

If you are a female or identify as a female and were an RCMP Regular Member (for purposes of this Settlement includes Regular Members, Special Constables, Cadets, Auxiliary Constables, Special Constable Members, and Reserve Members), Civilian Member or Public Service Employee (for purposes of this Settlement includes Temporary Civilian Employees) working within the RCMP, this notice may affect your legal rights. Please read it carefully.

On ***, the Federal Court (Canada) approved a settlement of the class action *Merlo and Davidson v. Canada*. The class action concerns allegations of gender and sexual orientation based harassment and discrimination within the RCMP.

Who is Eligible for the Settlement?

To be eligible to participate in the settlement, you must be a member of the class. The class is defined as:

Primary Class Members: female current and former living Regular Members, Civilian Members and Public Service Employees (who are appointed by the Commissioner of the RCMP under the delegated authority of the Public Service Commission pursuant to the *Public Service Employment Act*, R.S.C., 1985, c. P-32; amended S.C. 2003, c. 22, ss.12, 13) who worked within the RCMP during the Class Period who experienced and/or continue to experience gender and sexual orientation based harassment and discrimination while working in the RCMP during the Class Period, and who have not opted out or are not deemed to have opted out of the Class Action on or before the expiry of the Opt Out Period.

For the purposes of this Settlement “**Regular Members**” includes Regular Members, Special Constables, Cadets, Auxiliary Constables, Special Constable Members, and Reserve Members

For the purposes of this Settlement “**Public Service Employees**” includes Temporary Civilian Employees who, prior to 2014 were appointed under the now-repealed subsection 10(2) of the *RCMP Act*, R.S.C., 1985, c. R-10

Secondary Class Members: all persons who have a derivative Claim in accordance with applicable family law legislation arising from a family relationship with a member of the Primary Class.

Anyone who has who has opted out of the class action is not eligible for compensation under the settlement.

What are the Terms of the Settlement?

The settlement contains numerous change initiatives directed at eliminating workplace harassment and discrimination in the RCMP. The settlement also provides compensation for Primary Class Members who experienced gender or sexual orientation based harassment or discrimination while working in the RCMP during the Class Period. Compensation is available for Secondary Class Members where the Primary Class Member's claim is assessed at either of the two highest severity levels.

You can obtain a copy of the settlement agreement and the applicable forms and protocols by contacting Class Counsel at the address below. These documents are also available on Class Counsel's websites.

How Do I Make a Claim?

Primary Class Members must submit a claim form together with all supporting documentation to the Assessor on or before ****. Primary Class Members whose claims are approved at either of the two highest levels will be provided with a Secondary Class Member Claim Form.

For More Information and to Obtain a Claim Form

For more information about the settlement or to obtain a Claim Form, contact Class Counsel:

Or contact the Office of the Assessor:

This is Exhibit "E" referred to in the
Affidavit of Deanna Wissman
Sworn before me at Vancouver in the
Province of British Columbia this
30th day of June, 2021

A handwritten signature in blue ink, appearing to be 'Deanna', is written above a horizontal line.

A Commissioner for taking affidavits
within British Columbia

Home > Class Actions > Settled Class Actions > RCMP

RCMP

November 19, 2020 – Final Report on the Implementation of the Merlo Davidson Settlement Agreement (English)

November 19, 2020 – Final Report on the Implementation of the Merlo Davidson Settlement Agreement (French)

May 30, 2017 – Federal Court Settlement Approval – Order and Reasons

February 7, 2018 – Court Order Extending Time to File Completed Claims to May 22, 2018

A settlement has been reached in the RCMP Gender-Based Harassment and Discrimination Class Action. The settlement agreement and schedules are set out below. The settlement was approved by Madam Justice McDonald on May 30, 2017.

Justice McDonald has issued an **Order** extending the date by which Primary Class Members may file completed claims to May 22, 2018. This order only applies to Primary Class Members who have opened an online file with the Office of the Assessor or have informed Class Counsel in writing (e.g. a signed retainer agreement or sent a letter or an email) on or before February 8, 2018 that they intend to file a claim under the RCMP Class Action Settlement.



"Janet Merlo and I at the Ottawa news conference announcing a settlement of the RCMP gender harassment class action. This historic settlement included an apology by the RCMP Commissioner (to my right), a host of change initiatives aimed at eliminating gender harassment and discrimination in the RCMP, and a compensation package with a total estimated value of over \$100 million for women who suffered harassment or discrimination while working for the RCMP. It was a good day for current, former and future women in the RCMP. It was a good day for Canada." ~ David Klein

Who is eligible to participate in the proposed settlement?

If you are a female, or identify as a female, and were or are an RCMP Member (includes Regular Members, Special Constables, Cadets, Auxiliary Constables, Special Constable Members, and Reserve Members), Civilian Member or Public Service Employee (includes Temporary Civilian Employees) working within the RCMP, you may be eligible to participate in this settlement.

What conduct is covered?

To be eligible for compensation, you must have been subjected to gender or sexual orientation based harassment while working for the RCMP during the Class Period. "Harassment" means improper conduct by any Regular Member, Special Constable, Cadet, Auxiliary Constable, Special Constable Member, Reserve Member, Civilian Member, Public Service Employee or Temporary Civilian Employee (collectively referred to as "member(s)"), male or female, that is directed at and offensive to another member in the workplace, including, but not limited to, at any event or any location related to work, and that the member knew or ought reasonably to have known would cause

offence or harm. It comprises objectionable act(s) comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the *Canadian Human Rights Act*, RSC 1985, c.H-6, based on sex, sexual orientation, marital status, and family status. Harassment can be a series of incidents but can also be one severe incident which has a lasting impact on the individual. Harassment by members of the public is not harassment for the purposes of the settlement agreement. In the settlement agreement, "Harassment" refers collectively to gender and sexual orientation based harassment, gender and sexual orientation based discrimination, and sexual assault, including physical assault in the course of conduct constituting harassment.

What time period applies?

The settlement covers harassment that occurred during the Class Period. The Class Period is September 16, 1974 to the date the proposed settlement receives court approval.

How much time do I have to submit my claim?

Claims must be submitted within 180 days of the first publication of the Notice of Settlement Approval. The Notice will be published after the settlement receives court approval.

Settlement Documents (English)

Settlement Documents (French)

Other Resources

News & Updates



Final Report of The Honourable Michel Bastarache, C.C. Q.C.,
Independent Assessor released November 19, 2020 (English)



Final Report of The Honourable Michel Bastarache, C.C. Q.C.,
Independent Assessor released November 19, 2020 (French) ▶

Settlement Documents (English) ▶

Settlement Documents (French) ▶

RCMP Updates ▶

RCMP Frequently Asked Questions ▶

Opt Out Frequently Asked Questions ▶

Court Documents ▶

66 "You have all bent over backwards to help me, for which I thank you
from the bottom of my heart."

-Anne Schroeder Klasen

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Court File No: T-1673-17

FEDERAL COURT
CLASS PROCEEDING

Between

CHERYL TILLER, MARY-ELLEN COPLAND AND DAYNA ROACH

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

**WRITTEN REPRESENTATIONS OF THE DEFENDANT,
ATTORNEY GENERAL OF CANADA
Responding to the Plaintiffs' Motion to Approve a
Protocol for Auxiliary Constables**

OVERVIEW

1. The settlement in this case addresses the claims of women who were not eligible to make a claim under a previous class action settlement - *Merlo-Davidson*. As explained by this Court, "...the genesis of this litigation was the realization that female non-RCMP personnel and others engaged with the RCMP and who experienced the same type of abuse and discrimination as the serving RCMP members, **were not covered by the *Merlo-Davidson* case**"¹ [emphasis added]. Auxiliary constables, who are the subject of the present motion, were eligible in *Merlo-Davidson*.

¹ *Tiller v Canada*, 2020 FC 321 at paras 14-15 [*Tiller Settlement #2*].

2. While it is unfortunate that some women may not have acted upon their opportunity to apply for compensation in *Merlo-Davidson*, that opportunity was provided in a manner that all parties, and this Court, agreed was appropriate. Class actions strike a balance between providing an effective remedy for class members and providing finality to all parties. Removing that finality by amending settlements after the fact would set a precedent that would discourage defendants from settling such claims.

3. The relief sought by the Plaintiffs would require a re-opening and rewriting of the certification order in this case and to multiple provisions of the approved settlement agreement, in order to add class members whose claims were released in *Merlo-Davidson*. This relief is outside of the Court's jurisdiction. The Court is unable to expand the class definition and rewrite the terms of the settlement agreement. The Court's supervisory jurisdiction is limited to implementing the agreed upon terms.

FACTS

1. *Merlo-Davidson* Primary Class Definition

4. On January 13, 2017, Justice McDonald certified *Merlo and Davidson v. Her Majesty the Queen*, [*Merlo-Davidson*] as a class action for settlement purposes.² The *Merlo-Davidson* class action relates to gender and sexual orientation based harassment and discrimination of women who worked in the Royal Canadian Mounted Police [RCMP].

5. The certification order in *Merlo-Davidson* contained an express reference to Auxiliary Constables being part of the primary class:³

- a. Primary Class Members: All female current and former living Regular Members, Civilian Members and Public Service Employees (who are appointed by the Commissioner of the RCMP under the delegated authority of the Public Service Commission pursuant to the *Public Service Employment*

² *Merlo v. Canada*, 2017 FC 51 [*Merlo Certification*].

³ *Merlo Certification*, *supra* note 2 at para 17.

Act, R.S.C., 1985, c. P-32; amended S.C. 2003, c. 22, ss.12 and 13) who worked within the RCMP at any time during the Class Period. The Class Period is September 16, 1974, to the date the Settlement receives court approval.

- i. For the purposes of the Settlement, “Regular Members” includes Regular Members, Special Constables, Cadets, **Auxiliary Constables**, Special Constable Members, and Reserve Members.
- ii. For the purpose of the Settlement, “Public Service Employees” includes Temporary Civilian Employees who, prior to 2014 were appointed under the now-repealed subsection 10(2) of the *RCMP Act*, R.S.C., 1985, c. R-10.

[emphasis added]

6. The Notice of Certification and Settlement Approval Hearing attached to Justice McDonald’s order certifying the litigation as a class proceeding, repeated the primary class definition and its express inclusion of Auxiliary Constables.⁴ In addition, in the opening lines, it stated:

*If you are a female or identify as a female and were an RCMP Regular Member (for the purposes of this Settlement includes Regular Members, Special Constables, Cadets, **Auxiliary Constables**, Special Constable Members, and Reserve Members), Civilian Member or Public Service Employee (for purposes of this Settlement includes Temporary Civilian Employees) working within the RCMP, this notice may affect your legal rights. Please read it carefully.*

[emphasis added]

7. In *Merlo-Davidson*, the evidence supporting certification included an affidavit from Dr. James Lea. Dr. Lea provided evidence of the number of women working in different roles with the RCMP. In particular, he provided evidence that on April 1, 2013, there were 362 Auxiliary Constables and 2,790 volunteers working with the RCMP.⁵

⁴ *Merlo Certification*, *supra* note 2, Schedule A.

⁵ Affidavit of Deanna Wissman sworn June 30, 2021 [**Wissman Affidavit**], Ex B at para 3, Defendant’s Motion Record [**DMR**] at pp 10-16.

8. After the Certification Order was issued, Klein Lawyers, as one of the class counsel in *Merlo-Davidson*, posted information about the settlement on its website and also included the reference to Auxiliary Constables in describing who was eligible to participate in the settlement.⁶

9. As explained by Justice McDonald when she approved the *Merlo-Davidson* settlement, a “robust notice distribution scheme to potential class members was undertaken. Class counsel estimates that over 20,000 notices were sent out. Notices were also published in newspapers throughout the country.”⁷ Additionally, class counsel advised the Court that they had been contacted by over a thousand women wishing to participate in the *Merlo-Davidson* Settlement. She also noted that the representative plaintiffs had a “hands-on role in the settlement discussions and communication with potential class members.”⁸

10. The notice of settlement approval contained the same opening language as the notice of certification, explicitly indicating that Auxiliary Constables were included.⁹

2. Tiller Primary Class Definition

11. In this case, the parties intentionally defined the class broadly in order to capture women who were not included in *Merlo-Davidson*. Justice Phelan explained that a “broad definition of the Primary Class is meant to describe the large group of women who have worked or volunteered with or under the RCMP in varying capacities but **who were not included in the *Merlo-Davidson* settlement**” [emphasis added].¹⁰

⁶ Wissman Affidavit, Ex E, DMR at pp 59.-65

⁷ *Merlo v Canada*, 2017 FC 533 [*Merlo Settlement*], at para 50.

⁸ *Merlo Settlement*, *supra* note 7 at paras 51, 52.

⁹ Wissman Affidavit, Ex D, DMR at pp 55-58.

¹⁰ *Tiller Settlement #2*, *supra* note 1 at para 18.

12. On July 5, 2019, Justice Phelan certified this proceeding as a class action for settlement purposes.¹¹ The certification order expressly excluded those individuals who are primary class members in *Merlo-Davidson*:

Primary Class Members: all current and former living Municipal Employees, Regional District Employees, employees of non-profit organizations, volunteers, Commissionaires, Supernumerary Special Constables, consultants, contractors, public service employees, students, members of integrated policing units and persons from outside agencies and police forces who are female or publicly identify as female and who were supervised or managed by the RCMP or who worked in an RCMP controlled workplace during the Class Period, **excluding individuals who are primary class members in *Merlo and Davidson v. Her Majesty the Queen*, Federal Court Action Number T-1685-16** and class members in *Ross, Roy, and Satalic v. Her Majesty the Queen*, Federal Court Action Number T-370-17 or *Association des membres de la police montée du Québec inc., Gaétan Delisle, Dupuis, Paul, Lachance, Marc v. HMTQ*, Quebec Superior Court Number 500-06-000820-163. The Class Period is September 16, 1974 to the date the Court certifies the action as a class proceeding.

[emphasis added]

13. The Notice of Certification also expressly excluded primary class members in *Merlo-Davidson*:¹²

Excluded from the class are individuals who are primary class members in *Merlo and Davidson v Her Majesty the Queen*, Federal Court Action Number T-1685-16...

14. On March 10, 2020, Justice Phelan approved the settlement agreement in this proceeding.¹³ The definition of primary class members in the settlement agreement expressly excluded primary class members in *Merlo-Davidson*.

Primary Class Members means current and former living Municipal Employees, Regional District Employees, employees of non-profit organizations, volunteers, Commissionaires, Supernumerary Special Constables, consultants, contractors, public service employees, students,

¹¹ *Tiller v Canada*, 2019 FC 1501 [*Tiller Certification*], certification order.

¹² *Tiller Certification*, *supra* note 11, Schedule A.

¹³ *Tiller v Canada*, 2020 FC 320 [*Tiller Settlement*]; *Tiller Settlement #2*, *supra* note 1.

members of integrated policing units and persons from outside agencies and police forces who are female or publicly identify as female and who were supervised or managed by the RCMP or who worked in an RCMP controlled workplace during the Class Period, **excluding individuals who are primary class members in *Merlo and Davidson v. Her Majesty the Queen*, Federal Court Action Number T-1685-16** and class members in *Ross, Roy, and Satalic v. Her Majesty the Queen*, Federal Court Action Number T-370-17 or *Association des membres de la police montée du Québec inc., Gaétan Delisle, Dupuis, Paul, Lachance, Marc v. HMTQ*, Quebec Superior Court Number 500-06-000820-163. The Class Period is September 16, 1974 to the date the Court certifies the action as a class proceeding.

[emphasis added]

15. The Notice Plan and Notice of Settlement Approval attached to Justice Phelan’s order approving settlement also repeated the primary class definition and its exclusion of individuals who are primary class members in *Merlo-Davidson*.¹⁴

16. The claim form in this proceeding also states that anyone who was a primary class members in *Merlo-Davidson* is excluded from this settlement:¹⁵

You should not complete a Claim Form if you were a class Member in the *Merlo/Davidson* class action...

[emphasis in original]

3. Amendments to the Settlement Agreement

17. The settlement agreement in this case allows for substantive amendments only where the parties first agree to those amendments in writing.¹⁶

14.02 Amendments

Except as expressly provided in this Agreement, no substantive amendment or supplement may be made to the provisions of this Agreement and no restatement of this Agreement may be made unless

¹⁴ *Tiller Settlement*, *supra* note 13, Schedule A – Notice Plan and Schedule C – Notice of Settlement Approval.

¹⁵ *Tiller Settlement*, *supra* note 13, Schedule B, Appendix 1.

¹⁶ *Tiller Settlement*, *supra* note 13, Schedule A at para 14.02.

agreed to by the Parties in writing and any such amendment, supplement or restatement is approved by the Court.

4. Changes and Extensions to the Claims Period

18. In early 2020, after COVID-19 surfaced as a global pandemic, the Federal Court and Federal Court of Appeal issued Practice Directions suspending the running of time under their respective Rules of Court. Additionally, federal legislation was also enacted to suspend limitation periods. In order to respond to those suspensions, the parties agreed to clarify in writing, and this Court agreed, that the implementation date of the settlement agreement was July 16, 2020.¹⁷

19. Additionally, to ensure that the settlement process included as many individuals as possible, including those who may have been adversely impacted by COVID-19, the parties agreed to provide more time to complete claims for individuals who had opened an online file with the claims administration, or contacted class counsel, prior to the claims filing deadline.

20. The parties agreed to a deemed extension under the provisions of the settlement agreement dealing with extensions of the claim filing deadline. By order dated January 6, 2021, this Court approved the parties' agreement and granted an order by consent to extend the claim filing deadline to April 22, 2021 to those primary class members who had, on or before January 12, 2021, opened an online file with the Claims Administrator, or contacted class counsel.¹⁸

5. Finality of Assessors' Decisions

21. The settlement agreement provides that decisions on claims made by an Assessor will be final and binding upon the claimant, subject to a limited right of a claimant assessed at Level 2 to request a reconsideration. The settlement agreement

¹⁷ *Tiller v Canada*, 2020 FC 845.

¹⁸ *Tiller v Canada*, 2021 FC 25.

expressly states that there is no right of appeal or judicial review from any decision made by an Assessor:

6.05 Decisions of the Assessor

The Assessor will render a Decision in respect of a Claim to a Claimant promptly after the decision is made in accordance with paragraph 32 of Schedule B to this Agreement. A Decision of the Assessor in respect of a Claim will, subject to the limited right of a Claimant assessed at Level 2 to request a reconsideration as set out in the Claims Process in Schedule B of this Agreement, be final and binding upon the Claimant. For further clarity, there is no right of appeal or judicial review from any Decision of the Assessor.¹⁹

ISSUES

22. The substantive issues the Court must address in considering the plaintiffs' requested relief are:

- a. Are Auxiliary Constables covered by the class definition in this matter?
Canada says no.
- b. If they are not, which Canada says is the case, can the Court amend the class definition at this point in the proceedings to include Auxiliary Constables?
Canada says the Court cannot make this amendment.
- c. Even if the class definition can be amended, can the Court amend provisions of the approved settlement agreement to:
 - i. Extend the class period; and
 - ii. Require the Assessors to reconsider decisions already issued?

Canada says that the Court cannot make these amendments.

¹⁹ *Tiller Settlement*, *supra* note 13, Schedule A, ss 6.05.

ANALYSIS

23. Prior to addressing the substantive issues, there is a preliminary matter to be addressed, namely the weight to be given to the affidavit evidence of Whitney Santos filed in this application.

1. The Affidavit of Whitney Santos Filed on this Application is Unreliable

24. The Santos affidavit relied upon by the Plaintiffs provides information in an inherently unreliable manner. It contains opinion, supposition, and hearsay and double-hearsay from unidentified sources. Most importantly, it is internally contradictory and contains inaccurate statements.²⁰

25. In paragraph 20 Ms. Santos states that “Of the women who have provided feedback in writing, none received notice of the Merlo-Davidson settlement”. However, the evidence Ms. Santos relies on for this statement, Exhibit D, reveals that at least two of those women say they receive notice. One states “I received an initial letter”. Another states “I recall a piece of paper that was stapled to the wall in my Detachment”.²¹

26. Ms. Santos also indicates in paragraph 17 that “a potential claimant would need to read the Merlo-Davidson Agreement in order to determine that a volunteer who is also an Auxiliary Constable would not meet the definition under the Primary Class Member in Tiller”. Not only is this impermissible opinion evidence, it is also false. It was not necessary for claimants to read the agreement in *Merlo-Davidson*. All that was required is that they inform themselves of the class definition in *Merlo-Davidson*, which was available in a number of places other than the agreement, including notices

²⁰ Affidavit of Whitney Santos sworn June 23, 2001 [**Santos Affidavit**] at paras 10-13, 16, 17, 20-21, Plaintiffs’ Motion Record [**PMR**] at pp 10-14.

²¹ Santos Affidavit at para 20 and Ex D: Claimant CG (Q5) and Claimant LT (Q3), PMR at pp 13-14, 25, 29

issued in *Merlo-Davidson*, the statement of claim in this matter, and on Klein Lawyers' website.²²

27. While hearsay evidence is permissible on an application of this nature, given the issues of accuracy in the Santos affidavit, the reliability of such evidence is significantly undermined.

2. The Tiller Class Definition Cannot be Interpreted to Include Auxiliary Constables

28. The plaintiffs ask that the class definition in the settlement agreement be “interpreted” to include Auxiliary Constables. However, this is not possible on any reasonable interpretation of the class definition.

29. The terms of a settlement agreement, like all contracts, must be read in accordance with the plain language of the agreement. As this Court has stated in relation to the interpretation of a settlement agreement:

[T]he golden rule of contract interpretation is that the “literal meaning must be given to the language of the contract, unless this would result in absurdity.” Context can be admitted to show the purpose for which the contractual provision at issue was included, not to vary the meaning of the words of a written contract. Evidence of one party's subjective intention is not relevant and extrinsic evidence should not be considered when the contract is clear and unambiguous. [citations omitted]²³

30. In *JW v Canada (AG)*, the Supreme Court, in the context of a class action, stated that “Courts have a duty to ensure that the Agreement is implemented in accordance with the intentions of the parties as reflected in the Agreement’s terms.”²⁴

²² Statement of Claim in T-1673-17 at para 29, DMR, tab 3 at pp 87-105; Wissman Affidavit, Ex E, DMR at pp 59-65.

²³ *Taticek v. Canada (Border Services Agency)*, 2015 FC 542.

²⁴ *JW v Canada (AG)*, 2019 SCC 20 at para 32 [*JW*].

31. The parties to the *Merlo-Davidson* and *Tiller* settlement agreements agreed that Auxiliary Constables would be eligible for compensation in *Merlo-Davidson* and excluded from *Tiller*, and this was clearly articulated in the agreements.²⁵

32. In addition, before each settlement agreement was approved, the Court determined that the terms of those settlement agreements were fair and reasonable.

a. Auxiliary Constables were Included in *Merlo-Davidson*

i. The Class Definition in Merlo-Davidson Specifically Included Auxiliary Constables, as did the Notice Campaign

33. The class definition in *Merlo-Davidson* included “Regular Members” and stated that “[f]or the purposes of this settlement, ‘Regular Members’ includes...Auxiliary Constables...”.²⁶

34. This was also set out in the form of notice approved by the Court, and Klein Lawyers’ information on their website, which clearly set out that Auxiliary Constables were included in the class.

35. It was the clear intention of the parties in *Merlo-Davidson* that Auxiliary Constables were primary class members and the agreement clearly articulated this.

ii. Reasonable Notice was Provided in Merlo-Davidson

36. Developing an adequate notice plan is the responsibility of the plaintiffs. It need not be perfect in its reach or contents.²⁷ Rule 334.32 of the *Federal Courts Rules* sets out the factors the Court considers in assessing the timing and reach of notice, the

²⁵ *Tiller Certification*, *supra* note 11 at para 2.

²⁶ *Merlo Certification*, *supra* note 2 at para 17.

²⁷ *Federal Courts Rules*, SOR/98-106, Rule 334.16 (e) and 334.32 (1) [***Federal Court Rules***]; The Honourable Mr. Justice Ward K Branch & Mathew P Good, *Class Actions in Canada*, 2nd Edition (Toronto: Thomson Reuters, 2021) Chapter 10 Class Notice and Communication, § 10:1 The Requirement for Notice.

means by which notice may be given, and also prescribes the information that must be included.²⁸ The *Rules* require that notice should provide enough information to class members so that they can determine whether they wish to participate in a settlement or opt-out.²⁹

37. This Court described the notice of certification and settlement approval hearing in *Merlo-Davidson* as robust and extensive, and noted that the rights of members to participate in the settlement were detailed in the communications:

[12] Following the certification of the class action, Class counsel undertook an extensive communication plan to advise potential class members of the proposed settlement and to advise them of the date of the settlement approval hearing. The right of class members to object to the settlement and the right to opt out were also detailed in the communications.

[13] At the hearing, I was advised that communications were sent to over 20,000 class members. As well, a copy of the Settlement Agreement had been made available on Class counsel websites and on the Assessor's website.³⁰

38. The *Merlo-Davidson* certification notice plan and its distribution was described by Whitney Santos, in an affidavit filed in that proceeding, as “very successful” and “highly effective” and a similar plan was set out for notice of settlement approval.³¹ The information posted on Klein Lawyers’ website made clear that Auxiliary Constables were class members and the notice referred to Auxiliary Constables in the opening paragraph.³²

39. The notice campaign in *Merlo-Davidson* was developed to reach the entire class, including Auxiliary Constables. The campaign was extensive, and included a

²⁸ *Federal Courts Rules*, Rule 334.32.

²⁹ *Federal Courts Rules*, Rule 334.32(5); *Canada Post Corp v Lépine*, 2009 SCC 16 [*Lépine*] at para 42; *Wenham v Canada (AG)*, 2019 FC 383 at paras 10, 11.

³⁰ *Merlo Settlement*, *supra* note 7 at paras 12, 13, 50.

³¹ Wissman Affidavit, Ex C at paras 80-91, Ex D, DMR at pp 41-43, 55.

³² Wissman Affidavit, Ex E, DMR at pp 59-65.

combination of traditional and online media, postings in RCMP workplaces, and a direct mail-out where current addresses were on file. Contrary to class counsel's assertion,³³ at least two of the four claimants referred to in Exhibit D to the Santos Affidavit filed in this proceeding explicitly indicate that they received notice in *Merlo-Davidson*, one directly and one through a posting in a detachment.³⁴

40. There is no question that Auxiliary Constables were primary class members in *Merlo-Davidson* and that a robust notice campaign made this clear. While that notice may not have come to the attention of every class member, perfection is not required nor expected.³⁵

b. *Merlo-Davidson* Primary Class Members are Excluded in *Tiller*

41. The class definition in this case explicitly excludes those who were primary class members in *Merlo-Davidson*. As a result, Auxiliary Constables, as primary class members in *Merlo-Davidson*, are clearly excluded.

42. The fact that the class definition in this case refers to “volunteers”, and Auxiliary Constables volunteer their services, does not change this. There are many volunteers with the RCMP other than Auxiliary Constables, and it is those individuals who the term “volunteer” captures. In fact, the largest proportion of volunteers with the RCMP are in roles other than Auxiliary Constables. While Auxiliary Constables may be volunteers within the RCMP, the terms are not synonymous. Rather Auxiliary Constables are a specialised subset of volunteers within the much broader category. Unlike other volunteers, Auxiliary Constables receive specialised training by the RCMP, and commit to the program for an extended period.³⁶

³³ Santos Affidavit at para 20 PMR tab 2 at pp 13-14; Plaintiffs' Written Submissions, at para 18, PMR tab 4 at p 92.

³⁴ Santos Affidavit, Ex D: Claimant CG (Q5), Claimant SF (Q5), Claimant LT (Q3 and 5), PMR at pp 25, 28, 29.

³⁵ *Lépine*, *supra* note 29 at para 43.

³⁶ Santos Affidavit, Ex E, PMR at pp 30-32.

i. *The Notice in Tiller was not Required to Target Excluded Groups*

43. The Plaintiffs err in alleging that the notice in this case was inadequate because it did not expressly exclude Auxiliary Constables from the definition of volunteers. First, Auxiliary Constables were expressly excluded by excluding *Merlo-Davidson* primary class members. Second, the purpose of notice is to reach those who are in the class definition, not those who are not. As Auxiliary Constables are not class members in this case, they were not the intended recipients of the notice. There is no requirement that notice be directed to individuals who are clearly not class members to ensure that they do not mistakenly assume that they are.

44. The parties endorsed, and this Court approved, the notice that was provided in *Merlo-Davidson*. As a result, this case must proceed on the basis that the notice plan in *Merlo-Davidson* was generally effective in relation to the *Merlo-Davidson* class, including Auxiliary Constables. It was not for the parties in this subsequent proceeding to ensure that *Merlo-Davidson* class members know who they are. While it is unfortunate that some individuals may have been confused, the notice in this case made clear that *Merlo-Davidson* primary class members are excluded and the information as to who is a *Merlo-Davidson* class member was still available on Klein Lawyers' website.

45. The plaintiffs' reliance on *Canada Post Corp. v. Lépine* is misplaced. That case deals with the requirements of a notice plan to reach the class members so they can make decisions about the class action's impact on their rights. Nothing in this case impacts the rights of *Merlo-Davidson* class members. The claims of those class members were governed by that proceeding and have now been released.³⁷ No form of notice in this case would change that, and the notice in this proceeding was not required to address *Merlo-Davidson* class members.

³⁷ *Merlo Settlement*, *surpa* note 7, Order, ss. 14-16.

46. In effect the plaintiffs attempt to collaterally attack the notice provided in *Merlo-Davidson*. While this Court's rulings, and the parties evidence, in *Merlo-Davidson* was clear that the notice campaign in that case was robust and successful, even if that was not the case, it would have had to be addressed within the *Merlo-Davidson* proceeding, and not within this proceeding.

3. The Court Lacks Jurisdiction to Make the Proposed Order

47. The "Protocol" requested by the plaintiffs requires this Court to amend its certification order to change the class definition, and to amend terms of the settlement agreement in this matter, including: the class definition, the time period for the filing of claims, and the provisions providing that decisions of the Assessors are final. The Court's supervisory jurisdiction does not permit any of these amendments.

a. The Class Definition Cannot be Amended to Include Individuals with Released Claims

48. While the plaintiff attempts to characterise this as an issue of interpreting the class definition, as set out above, the class definition is clear in excluding Auxiliary Constables as members of the primary class in *Merlo-Davidson*. The class was defined by this Court's certification order. In order to include Auxiliary Constables at this stage, not only would the approved settlement agreement require amendment, the certification order would also require amendment. The plaintiffs have not requested this relief, and it would be improper in any event.

49. While Rule 334.19 of the *Federal Court Rules* allows for amendment of the certification order, the class definition can only be expanded where the additional individuals sought to be included can meet the certification test.³⁸ Here that is not possible.

³⁸ *Endean v Canadian Red Cross Society* (24 June 1998), Vancouver C965349 (BCSC) at para 8.

50. Auxiliary Constables, as primary class members in *Merlo-Davidson*, have had their claims released through the operation of that proceeding.³⁹ Rule 334.29 of the *Federal Court Rules* makes it clear that once a settlement is approved by the Court, the settlement “binds every class or subclass member who has not opted out of or been excluded from the class proceeding.”⁴⁰

51. Given the release of their claims in *Merlo-Davidson*, the individuals the plaintiffs now seek to add to the class definition do not have a viable cause of action, which is a requirement for certification.⁴¹

52. This situation differs from the agreement reached between the parties, and communicated to the Assessors, in relation to public service employees. In contrast to Auxiliary Constable, which is a well defined and clear category, public service employees who were class members in *Merlo-Davidson* were defined in a technical manner. The definition of public service employees in *Merlo-Davidson* did not facilitate individuals to know whether they were captured by that settlement.

53. In implementing the settlement agreement it was also very difficult for the Assessors to determine a public service employee’s eligibility on the basis of the definitions, specifically whether they were a public service employee appointed by the Commissioner of the RCMP (*Merlo-Davidson*) or by some other process (*Tiller*). The parties therefore agreed to an interpretation of public service employee which could be addressed through a practical approach - that any federal public service employee who worked in an RCMP workplace is not considered a *Merlo-Davidson* class member, and therefore excluded, unless she received compensation in *Merlo-Davidson*.⁴²

³⁹ *Merlo Settlement*, *supra* note 7, Order, ss. 14-16; Merlo Settlement Agreement, Article 10.

⁴⁰ *Merlo Settlement*, *supra* note 7 at para. 15.

⁴¹ *Federal Court Rules*, Rule 334.16 (1)(a).

⁴² Affidavit of Connie Luong sworn December 18, 2020, Ex A, PMR at pp 78-81.

b. The Court’s Supervisory Jurisdiction is Limited

54. The other aspects of the requested “Protocol” require amendments to the approved settlement agreement that go beyond what is permitted under the Court’s supervisory jurisdiction. Under its supervisory jurisdiction a court may intervene in the administration and implementation of an approved settlement agreement only where a relevant term of the agreement is not considered or if there is a gap in the agreement.⁴³

55. As Justice McDonald explained when she approved the settlement in *Merlo-Davidson*, the court has the power to approve or reject a settlement, but it may not modify or alter a settlement.⁴⁴

56. Justice Perell, in explaining the scope of a court’s jurisdiction in a settled class action, has stated:

Although the court’s settlement approval order reserved a jurisdiction to consider applications about the administration of the settlement, the court does not have jurisdiction to change the nature of the settlement reached by the parties.

While a court has the jurisdiction to reject or approve a settlement, it does not have the jurisdiction to rewrite the settlement reached by the parties...⁴⁵

57. In relation to both the claims period and the finality of the Assessors’ decisions, there is neither a gap in the agreement, nor has a term of the agreement been ignored.

⁴³ *JW*, *supra* note 24 at para 35; *Merlo v Canada*, 2020 FC 1005 at para 23.

⁴⁴ *Merlo Settlement*, *supra* note 7 at paras 16, 17; *Haney Iron Works Ltd v Manufacturers Life Insurance Co*, 1998 CanLII 3085 (BCSC) at para 22.

⁴⁵ *Lavier v MyTravel Canada Holidays Inc.*, 2011 ONSC 3149 [*Lavier*] at paras 31, 32.

c. This Court does not have Jurisdiction to Amend the Claims Period

58. The claims period, and the previously agreed to, and court approved, deemed extension to that period, and the time for claimants to apply for an extension under the settlement agreement, have all expired.

59. A change to the claims period would be a substantive amendment to the settlement agreement.⁴⁶ While the provisions of s.14.02 of the settlement agreement allows substantive amendments, such amendments require the agreement of the parties and the approval of the court. The agreement of one party is not sufficient.

60. This Court's supervisory jurisdiction also does not allow for the amendment of this provision as there is no "gap" in relation to the claims period which this Court must fill, and no provision of the agreement which is being disregarded in rejecting future claims filed.

61. The women for whom the plaintiffs seek to extend the claims period did not miss their opportunity to file a claim in this matter as a result of a misunderstanding. They were never intended to be covered by this settlement. Instead they were intended to be, and were, covered by the *Merlo-Davidson* settlement. The *Merlo-Davidson* settlement was approved on the basis that it was fair and reasonable and in the best interests of the class as a whole.⁴⁷ This included Auxiliary Constables.

62. The standard against which a settlement is approved in a class action is whether the settlement falls within the range of reasonableness, not perfection.⁴⁸ Additionally, the court approving settlement examines how the settlement was negotiated to ensure the settlement agreement is the result of good faith bargaining between the parties.⁴⁹

⁴⁶ *Lavier*, *supra* note 45 at para 35.

⁴⁷ *Merlo Settlement*, *supra* note 7 at paras 26, 35, 56.

⁴⁸ *Châteauneuf v. Canada*, 2005 FC 286 at para 7.

⁴⁹ *Fakhri et al v Alfalfa's Canada, Inc cba Capers*, 2005 BCSC 1123 at paras 9, 10.

63. While it is unfortunate that, for any number of possible reasons, some women may not have taken advantage of their opportunity to file a claim in *Merlo-Davidson*, this does not create a “gap” which this Court can fill using its supervisory jurisdiction in another proceeding. It is likely also true that some individuals in other categories of claimants in *Merlo-Davidson* did not file claims. To create a second chance for one class of claimants and not others would be unfair.

64. Given that notice campaigns are rarely, if ever, perfect, it is inevitable that some individuals will miss their opportunity in any class action. This can create a situation that seems unfair. However, class actions are, by their nature, a compromise. As described in *Dabbs v. Sun Life Assurance Co. of Canada* “all settlements are the product of compromise and a process of give and take and settlements rarely give all parties exactly what they want.”⁵⁰ In approving a settlement, courts determine that the class as a whole will benefit from the process, knowing that the result is that all class members’ claims will be released, whether or not they file a claim.⁵¹

65. Class actions strike a balance between providing an effective remedy for class members and providing finality to all parties. If courts amend settlements after the fact to remove that finality, the balance that class actions are designed to achieve is lost. Without finality, defendants will be much less willing to enter into settlements.⁵²

d. This Court does not have Jurisdiction to Amend the Provisions Dealing with the Finality of the Assessors’ Decisions

66. The same considerations that apply to the requested amendment to the claims period also apply to the requested amendment to the provisions providing for the finality of the Assessors’ decisions. Having the Assessors’ decisions be final and binding was part of the bargain that was struck between the parties. Amending that provision would be a substantive amendment to the settlement agreement and cannot

⁵⁰ *Dabbs v Sun Life Assurance Co of Canada*, [1998] OJ No 2811 at para 30.

⁵¹ *Lavier*, *supra* note 45 at paras 36-38.

⁵² *Lavier*, *supra* note 45 at para 26 – this sets out the defendant’s submissions, which were accepted by the Court at para 29.

occur under the amendment provisions of the settlement agreement without the agreement of all parties.

67. Once again, the Court's supervisory jurisdiction does not provide authority for this amendment. In rejecting such claims, the Assessors have not failed to consider a provision of the settlement agreement, they have implemented precisely what was intended. The amendment is requested to support the inclusion of Auxiliary Constables, who were never intended to be included in this proceeding, as they had already been provided for in *Merlo-Davidson*. As such, there is no gap in the settlement agreement that requires filling.

CONCLUSION

68. While it is unfortunate that some Auxiliary Constables may not have taken advantage of the opportunity they had to seek compensation in *Merlo-Davidson*, it is undoubtedly the case that others in different categories that were included in *Merlo-Davidson*, similarly did not take advantage of that opportunity. Not only would it be beyond this Court's jurisdiction to grant the relief requested by the plaintiffs, allowing Auxiliary Constables a second chance in this proceeding would be unfair to those others who may also not have taken advantage of the opportunity provided to them by *Merlo-Davidson*.

ORDER SOUGHT

69. Canada requests that the motion be dismissed.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Vancouver, in the Province of British Columbia, this 5th day of July, 2021



ATTORNEY GENERAL OF CANADA

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Counsel for the Defendant

Court File No: T-

FEDERAL COURT**PROPOSED CLASS PROCEEDING**

BETWEEN:

CHERYL TILLER, MARY-ELLEN COPLAND AND DAYNA ROACH

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

Brought pursuant to the *Federal Courts Rules*, SOR/98-106**STATEMENT OF CLAIM**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defense in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defense is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defense is sixty days.

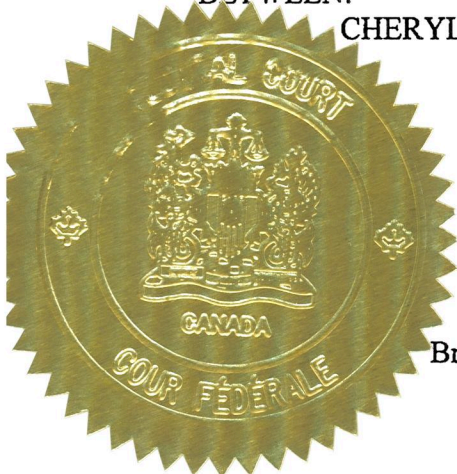
Copies of the Federal Courts Rules, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

(Date) NOV 2 2017

Issued by: _____
(Registry Officer)

ORIGINAL SIGNED BY
FRANK FEDORAK
A SIGNÉ L'ORIGINAL



Address of local office:
Pacific Centre
PO Box 10065
701 West Georgia Street
Vancouver, BC V7Y 1B67

TO: Her Majesty the Queen
Department of Justice Canada
900 – 840 Howe Street
Vancouver, BC V6Z 2S9

I HEREBY CERTIFY that the above document is a true copy of
the original issued out of / filed in the Court on the _____
day of NOV 2 2017 A.D. 20 _____

Dated this _____ day of NOV 2 2017 20 _____


ORIGINAL SIGNED BY
FRANK FEDORAK
A SIGNÉ L'ORIGINAL

FRANK FEDORAK
REGISTRY OFFICER
AGENT DU GREFFE

Relief Sought

1. The plaintiffs Cheryl Tiller, Mary-Ellen Copland and Dayna Roach claim on their own behalf and on behalf of a proposed Class of similarly situated persons:

- a. an order certifying this action as a class proceeding and appointing Cheryl Tiller, Mary-Ellen Copland and Dayna Roach as representative plaintiffs under the *Federal Courts Rules*, SOR/98-106;
- b. general damages plus damages equal to the costs of administering the plan of distribution;
- c. special damages in an amount to be determined, including but not limited to past and future loss of income, medical expenses and out-of-pocket expenses;
- d. exemplary and punitive damages;
- e. damages pursuant to the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, s 24(1);
- f. punitive damages pursuant to the *Charter of Human Rights and Freedoms*, CQLR c C-12 and the *Civil Code of Quebec*, CQLR c C-1991;
- g. recovery of health care costs incurred by the Ministry of Health Services and other provincial and territorial health insurers on behalf of the plaintiffs and Class Members pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c 27 and comparable legislation in the other provinces and territories;
- h. damages pursuant to the *Family Law Act*, RSO 1990 c F-3 (the “FLA”) and comparable legislation in other provinces and territories;
- i. pre-judgment and post-judgment interest;
- j. costs; and
- k. such further and other relief as this Honourable Court may deem just.

Nature of this Action

2. This action concerns gender and sexual orientation based harassment and discrimination within the Royal Canadian Mounted Police ("RCMP").
3. The Class, to be defined in the plaintiffs' application for certification, will include but is not limited to female municipal employees, regional district employees and employees and volunteers of non-profit organizations who worked with the RCMP and within the physical premises of the RCMP (collectively the "Class Members" or the "Class"). The plaintiffs allege that they and other Class Members were subjected to gender and sexual orientation based harassment and discrimination in the workplace by RCMP regular members, civilian members, public service employees ("PSEs") and management (collectively referred to as "RCMP Members and Management"). The impugned conduct also included sexual assault, including physical assault in the course of conduct constituting harassment. The plaintiffs allege that RCMP management failed to fulfill its statutory and common law duties to the plaintiffs and Class Members to ensure that they could work in an environment free of gender and sexual orientation based harassment and discrimination.
4. As a result of the harassment and discrimination, the plaintiffs and Class Members have suffered serious physical and psychological damages, out-of-pocket expenses and loss of income.
5. The Class excludes persons who are Primary Class Members in *Merlo and Davidson v. Her Majesty the Queen*, Federal Court Action No. T-1685-16 (the "Merlo Action").

The Parties

6. The plaintiff, Cheryl Tiller, worked as a stenographer and a victims' services coordinator at the Yorkton Municipal RCMP Detachment. Ms. Tiller continues to reside in Yorkton, Saskatchewan.
7. The plaintiff, Mary-Ellen Copland, worked as a program coordinator of the block watch program and a coordinator of the crime prevention program, initially at the Surrey Municipal RCMP Detachment and later at the Newton RCMP Community Police Station. Ms. Copland currently resides in Sechelt, British Columbia.

8. The plaintiff, Dayna Roach, worked as an office manager at the Lloydminster Municipal RCMP Detachment. Ms. Roach currently resides in Lloydminster, Alberta.

9. The defendant, Her Majesty the Queen (the "Crown") is liable for the conduct, negligence and malfeasance of the RCMP and individuals who were at all material times Crown employees, agents and servants, pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50.

The Plaintiffs and the Class

10. While working with the RCMP, Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members were located within RCMP premises and integrated into the RCMP work environment. They used RCMP property and resources to perform their jobs and worked with and reported directly to RCMP Members and Management.

11. While working with the RCMP, Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members were each subjected to systemic and persistent gender based harassment and discrimination by RCMP Members and Management. All of this behaviour has had the effect of demeaning Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members and limiting their careers.

12. Ms. Tiller worked at the Yorkton Municipal RCMP Detachment. From approximately January 1, 2005 to March 10, 2007, Ms. Tiller was employed by the municipality of Yorkton and provided stenography services to the RCMP. In her role as a stenographer, Ms. Tiller worked with the RCMP members on duty during her shifts and provided monitoring, dispatching, transcribing and administrative services. In April of 2007, Ms. Tiller began working for Parkland Victims Services at the Yorkton Municipal RCMP Detachment as the coordinator of its victims' services program. She continues to work in this role. Parkland Victims Services is a non-profit agency, funded by the Saskatchewan Ministry of Justice, that works with the RCMP to provide support and services to victims of crime.

13. While working with the RCMP, Ms. Tiller endured, among other things, unwanted sexual touching and comments in the workplace. Ms. Tiller complained to sergeants and others in RCMP management about the gender based harassment that she was experiencing, but these

complaints were never addressed and led to retaliatory abuse, often at the hands of RCMP management.

14. As a consequence of the ongoing harassment that she experienced while working with the RCMP, Ms. Tiller suffered from suicidal ideation and was diagnosed with depression, anxiety and stress.

15. Ms. Copland worked at the Surrey Municipal RCMP Detachment as program coordinator of the block watch program. Ms. Copland began this role in approximately 1990. In 2003, Ms. Copland became the coordinator of the crime prevention program, also at the Surrey Municipal RCMP Detachment. In or around 2005, Ms. Copland was transferred to the Newton RCMP Community Police Station where she continued to work in the crime prevention program. Ms. Copland was employed by the municipality of Surrey. As coordinator of the block watch and crime prevention programs, Ms. Copland worked directly with RCMP members. She managed the block watch program, conducted home security checks and gave safety awareness talks to the public. In 2014, Ms. Copland stopped working with the RCMP.

16. While working with the RCMP Ms. Copland experienced, among other things, unwanted sexual touching and comments in the workplace. On several occasions, Ms. Copland complained to sergeants and others in RCMP management about the harassment that she was experiencing at the hands of RCMP Members and Management. On some occasions, Ms. Copland was told to drop her complaints. On other occasions, Ms. Copland's complaints were investigated, but those investigations did not result in any consequences for the perpetrators.

17. Ms. Copland's complaints often led to retaliatory abuse from RCMP Members and Management, which prevented her from effectively performing her job.

18. As a consequence of the ongoing harassment that she experienced while working with the RCMP, Ms. Copland was diagnosed with depression, anxiety and stress.

19. Ms. Roach began working at the Lloydminster Municipal RCMP Detachment as an office manager in 2009. As the office manager of the Lloydminster Municipal RCMP Detachment, Ms. Roach worked directly with RCMP members. Ms. Roach was employed by the municipality of Lloydminster and seconded to this role.

20. Ms. Roach experienced constant and extreme gender based harassment and discrimination while working with the RCMP. Ms. Roach complained to RCMP management, but she was dismissed and became afraid to speak out. One on occasion, the inspector interviewing Ms. Roach advised her that he was good friends with the perpetrator. The other times Ms. Roach complained, nothing was done.

21. Ms. Roach's complaints often led to retaliatory abuse from RCMP Members and Management. RCMP management failed to stop this retaliatory conduct and often participated in it. At the behest of RCMP management, Ms. Roach's employer threatened termination. On July 17, 2017, Ms. Roach was terminated from her employment and ceased acting as office manager of the Lloydminster Municipal RCMP Detachment.

22. As a consequence of the ongoing harassment and discrimination that she endured while working with the RCMP, Ms. Roach was diagnosed with post-traumatic stress disorder ("PTSD"), depression, anxiety and stress.

23. At all material times in each RCMP Detachment/Station in which they worked, Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members were treated differently than their male colleagues, particulars of which include but are not limited to:

- a. sexually explicit comments were frequently made to or about Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members by RCMP Members and Management;
- b. comments dismissing Ms. Tiller's, Ms. Copland's, Ms. Roach's and other Class Members' ability to carry out the tasks and duties of their jobs were frequently made by RCMP Members and Management;
- c. Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members were subjected to unwanted physical and sexual touching by RCMP Members and Management;
- d. Class Members were subjected to demeaning comments about sexual orientation and lesbian relationships, which were frequently made to or about them by RCMP Members and Management;
- e. as between Class Members and their male colleagues of equivalent experience and seniority, the men were assigned to more complex files and tasks; and

f. as between Class Members and their male colleagues of equivalent experience and seniority, the men generally received more positive feedback on their performance reviews.

24. Due to the systemic culture of gender and sexual orientation based harassment and discrimination in the RCMP, Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members were ostracized, belittled and humiliated and their career advancement prospects limited.

Discoverability

25. Ms. Tiller was unable to bring an action in respect of her injury, damage or loss because she was battling cancer and was experiencing severe depression and anxiety as a result of ongoing harassment by RCMP Members and Management. Ms. Tiller's physical and psychological circumstances were so serious that she could not reasonably bring an action until October of 2017.

26. Ms. Copland was unable to bring an action in respect of her injury, damage or loss because of the symptoms of depression and anxiety that she suffered as a result of ongoing harassment by RCMP Members and Management. She was also battling multiple sclerosis. It was not until the fall of 2017 that, after years of counselling and treatment, Ms. Copland's psychological and physical state had progressed to the point where she finally had the physical and mental fortitude to pursue a claim against the RCMP. Ms. Copland could not reasonably have brought an action prior to this time.

The Settlement in the Merlo Action

27. A settlement agreement in the Merlo Action was executed on October 6, 2016 and was approved by the Federal Court on May 30, 2017 (the "Settlement Agreement"). The Settlement Agreement implements measures to eliminate workplace harassment and discrimination in the RCMP and resolves the claims of Primary Class Members who experienced or continue to experience gender or sexual orientation based harassment and discrimination while working in the RCMP.

28. Primary Class Members who submit claims for compensation under the Settlement Agreement, and are determined by the Assessor to qualify for monetary compensation at one of

the six delineated categories of compensation, will be awarded compensation. The six categories of compensation under the Settlement Agreement are: 1) Minimal Injury: \$10,000; 2) Mild Injury: \$35,000; 3) Low Moderate Injury: \$70,000; 4) Upper Moderate Injury: \$100,000; 5) Significant Injury: \$150,000; and 6) Severe Injury: \$220,000.

29. Included within the scope of the Settlement Agreement are a broad group of women who worked with and within the physical premises of the RCMP, namely: female current and former living regular members, special constables, cadets, auxiliary constables, special constable members, reserve members, civilian members, PSEs and temporary civilian employees.

30. The Settlement Agreement does not include women who are Class Members in the within action.

RCMP Negligence

31. At all material times, the Crown, the RCMP and its management owed a duty of care to Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members to ensure they could work in an environment free of gender and sexual orientation based harassment and discrimination. Specifically, the Crown, the RCMP and its management had a duty to:

- a. use reasonable care to ensure the safety and well-being of Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members;
- b. provide safe workplace environments free from gender and sexual orientation based harassment and discrimination;
- c. provide Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members with equal access to files and tasks as compared to their male colleagues;
- d. establish and enforce appropriate policies, procedures, codes of conduct and guidelines to ensure that Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members would be free from gender and sexual orientation based harassment and discrimination in the workplace;
- e. educate and train RCMP Members and Management to promote a universal understanding that gender and sexual orientation based harassment and discrimination in the workplace are harmful and will not be tolerated;

- f. properly supervise the conduct of RCMP Members and Management to ensure that Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members would not be exposed to gender and sexual orientation based harassment and discrimination in the workplace;
 - g. investigate complaints of gender and sexual orientation based harassment and discrimination fairly and with due diligence, and make efforts to prevent retaliation; and
 - h. act in a timely manner to resolve situations of gender and sexual orientation based harassment and discrimination.
32. The Crown, the RCMP and its management negligently breached this duty of care owed to Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members by, among other things:
- a. failing to properly supervise RCMP Members and Management so as to prevent and minimize the risk of Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members being subjected to gender and sexual orientation based harassment and discrimination;
 - b. failing to have or, alternatively, failing to enforce adequate policies, procedures, codes of conduct and guidelines to minimize the risk of Ms. Tiller, Ms. Copland, Ms. Roach and Class Members being subjected to gender and sexual orientation based harassment and discrimination;
 - c. failing to properly investigate allegations of gender and sexual orientation based harassment and discrimination in the workplace in a thorough, timely and impartial manner, or at all;
 - d. failing to provide adequate, or any, training and educational programs to RCMP Members and Management regarding the dangerous and harmful effects of gender and sexual orientation based harassment and discrimination;
 - e. failing to make sufficient efforts to promote the universal understanding among RCMP Members and Management that gender and sexual orientation based harassment and discrimination are harmful and will not be tolerated;
 - f. permitting a workplace environment and culture that normalized the occurrence of gender and sexual orientation based harassment and discrimination;
 - g. failing to act in a timely fashion to stop incidents of gender and sexual orientation based harassment and discrimination;

- h. failing to ensure that perpetrators of gender and sexual orientation based harassment and discrimination were appropriately disciplined; and
- i. failing to protect Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members from the continuation or re-occurrence of gender and sexual orientation based harassment and discrimination and failing to protect them from retaliation after reporting such behaviour.

33. The Crown, the RCMP and its management knew, or ought to have known, that the negligent acts described above were of a kind reasonably capable of traumatizing a normal person and that Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members would suffer damages as a result.

Breach of Canadian Charter of Rights and Freedoms

Workplace Discrimination

34. The Crown, the RCMP and its management breached Ms. Tiller's, Ms. Copland's, Ms. Roach's and Class Members' right to be free from discrimination on the basis of sex, pursuant to section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 by, among other things:

- a. failing to properly supervise RCMP Members and Management so as to prevent and minimize the risk of Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members being subjected to gender and sexual orientation based harassment and discrimination;
- b. failing to have or, alternatively, failing to enforce adequate policies, procedures, codes of conduct and guidelines to minimize the risk of Ms. Tiller, Ms. Copland, Ms. Roach and Class Members being subjected to gender and sexual orientation based harassment and discrimination;
- c. failing to properly investigate allegations of gender and sexual orientation based harassment and discrimination in the workplace in a thorough, timely and impartial manner, or at all;

- d. failing to provide adequate, or any, training and educational programs to RCMP Members and Management regarding the dangerous and harmful effects of gender and sexual orientation based harassment and discrimination;
- e. failing to make sufficient efforts to promote the universal understanding among RCMP Members and Management that gender and sexual orientation based harassment and discrimination are harmful and will not be tolerated;
- f. permitting a workplace environment and culture that normalized the occurrence of gender and sexual orientation based harassment and discrimination;
- g. failing to act in a timely fashion to stop incidents of gender and sexual orientation based harassment and discrimination;
- h. failing to ensure that perpetrators of gender and sexual orientation based harassment and discrimination were appropriately disciplined; and
- i. failing to protect Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members from the continuation or re-occurrence of gender and sexual orientation based harassment and discrimination and failing to protect them from retaliation after reporting such behaviour.

Exclusion from the Settlement

35. The Crown, the RCMP and its management breached section 15 of the *Charter* by failing to extend to Ms. Tiller, Ms. Copland, Ms. Roach and Class Members the same compensation and benefits given to Primary Class Members under the Settlement Agreement, thus denying Ms. Tiller, Ms. Copland, Ms. Roach and Class Members equal benefit and treatment under the law.

36. The Settlement is a benefits program. Once a benefits program is provided by the Crown, it cannot be applied in a discriminatory manner.

37. Like Primary Class Members in the Merlo Action, Class Members in the within action come under the enumerated head of “sex” in section 15 of the *Charter*. Given that both Primary Class Members and Class Members are members of a protected group of persons under section 15 of the *Charter*, the Crown was not - with respect to the provision of the Settlement benefits program - entitled to treat Primary Class Members differently from Class Members. The Settlement Agreement is under-inclusive.

38. The liability position of Class Members, as against the Crown, is no stronger or weaker than the liability positions of the various groups that make up the Primary Class in the Merlo Action; all of these women worked with and within the physical premises of the RCMP. There is no difference in the liability positions of the groups that would justify the differential treatment.

39. The decision to grant Settlement benefits to Primary Class Members while denying those same benefits to Class Members results in differential treatment under an enumerated or analogous ground, is discriminatory, and is a breach of section 15 of the *Charter*.

Damages

40. Damages should be awarded pursuant to section 24(1) of the *Charter* as they are just and appropriate to 1) provide compensation that might not otherwise be awarded to Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members, 2) vindicate Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members and society at large for the harm caused by the RCMP's violation of section 15 of the *Charter*, and 3) deter future breaches.

RCMP Member Negligence

41. At all material times, certain individuals who were RCMP members, civilian members and PSEs and who were each Crown employees, agents and servants (the "Negligent Individuals") owed a duty of care to Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members to ensure that they could work in an environment free of gender and sexual orientation based harassment and discrimination.

42. Section 37 of the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 (the "*RCMP Act*") makes it incumbent on every RCMP member and civilian member to, among other things:

- a. respect the rights of all persons;
- b. to maintain the integrity of the law, law enforcement and the administration of justice;
- c. to perform the member's duties promptly, impartially and diligently, in accordance with the law and without abusing the member's authority;
- d. to ensure that any improper or unlawful conduct of any member is not concealed or permitted to continue;

- e. to act at all times in a courteous, respectful and honourable manner; and
 - f. to maintain the honour of the RCMP and its principles and purposes.
43. The Code of Conduct established by regulation under section 38 of the *RCMP Act* requires RCMP Members and Management to, among other things, respect the rights of every person, and treat every person with respect and courtesy and not engage in discrimination or harassment. Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members plead and rely upon the *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281, section 18 and the Scheduled Code of Conduct.
44. The Negligent Individuals breached the aforementioned duties by, among other things:
- a. failing or neglecting to adhere to the applicable legislation, policies, procedures, codes of conduct and guidelines in respect of gender and sexual orientation based harassment and discrimination;
 - b. failing to properly investigate allegations of gender and sexual orientation based harassment and discrimination in the workplace in a thorough, timely and impartial manner;
 - c. failing or neglecting to exercise their authority to put an end to gender and sexual orientation based harassment and discrimination;
 - d. failing to adhere to section 37 of the *RCMP Act*;
 - e. failing to hold accountable those found to be in breach of the applicable legislation, policies, procedures, codes of conduct and guidelines;
 - f. failing to properly supervise members, civilian members and PSEs; and
 - g. harassing and discriminating against Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members because they are woman.
45. The conduct that the RCMP, its management and the Negligent Individuals directed toward Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members was repetitive and extreme and calculated to harass Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members. As a result of this conduct, Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members suffered mental and physical injury, particularized below.
46. The RCMP, its management and the Negligent Individuals knew or ought to have known

that their conduct was of a kind reasonably capable of terrifying and harming a normal person. In particular, the RCMP, its management and the Negligent Individuals knew or ought to have known that this conduct would cause physical and psychological harm to Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members.

47. The Crown is vicariously liable for the conduct of the Negligent Individuals.

48. The Crown, the RCMP and its management knew or ought to have known about the presence of gender and sexual orientation based harassment and discrimination within the RCMP. Among other things, the Crown, the RCMP and its management commissioned various reports and inquiries that recognized the prevalence of gender based harassment and discrimination within the RCMP and within certain divisions of the RCMP.

Injury and Damage

49. As a result of the fault and negligence of the Crown, the RCMP, its management and the Negligent Individuals, Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members have sustained serious injuries and consequences, including:

- a. post-traumatic stress disorder;
- b. depression;
- c. anxiety;
- d. suicidal ideation;
- e. diminished self-worth;
- f. diminished ability to concentrate;
- g. repeated and ongoing nightmares;
- h. difficulty in coping with emotional stress;
- i. attempted suicide;
- j. feelings of guilt, responsibility and self-blame;
- k. insomnia;
- l. irritable bowel syndrome;
- m. failed relationships;
- n. substance abuse;
- o. loss of consortium; and

- p. loss of enjoyment of life.

50. These injuries have caused and continue to cause Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members pain, suffering, loss of enjoyment of life, permanent disability, loss of physical, mental and emotional health and loss of earnings, past and prospective.

51. As a further result of the negligence of the Crown, the RCMP, its management and the Negligent Individuals, Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members have sustained special damages and loss and expenses for medical and psychological treatment. Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members continue to undergo medical and psychological care and treatment and continue to incur loss and expense.

52. As a result of the negligence of the Crown, the RCMP, its management and the Negligent Individuals, the families of Class Members have sustained and will continue to sustain injury, loss and damages, including but not limited to:

- a. actual expenses reasonably incurred for the benefit of Class Members;
- b. travel expenses incurred while visiting Class Members during medical procedures and counselling and recovery; and
- c. loss of income and the value of services provided by family members to Class Members where such services, including nursing and housekeeping, have been provided.

53. These family members seek compensation for the costs set out in paragraph 52 as well as compensation for loss of support, guidance, consortium, care and companionship that they might reasonably have expected to receive from Class Members.

Punitive Damages

54. As set out in detail in this claim, the actions of the Crown, the RCMP, its management and the Negligent Individuals were reprehensible and showed a callous disregard for Ms. Tiller's, Ms. Copland's, Ms. Roach's and other Class Members' rights.

55. The conduct of the Crown, the RCMP, its management and the Negligent Individuals was deliberate, lasted for many years and represented a marked departure from ordinary standards of decent behaviour.

56. Compensatory damages are insufficient in this case. A punitive damage award is necessary to express society's condemnation of the conduct engaged in by the Crown, the RCMP, its management and the Negligent Individuals, and to achieve the goals of both specific and general deterrence.

57. The conduct of the Crown, the RCMP, its management and the Negligent Individuals merits punishment and warrants a claim for punitive damages.

Provincial Health Insurers

58. As a consequence of the conduct of the Crown, the RCMP, its management and the Negligent Individuals, as set out above, the British Columbia Ministry of Health Services (the "Ministry") and comparable provincial and territorial health insurers have incurred various expenses with respect to the medical treatment of Ms. Copland, Ms. Tiller, Ms. Roach and other Class Members. Accordingly, the Ministry and other provincial and territorial health insurers have suffered, and will continue to suffer, damages including the ongoing medical monitoring of Ms. Copland, Ms. Tiller, Ms. Roach and other Class Members, for which they are entitled to be compensated by virtue of their subrogated and direct rights of action in respect of all past and future insured services.

59. This action is maintained on behalf of the Ministry and all other provincial and territorial health insurers.

Legislation

60. Ms. Tiller, Ms. Copland, Ms. Roach and other Class Members plead and rely upon, *inter alia*:

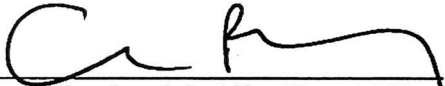
- a. *Alberta Health Care Insurance Act*, RSA 2000, c A-20
- b. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11
- c. *Charter of Human Rights and Freedoms*, CQLR c C-12
- d. *Civil Code of Quebec*, CQLR c CCQ-1991
- e. *Crown Liability and Proceedings Act*, RSC 1985, c C-50
- f. *Excise Tax Act*, RSC 1985, c E-15
- g. *Family Law Act*, RSO 1990, c F-3
- h. *Fatal Accidents Act*, RSA 2000, c F-8

- i. *Fatal Accidents Act*, RSNL 1990, c F-6
- j. *Fatal Accidents Act*, RSNWT 1988, c F-3
- k. *Fatal Accidents Act*, RSPEI 1988, c F-5
- l. *Fatal Accidents Act*, RSS 1978, c F-11
- m. *Fatal Accidents Act*, RSY 2002, c 86
- n. *Fatal Accidents Act*, RSNWT 1988, c F-3
- o. *Fatal Accidents Act*, SNB 2012, c 104
- p. *Fatal Injuries Act*, RSNS 1989, c 163
- q. *Federal Courts Rules*, SOR/98-106
- r. *Health Care Cost Recovery Act*, SBC 2008, c 27
- s. *Health Insurance Act*, RSO 1990, c H.6
- t. *Health Services and Insurance Act*, RSNS 1989, c 197
- u. *Health Services Insurance Act*, CCSM, c H35
- v. *Hospitals Act*, RSA 2000, c H-12
- w. *Hospital and Diagnostic Services Insurance Act*, RSPEI 1988, c H-8
- x. *Hospital Insurance Agreement Act*, RSNL 1990, c H-7
- y. *Hospital Insurance and Health and Social Services Administration Act*, RSNWT 1988, c T-3
- z. *Hospital Insurance and Health and Social Services Administration Act*, RSNWT 1988, c T-3
- aa. *Hospital Insurance Services Act*, RSY 2002, c 112
- bb. *Hospital Services Act*, RSNB 1973, c H-9
- cc. *Royal Canadian Mounted Police Act*, RSC 1985, c R-10
- dd. *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281
- ee. *Survival of Actions Act*, RSA 2000, c-27
- ff. *The Fatal Accidents Act*, CCSM c F50
- gg. *The Health Administration Act*, RSS 1978, c H-0.0001
- hh. *The Trustee Act*, CCSM c T160
- ii. *Trustee Act*, RSNL 1990, c T-10
- jj. *Trustee Act*, RSNWT 1988, c T-8
- kk. *Trustee Act*, RSNWT (Nu) 1988, c T-8
- ll. *Trustee Act*, RSO 1990, c T.23
- mm. All other comparable and relevant acts and regulations in Canada

Place of Trial

The plaintiff proposes that this action be tried at the City of Vancouver, in the Province of British Columbia.

Date: November 2, 2017



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SOR/2004-283, s. 35