

FEDERAL COURT

PROPOSED CLASS PROCEEDING

BETWEEN:

A.B., WALLACE FOWLER and JEAN-PIERRE ROBILLARD

Plaintiffs

- and -

HIS MAJESTY THE KING

Defendant

FINAL SETTLEMENT AGREEMENT

WHEREAS:

1. In this “**Proceeding**”, the Plaintiffs, all former members of the Canadian Armed Forces (“**CAF**”), claim on their own behalf and on behalf of class members that they suffered racial discrimination and racial harassment while serving in the CAF.
2. The Plaintiffs and the Defendant (together, the “**Parties**”) recognize and acknowledge that racial discrimination and racial harassment have no place in the CAF, and further

recognize and acknowledge the harm suffered by class members who have experienced racial discrimination and racial harassment in the CAF.

3. The Parties further acknowledge that experiencing racial harassment and/or discrimination undermines the very camaraderie necessary to a cohesive and effective military, and that racial harassment and/or discrimination in the CAF has unique consequences given the military climate and feelings of betrayal experienced by racialized CAF members who are often called upon to live and work around the clock with the perpetrators of racial harassment and/or discrimination, such as in basic training, on CAF bases, deployments, or ships.
4. On August 29, 2019, the Parties entered into an Agreement in Principle to settle this Proceeding (“**AIP**”).
5. The Parties have now agreed to settle this Proceeding on the terms set forth in this Final Settlement Agreement (“**FSA**”).

NOW THEREFORE, in consideration of the mutual agreements, covenants and undertakings set out in this FSA, the Parties agree with each other as follows:

ARTICLE 1 – INTERPRETATION

1.01 Definitions

In this FSA, the following terms will have the following meanings:

- (a) “**Adjusted Payments**” means the monetary amount determined in accordance with Section 6.07;
- (b) “**Administrator**” means Deloitte LLP, the entity to be appointed by the Court to carry out the duties assigned in ARTICLE 8, ARTICLE 9, and **Appendix “G”**;

- (c) **“Aggregate Payment Cap”** means 150 million dollars (\$150,000,000);
- (d) **“Approval Date”** means the date the Court issues its Approval Order;
- (e) **“Approval Hearing”** means the hearing of the motion for consent certification of the Proceeding, approval of this Final Settlement Agreement, appointment of the Administrator, and approval of Class Counsel fees and disbursements, in accordance with Rule 334.29 of the *Federal Courts Rules*, SOR 98-106;
- (f) **“Approval Order”** means the order of the Federal Court, certifying this Proceeding as a class proceeding, approving this FSA as fair, reasonable and in the best interests of the Class Members, appointing the Administrator, and approving Class Counsel legal fees and disbursements;
- (g) **“Augmented Amounts”** means the monetary amount determined in accordance with either Section 6.05 or Section 6.06;
- (h) **“CAF”** means the Canadian Armed Forces, as defined in section 14 of the *National Defence Act*, RSC 1985, c. N-5, as amended;
- (i) **“CAF Member”** means any member of the CAF including, for greater clarity, all current and former Regular and Reserve Force members of the CAF, including the Primary Reserve, Cadet Organizations Administration and Training Service (“COATS”), Canadian Rangers and Supplementary Reserve;
- (j) **“Canada”** or **“Government of Canada”** means His Majesty the King in Right of Canada, the Attorney General of Canada, His and their current and

former respective legal representatives, employees, agents, servants, predecessors, successors, executors, administrators, heirs and assigns;

- (k) **“Claims Period”** means the twelve (12) month period from the Implementation Date to the Individual Application Deadline;
- (l) **“Claims Process”** means the process for the submission of Individual Claim Forms and the assessment, determination and payment of Individual Monetary Awards to Eligible Class Members, as set forth in **Appendix “G”**;
- (m) **“Class”** has the meaning set out in Section 4.01;
- (n) **“Class Counsel”** means Stewart McKelvey;
- (o) **“Class Member”** means a person who is included in the Class;
- (p) **“Court”** means the Federal Court of Canada;
- (q) **“Department of National Defence”** or **“DND”** means the department established under section 3 of the *National Defence Act*, over which the Minister of National Defence presides;
- (r) **“Designated Amount”** means 100 million dollars (\$100,000,000);
- (s) **“Eligible Class Member”** has the meaning set out in Section 6.02;
- (t) **“Estate Executor”** means the estate executor, administrator or trustee of a deceased Eligible Class Member’s estate;
- (u) **“Final Settlement Agreement”** or **“FSA”** means this settlement agreement, including its recitals and Appendices;

- (v) **“Implementation Date”** means the latest of:
 - (i) the expiry of the Opt Out Period;
 - (ii) if the Opt Out Threshold is exceeded, thirty days after the expiry of the Opt Out Period;
 - (iii) the day after the deadline for appealing the Approval Order; or
 - (iv) the day after the date of a final determination of any appeal brought in relation to the Approval Order.

- (w) **“Individual Application Deadline”** means the twelve (12) month anniversary of the Implementation Date;

- (x) **“Individual Assessed Amount”** means the amount of money each individual Class Member is eligible to receive under the Monetary Assessment Scheme;

- (y) **“Individual Claim Form”** means a Class Member’s application for an Individual Monetary Award, a letter of apology and/or participation in the Restorative Engagement Process, completed substantially in the form attached as **Appendix “F”** or as amended by the Parties’ agreement, and signed by a Class Member or the Class Member’s personal representative or Estate Executor;

- (z) **“Individual Monetary Award”** means the amount payable to an Eligible Class Member under this FSA, which shall be calculated in accordance with Section 6.04;

- (aa) **“Legal Proceedings”** includes civil actions, claims, and complaints under the *Canadian Human Rights Act*, but does not include internal harassment complaints, grievances under the *National Defence Act* or the *Federal Public Sector Labour Relations Act*, or staffing complaints under the *Public Service Employment Act*, as those acts exist on the date this FSA is executed or as they may exist in the future;
- (bb) **“Monetary Assessment Scheme”** is the scheme for the assessment of Individual Assessed Amounts, as referred to in Section 6.04 and attached at **Appendix “E”**;
- (cc) **“Opt Out”** means the delivery of a valid Opt Out Form to Class Counsel prior to the expiry of the Opt Out Period, or an automatic opt out pursuant to Rule 334.21(2) of the *Federal Courts Rules*;
- (dd) **“Opt Out Form”** means the form by which a Class Member must Opt Out of this Proceeding, generally in the form and content as attached at **Appendix “C”** to this FSA;
- (ee) **“Opt Out Period”** means the ninety (90) day period commencing on the Approval Date;
- (ff) **“Opt Out Threshold”** means the Opt Out Threshold set out in Section 3.06;
- (gg) **“Racial Discrimination”** means any unfair treatment, adverse differentiation or bias occurring in connection with military service and involving military members (CAF or foreign), DND employees, Staff of the Non-Public Funds employees, or CAF/DND contractors, and that is based on an individual’s race, ethnicity, colour and/or Indigeneity;

- (hh) **“Racial Harassment”** means any conduct that is based on another individual’s race, ethnicity, colour and/or Indigeneity that is known or should reasonably be known to be offensive or cause harm – including objectionable act(s), comment(s), or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat - occurring in connection with military service and involving military members (CAF or foreign), DND employees, Staff of the Non-Public Funds employees, or CAF/DND contractors. Harassment may be a series of incidents or one incident which has a lasting impact on the individual;
- (ii) **“Release”** has the meaning given in Section 11.01;
- (jj) **“Releasees”** means individually and collectively, Canada, and all current and former Ministers, employees, departments, Crown agents, agencies, the Canadian Armed Forces, and their employees, Crown servants and CAF Members for the matters pleaded, or which could have been pleaded against Canada in respect of Racial Discrimination and/or Racial Harassment, known or unknown, in this Proceeding;
- (kk) **“Releasor(s)”** means each Eligible Class Member who does not Opt Out of this Proceeding and, as the case may be, the Estate Executor, along with their respective legal representatives, successors, heirs and assigns;
- (ll) **“Restorative Engagement Process”** means the process set forth and described in Section 5.03 and in Schedule C of **Appendix “D”**;
- (mm) **“Systemic Relief Measures”** means those measures set forth and described in Section 5.02 and in Schedules A and B of **Appendix “D”**;

(nn) “**Veterans Affairs Canada**” or “**VAC**” means the department within the Government of Canada that administers benefits provided under the *Pension Act* and the *Veterans Well-being Act*, which include disability benefits available to eligible CAF members and veterans.

1.02 **Headings**

The division of this FSA into Sections and Appendices and the insertion of headings are for convenience of reference only and do not affect the construction or interpretation of this FSA. References in this FSA to Sections and Appendices are to Sections and Appendices of this FSA, unless something in the subject matter or context of a Section or Appendix is inconsistent with this interpretation.

1.03 **Singular and Plural Meanings**

In this FSA, unless the context otherwise requires, words importing the singular include the plural and *vice versa*.

1.04 **Extended Meanings**

The term “including” means “including without limiting the generality of the foregoing”.

1.05 **No *Contra Proferentem***

The Parties acknowledge that they have all reviewed and participated in settling the terms of this FSA and they agree that any rule of construction to the effect that any ambiguity is to be resolved against the drafting parties is not applicable in interpreting this FSA.

1.06 **Day for Any Action**

Where the day or date on or by which any action required to be taken under this FSA expires or falls on a day that is not a business day, such action may be done on the next day that is a business day.

1.07 **Currency**

All references in this FSA to currency are to the lawful money of Canada.

1.08 **Appendices**

The following Appendices to this FSA are incorporated into and form part of it by this reference as fully as if contained in the body of this FSA:

- (a) **Appendix “A”** – Order and Reasons of the Federal Court dated April 2, 2024 (2024 FC 505);
- (b) **Appendix “B”** – Notice Plan
- (c) **Appendix “C”** – Opt Out Form
- (d) **Appendix “D”** – Systemic Relief Measures
- (e) **Appendix “E”** – Monetary Assessment Scheme
- (f) **Appendix “F”** – Individual Claim Form
- (g) **Appendix “G”** – Claims Process

However, in the event of a contradiction between the content of the body of this FSA and the content of the body of one of the above Appendices, the language of the body of this FSA will govern.

1.09 **No Other Obligations**

All actions, causes of actions, liabilities, claims and demands whatsoever of any nature or kind for damages, contribution, indemnity, costs, expenses or interest which any Class Member who does not Opt Out of this Proceeding ever had, now has or may hereafter have arising against Canada in relation to Racial Discrimination and/or Racial Harassment in the CAF, whether or not

such claims were made or could have been made in any proceeding including the Proceeding, will be finally settled on the terms and conditions set out in this FSA upon the Implementation Date, and Canada will have no further obligations except as set out in this FSA.

ARTICLE 2 – EFFECTIVE DATE OF THIS FSA

2.01 Date when Binding and Effective

This FSA will become effective and be binding on all the Parties and all Class Members who do not Opt Out of this Proceeding on and as of the Implementation Date. The Approval Order will constitute approval of this FSA in respect of all Class Members who do not Opt Out of this Proceeding.

ARTICLE 3 – IMPLEMENTATION OF THIS FSA

3.01 Consent Certification

The Parties agree that a motion will be made to the Court for certification of the Proceeding as a class proceeding on consent for purposes of settlement, returnable at the same time as the settlement approval motion, in accordance with the terms of this FSA. The Parties agree that Canada's consent to certification of the Proceeding is conditional upon the Court approving the settlement in accordance with the terms of this FSA.

3.02 Notice

The Parties will implement and effect the following in accordance with the Notice Plan attached as **Appendix "B"**:

- (a) notice of the Approval Hearing, as already approved by Order and Reasons of the Federal Court on April 2, 2024 (2024 FC 505), a copy of which is attached as **Appendix "A"**;

- (b) if approved following the Approval Hearing, notice of the consent certification and approval of this FSA; and
- (c) if the FSA is approved:
 - (i) notice of the process to Opt Out; and
 - (ii) notice of the process to submit an Individual Claim Form and apply for an Individual Monetary Award; and
 - (iii) notice of the process to request a letter of apology and/or to apply for participation in the Restorative Engagement Process.

3.03 Form and Content of Notices

The Parties agree that:

- (a) notice of the Approval Hearing will be in the form and content as already approved by the Federal Court as at **Appendix “A”**;
- (b) if approved following the Approval Hearing, notice of the consent certification and approval of this FSA will be generally in the form and content of the notices contained at Schedules A and B of **Appendix “A”**, with necessary modifications and inclusions, and will include an Opt Out Form generally in the form and content as attached at **Appendix “C”**.

3.04 Cost of Notice

Unless otherwise agreed to by the Parties, Canada agrees to fund the reasonable costs of notice to a maximum of \$200,000, as provided for at Sections 3.02 and 3.03 above, but will not pay the cost of publishing notices on Class Counsel’s website.

3.05 **Opt Out Process and Form**

Class Members who wish to Opt Out of the proceeding may do so by completing and delivering an Opt Out Form during the Opt Out Period. Completed Opt Out Forms will only be disclosed to CAF where necessary for purposes of determining whether any Legal Proceedings are barred by the Release contained in this FSA and the Approval Order.

3.06 **Opt Out Threshold**

If the number of Class Members who have delivered a valid Opt Out Form exceeds 2,250 (two thousand two hundred fifty – the “**Opt Out Threshold**”), in Canada’s sole discretion Canada may, within thirty days after the end of the Opt Out Period, exercise the option to void this FSA, in which case the Approval Order will be set aside. For greater certainty, automatic opt outs pursuant to Rule 334.21(2) of the *Federal Courts Rules* are not to be counted in determining whether the Opt Out Threshold has been exceeded.

ARTICLE 4 – CLASS DEFINITION

4.01 **Class Definition**

The Parties agree that the Class will be defined as follows:

All persons who are or have been enrolled as CAF Members at any time from April 17, 1985, and for any duration up to and including the Approval Date, and who assert that they have been subjected to Racial Discrimination and/or Racial Harassment.

ARTICLE 5 – CAF MEASURES

5.01 **Letter of Apology**

Canada agrees to provide a personally addressed letter of apology, signed by the Chief of the Defence Staff, to all Eligible Class Members who request one. Such apology will not be

admissible in any civil or criminal proceeding, administrative proceeding or arbitration as evidence of the fault or liability of any person in connection with that matter.

5.02 **Systemic Relief Measures**

Canada agrees to implement Systemic Relief Measures to improve the organizational culture and systems within the CAF with the objective of addressing and eliminating racism, Racial Discrimination and Racial Harassment in the CAF.

The costs of the Systemic Relief Measures will be borne by Canada and include all internal and external costs required for implementation of the Systemic Relief Measures.

The elements of the Systemic Relief Measures are described in Schedules A and B of **Appendix “D”**.

5.03 **Restorative Engagement Processes**

Canada agrees to provide group restorative opportunities (individual opportunities may be available on a case-by-case basis) led by the CAF to allow interested Class Members to communicate their experiences of Racial Discrimination and/or Racial Harassment to senior CAF leadership with the assistance of qualified and trained restorative practitioners.

The elements of these opportunities are described at Schedule C of **Appendix “D”**. The Parties acknowledge and agree that the elements may be amended by Canada, provided such amendments are consistent with the intent of this provision and **Appendix “D”**.

5.04 **Impact of Release Item on VAC Benefits**

Canada will provide a standard form letter from the appropriate authority to inform Class Members about the relationship (if any) between CAF release items and entitlement to VAC benefits of any kind, whether medical or otherwise.

ARTICLE 6 – INDIVIDUAL MONETARY AWARDS

6.01 Maximum Aggregate Payment Cap for Individual Monetary Awards

The total amount payable by Canada in respect of individual payments to Class Members is limited to the sum of all Individual Monetary Awards assessed as payable to Eligible Class Members as set out below, and shall not in any circumstances exceed the Aggregate Payment Cap of 150 million dollars (\$150,000,000).

6.02 Eligibility for Consideration for Individual Monetary Awards

A Class Member is eligible to be considered for an Individual Monetary Award provided that the Class Member was alive as of the date that this FSA is executed, and provided that an Individual Claim Form is submitted to the Administrator by the Individual Application Deadline, subject to the exception in Section 6.03 for late Individual Claim Forms (“**Eligible Class Member**”). The Individual Claim Form will be in the form attached as **Appendix “F”**.

6.03 Late Individual Claim Forms

The Administrator shall accept Individual Claim Forms received within thirty days after the Individual Application Deadline, only where the Administrator is satisfied that the Class Member was delayed from delivering an Individual Claim Form until after the Individual Application Deadline due to a disability on the part of the Class Member or due to other exceptional circumstances. No Individual Claim Forms shall be accepted for substantive review by the Administrator if received more than thirty days after the Individual Application Deadline.

6.04 Assessment of Individual Monetary Awards

The quantum of an Eligible Class Member’s Individual Monetary Award will be assessed and determined by the Administrator according to the following process, as further detailed in **Appendix “G”**:

- (a) The Administrator will first determine each Eligible Class Member's "**Individual Assessed Amount**" in accordance with the Monetary Assessment Scheme attached at **Appendix "E"**.
- (b) In the event that a Class Member is denied a Common Experience Payment and/or is denied the payment of an additional level amount following the Assessment of Narrative Evidence of Racism (both as contemplated by the Monetary Assessment Scheme), they will be entitled to seek a reconsideration of such denial(s) in accordance with **Appendix "G"**.
- (c) Following determination of each Eligible Class Member's "Individual Assessed Amount" and completion of any reconsiderations, the Administrator will calculate the final total aggregate amount of all Individual Assessed Amounts ("**Aggregate of Assessed Amounts**").
- (d) After calculating the Individual Assessed Amounts and the Aggregate of Assessed Amounts, the Individual Monetary Award of an Eligible Class Member is then determined in accordance with one of the following subparagraphs, as applicable:
 - (i) the total value of the Eligible Class Member's Individual Assessed Amount, plus the Eligible Class Member's Augmented Amount calculated in accordance with Section 6.05, if the Aggregate of Assessed Amounts is less than or equal to \$83,333,333; or
 - (ii) the total value of the Eligible Class Member's Individual Assessed Amount, plus the Eligible Class Member's Augmented Amount calculated in accordance with Section 6.06, if the Aggregate of Assessed Amounts is greater than \$83,333,333, but less than the Designated Amount (*i.e.* 100 million dollars); or

- (iii) the total value of the Eligible Class Member's Individual Assessed Amount, if the Aggregate of Assessed Amounts is greater than or equal to the Designated Amount (*i.e.* 100 million dollars) but less than or equal to the Aggregate Payment Cap (*i.e.* 150 million dollars); or
- (iv) the total value of the Eligible Class Member's Adjusted Payment provided under Section 6.07, if the Aggregate of Assessed Amounts is greater than the Aggregate Payment Cap (*i.e.* 150 million dollars).

6.05 Augmented Amounts under subparagraph d(i) of Section 6.04

The Augmented Amount payable to an Eligible Class Member under subparagraph d(i) of Section 6.04 shall be calculated according to the following formula:

$$A = B \times 20\%$$

where:

A = the Augmented Amount payable to an Eligible Class Member;

B = the Eligible Class Member's Individual Assessed Amount

But if an individual Augmented Amount under this Section would amount to less than 100 dollars (\$100), no such amount will be awarded and paid to this Eligible Class Member.

6.06 Augmented Amounts under subparagraph d(ii) of Section 6.04

The Augmented Amount payable to an Eligible Class Member under subparagraph d(ii) of Section 6.04 shall be calculated according to the following formula:

$$A = B \times \frac{C}{D}$$

Where:

A = the Augmented Amount payable to an Eligible Class Member;

B = the Eligible Class Member's Individual Assessed Amount;

C = the difference between the Aggregate of Assessed Amounts and the Designated Amount;

D = the Aggregate of Assessed Amounts.

But if an individual Augmented Amount under this Section would amount to less than 100 dollars (\$100), no such amount will be awarded and paid to this Eligible Class Member.

6.07 Adjusted Payments under subparagraph d(iv) of Section 6.04

The Adjusted Payment payable to an Eligible Class Member under subparagraph d(iv) of Section 6.04 shall be calculated according to the following formula:

$$R = X \times \frac{Y}{Z}$$

Where:

R = the Adjusted Payment payable to an Eligible Class Member;

X = the Eligible Class Member's Individual Assessed Amount;

Y = the Aggregate Payment Cap;

Z = the Aggregate of Assessed Amounts.

6.08 **Payments Inclusive**

For greater certainty, the amounts payable to Eligible Class Members under this FSA are inclusive of any prejudgment or post-judgment interest or other amounts that may be claimed by Eligible Class Members.

6.09 **Social Benefits and Taxation**

The Parties shall jointly write a letter to Employment and Social Development Canada and the Canada Revenue Agency requesting that Class Members' entitlement to federal social benefits or social assistance benefits not be negatively affected by receipt of an Individual Monetary Award, and that any such Individual Monetary Award not be considered taxable income within the meaning of the *Income Tax Act*.

Canada shall write a letter to provincial and territorial governments requesting that any Class Members' receipt of an Individual Monetary Award not affect the amount, nature or duration of any social benefits or social assistance benefits available or payable to any Eligible Class Member who has received a payment under this FSA.

6.10 **No Assignment**

No amount payable under this FSA can be assigned, and any such purported assignment is null and void except as expressly provided for in this FSA. Payments for Individual Monetary Awards will be sent by mail to an Eligible Class Member's home or mailing address as indicated on the Individual Claim Form.

ARTICLE 7 – APPOINTMENT AND FUNDING OF CLAIMS ADMINISTRATOR

7.01 **Appointment of Claims Administrator**

Deloitte LLP has agreed to act as the Claims Administrator (the "**Administrator**"), who will be tasked with the duties and responsibilities assigned to the Administrator in ARTICLE 8 and ARTICLE 9, subject to appointment by the Court.

7.02 Funding of Administrator

Canada agrees to fund the reasonable costs of claims administration by the Administrator.

7.03 Invoicing and Payment Schedule

Invoices shall be submitted in Deloitte's name on a monthly basis and contain the following:

- (a) the date of the work performed, the deliverables, a description of work performed, and who performed the work;
- (b) other details as may be required by Canada; and
- (c) a copy of any invoices and proof of payment of any expenses

GST and HST must be separately indicated on each invoice. All items that are zero-rated, exempt, or to which the GST or HST does not apply, shall be identified as such on all invoices.

By submitting an invoice, Deloitte certifies that the invoice is consistent with the work delivered and is in accordance with this FSA and its Appendices.

ARTICLE 8 – DUTIES OF THE ADMINISTRATOR

8.01 Language of Work

The Administrator shall provide services in English or French.

8.02 Co-ordination

The Administrator shall work cooperatively with the Parties to ensure that their processes and products are designed to ensure the efficient administration of the mandate. This co-ordination shall begin as soon as is reasonably practicable and shall continue throughout the administration of this FSA as may reasonably be required from time to time.

8.03 Administrator's Duties

Administration of the Claims Process will take place in accordance with the framework described in **Appendix "G"**.

The Administrator's duties and responsibilities will include the following:

- (a) developing, installing and implementing systems and procedures for processing, evaluating and making decisions respecting Individual Claim Forms which reflect the need for simplicity in form, including performing initial intake and other screening functions, and ensuring that the Individual Claim Forms are complete, substantially in accordance with **Appendix "F"**;
- (b) providing personnel in such reasonable numbers as are required for the performance of its duties, and all training for such personnel;
- (c) keeping accurate accounts of its activities, preparing such financial statements, reports and records as are required by the Court, in a form and with content as directed by the Court;
- (d) receiving and responding to all enquiries and correspondence respecting the validation of Individual Claim Forms, reviewing and evaluating all Individual Claim Forms for monetary awards under the Monetary Assessment Scheme, making decisions in respect of Individual Claim Forms and the corresponding Individual Monetary Awards, giving notice of its decisions in accordance with the provisions of this FSA, and communicating with Class Members;
- (e) making best efforts to accommodate a Class Member or Eligible Class Member who contacts the Administrator and expresses the desire to communicate in a language other than English or French;

- (f) providing all records and information requested for the purposes of any audit that may be conducted, and cooperating fully with such audits;
- (g) providing reports and invoices as set out in this FSA; and
- (h) such other duties and responsibilities as the Court may direct from time to time.

8.04 Confidentiality

The Administrator and any individual required to process or verify Class Member information shall treat all information and records as confidential in accordance with Section 18.01, and must execute, and require all employees or sub-contractors to execute, a non-disclosure agreement in a form satisfactory to the Parties. Class Member information, including material in printed and/or electronic format, shall be stored in a secure manner to ensure that only authorized persons who have signed the non-disclosure agreement may access the information.

8.05 Powers and Immunity

The Administrator shall have all the powers necessary for the performance of their duties and responsibilities in accordance with this FSA. The Administrator and any person(s) working for them in connection with this FSA shall benefit from the public law immunity associated with judicial functions. No suit may be instituted against the Administrator or any person working for the Administrator without the permission of the Court.

8.06 Requirement for Insurance

The Administrator shall ensure that they carry adequate insurance considering the duties and risk associated with their appointment as Administrator. All costs associated with such insurance shall be borne by the Administrator.

8.07 **Audits of the Administrator**

Canada reserves the right to audit the activities of the Administrator for the purpose of assessing compliance with the FSA.

ARTICLE 9 – CLAIMS ADMINISTRATION

9.01 **Claims Period**

The Claims Period will begin on the Implementation Date and continue to the Individual Application Deadline.

9.02 **Claims Process**

The Administrator shall perform an initial intake review of all Individual Claim Forms to ensure completeness and to facilitate the verification of a Class Member's service with the CAF. Once an Individual Claim Form is verified in this manner, the Administrator will administer the process set out in **Appendix "G"**.

9.03 **Determinations Final**

All decisions by the Administrator are final and binding and are not subject to review, subject only to the process for reconsideration of denials and the correction of administrative errors as set forth in **Appendix "G"**. For greater certainty, the Administrator's decisions are not subject to judicial review under section 18 or 18.1 of the *Federal Courts Act*.

ARTICLE 10 – NO BAR OR PREVENTION OF DOUBLE RECOVERY

10.01 **Previous Awards and Settlement**

Notwithstanding any statute, regulation, or doctrine of law or equity to the contrary, there shall be no bar to or prevention of double recovery. Eligible Class Members who have received a monetary payment or damages through another settlement process, through a court decision or human rights complaint, or through some other form of court or administrative proceeding, are

not excluded from the Claims Process and are entitled to an Individual Monetary Award under the Monetary Assessment Scheme.

10.02 Receipt of VAC Benefits

For greater certainty, Eligible Class Members are entitled to an Individual Monetary Award under the Monetary Assessment Scheme, even if they have received, are receiving, or are entitled to receive any statutory benefits through VAC.

ARTICLE 11 – RELEASES AND LIMITATIONS ON FURTHER LITIGATION

11.01 Full and Final Release

Upon approval by the Court of this FSA, but subject to any decision by Canada to void this FSA and set aside the Approval Order as a result of the Opt Out Threshold being exceeded, the Parties agree that the Proceeding, and the claims of all Class Members who do not Opt Out, shall be discontinued against Canada without costs and with prejudice and that such discontinuance shall be a defence and absolute bar to any subsequent action against Canada in respect of any of the claims (or any aspect of the claims made in this Proceeding and relating to the subject matter hereof) and are released against the Releasees. In this instance, and for greater certainty, the Releasor(s) fully, finally and forever release and discharge the Releasees, from any and all Legal Proceedings, actions, suits, proceedings, causes of action, common law, Quebec civil law and statutory liabilities, including but not limited to the *Canadian Charter of Rights and Freedoms*, equitable obligations, contracts, claims, losses, costs, complaints and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which any Releasor may ever have had, may now have, or may in the future have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned right or otherwise with respect to or in relation to any aspect of this Proceeding, and this release includes any such claim made or that could have been made in any proceeding including this Proceeding whether asserted directly

by the Releasor(s) or by any other person, group or legal entity on behalf of or as representative for the Releasor(s) (the totality of this Section 11.01 shall hereafter be referred to as the “**Release**”).

11.02 Discontinuance of Related Claims and Indemnification

The Releasor(s) agree not to commence or maintain any Legal Proceedings against any person, corporation or other entity, which might claim contribution or indemnity or otherwise against Canada in respect of the claims released in Section 11.01. It is agreed and understood that if any Releasor commences or continues any Legal Proceedings, and Canada is added to the Legal Proceedings in any manner whatsoever, whether justified in law or not, Canada may, at Canada’s sole discretion, require the initiating Releasor to immediately discontinue the Legal Proceedings. If Canada exercises this discretion, the initiating Releasor will be liable, on a full indemnity scale, to Canada for all legal costs incurred. The Release shall operate conclusively as an estoppel and may be pleaded in the event any Legal Proceedings are brought or continued, as a complete defence and reply, and may be relied upon to dismiss the Legal Proceedings on a summary basis, and no objection will be raised by the Releasor(s) that the other parties in the Legal Proceedings were not privy to the formation of this Release.

ARTICLE 12 - SETTLEMENT APPROVAL

12.01 Settlement Approval

On consent, the Parties agree that they will seek the Court’s approval of this FSA in full and final settlement of this Proceeding.

ARTICLE 13 – FEDERAL COURT OVERSIGHT

13.01 Continued Case Management

If and when any dispute shall arise with respect to the implementation of this FSA and/or the Approval Order, the Parties hereby agree to the continued case management of this Proceeding

by the Honourable Justice Ann Marie McDonald or such other judge as may be assigned by the Court for this purpose.

ARTICLE 14 – HONORARIA

14.01 Honoraria

Within sixty days of the Implementation Date, the Defendant shall pay to Class Counsel in trust the sum of thirty thousand dollars (\$30,000) for contribution to the payment of honoraria in equal measure to each of the three Plaintiffs in this Proceeding.

From the amount of Class Counsel legal fees as set forth at Section 15.01, if and as approved by the Court, Class Counsel will seek Court approval to provide: (a) an additional \$20,000 honorarium to each of the three Plaintiffs in this Proceeding; and (b) a \$30,000 honorarium to Rubin Coward. Canada shall take no position on this request by Class Counsel to contribute to the payment of honoraria from Class Counsel legal fees.

In the result, and if approved by the Court, the Plaintiffs in this proceeding and Rubin Coward would then each receive a \$30,000 honorarium in recognition of their efforts on behalf of the Class.

If this Section 14.01 is found to be void, contrary to public policy or unenforceable, either in whole or in part, such impugned portions shall be regarded as severed while the rest of this FSA shall remain in full force and effect.

ARTICLE 15 – LEGAL SERVICES AND FEES

15.01 Legal Fees

Within sixty days of the Implementation Date, Canada shall pay to Class Counsel its legal fees in the amount of 5 million dollars (\$5,000,000), plus applicable taxes at the rate applicable in the

province of Nova Scotia, which shall be separate from and in addition to the Individual Monetary Awards paid to Class Members.

For greater certainty, Class Counsel agree that no amounts shall be deducted from any payments made to Class Members under this FSA on account of legal fees.

Canada shall take no position on the motion to approve the legal fees of Class Counsel.

15.02 Provision of Legal Services to the Class

Class Counsel further agrees to provide reasonable assistance to Class Members throughout the Claims Process at no additional charge. For greater certainty, Class Counsel are not required to provide legal assistance in respect of applications for pensions, benefits or other awards that may be available to Class Members through VAC.

Nothing in this FSA prevents Class Members from entering into individual retainers with Class Counsel for assistance with respect to any issues outside of the Proceeding or this FSA for which they may require assistance, including pursuit of VAC or other employment benefits. However, such services are not included within the Class Counsel fees being paid by Canada and must be negotiated individually with such Class Members.

15.03 Disbursements

Within sixty days of the Implementation Date, Canada agrees to pay the reasonable disbursements of Class Counsel incurred up to the Approval Date, upon provision of a detailed synopsis and all supporting invoices and receipts, in an amount agreed upon by the Parties or as assessed by the Court. Class counsel will provide all supporting invoices and receipts to Canada at least fifteen days prior to the Approval Hearing.

ARTICLE 16 – COMMUNICATIONS

16.01 Public Communications

Save as may otherwise be agreed upon, the Parties will not engage in any media or public communications or disclosure of or about this FSA until the form and content of the notice of the Approval Hearing and its distribution has been approved by the Court and all translations of this FSA are completed. Any media or public communication by the Parties will not be inconsistent with this FSA and will be mutually approved by the Parties.

ARTICLE 17 – CONDITIONS AND TERMINATIONS

17.01 FSA is Conditional

This FSA will not be effective unless and until it is approved by the Court, and if such approval is not granted, this FSA will thereupon be terminated and none of the Parties will be liable to any of the other Parties to this FSA for such termination.

17.02 Legal Fees are Severable

If the quantum of the legal fees and/or disbursements set out in ARTICLE 15 is not approved by the Court or confirmed on appeal, ARTICLE 15 shall be regarded as severed while the rest of this FSA shall remain in full force and effect.

17.03 Amendments

Except as expressly provided in this FSA, no amendment or supplement may be made to the provisions of this FSA and no restatement of this FSA may be made unless agreed to by the Parties in writing and any such amendment, supplement or restatement is approved by the Court without any material difference.

ARTICLE 18 – CONFIDENTIALITY

18.01 Confidentiality

Any information provided, created or obtained in the course of this settlement, whether written or oral, will be kept confidential by the Parties, the Parties' counsel, all Class Members and the Administrator, and will not be shared or used for any purpose other than this settlement unless otherwise agreed by the Parties or as otherwise provided for or required by law. The information and documents provided by Class Members, or the fact that a Class Member has claimed under this FSA, will not be disclosed to Class Members' co-workers, supervisors or DND/CAF leadership, except with the express written consent of the Class Member or as required by law.

18.02 Non-Retaliation

Canada agrees and confirms that retaliation against any Class Members for their participation in any measures contemplated by this FSA and/or by submitting an Individual Claim Form is contrary to the express provisions of CAF legislation, regulations, and policies.

18.03 Retention and Destruction of Class Member Information and Records

The Administrator shall retain all information and documentation in its possession provided in connection with an Individual Claim Form for seven (7) years following the completion of the Individual Monetary Award payments ("**Retention Period**").

The Administrator will destroy all information and documentation in the Administrator's possession that was provided as part of an Individual Claim Form, with the exception of the Administrator's reports and administrative records, as soon as reasonably practicable after the Retention Period, and will provide certification of same to the Parties.

Canada will destroy all information and documentation in Canada's possession that was provided as part of the service verification process as soon as reasonably practicable after the

Administrator has issued payment to Eligible Class Members. Nothing in this FSA will restrict the retention of other documents held by the Government of Canada.

18.04 Confidentiality of Negotiations

Save as may otherwise be agreed between the Parties, the undertaking of confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiation leading to the AIP and this FSA continues in force and in perpetuity, notwithstanding any termination or voiding of this FSA. Save as may otherwise be agreed between the Parties, the parties intend their negotiations leading to the AIP and this FSA to be absolutely confidential, without exception.

ARTICLE 19 – GENERAL

19.01 Applicable Law

This FSA will be governed by and construed in accordance with the law of Canada and, where silent, the law of Nova Scotia.

19.02 No Admission of Liability

This FSA is not to be construed as an admission of liability by Canada.

19.03 Entire FSA

Subject to Section 17.03 regarding amendments, this FSA constitutes the entire agreement among the Parties with respect to the subject matter of this FSA and cancels and supersedes any prior or other understandings or agreements between or among the Parties with respect thereto, including the AIP. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between or among the Parties with respect to the subject matter of this FSA other than as expressly referenced in this FSA.

19.04 Benefit of this FSA

This FSA will enure to the benefit of and be binding upon the Parties, Class Members who do not Opt Out, and deceased Class Members and their successors, heirs and assigns, Estate Executors and estate executors of Class Members who were not alive on the Implementation Date.

19.05 Counterparts

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

19.06 Official Languages

Canada will prepare a French translation of this FSA. To the extent that there are any inconsistencies between the English and the French versions of this FSA, the Parties acknowledge and agree that the English version was the original version as executed.

Signed at Halifax, Nova Scotia this 6th day of June, 2024.


**HIS MAJESTY THE KING IN RIGHT OF CANADA, as represented by the Attorney General
of Canada**

BY: 

ATTORNEY GENERAL OF CANADA

For the Defendant

CLASS COUNSEL

BY: 

STEWART MCKELVEY

For the Plaintiffs

APPENDIX "A"

Federal Court



Cour fédérale

Date: 20240402

Docket: T-2158-16

Citation: 2024 FC 505

Ottawa, Ontario, April 2, 2024

PRESENT: Madam Justice McDonald

PROPOSED CLASS PROCEEDING

BETWEEN:

**MARC FRENETTE,
WALLACE FOWLER AND
JEAN-PIERRE ROBILLARD**

Plaintiffs

and

ATTORNEY GENERAL OF CANADA

Defendant

ORDER AND REASONS

[1] On this Motion, the parties seek Court approval of a Notice Plan intended to communicate the proposed settlement of this class proceeding to potential class members.

[2] This class proceeding relates to racial discrimination and racial harassment within the Canadian Armed Forces (CAF). The parties have agreed to the terms of a proposed settlement of this class proceeding and must now communicate the terms of that settlement to individuals who would be covered by the proposed class member definition.

I. Relevant Background

[3] The Statement of Claim was filed on December 14, 2016. The parties have been engaged in settlement discussions and on August 29, 2019, they reached the framework of an agreement to settle this proceeding. The final terms of the Settlement Agreement are still being finalized.

[4] The Settlement Agreement proposes the following definition as “Class Members”:

All persons who are or who have been enrolled as CAF Members at any time from April 17, 1985, and for any duration up to and including the Approval Date, and who assert that they have been subjected to Racial Discrimination and/or Racial Harassment.

[5] The proposed settlement includes individual compensation for class members (Monetary Assessment Scheme) as well as internal CAF measures (Systemic Relief Measures) designed to address and correct internal systemic issues.

[6] Pursuant to Rules 334.34 and 334.37 of the *Federal Court Rules*, SOR/98-106 [*Rules*] the Court must approve the plan for disseminating notice to potential class members of the proposed settlement. The parties propose a notice program that includes Short Form Notice and a Long Form Notice [Notice Plan] to provide the necessary notice to the class members, including:

- (a) the terms of the proposed settlement of this proceeding;

- (b) the hearing dates for the Motion to certify the proceeding as a class proceeding, to determine if the proposed settlement is fair, reasonable, and in the best interests of the class, and, to approve Class Counsel fees [Settlement Approval Motion]; and
- (c) the July 16 and 17, 2024 hearing dates for the Settlement Approval Motion.

II. Relief sought on this Motion

[7] The Plaintiffs, with the Defendant's consent, request an Order:

- (a) to approve the form and contents of the Notice Forms; and
- (b) to approve the Notice Plan.

[8] In support of this Motion, Class Counsel filed the Affidavit of Lydia S. Bugden, K.C. affirmed on March 12, 2024. Ms. Bugden is the Chief Executive Officer and Managing Partner of Stewart McKelvey, who are Class Counsel on this matter.

III. Analysis

[9] The Notice requirement is outlined in Rule 334.34 and Rule 334.37 as follows:

334.34 Notice that an offer to settle has been made or that a settlement has been approved under rule 334.29 shall be given by the representative plaintiff or applicant to the class or subclass members in accordance with the directions of a judge in respect of the content of and means of giving the notice.

334.34 Lorsqu'une offre en vue d'un règlement est présentée ou qu'un règlement est approuvé aux termes de la règle 334.29, le représentant demandeur du groupe ou du sous-groupe en donne avis aux membres concernés conformément aux directives d'un juge quant au contenu de l'avis et à son mode de communication.

...

334.37 Notices referred to in rules 334.32 to 334.35 shall be given unless they have been approved by a judge.

...

334.37 Tout avis prévu aux règles 334.32 à 334.35 doit être approuvé par un juge avant d'être communiqué.

[10] The notice stage is indispensable as it informs class members about their rights, particularly the possibility of opting out, and sometimes about the settlement of a case (*Canada Post Corp v Lépine*, 2009 SCC 16 at para 42; *Wenham v Canada (Attorney General)*, 2019 FC 383 at paras 10-11).

[11] The content of the notice must be “sufficiently transparent, informative and adequate disclosure” so that class members can make a well-informed decision about whether to support, opt-out or object to the Settlement Agreement (*Lin v Airbnb, Inc*, 2021 FC 1260 at paras 54 and 55 [*Airbnb*]).

[12] Here, the Notice Plan advises of the total settlement amount of \$150 million. It explains the range of settlement funds available for individual payments for each class member as being between \$5,000 to a maximum of \$35,000. It addresses the potential of a *pro rata* decrease or increase in the individual payments depending upon the size of the class.

[13] Legal fees for Class Counsel are proposed at \$5 million plus disbursements and tax. Legal fees will be paid separately and will not be deducted from the \$150 million settlement funds. This is an important feature of the proposed settlement as legal fees will not deplete the settlement funds available to class members.

[14] The Short Form Notice has a “Legal Rights and Options” section which includes the options to Class Members: (1) do nothing; (2) opt out; (3) submit a statement of support; (4) object to the proposed settlement; or (5) participate at the settlement hearing. The Long Form Notice contains the same information with additional detail on these rights and options.

[15] The Plaintiffs and Defendant share responsibilities to disseminate Notices. The Defendant will oversee delivery of the proposed Notice Forms to existing Class Members of the CAF and recipients of Veterans Affairs Canada benefits via social media, intranet, accounts websites, and mobile applications. Class Counsel will post the Notice Forms to their website, deliver them to all known Class Members, deliver them to multiple veterans’ organizations and arrange for publication of the Short Form Notice in three veterans’ publications.

[16] Class Counsel has retained a public relations firm, NATIONAL, to facilitate creating a dedicated website, issue media releases and leverage earned media opportunities, and conduct targeted advertising and digital newspaper advertising in English and French.

[17] I find the proposed Notice Plan accomplishes the overarching purpose of notice, which is to ensure Class Members understand their rights and options and will be able to make informed decisions about what to do regarding the settlement approval process.

[18] Accordingly, I will grant this Motion on the terms requested by the parties.

ORDER IN T-2158-16

THIS COURT ORDERS that:

1. The short and long form notices of the Settlement Approval hearing are hereby approved in the forms attached respectively at Schedule A and Schedule B to this Order (the “Notice Forms”), subject to the right of the parties to make non-material amendments as may be necessary or appropriate.
2. The parties shall arrange for translation of the Notice Forms into French, prior to distribution.
3. The parties shall distribute the Notices in accordance with the “Notice Plan” attached at Schedule C to this Order, and shall do so by no later than May 1, 2024.
4. The Notice Plan satisfies the requirements of Rules 334.34, 334.35, 334.36 and 334.37 of the Federal Courts Rules and shall constitute good and sufficient notice to Class Members about the Settlement Approval hearing.
5. The parties shall have the right to make non-material amendments to the Notice Plan as may be necessary or appropriate.
6. If a Class Member wishes to participate at the Settlement Approval hearing, either to support or object to the proposed settlement and/or the amount of Class Counsel fees and disbursements, the Class Member shall complete a “Participation Form” substantially in the form attached at Schedule D to this Order. The Class Member shall deliver the completed Participation Form to Class Counsel by mail, courier or email according to the contact information indicated

on the Participation Form, and ensure that Class Counsel receive the Participation Form by no later than June 27, 2024 (the “Participation Deadline”).

7. At the Settlement Approval hearing, the Court shall not consider, without leave, any Participation Forms received by Class Counsel after the Participation Deadline.
8. Class Counsel shall serve on the Defendant and file, by July 5, 2024, an affidavit including copies of all Participation Forms received by Class Counsel by the Participation Deadline.

"Ann Marie McDonald"

Judge

SCHEDULE A

Short Form Notice

LEGAL NOTICE

**Have you experienced racial discrimination or
racial harassment in the Canadian Armed
Forces?**

**A proposed class action settlement may affect you.
Please read this notice carefully.**

*The Federal Court has authorized this notice.
This is not a solicitation from a lawyer or a lawsuit against you.*

While not admitting liability, the Government of Canada has agreed to settlement of a class action ("**Class Action**") for current and former members of the Canadian Armed Forces (CAF) who experienced racial discrimination and/or racial harassment in connection with their military service.

WHO IS INCLUDED?

The proposed settlement covers members and former members of the CAF who experienced racial discrimination and/or racial harassment in connection with their military service at any time from April 17, 1985 (the "**Class Members**").

To be eligible for a payment you must be a member of the Class. The Class is defined as:

All persons who are or have been enrolled as CAF Members at any time from April 17, 1985, and for any duration up to and including the Approval Date, and who assert that they have been subjected to Racial Discrimination and/or Racial Harassment.

The terms of the proposed settlement will be binding on all Class Members, except those who opt out of the Class Action by a specified date.

A hearing to determine if the proposed settlement is fair, reasonable and in the best interests of the Class Members is scheduled to take place in Halifax, Nova Scotia on July 16 and 17, 2024.

WHAT DOES THE SETTLEMENT PROVIDE?

If approved, the proposed settlement provides:

- a) payment for Class Members who experienced racial discrimination and/or racial harassment connected with their military service;
- b) the option to participate in a restorative engagement process for Class Members to communicate their experiences of racial discrimination and/or racial harassment with senior CAF leadership with the assistance of qualified and trained restorative practitioners; and
- c) other systemic relief measures to improve the organizational culture and systems within the CAF with the objective of addressing and eliminating racial discrimination and racial harassment in the CAF.

If the Federal Court approves the proposed settlement, you may make a claim for payment. To do so, you will have to complete a **Claim Form** and send it to the claims administrator during the claims period.

WHAT ARE YOUR LEGAL RIGHTS AND OPTIONS?

1. Do nothing	If you support the proposed settlement, you do not have to do anything right now. Please note that by doing nothing, you will give up any right to object to the settlement and you will give up the right to sue Canada on your own.
2. Opt Out	If the settlement is approved by the Court, and you don't want to be bound by it, you can Opt Out of the class action. You will have 90 days from the date the Court issues an order approving the settlement to make your decision. If you Opt Out, you will not be entitled to any payment from the settlement, but you will keep your right to sue Canada on your own, subject to any time limits or other legal limitations applying to your claim.
3. Submit a statement of support	If you do not wish to attend the hearing, but you wish to explain why you support the proposed settlement, you can complete a Participation Form . This form will include your name, address, and the reasons why you support the settlement. The Participation Form can be found at [insert website] . You must mail, courier or email this Form to the contact information indicated on this Form, and it must be received by no later than June 27, 2024 .

4. Object to the proposed settlement	If you do not wish to attend the hearing, but you want to explain why you object to the proposed settlement, you can complete a Participation Form . This form will include your name, address, and the reasons why you do not support the settlement. The Participation Form can be found at [insert website] . You must mail, courier or email this Form to the contact information indicated on this Form, and it must be received by no later than June 27, 2024 .
5. Participate at the settlement hearing	You can attend the approval hearing in person at the Federal Court on July 16, 2024, at [to be confirmed by the Court] in Halifax, Nova Scotia, commencing at 9:30 a.m. ADT, or by videoconference , to participate in the proceeding and voice your support or objection to the proposed settlement. The Court will decide if you will be permitted to make oral submissions at the time of the hearing. However, in order to be eligible to participate, you must have completed and submitted the participation form setting out your reasons for supporting or objecting to the proposed settlement.

AM I RESPONSIBLE FOR LEGAL FEES?

You are not responsible for payment of legal fees. Class Counsel, the lawyers for the Class, will not be paid until the Federal Court approves the proposed settlement and declares that the proposed legal fees are fair and reasonable.

Class Counsel will ask for approval of fees in the amount of \$5 million, plus repayment of reasonable disbursements and applicable tax. The Federal Court will decide the value of fees and disbursements to award. These amounts will be paid directly by Canada and will not be deducted from any amounts that eligible Class Members may receive.

FURTHER INFORMATION?

Contact Class Counsel by phone, email, or online:

Visit: [\[insert\]](#)

Call: (902) 420-3322

Email: forces.class.action@stewartmckelvey.com

WHAT KIND OF PAYMENT AM I ELIGIBLE FOR?

Your payment will depend on the duration and severity of your experience of racial discrimination and/or racial harassment in connection with your military service. It may also depend on how many Class Members submit claims. The potential range of

individual payment for Class Members is from \$5,000 to \$35,000. The total amount of individual payments to all Class Members cannot exceed \$150 million. The individual payments to Class Members, as assessed by the Independent Assessors, may need to be reduced on a *pro rata* basis so that the total amount of payments to Class Members does not exceed \$150 million.

If the total amount of individual payments to Class Members is less than \$100 million, the individual payments to Class Members may be increased by a maximum of 20%.

SCHEDULE B

Long Form Notice

LEGAL NOTICE

Have you experienced racial discrimination or racial harassment in the Canadian Armed Forces?

**A proposed class action settlement may affect you.
Please read this notice carefully.**

*The Federal Court has authorized this notice.
This is not a solicitation from a lawyer or a lawsuit against you.*

Your legal rights are affected by a proposed settlement (“**Settlement**”) even if you do nothing. Please read this notice carefully.

While not admitting liability, the Government of Canada has agreed to a proposed Settlement of a class action (“**Class Action**”) for current and former members of the Canadian Armed Forces (“**CAF**”) who experienced racial discrimination and/or racial harassment in connection with their military service.

All current or former CAF members who experienced racial discrimination and/or racial harassment in connection with their military service may be able to receive a payment under the proposed Settlement if it is approved by the Court.

A hearing to determine if the proposed Settlement is fair, reasonable and in the best interests of the Class Members is scheduled to take place before the Federal Court, commencing at 9:30 a.m. ADT on **July 16, 2024**, at **[to be confirmed by the Court]** in Halifax, Nova Scotia, and by videoconference.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS PROPOSED SETTLEMENT

1. **DO NOTHING:** If you agree with the proposed Settlement, there is nothing more to do. By doing nothing, you give up any right to object to the proposed Settlement.
2. **STATEMENT OF SUPPORT:** If you wish, you may provide a statement of support for the proposed Settlement by completing a Participation Form. The Participation Form is located online at: **[website]**. Class Counsel must receive your completed Participation Form by mail, courier or email on or before **June 27, 2024**. If Class

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Counsel do not receive your completed Participation Form on or before June 27, 2024, you will not be entitled to speak to the Court, and the Court will not consider your statement of support at the Settlement Approval hearing.

3. **OBJECT:** If you disagree with the proposed Settlement, you can also file a completed Participation Form. The Participation Form is located online at: [website]. Class Counsel must receive your completed Participation Form by mail, courier or email on or before **June 27, 2024**. If Class Counsel do not receive your completed Participation Form on or before June 27, 2024, you will not be entitled to speak to the Court, and the Court will not consider your objection, at the Settlement Approval hearing.
4. **GOING TO THE HEARING:** Anyone is free to attend the Federal Court hearing commencing at 9:30 a.m. ADT on July 16, 2024, at [to be confirmed by the Court] in Halifax, Nova Scotia, or by videoconference.

More information is available on Class Counsel's website:

<https://www.stewartmckelvey.com/class/actions/canadian-armed-forces>

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

1. Why did I get this notice?
2. What is a class action?
3. What is this lawsuit about?
4. Why is there a Settlement?

WHO IS INCLUDED IN THE SETTLEMENT?

5. Who is included in the proposed Settlement?

PROPOSED SETTLEMENT BENEFITS?

6. What does the proposed Settlement provide?
7. How will the lawyers be paid?
8. What if I don't want to be included in the lawsuit or Settlement?

THE LAWYERS REPRESENTING YOU

9. Who are Class Counsel, the lawyers for the Class?

MAKING YOUR VIEWS KNOWN

10. How do I tell the Court if I approve of, or object to, the proposed Settlement?

THE APPROVAL HEARING

11. When and where will the court decide whether to approve the proposed Settlement?
12. Do I have to attend the hearing?
13. May I speak at the hearing?
14. What if I do nothing?

BASIC INFORMATION

1. Why did I get this notice?

The Federal Court has authorized this Notice to inform you about the proposed Settlement and your options before the Court decides whether to give final approval to the proposed Settlement. This notice explains the lawsuit, the proposed Settlement, and your legal rights.

2. What is a class action?

In a class action, one or more people called "**Representative Plaintiffs**" sue on behalf of those who have similar claims. All of these people are called a "**Class**" or "**Class Members**." The courts resolve the issues for everyone affected by the class action, except for those who exclude themselves, or "opt out" of, the lawsuit.

3. What is this lawsuit about?

The Class Action relates to CAF members who have experienced racial discrimination and/or racial harassment in connection with their military service. Canada has not admitted liability, however, it has agreed to a proposed Settlement.

4. Why is there a Settlement?

The Plaintiffs and Canada have agreed to a proposed Settlement of the Class Action. The proposed Settlement is not binding unless approved by the Federal Court. By agreeing to settle the lawsuit, the parties avoid the costs, uncertainty, and delay of going to trial and obtaining judgment. In this case, it also means that Class Members will not need to testify in court.

The Representative Plaintiffs and the lawyers for the Class ("**Class Counsel**") believe the proposed Settlement is fair, reasonable, and in the best interests of the Class.

WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?

5. Who is Included in the proposed Settlement?

The proposed Settlement affects any person who falls under the Class Definition defined as:

All persons who are or have been enrolled as CAF Members at any time from April 17, 1985, and for any duration up to and including the Approval Date, and who assert that they have been subjected to Racial Discrimination and/or Racial Harassment.

PROPOSED SETTLEMENT BENEFITS

6. What does the proposed Settlement provide?

If approved, the proposed settlement provides:

- a) payment for Class Members who experienced racial discrimination and/or racial harassment connected with their military service;
- b) the option to participate in a restorative engagement process for Class Members to communicate their experiences of racial discrimination and/or racial harassment with senior CAF leadership with the assistance of qualified and trained restorative practitioners; and

- c) other systemic relief measures to improve the organizational culture and systems within the CAF with the objective of addressing and eliminating racial discrimination and racial harassment in the CAF.

Individual Payments to Class Members

Category	Payment Level	
Common Experience payment: Class Member confirms that they experienced racial discrimination and/or racial harassment connected with their military service		\$5,000
Assessment of Narrative Evidence: Class Member chooses to share their experiences of racial discrimination and/or racial harassment connected with their military service. Independent Assessors will determine whether Class Members are entitled to additional payment focused on the duration and severity of impacts on personal dignity, bodily and/or emotional integrity, spiritual well-being and individual relationships.	Level A	\$10,000
	Level B	\$20,000
	Level C	\$30,000

The potential range of individual payments for Class Members is between \$5,000 and \$35,000, subject only to the *pro rata* provisions below.

The total amount of individual payments to all Class Members cannot exceed \$150 million. The individual payments to Class Members, as assessed by the Independent Assessors, may need to be reduced on a *pro rata* basis so that the total amount of payments to Class Members does not exceed \$150 million.

If the total amount of individual payments to Class Members is less than \$100 million, the individual payments to Class Members may be increased by a maximum of 20%.

7. How will the lawyers be paid?

You are not responsible for payment of legal fees. Class Counsel will not be paid until the Federal Court approves the proposed Settlement and declares that the proposed legal fees are fair and reasonable.

Class Counsel will ask for approval of fees in the amount of \$5 million, plus repayment of reasonable disbursements and applicable tax. The Federal Court will decide the value of fees and disbursements to award. These amounts will be paid directly by Canada and will not be deducted from any amounts that eligible Class Members may receive.

8. What if I don't want to be included in the lawsuit or settlement?

If the proposed Settlement is approved, and you do not want to be bound by it, you will have an opportunity to "**Opt Out**" after the Court has decided whether to approve the Settlement. The Parties have agreed that the Opt-Out Period will be 90 days from the Approval Date (the date the Court issues an Order approving the Settlement).

If you Opt Out, you will not be entitled to any payment from the settlement, but you will keep your right to sue Canada or others on your own or bring a Human Rights complaint about the same legal claims in the lawsuit, subject to any time limits or other legal limitations applying to your claim.

You may have already commenced a legal proceeding against Canada for damages resulting from racial harassment or racial discrimination suffered in connection with your military service. If you do not discontinue it on or before the Opt-Out Deadline fixed by the Court when the settlement is approved, you will automatically be deemed to have Opted Out of the settlement.

THE LAWYERS REPRESENTING YOU

9. Who are Class Counsel, the lawyers for the Class?

Class Counsel are the law firm Stewart McKelvey in Halifax, Nova Scotia.

If you want to be represented by or receive advice from another lawyer, you may hire one at your own expense.

MAKING YOUR VIEWS KNOWN

10. How do I tell the Court if I approve of, or object to, the proposed Settlement?

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If you agree with the proposed Settlement there is nothing more to do. You may nonetheless provide a statement in support of the Settlement by filing a Participation Form. You may download a Participation Form from [INSERT]. If you do not have access to a computer, you may call (902) 420-3322 and a Participation Form will be mailed to you.

If you object to the proposed Settlement, you may file a Participation Form expressing your objection. You may download a Participation Form from [INSERT]. If you do not have access to a computer, you may call (902) 420-3322 and a Participation Form will be mailed to you.

You can send your completed Participation Form by email to forces.class.action@stewartmckelvey.com or by mail or courier to Forces Class Action, c/o Stewart McKelvey, 600-1741 Lower Water Street, P.O. Box 997, Halifax, Nova Scotia, B3J 2X2. Class Counsel must receive a Participation Form no later than June 27, 2024. If your Participation Form is not received by the deadline, your views will not be conveyed to the Court. Filing a Participation Form does not mean you have opted out of the Class Action.

In your Participation Form, you may ask to speak at the hearing either in person or by videoconference. You may also file a Participation Form without appearing at the hearing. Class counsel will make Participation Forms received on or before June 27, 2024 available to the Court even if you do not appear in person or by videoconference.

THE APPROVAL HEARING

11. When and where will the court decide whether to approve the proposed Settlement?

The Federal Court will hold a hearing commencing at 9:30 a.m. ADT on **July 16, 2024**, at **[to be confirmed by the Court]** in Halifax, Nova Scotia to decide whether to approve the proposed Settlement and Class Counsel's request for legal fees and disbursements. You may attend the hearing in person or by videoconference and ask to speak, but attendance is not required. If you intend to object to the Settlement, Class Counsel must receive your completed Participation Form by the June 27, 2024 deadline.

There will be a videoconference link allowing you to watch the Settlement Approval hearing online. If the hearing is re-scheduled, the videoconference link may be changed. If you intend to participate by videoconference, it is a good idea to check **[website]** the day before the hearing to make sure you have the correct link.

12. Do I have to attend the hearing?

No. Class Counsel will answer any questions the Court may have. If you wish to observe, you are welcome to attend the hearing in person or by videoconference. You may also have your own lawyer attend at your expense, but attendance is not necessary.

13. May I speak at the hearing?

You may ask the Court for permission to speak at the approval hearing. To be entitled to speak at the hearing, your Participation Form must be received by the June 27, 2024 deadline and indicate that you wish to speak to the Court at the approval hearing.

14. What if I do nothing?

If you do nothing, you are choosing, by default, not to object to the proposed Settlement. The Settlement Approval hearing will proceed and the Federal Court will consider whether the Settlement is fair, reasonable, and in the best interests of the Class, and whether Class Counsel's fees should be approved, without considering your views. If you agree with the Settlement, nothing further is required.

GETTING MORE INFORMATION

This notice summarizes the proposed Settlement. To speak with Class Counsel, please obtain details at [insert address] send an email to forces.class.action@stewartmckelvey.com or call (902) 420-3322.

SCHEDULE C

NOTICE PLAN

For distribution of the Notice Forms (Short-Form and Long-Form) and related information about the Settlement Approval Motion:

Canada

Canada will:

- distribute the Notice Forms to the following locations, along with a post on National Defence – Canada.ca
 - The Maple Leaf (DND/CAF newspaper)
 - Defence Team news email
 - All Base and Wing Newspapers
 - Base, Wing and Unit Routine Orders (CANFORGEN)
 - CAF units and DND buildings and facilities
 - CAF Health Services clinics
 - Conflict and Complaint Management Services Centers across Canada

- post the Notice Forms or a link to the Notice Forms on the following websites:
 - National Defence – Canada.ca
 - CAF / Defence intranet page and subpages
 - Veterans Affairs Canada webpage, and My VAC Account webpage

- post a link to the Notice Forms on the following the social media channels:
 - National Defence X (Twitter) page: @NationalDefence
 - CAF X (Twitter) page: @CanadianForces
 - CAF Facebook Page: @Canadian Forces

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- post the Notice Forms or a link to the Notice Forms on the following mobile apps:
 - CAF mobile app
 - VAC mobile app

Class Counsel

Class Counsel will:

- post the Notice Forms on the Stewart McKelvey website:
https://www.stewartmckelvey.com/class_actions/canadian-armed-forces/
- deliver the Notice Forms to all known Class Members, who have already provided their contact information to Class Counsel
- deliver the Notice Forms to multiple veterans' organizations, including:
 - Royal Canadian Legion: <https://www.legion.ca/home>
 - Soldier On: <https://www.soldieron.ca/>
 - Veterans Transition Network: <https://vtncanada.org/>
 - Canadian Forces Morale and Welfare Services: <https://cfmws.ca/>
 - VETS Canada: <https://vetscanada.org/>
 - Wounded Warriors Canada: <https://woundedwarriors.ca/>
- arrange for publication of the Short-Form Notice, or an agreed-upon short form bulletin, in the following veterans' publications (either in print or electronically):
 - Legion Magazine: <https://legionmagazine.com/>
 - Esprit de Corps: <https://www.espritdecorps.ca/>
 - Canadian Military Family Magazine: <https://www.cmfmag.ca/>

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Class Counsel will also engage the following services of NATIONAL Public Relations:

- NATIONAL will facilitate the creation of a dedicated website (with a user-friendly web address), where the proposed Notice Forms and other relevant materials will be posted in both English and French.
 - This website will also provide information for how individuals can contact Class Counsel (Stewart McKelvey) with questions or requests for further information.
 - This website address will be included in all other methods of distribution, and the Stewart McKelvey website (referred to above) will also be updated with direction to this dedicated website.
- NATIONAL will issue a press release in both English and French, with a summary of information contained in the proposed Notice Forms and with direction to the dedicated website, for distribution to targeted publications with appropriate reach across the country.
- NATIONAL will provide the press release and related details to traditional media and reporters, who have a wide reach and have previously reported on issues related to racism in the Canadian Armed Forces.
 - This would include: Brett Forester (APTN); Matthew Byard (Local Journalism Initiative/Halifax Examiner); Preston Mulligan (CBC); Robert Fife (Globe & Mail); and Mercedes Stephenson (Global News).
 - Additional earned media activity is also expected to stem from these actions, so to further support the spread of information surrounding the class action and settlement.
- NATIONAL will arrange for paid search and electronic media / social media advertising, which will provide a short form bulletin and links to the dedicated website.
 - This will include: (a) advertising on search engines (Google) and social media platforms (Facebook and Instagram); (b) advertising in a digital edition of the Globe & Mail (English); National Post (English); La Presse (French); and Le Devoir (French).

SCHEDULE D

PARTICIPATION FORM

**THIS IS NOT A CLAIM FORM
THIS FORM IS OPTIONAL**

RE: CAF Racial Discrimination and Racial Harassment Class Action

My name is _____.

My date of birth is _____.

For the reasons stated below, I (please specify):

(If objecting)

Object to the Settlement terms.

Object to the proposed fees and disbursements of Class Counsel.

(If supporting)

Support the Settlement terms and the proposed fees and disbursements of Class Counsel.

Class Members who wish to be entitled to have their views considered as part of the Settlement Approval Hearing must ensure this Participation Form is completed and received **by no later than June 27, 2024**: via email to forces.class.action@stewartmckelvey.com or by mail or courier to Forces Class Action, c/o Stewart McKelvey, 600-1741 Lower Water Street, P.O. Box 997, Halifax, Nova Scotia, B3J 2X2.

I (support/object to) the Settlement/fees for the following reasons (please attach extra pages if you require more space):

Check all that apply:

- I have enclosed copies of documentation supporting my views.
- I have **NOT** enclosed documentation supporting my views, and I do not intend to provide any.
- I intend to appear, in person or by counsel at my expense, and to make submissions at the Settlement Approval hearing scheduled for July 16 and 17, 2024.
- I intend to appear by videoconference and to make submissions at the hearing.
- I do **NOT** intend to appear in person or by videoconference at the hearing of the motion to approve the Settlement, and I understand that my views will be filed with the Court before the hearing of the Settlement Approval motion.

MY ADDRESS FOR SERVICE IS:

Name:

Address:

Tel.:

Fax:

Email:

MY LAWYER'S ADDRESS FOR SERVICE IS (if applicable, but you do not need a lawyer to object):

Name:

Address:

Tel.:

Fax:

Email:

Date: _____ **Signature:** _____

THIS IS NOT A CLAIM FORM
THIS FORM IS OPTIONAL

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-2158-16

STYLE OF CAUSE: FRENETTE ET AL V ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: HALIFAX, NOVA SCOTIA

DATE OF HEARING: MARCH 20, 2024

ORDER AND REASONS: MCDONALD J.

DATED: APRIL 2, 2024

APPEARANCES:

Scott R. Campbell
Christopher W. Madill

FOR THE PLAINTIFFS

Angela Green
Victor Ryan

FOR THE DEFENDANT

SOLICITORS OF RECORD:

STEWART McKELVEY
Halifax, Nova Scotia

FOR THE PLAINTIFFS

Attorney General of Canada
Halifax, Nova Scotia

FOR THE DEFENDANT

APPENDIX “B” – NOTICE PLAN

For distribution of notice about settlement approval:

Canada

Canada will:

- distribute the Notice Forms to the following locations, along with a post on National Defence – Canada.ca
 - The Maple Leaf (DND/CAF newspaper)
 - Defence Team news email
 - All Base and Wing Newspapers
 - Base, Wing and Unit Routine Orders (CANFORGEN)
 - CAF units and DND buildings and facilities
 - CAF Health Services clinics
 - Conflict and Complaint Management Services Centers across Canada
- post the Notice Forms or a link to the Notice Forms on the following websites:
 - National Defence – Canada.ca
 - CAF / Defence intranet page and subpages
 - Veterans Affairs Canada webpage, and My VAC Account webpage
- post a link to the Notice Forms on the following the social media channels:
 - National Defence X (Twitter) page: @NationalDefence
 - CAF X (Twitter) page: @CanadianForces
 - CAF Facebook Page: @Canadian Forces

- post the Notice Forms or a link to the Notice Forms on the following mobile apps:
 - CAF mobile app
 - VAC mobile app

Class Counsel

Class Counsel will:

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https://www.stewartmckelvey.com/class_actions/canadian-armed-forces/
- deliver the Notice Forms to all known Class Members, who have already provided their contact information to Class Counsel
- deliver the Notice Forms to multiple veterans' organizations, including:
 - Royal Canadian Legion: <https://www.legion.ca/home>
 - Soldier On: <https://www.soldieron.ca/>
 - Veterans Transition Network: <https://vtncanada.org/>
 - Canadian Forces Morale and Welfare Services: <https://cfmws.ca/>
 - VETS Canada: <https://vetscanada.org/>
 - Wounded Warriors Canada: <https://woundedwarriors.ca/>
- arrange for publication of the Short-Form Notice, or an agreed-upon short form bulletin, in the following veterans' publications (either in print or electronically):
 - Legion Magazine: <https://legionmagazine.com/>
 - Esprit de Corps: <https://www.espritdecorps.ca/>
 - Canadian Military Family Magazine: <https://www.cmfmag.ca/>

Class Counsel will also engage the following services of NATIONAL Public Relations:

- NATIONAL will facilitate the creation of a dedicated website (www.forcesaction.com), where the proposed Notice Forms and other relevant materials will be posted in both English and French.
 - This website will also provide information for how individuals can contact Class Counsel (Stewart McKelvey) with questions or requests for further information.
 - This website address will be included in all other methods of distribution, and the Stewart McKelvey website (referred to above) will also be updated with direction to this dedicated website.
- NATIONAL will issue a press release in both English and French, with a summary of information contained in the proposed Notice Forms and with direction to the dedicated website, for distribution to targeted publications with appropriate reach across the country.
- NATIONAL will provide the press release and related details to traditional media and reporters, who have a wide reach and have previously reported on issues related to racism in the Canadian Armed Forces.
- NATIONAL will arrange for paid search and electronic media / social media advertising, which will provide a short form bulletin and links to the dedicated website.

APPENDIX “C” – OPT OUT FORM

**Canadian Armed Forces Racial Discrimination and Racial Harassment
Class Action**

OPT OUT FORM

DEADLINE FOR OPTING OUT: [90 days from approval date]

TO: CAF Racial Discrimination and Racial Harassment Class Action Settlement
Administrator

Address: c/o Deloitte

Email address: [TBC]

PLEASE NOTE: This is NOT a claim form. Completing this OPT OUT FORM will mean that YOU WILL NOT be able to get money arising out of this settlement or any subsequent judgment in the CAF Racial Discrimination and Racial Harassment Lawsuit.

IF YOU WANT TO PARTICIPATE IN THIS CLASS PROCEEDING AND BE ELIGIBLE TO CLAIM MONEY UNDER THE SETTLEMENT, DO NOT FILL OUT THIS FORM. Instead, fill out the claim form which has been provided to class members and is also available from the settlement administrator or class counsel.

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT THE ADMINISTRATOR AT:

CAF Racial Discrimination and Racial Harassment Class Action, c/o Deloitte, [Address]
or by email at [email]. You may also call the toll-free number [phone]

**IF YOU HAVE ANY QUESTIONS ABOUT YOUR LEGAL RIGHTS, PLEASE
CONTACT CLASS COUNSEL:**

Stewart McKelvey

Email: forces.class.action@stewartmckelvey.com

600-1741 Lower Water Street

Phone: (902) 420-3322

PO Box 997

Website: www.forcesaction.com

Halifax, NS B3J 2X2

You must fill out the form below by checking all the boxes provided (except for the “Reasons” section, which is optional)

<p>I am a current member of the Canadian Armed Forces:</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>I am a former member of the Canadian Armed Forces:</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>I experienced racial discrimination and/or racial harassment in connection with my military service:</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>

<input type="checkbox"/>	<p>I understand that there is a settlement of the lawsuit which may provide eligible class members a payment of up to \$35,000, depending on their circumstances. If the Federal Court has approved this settlement as being fair and reasonable to the class members, I may be eligible for a payment under the settlement depending on my circumstances.</p>
<input type="checkbox"/>	<p>I understand that by opting out of this class proceeding, I am confirming that I do <u>NOT</u> wish to participate in this class proceeding which means I will <u>NOT BE</u> eligible to receive any money from the settlement or to obtain any other benefits of this class proceeding.</p>
<input type="checkbox"/>	<p>I understand that by opting out, I take full responsibility for taking all necessary legal steps to protect any claim I may have, including addressing the running of any relevant limitation periods. If I choose to pursue any legal action on my own, it will be at my own expense (including lawyers’ fees and any risk of adverse costs).</p>

Full Name:		Date:	
Prior Name(s):		Service Number, Military Identification Number, PRI or other employment identifier:	
Signature:		Email Address:	
Address:		Phone Number:	

Optional – Reason for Opting Out	
<input type="checkbox"/>	I do not wish to be a class member
<input type="checkbox"/>	I intend to bring my own individual action against the CAF and/or the individuals who discriminated against or harassed me
<input type="checkbox"/>	Other reason (please provide details)

APPENDIX "D"
SYSTEMIC RELIEF MEASURES

SCHEDULE A – INTRODUCTION AND OVERVIEW

CONTEXT

1. The DND/CAF Code of Values and Ethics requires all Canadian Armed Forces (“CAF”) members to respect human dignity and the value of every person, by treating every person with respect and fairness, helping to create and maintain safe and healthy workplaces that are free from Racial Discrimination and Racial Harassment.

2. To understand the context in which Class Members have experienced Racial Discrimination and Racial Harassment, it is necessary to consider all the components of Racism that exist in the CAF.
 - (a) On an interpersonal level, racialized individuals are likely to be subject to racist behavior that is based on the belief that people who are not of European descent are inferior; beliefs that are often passed down intergenerationally with their roots in Colonialism and the African slave trade.

 - (b) On a systemic level, these racist beliefs and attitudes permeate the structures and operations of institutions and organizations. These beliefs and attitudes are inherent in the policies and established practices that guide the actions of individuals.

 - (c) Indigenous, Black and other racialized persons suffer daily indignities that affect their mental and physical health, limit their access to resources and social inclusion, and reduce their capacity to advance economically and socially.¹

3. The organization acknowledges that the long-standing failure to meaningfully address Racial Discrimination and Racial Harassment within the Defence Team has resulted in a loss of trust on behalf of our people and Canadians more broadly, particularly those from racialized groups who endure disproportionate harm.

¹ Excerpt from the work of Plaintiffs’ Subject Matter Experts – Robert Wright and Andrea Currie, 2020.

4. Accordingly, Systemic Relief Measures (“**SRM**”) are required and form part of the Final Settlement Agreement (“**FSA**”). SRM means the activities that will address Racism, Systemic Racism, Racial Discrimination and Racial Harassment, all to improve the organizational culture and systems within the CAF, while supporting DND/CAF’s efforts to embrace a high-performing culture, characterized by trust, respect and where equity, diversity and inclusion can flourish. The SRM will also provide opportunities to focus on individuals that are affected by Racial Harassment and Racial Discrimination.
5. DND/CAF’s mission is to implement SRM that are operationally sustainable and meaningful and empathetic to the Class Members, all while improving the organizational culture within the Defence Team.
6. All the defined terms included in the FSA are relevant to the implementation of the SRM.
7. In Spring 2022, DND/CAF released the Minister of National Defence (“**MND**”) Advisory Panel on Systemic Racism and Discrimination with a focus on Anti-Indigenous and Anti-Black Racism, 2SLGBTQ2IA+ Prejudice, Gender Bias, and White Supremacy (“**Panel Report**”).
8. The Advisory Panel’s mandate was to conduct consultations and provide the MND with recommendations on how to eliminate Systemic Racism and Discrimination from DND/CAF. The Panel Report identified Systemic Barriers to inclusivity which run deep and wide in the Defence Team; deep within all the levels of leadership, and wide across the different units and directorates of the organization.²
9. The Panel Report called attention to thirteen opportunities to address these Systemic Barriers with an understanding that the Defence Team be held accountable for the rigorous implementation of the recommendations.³

² Minister of National Defence Advisory Panel on Systemic Racism and Discrimination. Final Report, January 2022, vii.

³ *Ibid.*

10. Also, on July 9, 2022, the Prime Minister and the MND delivered a historic apology to descendants of the Number 2 Construction Battalion, recognizing the legacy of Systemic Racism and Discrimination that denied the men of this all-Black battalion fighting role, support and care, and later recognition and commemoration. The apology was accompanied by a report of the Number 2 Construction Battalion National Apology Advisory Committee (“**NAAC**”). Most of the recommendations were achieved through the apology itself, with further consideration needed for the recommendations that propose the establishment of long-term programs.
11. To address how the Defence Team will implement both the NAAC and Panel Report recommendations in conjunction with other internal and external report recommendations and government wide Anti-Racism program and policy initiatives, the Chief, Professional Conduct and Culture (“**CPCC**”) developed an Anti-Racism Implementation Plan which forms part of the DND/CAF Culture Evolution Strategy.
12. The Anti-Racism Implementation Plan is built around the four themes of Recognition, Understanding, Building Capacity and Strengthening Voices, which are defined below:
 - (a) **Recognition**: Understanding our legacy of harms, and commemorating and celebrating historically underrepresented groups.
 - (b) **Understanding**: Engaging in research and outreach to raise awareness and knowledge about systemic racism and discrimination.
 - (c) **Building Capacity**: Enhancing the capacity at the leadership and team level to respond to the mandate to build a diverse, equitable, inclusive, and harassment-free workplace; developing tools, training materials, and resources to help identify and challenge Racial Discrimination and hateful conduct.
 - (d) **Strengthening Voices**: Shifting mindsets and evolving culture by elevating the voices of those with lived experience.

13. The implementation of the SRM included in the following schedules will link to the above themes to take a consistent thematic approach to the program and policy initiatives underway to resolve Systemic Barriers and address historical harms while collaborating efforts within DND/CAF and the broader government of Canada ecosystem. The SRMs will strengthen DND/CAF's overall approach to Anti-Racism implementation and contribute to the building of culturally evolved workplaces that break down the Systemic Barriers for Indigenous, Black, and other racialized peoples so they can advance and thrive in the organization.
14. The SRM will include a Research and Analysis initiative and Restorative Engagement Processes. Consultations will be conducted on the development, progress, and findings on both initiatives.

PURPOSE

15. To eliminate Racial Discrimination and Racial Harassment by responding to, addressing, and removing Systemic Barriers in the CAF that restrict building a workplace that is characterized by trust, free from Racial Discrimination and Racial Harassment and where every person is treated with dignity and respect.

OBJECTIVES

16. The SRM will be undertaken in pursuit of the following:
 - (a) in pursuit of the objectives explained below and those found in each Schedule hereto;
 - (b) in accordance with the guiding principles set out in paragraph 21 of this Schedule A; and
 - (c) in consideration of the expertise and lived experience of Indigenous, Black and other racialized current and former CAF members.

17. The overarching objectives of the SRM are as follows:
 - (a) To enhance understanding of the scope, prevalence and nature of Racism, Systemic Racism, Racial Discrimination and Racial Harassment and how to break down Systemic Barriers.
 - (b) To identify key cultural factors and behaviours that enable positive culture evolution, and that proactively address Racial Discrimination and Racial Harassment in the DND/CAF to effect lasting positive culture change across the organization.
 - (c) To provide recommendations designed to retain, restore trust, and support survivors of Racial Discrimination and Racial Harassment in the CAF.

REPORTING REQUIREMENTS

18. Mid-way into FSA implementation, the Lead Organizations will deliver to the Chief of Defence Staff (“**CDS**”) and the Deputy Minister (“**DM**”) an interim progress report, addressing issues for immediate consideration by the CDS and DM that may become apparent during the implementation of the SRM.
19. Upon completion of FSA implementation, the Lead Organizations, through the Coordinating Committee, will provide recommendations arising from the implementation of the SRM through a final report, to be delivered to the CDS and the DM.
20. The final report will be made public.

GUIDING PRINCIPLES

21. The following principles guide the implementation of the SRM:

- (a) **Cultural Humility**: Framework for moving toward equity. It is an approach that recognizes the role of power and privilege, as well as the imbalances inherent within systems and organizations.
- (b) **Distinctness and Intersectionality of Racism**: Recognition that Racial Discrimination and Racial Harassment are experienced differently by various groups, and within groups along intersectional lines.
- (c) **Evidence-informed Approach**: An approach based on concrete evidence gathered through research.
- (d) **Inclusive Process**: The expertise and experiential knowledge of Indigenous, Black and other racialized CAF members are valued and must be meaningfully engaged at every stage of the work. Their perspectives through their lived experiences and guidance inform all aspects of planning and decision-making.
- (e) **Historical Impact**: Recognition of a historical and contextual approach that includes Canada's history of colonialism, slavery and segregation.
- (f) **Organizational / Collective Impact Approach**: Recognizes the importance to work with all commands and units across CAF to address Systemic Barriers.
- (g) **Restorative Approach**: A principle-based approach that puts people and their relationships (to one another, between groups and with institutions and organizations) at the centre and within the context of relative power. A restorative approach requires attention to the connections, contexts, causes and impacts of Racial Discrimination and Racial Harassment to identify what needs to happen to address these harms, and link these actions to real change.
- (h) **Trauma Informed Care**: Every system and organization is impacted by trauma and has the potential to re-traumatize people and interfere with recovery. Trauma informed systems and organizations provide for everyone within that system or organization by having a basic understanding of the impact that trauma can have

on individuals seeking support, and a process that is client- centered, responsive and supports healing.

- (i) **Universalism:** The concept that everyone benefits from targeted removal of Systemic Barriers faced by Indigenous, Black or other racialized peoples. Reducing barriers leads to a better working environment for everyone.

COORDINATING COMMITTEE

- 22. To ensure that the SRM work is integrated and that the recommendations made regarding the outcome of each initiative's work are considered together, a Coordinating Committee ("CC") will be established.
- 23. The CC will be chaired by the Director General of Culture at CPCC and will provide advice, guidance, and direction, as necessary to the Lead Organizations and/or Subject Matter Experts, for each of the pillar's work.
- 24. The CC will coordinate implementation of the SRM and consolidate the timelines for all reports and briefings.
- 25. A minimum of three current and/or former CAF Members, each of whom identify as a Class Member, and who serve or has served in either the Regular Force, the Primary Reserve, the COATS, or Rangers will be represented on the CC.
- 26. Canada shall be responsible for reasonable travel expenses incurred by the Class Member Representatives while carrying out their obligations.
- 27. SMEs and representatives of the Lead Organizations will also be represented on the CC.
- 28. The process for selecting Class Member representation will be as follows:

- (a) the Defence Advisory Group Secretariat will compile a list of potential Class Member representatives on the CC, which will include current and former CAF members;
 - (b) the list of proposed Class Member representatives will then be provided to the Parties for consideration;
 - (c) the Parties will make all reasonable efforts to reach agreement upon the selection of three Class Member representatives from the list; but
 - (d) failing any such agreement between the Parties, class counsel shall select the representatives from the list.
29. The CC may engage other professional and collective bodies as necessary to complete its work.
30. Terms of Reference for the CC will be developed in consultation with Class Counsel.

SYSTEMIC RELIEF MEASURES

SCHEDULE B – RESEARCH AND ANALYSIS

PURPOSE

1. The purpose of this pillar is to conduct Research and Analysis. The research process must include Participatory Action Research (“**PAR**”), a Racial Lens, and a Multi-Level Analysis Framework.
2. As mentioned in the Panel Report, inequality in representation persists in every corner of the Defence Team: recruitment, retention and career progression are seriously hampered by systemic discrimination.⁴
3. High retention rates can be an indicator of positive general morale and contribute to operational effectiveness. DND/CAF statistics demonstrate that Indigenous Peoples, visible minorities, women, and persons with disabilities have much lower retention rates than white men.⁵
4. Research and Analysis is to build on the findings in the Panel Report around retention and to conduct research on the impacts that Systemic Barriers have on the retention of Indigenous, Black, and other racialized CAF members.
5. Research and Analysis will contribute to the Anti-Racism Implementation Plan themes by engaging and building on ongoing research to raise awareness and knowledge about Racial Discrimination and Racial Harassment, to enhance data collection, and to better understand the Systemic Barriers that impact the retention of Indigenous, Black, and other racialized peoples.

OBJECTIVES

6. To collect and capture the perceptions of Indigenous, Black, and other racialized CAF members and the perceptions of the white CAF population, all in relation to Racism,

⁴ *Supra* note 2 at v.

⁵ *Supra* note 2 at 16.

Systemic Racism, Racial Discrimination and Racial Harassment within the CAF. The collection of those perceptions must account for how Racial Discrimination and Racial Harassment is experienced differently among Indigenous, Black, and other racialized CAF members.

7. To identify Systemic Barriers that impact the retention of Indigenous, Black, and other racialized CAF members.
8. Based on the results of the research, to provide recommendations designed to increase the retention of Indigenous, Black and other racialized members, based on the results of the research, and to strengthen the CAF equity plan.

ROLES AND RESPONSIBILITIES

9. **Lead Organization**: Director General Military Personnel Research and Analysis (“**DGMPRA**”) is identified as the Lead Organization to undertake Research and Analysis. The role of DGMPRA includes: coordinating the review of social science research projects in DND/CAF and delivering an internal program of social scientific research.
10. The Lead Organization will seek researchers who are Indigenous, Black and other racialized persons, and who are experienced with conducting Research and Analysis on Racial Discrimination and Racial Harassment.
11. The Lead Organization will ensure that the Participatory Action Research is an equitable, culturally humble and trauma informed process and will formulate a comprehensive and relevant research plan. All research inquiries should, where feasible, consider the multi-level analysis of cultures, subcultures, and climates within the CAF, consistent with the Multi-Level Analysis Framework. Recommendations for future research are critical and will highlight the ongoing, learning nature of creating a more inclusive organizational culture.
12. **External Subject Matter Experts**: In consultation with the Coordinating Committee, CPCC will retain a minimum of three external Subject Matter Experts who have lived

experience and/or who are grounded in either Critical Race Theory or in Indigenous ways and knowledge. These Subject Matter Experts will use their expert voices to provide a support and information function to assist with the Research and Analysis.

13. Contracts with Subject Matter Experts will be arranged and established in accordance with Government of Canada contracting rules and guidelines.

CONSULTATIONS

14. Chief, Professional Conduct and Culture and the Coordinating Committee will develop a critical path and compile a list of individuals and entities who would be consulted on both the research plan and the research findings. The lived experience of Indigenous, Black, and other racialized persons will be prioritized during the consultations. The Defence Advisory Groups should be included as much as is reasonably possible.

DEFINITIONS

15. **“Multi-level Analysis Framework”** means the level of analysis used in research to better understand the influences at the different levels of context. They are: micro, meso, and macro. Micro level analysis focuses on those interactions of individuals or very small groups. Meso level of analysis focused on the groups and institutions. Macro level analysis is used to focus on societies at large.
16. **“Participatory Action Research”** means a research approach that emphasizes participation and action. The process seeks to understand the issue being studied and the context within by trying to change it collaboratively with key communities that will be impacted by the study.
17. **“Racial Lens”** means a commitment to research that adopts the multitude of approaches and frameworks by social scientists in the study of Racial Discrimination and Racial Harassment that considers the lived experiences of various groups.

REVIEW PHASES AND DELIVERABLES

Twelve (12) Month Anniversary of the FSA Implementation Date

18. Completion of a problem definition phase which will include a literature review of internal and external research, as well as a review of ongoing research. Completion of a PAR plan with dates and deliverables for research. Consultations conducted on the PAR plan.

Twenty-Four (24) Month Anniversary of the FSA Implementation Date

19. The Lead Organization provides an update on progress and research results, inclusive of any recommendations to be included in the progress report as explained in Schedule A.

Forty-Eight (48) Month Anniversary of the FSA Implementation Date

20. The Lead Organization provides recommendations arising from the implementation of the work under this pillar for inclusion in the final report as explained in Schedule A.
21. Upon the consent of the Parties, these timelines can be amended.

SYSTEMIC RELIEF MEASURES

SCHEDULE C – RESTORATIVE ENGAGEMENT

PURPOSE

1. The Lead Organization for this Restorative Engagement pillar will be CPCC.
2. CPCC will establish Restorative Engagement Processes that are culturally competent, relational in their orientation, and principle based. From the beginning, the Restorative Engagement Processes will be responsive to the diverse needs of Class Members and will prioritize meaningful and empowered involvement throughout the processes of Indigenous, Black and other racialized persons who have experienced Racial Discrimination and Racial Harassment.
3. The Restorative Engagement Processes will be guided by the shared principles of the Systemic Relief Measures and by principles specific to the work of designing and implementing Restorative Engagement Processes. It will also be informed by individuals' lived experiences of Racial Discrimination and Racial Harassment.
4. The design of the Restorative Engagement Processes will be guided by consultations through the Coordinating Committee. It is envisioned that the Restorative Engagement processes will provide both individualized and group offerings to the Class Members and provide creative opportunities for CAF Representatives to respond and acknowledge the impacts of Racial Discrimination and Racial Harassment.
5. CPCC, as the lead implementer of the Restorative Engagement Processes, will maintain functional authority over the design of the processes and remain responsive to feedback as the processes are designed and implemented.
6. These processes will lead to the provision of recommendations about how to address and eliminate Racism, Systemic Racism, Racial Discrimination and Racial Harassment in the CAF, all to fulfill the purpose of the Systemic Relief Measures as explained in Schedule A.
7. These processes will contribute to the Anti-Racism implementation themes explained in Schedule A through strengthening voices by elevating the voices of those with lived

experience and building capacity by engaging leadership to respond and raise their awareness of Racial Discrimination and Racial Harassment.

OBJECTIVES

8. The Restorative Engagement Processes will:
 - (a) Create opportunities where Class Members are supported to share their experiences, knowledge and understanding of Racial Discrimination and Racial Harassment and its causes and impacts.
 - (b) Create opportunities for representatives of the CAF to acknowledge, understand, and learn from Class Members' experiences of Racial Discrimination and Racial Harassment, and to take responsibility, individually and collectively, for its causes and responses.
 - (c) Create opportunities for Class Members and CAF representatives to identify lessons learned and to take action, in real time, to contribute to broader CAF culture evolution efforts.
 - (d) Model, learn about, and build capacity for the use of a principle-based restorative approach as a response to harm, and as a way to build an inclusive and respectful institutional culture now and into the future.

Participation / Eligibility

9. Participation in the Restorative Engagement Processes is voluntary, based on free, informed and ongoing consent. Consent can be withdrawn at any time.
10. All individuals determined to be Class Members will be eligible for participation in the Restorative Engagement Processes, regardless of decisions with respect to the Monetary Assessment Scheme as included within the FSA. Furthermore, Class Members will be informed that participation in the Restorative Engagement Processes does not affect

Monetary Assessment Scheme decisions, nor any decisions about administrative, investigative, disciplinary or criminal matters.

11. Class Members do not need to seek restitution under the Monetary Assessment Scheme in order to participate in the Restorative Engagement Processes. However, the claims administration process is the mechanism by which individuals who wish to participate in the Restorative Engagement Processes can indicate their desire to participate. As the Restorative Engagement Processes are a voluntary, opt-in process, interested Class Members must complete a claim form in this manner to be eligible.

Safety and Respect

12. All participants and Restorative Practitioners must be and will be treated with respect, dignity and compassion.
13. The safety of participants and Restorative Practitioners (e.g. physical, emotional, cultural and spiritual) will be of the utmost importance.
14. The CAF will provide top cover to allow for Class Member participation in the Restorative Engagement Processes without fear of reprisal, inclusive of mechanisms through which this will be enforced.

Restorative Practitioners and Support

15. Restorative Practitioners will fulfil a range of roles in the Restorative Engagement Processes to meet the intent of this Schedule C, to meet the diverse needs of participants and the organization, and to contribute to culture evolution.
16. Participants will be encouraged to involve a support person throughout the process if this meets their needs. Participants will also be informed of available counselling and trauma informed support services.

Nature of Engagement

17. This Schedule C reflects the CAF's commitment to better understand Racism, Systemic Racism, Racial Discrimination and Racial Harassment, inclusive of the context in which these harms occur, and to contribute to institutional culture evolution through the shared lived experiences of Class Members in the Restorative Engagement Processes. It will offer Class Members flexibility and multiple, meaningful participation choices, co-created by participants.
18. Class Member participants in the Restorative Engagement Processes will themselves determine:
 - (a) who participates;
 - (b) if and how their experiences will be shared beyond the process in contribution to culture evolution;
 - (c) how and when communication takes place; and
 - (d) the nature, pace and format of their engagement.
19. The Restorative Engagement Processes must be designed to allow for diversity in process options, including individual and/or group engagement sessions.

Confidentiality

20. Participation in, and information shared within, the Restorative Engagement Processes will be kept and treated as confidential within legal limitations, subject to participants' desire to have their experiences recorded and shared beyond the process.
21. Participants will be fully informed about any legal limits to such confidentiality. Class Counsel will be informed regarding the information that will be provided to participants in this regard.

22. Participants who have not yet reported an incident of Racial Discrimination or Racial Harassment will be provided with information and options for doing so. Participants who do not wish to report will be offered options that would allow them to participate without activating a duty to report.

ROLES AND RESPONSIBILITIES

23. Class Members will be informed about the Restorative Engagement Processes as part of the Notice of Settlement. The Administrator of the claims process will inform Class Members about the option of participation in the Restorative Engagement Processes and will refer interested Class Members to CPCC.
24. CPCC will:
 - (a) Lead the development and implementation of the overall Restorative Engagement Processes from a principle based, culturally competent and relational approach and in consultation with Indigenous, Black and other racialized peoples, Class Members, internal and external Stakeholders and Subject Matter Experts.
 - (b) Recruit, assess and manage Restorative Practitioners.
 - (c) Ensure Restorative Practitioners are culturally competent, guided by restorative principles and qualified to meet the intent of this Schedule C, the diverse needs of participants and the organization, and contribute to culture evolution.
 - (d) Contribute to regular updates on the processes for all relevant stakeholders, including establishing a feedback schedule with Class Counsel to ensure consistent and regular feedback on the design of the Restorative Engagement Processes.
 - (e) Create a rigorous and transparent feedback loop to the Coordinating Committee so that those consulted, Class Members, and the CAF are regularly apprised about the processes and about any process developments.

- (f) Ensure all relevant Stakeholders have an understanding of the Restorative Engagement Processes and approach their work with Class Members from a restorative, culturally competent and trauma informed way.
 - (g) Develop an integrated, culturally competent and trauma informed communication strategy and outreach plan with a view to far-reaching internal and external awareness and understanding of the Restorative Engagement Processes and to build credibility, trust, and engagement.
25. CAF and CPCC will, in partnership, recruit, prepare, assess, assign, and coordinate CAF representatives for participation in the Restorative Engagement Processes.

Consultations

26. The needs of Indigenous, Black and other racialized peoples will be central to the design of the Restorative Engagement processes, especially the design of individual and/or group engagement sessions. The inclusion and participation of all groups with roles, responsibilities, and an interest in the Restorative Engagement Processes. is necessary for the process to engage restoratively, to meet the diverse needs of Class Members, and to fulfil the commitments of this Schedule.
27. CPCC intends to hear and acknowledge as many voices as possible and to respect those voices by ensuring they make a meaningful contribution to process design and implementation. CPCC, through the Coordinating Committee, will develop a comprehensive consultation schedule in support of the design and implementation of the Restorative Engagement Processes, creating the space and time necessary to conduct these consultations in a principle based, culturally competent and trauma informed way, and through a rigorous and transparent feedback loop to those consulted.
28. CPCC will engage a small group of Subject Matter Experts to advise on the processes. All feedback from Subject Matter Experts will be considered equally, and there is no hierarchy or primacy of any Subject Matter Experts.

Learning, Planning and Action

29. Along with the other Systemic Relief Measures, the Restorative Engagement Processes must be designed and implemented as an integrated and complementary component of broader culture evolution and thereby represent a conscious link to transformational change for the CAF.
30. A restorative approach will be applied to identifying and sharing what is learned through the Restorative Engagement Processes. Understanding the lived experiences of Class Members, the experiences of CAF representatives, and identifying lessons learned and action required will occur throughout the Restorative Engagement Processes, and be summarized in a final report on the results of the Systemic Relief Measures, following the lifecycle of the processes. The potential of the Restorative Engagement Processes to contribute to culture evolution lies in its capacity to engage those affected and those with leadership responsibility within the CAF directly in the learning.
31. The capturing of lived experiences of Racism, Systemic Racism, Racial Discrimination and Racial Harassment in the CAF is a priority for the Restorative Engagement Processes. With consent, experiences shared through the Restorative Engagement Processes will be retained for the purpose of increasing awareness and understanding and informing future policy and training in the CAF. CPCC will consult on the mode and means of recording, analyzing and reporting on the processes to determine how experiences shared, lessons learned and potential recommendations from the Restorative Engagement Processes will be captured through a trauma informed, culturally competent approach and effectively leveraged for meaningful change in CAF culture.
32. CPCC and CAF will make lessons learned from the Restorative Engagement Processes public and available through a final report, as explained in Schedule A, on the results of the Systemic Relief Measures, and on a consistent basis throughout the design and implementation of the Restorative Engagement Processes.

DEFINITIONS

33. **“Restorative Approach”** means activities that seek to restore, retain and transform trust in addition to addressing repair and prevention.
34. **“Restorative Practitioners”** means individuals who are guided by restorative principles and specially trained and qualified to provide culturally competent and trauma informed Restorative Engagement Processes.
35. **“Restorative Engagement Processes”** means a variety of co-developed processes where interested Class Members, with the support of Restorative Practitioners, will be able to share their experiences of Racial Harassment and Racial Discrimination with CAF representatives and contribute to culture evolution.

REVIEW PHASES AND DELIVERABLES

Six (6) Month Anniversary of the FSA Implementation Date

36. Completion of consultations on process design, and selection of Subject Matter Experts.

Twelve (12) Month Anniversary of the FSA Implementation Date

37. Completion of process design and commence implementation of the Restorative Engagement Processes.

Twenty-Four (24) Month Anniversary of the FSA Implementation Date

38. The Lead Organization provides an update on the processes, inclusive of any recommendations to be included in the progress update as explained in Schedule A.

Forty-Eight (48) Month Anniversary of the FSA Implementation Date

39. The Lead Organization provides recommendations arising from the implementation of the work under this pillar in accordance with this Schedule C, for inclusion in the final report as explained in Schedule A.

40. Upon the consent of the Parties, these timelines may be amended.

APPENDIX "E"

MONETARY ASSESSMENT SCHEME

CONTEXT / INTRODUCTION

The Parties recognize that Racial Discrimination and Racial Harassment have no place in the Canadian Armed Forces (“CAF”), and further recognize and acknowledge the pain and suffering of Class Members who have experienced Racial Discrimination and Racial Harassment in the CAF.

The Final Settlement Agreement refers to a claims process, by which Class Member experiences and impacts of Racial Discrimination and/or Racial Harassment will be assessed in a trauma informed, transparent and culturally competent way. This Monetary Assessment Scheme sets forth the manner by which Class Member claims for a monetary payment will be assessed under the settlement.

Andrea Currie and Robert Wright were hired by Class Counsel as experts, to provide advice on the structure and format of a monetary claims process. They emphasized that: “racialized and Indigenous persons suffer daily indignities that affect their mental and physical health and limit their access to resources and social inclusion. The concept of micro-aggressions has been articulated to explain this phenomenon. These daily indignities take their toll.” They proposed a trauma informed method for assessing Class Member claims: “a method that accepts that racialized persons within the CAF have experienced racism and engages in a process of healing rather than subjects them to onerous investigation.”

Myrna McCallum was hired by the Parties as a joint expert, to provide advice on how to incorporate a trauma informed approach to the settlement process. She highlighted that trauma is unavoidable, because Class Members will relive the events/incidents. It is therefore important to plan for efficient support and to be transparent about the process and clear about expectations, so as to avoid surprises and guard against causing additional/greater trauma. She was also of the view that payment is only one component

of the healing process, and that other (policy) measures are critical for a complete process.

This Monetary Assessment Scheme has been developed with all of these points in mind. It is one part of a larger settlement, which also includes a commitment to systemic and institutional change.

HIGHLIGHTS

The key highlights of the Monetary Assessment Scheme are as follows:

- In providing for a Common Experience Payment, the purpose is to recognize systemic racism in the CAF and to provide payment without requiring Class Members to tell a story. The focus is on institutional betrayal as experienced by all racialized CAF members, without reference to specific incidents or harms.
- If Class Members wish to apply for an additional payment, they may do so. An additional payment will be based upon the Class Members' own personal story of racism. It will not be based upon medical diagnoses or corroborative reports.
- The additional payment will be assessed by consideration of severity and duration of impacts on: personal dignity; bodily and/or emotional integrity; spiritual well-being; and individual relationships.
- The assessment will be conducted by Assessors, who have been trained in critical race theory and trauma-informed approaches.
- The Assessors will be guided by an assessment grid. The goal is to be as efficient as possible, recognizing that a delayed process is not trauma-informed. The grid assumes that duration of impact will often correspond with severity of impact.
- As with any assessment scheme, however, the grid is not perfect. The Assessors can decide to depart from the grid in their own discretion. As an example, this could account for the possibility of a very serious impact of short duration. This could also account for cases of multiple impacts with different durations.
- When an Assessor decides to depart from the grid, they must explain why. This will allow for transparency of process and meaningful review.

TRANSPARENCY

As a matter of transparency, it is important to be candid about the following:

- It is repellant to assign dollar amounts to the indignities of racism and its effects.
- Participation in the settlement may be retraumatizing or triggering. The goal of the claims process is to cause as little harm as possible.
- It is integral to provide access to meaningful and appropriate supports throughout the claims process. The Claims Administrator will help to facilitate Class Member access to these supports.
- The word “compensation” is intentionally not used within the Monetary Assessment Scheme, as this word incorrectly implies that payment can “make someone whole again”.
- The monetary amounts may be viewed as too low. For some Class Members, no amount will ever be sufficient.
- There are finite resources. A fund of \$150,000,000 has been dedicated for payment to all eligible Class Members under the settlement. This is in addition to the financial resources that will be committed for systemic and institutional change under the Final Settlement Agreement.
- After all claims are assessed, the dollar amount may need to be adjusted.
- If the total payout to Class Members is assessed as more than \$150,000,000, payments to all Class Members will be reduced across the board.
- If the total payout to Class Members is assessed as less than \$100,000,000 (the “**Designated Amount**”), payments to Class Members will be increased across the board up to and including the Designated Amount. In the event of such an

increase, individual payments as initially assessed may be increased by a maximum of 20%.

- Class members who have received a monetary payment or damages through another settlement process, through a court decision or human rights complaint, or through some other form of court or administrative proceeding, are still eligible to receive payment under this Monetary Assessment Scheme.
- For greater certainty, Class Members who have received, or are eligible to receive, VAC benefits are not excluded from this class action. That said, they are encouraged to make applications for VAC benefits or to apply for a reassessment of VAC benefits if previously denied.

SCHEME

1. **Common Experience Payment (\$5,000)** – Class Member confirms that they experienced Racial Discrimination and/or Racial Harassment by checking off a box on the claim form.
2. **Assessment of Narrative Evidence of Racism** – in addition to applying for the Common Experience Payment, the Class Member can choose to provide their story about their experience(s) of Racial Discrimination and/or Racial Harassment while in the CAF.

The Assessors will then decide whether these Class Members are entitled to an additional monetary amount (over and above the Common Experience Payment), as follows:

LEVEL A (\$10,000)

LEVEL B (\$20,000)

LEVEL C (\$30,000)

This determination will be made by reference to the Assessment Grid below.

The Assessors can decide to depart from these levels if they explain why. In doing so, the Assessors may award an amount up to the maximum amount of \$30,000 (over and above the Common Experience Payment), but without any other limitations.

In either instance, the Assessor will focus on both duration of impact and severity of impact on:

- (a) Personal Dignity: this could include, but is not limited to, impact on identity, belonging, inclusion, development, opportunity, advancement, or faith in leadership and/or institutional response. To any extent that the narrative includes reference to the lack of appropriate response to (or retaliation for) any reporting of racist misconduct, the resulting impact on the Class Member could be considered as a component of Personal Dignity.
- (b) Bodily and/or Emotional Integrity: this could include, but is not limited to, impact on memory, reaction, concentration, affect, self-worth, stress, fear, vigilance, drug and/or alcohol consumption, fitness, blood pressure, or sleep. To any extent that the narrative includes reference to physical assault or emotional abuse by a fellow CAF member or superior, the resulting impact on the Class Member could be considered as a component of Bodily and/or Emotional Integrity.
- (c) Spiritual Well-Being: this could include, but is not limited to, impact on spirituality, religious practice, faith in humanity, or connection to meaning in life.
- (d) Individual Relationships: this could include, but is not limited to, impact on relationships with romantic partners, children, family members, friends, Elders, or communities.

ASSESSMENT GRID

Assessment Levels and Amounts	Indicia
<u>Common Experience Payment</u> (\$5,000)	Class Member ticks a box to confirm that they experienced Racial Discrimination and/or Racial Harassment while serving in the CAF.
<u>LEVEL A</u> (\$10,000)	Disruption to Personal Dignity, Bodily and/or Emotional Integrity, Spiritual Well-Being, and/or Individual Relationships, persisting for a duration of at least one month.
<u>LEVEL B</u> (\$20,000)	Significant disruption to Personal Dignity, Bodily and/or Emotional Integrity, Spiritual Well-Being, and/or Individual Relationships, persisting for a duration of at least six months.
<u>LEVEL C</u> (\$30,000)	Severe disruption to Personal Dignity, Bodily and/or Emotional Integrity, Spiritual Well-Being, and/or Individual Relationships, persisting for a duration of at least two years.

CANADIAN ARMED FORCES RACIAL DISCRIMINATION AND/OR RACIAL HARASSMENT CLASS ACTION SETTLEMENT CLAIM FORM

This Claim Form is part of a negotiated settlement reached by the parties in this class action litigation (the “**Settlement**”), which addresses individual experiences of racism within the Canadian Armed Forces (“**CAF**”).

This Claim Form will be assessed by reference to the “**Monetary Assessment Scheme**”, which is a key component of the Settlement. That Monetary Assessment Scheme can be accessed [here](#).

The “**Class**” is defined in the Settlement as being comprised of “**Class Members**”, as follows:

All persons who are or have been enrolled as CAF Members at any time from April 17, 1985, and for any duration up to and including the Approval Date, and who assert that they have been subjected to Racial Discrimination and/or Racial Harassment.

“**Racial Discrimination**” is defined in the Settlement as:

Any unfair treatment, adverse differentiation or bias occurring in connection with military service and involving military members (CAF or foreign), DND employees, Staff of the Non-Public Funds employees, or CAF/DND contractors, and that is based on an individual’s race, ethnicity, colour and/or Indigeneity.

“**Racial Harassment**” is defined in the Settlement as:

Any conduct that is based on another individual’s race, ethnicity, colour and/or Indigeneity that is known or should reasonably be known to be offensive or cause harm – including objectionable act(s), comment(s), or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat - occurring in connection with military service and involving military members (CAF or foreign), DND employees, Staff of the Non-Public Funds employees, or CAF/DND contractors. Harassment may be a series of incidents or one incident which has a lasting impact on the individual.

These definitions are an important part of the Settlement, as they define the extent to which you might be eligible to be assessed for a monetary award under the Settlement. When the terms “CAF”, “Class”, “Class Members”, “Monetary Assessment Scheme”, “Racial Discrimination”, “Racial Harassment”, and “Settlement” are used in this document, please refer back to these definitions.

As a component of the Settlement – and this Claim Form – it is acknowledged by CAF that:

- Racial Discrimination and Racial Harassment causes harm.
- Class Members did nothing to cause or contribute to this harm.
- Class Members deserved a safe workspace and environment within the CAF.
- Money cannot repair the Racial Discrimination and/or Racial Harassment that Class Member’s suffered.
- There is no way to eliminate trauma that Class Members may experience when making a claim under the settlement. This is because Class Members will be asked to re-visit difficult and traumatic lived experiences with Racial Discrimination and Racial Harassment.

PLEASE KNOW THAT THERE ARE SUPPORTS FOR YOU THROUGHOUT THIS CLAIMS PROCESS. THOSE SUPPORTS ARE SET FORTH IN THIS CLAIM FORM, AT PART 2 BELOW.

This Claim Form is divided into 7 Parts.

Parts 1, 2 and 6 are for your information only.

You must complete Parts 3, 4 and 7 in order to be considered for a monetary award under the Settlement.

Part 5 is OPTIONAL, and requires more information if you wish to apply for a monetary amount beyond the Common Experience Payment (as set forth below). You do not need to complete Part 5 if you do not want to share further details of your experience. **But if you do wish to apply for a larger monetary amount, YOU MUST COMPLETE PART 5.**

Information you provide in this Claim Form will be kept confidential, except as indicated. Your privacy is important. Your information will not be disclosed to any of your co-workers, your supervisors, or DND/CAF leadership.

The personal information you provide, that makes its way to the Government of Canada (GOC), is governed by the *Privacy Act*. This collection of personal information is described in [Information about Programs and Information Holdings](#), personal information bank DNDP PU 873.

Before beginning your claim, you have the option to read the [Notice of Settlement Approval](#) and the [Final Settlement Agreement](#).

If you have any questions about this Claim Form or the claim process, please contact the Administrator by telephone [[@ 1-800-xxx-xxxx](#)] or consult the [Administrator's website](#).

THIS CLAIM FORM IS DIVIDED INTO THE FOLLOWING SECTIONS:

Part 1: Instructions

Part 2: Support Services

Part 3: Class Member Information to Process Claim

Part 4: Eligibility and Common Experience Payment – *The Common Experience Payment seeks to recognize systemic racism in the CAF and to provide a payment without requiring Class Members to disclose information about their experience. The focus is on institutional betrayal as experienced by all racialized CAF members, without reference to specific incidents or harms.*

Part 5: Assessment of Narrative Evidence – *The Assessment of Narrative Evidence will be based on the severity and duration of impacts due to the Class Member’s personal experience of racial discrimination and/or racial harassment. It will not be based on medical diagnoses or corroborative reports.*

Part 6: Veterans Affairs Canada Benefits

Part 7: Certificate/Attestation

PART 1: Instructions

This claim form seeks information the Administrator will need to determine your eligibility as a member of the class action settlement and to assess the appropriate payment, if sought.

You will be required to submit an official piece of government-issued photo identification with your claim form. Acceptable pieces of government-issued photo ID are as follows:

- *Driver's license; status card; passport.*

Your government-issued photo identification will only be used for administrative purposes relating to processing your claim. It will not be used to determine your inclusion in the Class or your eligibility for any payment. If you do not have government-issued photo identification, please indicate on the claims form. The Administrator will accept two non-photo documents that collectively provide your name, date of birth and signature (eg. Birth certificate, marriage certificate, health card, hospital card or other government-issued identification).

Eligible Class Members will receive a letter from the Administrator and be given the opportunity to elect to participate in a Restorative Engagement process, and/or to receive a personalized letter of apology from the Chief of the Defence Staff.

The Restorative Engagement (RE) process is designed to support Class Members to share their lived experiences. With the commitment of Senior Leadership to move the CAF towards the elimination of Racism, these processes will lead to the provision of recommendations about how to address and prevent Systemic Racism, Racial Harassment and Racial Discrimination. Engagements will be facilitated by specially trained Restorative Practitioners who will guide you in participating with other Class Members and members of CAF leadership. Your privacy, safety and well-being are paramount throughout this process. The RE Team will take time to prepare you and will provide resources to help support you before, during, and after your participation.

All eligible Class Members will receive a Common Experience Payment. For those who have requested an Assessment of Narrative Evidence and completed Part 5, that assessment will be completed in accordance with the Claims Process and Appendix E, and a decision letter will be issued with payment.

The **Monetary Assessment Scheme** provides two forms of payment:

- A Common Experience Payment (\$5,000)
- Payment based on an Assessment of Narrative Evidence of Racism
 - Level A \$10,000
 - Level B \$20,000

- Level C \$30,000

You can claim in both categories, or you may only wish to claim for a Common Experience Payment. The threshold to claim each payment is different.

The amounts above are as reflected in the Monetary Assessment Scheme, which is an important part of the Settlement.

1. **Common Experience Payment:**

- You can apply for a Common Experience Payment and receive payment by attesting that you experienced Racial Discrimination and/or Racial Harassment and describe your racial identity, without having to share your experiences.

2. **Assessment of Narrative Evidence:**

- Decisions on this payment category will be based on your experiences and will be assessed based on consideration of the severity and duration of impacts on: personal dignity; bodily and/or emotional integrity; spiritual well-being; and individual relationships. The Assessors will then place your narrative into one of three levels.
- This is explained in further detail in Part 5 below.

YOU DO NOT NEED TO PROVIDE ANY RECORDS OR DOCUMENTATION TO PROVE THE INFORMATION YOU PROVIDE.

Claims will be received and assessed by an independent court-appointed Administrator and their team of Assessors, who will have received training in Critical Race Theory and trauma informed approaches.

All the information you provide in this Claim Form will be kept confidential, except as indicated. Your privacy is important. Your information will not be disclosed to any of your co-workers, your supervisor, or DND/CAF leadership.

Your Claim Form cannot be considered if it is incomplete or does not contain all the required information. The Assessor may ask you to provide more information if they do not have what they need to fully assess your claim. The information you provide on your Claim Form is a critical part of what will be considered when deciding whether you are eligible to a payment and, if so, the amount.

ASSISTANCE:

If you need help completing this form, you can contact a member of the Administrator's team, at no cost to you, to discuss alternative methods to submit a claim. The Administrator is also available to recommend or provide support services.

Please contact them at: **[INSERT DELOITTE'S CONTACT INFORMATION]**

If you are unable to complete this form and need help to describe your experience and convey your lived experiences, you can contact Class Counsel, at no cost to you. They know the agreement in detail and can explain any details you may wish more info on.

Please contact them at: **[INSERT CC'S CONTACT INFORMATION]**

CLAIM DEADLINE: [12 months from the implementation date – TBC]

WAYS TO SUBMIT: Electronic at: [INSERT DELOITTE'S WEBSITE] OR Paper at : [INSERT DELOITTE'S RETURN ADDRESS]. Other?

PART 2: Support Services

Responding to questions contained in this Claim Form may be disturbing for you and could trigger painful memories. We suggest that you proceed slowly and read and complete this form in a safe place. If you feel anxious or unwell when you think about your experiences, or while you are filling out this Claim Form, you are encouraged to seek support from someone, such as a family member, chaplain, counselor, health care professional, friend, or someone else.

It is acknowledged that you may be hesitant using supports from the Government / DND / CAF. However, these supports are available to you.

You may use any support or resource that you choose.

NOTE: You do not need to use any of these resources to be eligible for a Monetary Assessment under the Settlement.

The Claims Administrator can also provide support and refer you to available services.

Please contact them at: **Provide link or contact info.**

IMPORTANT PLACEHOLDER FOR DELOITTE – PLEASE PROVIDE MORE DETAILS HERE.

Serving Members:

You may call Member's Assistance Service at 1-800-268-7708

You may also consider informing your chain of command of any incident of racial harassment/and or racial discrimination. This will trigger additional support and protection. The chain of command is responsible for ensuring the wellbeing of their subordinates and for responding promptly and decisively to all incidents of racial harassment and/or racial discrimination. They can provide support and guidance on how to proceed.

If you have concerns about the chain of command, you can bring your complaint to someone you trust outside of your direct chain of command, or to a Chaplain. You may reach out to your Health Services Unit, Primary Care Clinician or Sick Parade.

Inappropriate behaviour can also be reported through the **Conflict Complaint and Management Services**. This is a system which combines the harassment, grievance and alternative dispute resolution systems in a streamlined fashion, and is accessible online, at [Conflict Solutions and Services: Contact us for help - Canada.ca](#)

You may also consider reporting serious incidents to the Military Police or local police service.

Former members:

Former members, their families, and caregivers can call the Veterans Affairs Canada Assistance Service at 1-800-268-7708 to access free, 24/7 support from a mental health professional. You do not need to be receiving other services from Veterans Affairs Canada to receive this service.

The VAC Assistance Service provides support for issues that affect your well-being. These could include:

- Work-related issues
- Health concerns
- Family and marital problems
- Psychological difficulties
- Bereavement
- Other problems that affect your well-being

PART 3: Class Member Information to Process Claim

Name and Contact Information

The contact information you provide below will be used to send any communication from the Administrator and any cheque for you.

* **Marks a mandatory field**

* Current First name: _____

Current Middle name: _____

* Current Last name: _____

Other names: Please also provide all previous names, pre-married names, nicknames, or names used while a member of the Canadian Armed Forces. _____

Preferred honorific (Mr., Ms., Mx., etc.) _____

* Date of birth (YYYY/MM/DD) _____

* Are you currently serving in the CAF? Yes No

* Were you formerly a member of the CAF? Yes No

* Last/current CAF unit: _____

* Date(s) you joined CAF: _____

* Date(s) you released from CAF (if applicable): _____

* CAF service number (if known): _____

* If CAF service number is not known, Social Insurance Number: _____

* Mailing address: _____

* City/Town: _____

* Province/Territory/State: _____

* Country: _____

* Postal Code/Zip _____

* Evening telephone number: _____

* Daytime telephone number: _____

Name of Personal Representative: _____

Telephone number of Personal Representative: _____

* Preferred method of contact: Telephone Daytime Telephone Evening Number Mail

PART 4: Eligibility and Common Experience Payment

1. Claimant's Declaration Regarding Eligibility for Common Experience Payment

Based on the definitions noted on the first page of this Claim Form, do you swear (or solemnly affirm) that:

I have experienced Racial Discrimination and/or Racial Harassment while serving in the CAF at any point since April 17, 1985?

2. Your Racial Identity

Please explain your racial identity. The Administrator will determine your eligibility based on your description.

YOU MUST COMPLETE AT LEAST ONE OF SECTIONS A, B, OR C, BUT YOU MAY COMPLETE MORE THAN ONE SECTION.

YOU MAY WISH TO COMPLETE SECTION C, IF YOU DO NOT WISH TO ENGAGE IN A "BOX-TICKING" EXERCISE. YOU MAY ALSO WISH TO COMPLETE SECTION C, IN ADDITION TO SECTION A AND/OR B, IF YOU WISH TO PROVIDE FURTHER INFORMATION ABOUT YOUR RACIAL IDENTITY.

a) INDIGENOUS PERSONS

For the purpose of this Claim Form, the term "Indigenous" means a person who is First Nations, Inuit, or Métis.¹

I identify as an Indigenous person

Optional:

First Nation
optional to specify: _____

¹ [Statistics on Indigenous peoples \(statcan.gc.ca\)](http://www.statcan.gc.ca)

Inuk (Inuit)
optional to specify: _____

Métis
optional to specify: _____

b) RACIALIZED PEOPLES

The concept of “racialized people” is based on the visible minority variable in the Canadian census (Statistics Canada, 2023). The [Employment Equity Act](#) defines visible minorities as “persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour.”²

Please declare below all the racialized groups that you belong to:

- Black
- Chinese
- East/Southeast Asian
- Filipino
- Japanese
- Korean
- Latino/Latina/Latinx
- Middle Eastern
- South Asian
- West Asian

c) OPEN DESCRIPTION OF IDENTITY

- If you do not identify with one of the racial identity categories listed at section A and/or B above, please describe your racial identity below. Your racial identity may include your cultural and ethnic origin.

OR

² See [Changing Demographics of racialized people in Canada](#) – Stats Can, 23 August 2023. “The racialized population consists mainly of the following groups: South Asian, Chinese, Black, Filipino, Arab, Latin American, Southeast Asian, West Asian, Korean and Japanese. Statistics Canada is currently reviewing the visible minority concept. For details see [Visible minority concept consultative engagement](#).”

- Alternatively, if you would like to provide more detail about your racial identity in addition to the choices in Section A and/or B, you may include further information here.

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PART 5: Assessment of Narrative Evidence

As noted above, this Part 5 is OPTIONAL. You only need to complete this if you wish to apply for a monetary amount beyond the Common Experience Payment (Part 4).

You do not need to complete this Part 5 if you do not want to share further details of your experience. **But if you do wish to apply for a larger monetary amount, beyond the Common Experience Payment, YOU MUST COMPLETE THIS PART.**

Please read all questions and requests for information carefully before answering.

If possible, please ensure that you are in a safe space and have the time you need to complete the Claim Form.

Consider typing in a word document and copy/paste your answers into the Claim Form. This will allow you to save your progress and review as many times as you like before submitting.

Use as many extra sheets of paper as you need to provide complete and detailed information about your claim. Please make sure to submit those extra sheets with your Claim Form.

If you use extra sheets, please write the question number that the extra sheets relate to at the top of each page and write “see attached extra sheets” in the space provided to answer the question in the Claim Form.

Consider making a copy of your Claim Form for your records if you would like a copy. This is not a requirement.

In completing this Part 5, please be aware that this process can be triggering and retraumatizing. If you are feeling triggered or retraumatized at any point, please avail yourself of the supports that are available to you – and as described at [Part 2](#).

Description of your Impacts

The Monetary Assessment Scheme indicates that if Class Members wish to apply for an additional payment beyond the Common Experience Payment, they must provide a narrative of their experiences with racism within the CAF.

This narrative should include your statement on the impact that Racial Discrimination and/or Racial Harassment has had on your personal dignity; bodily and/or emotional integrity; spiritual well-being; and individual relationships (as defined below).

You do not need to provide a narrative of impacts upon each of these four factors (personal dignity; bodily and/or emotional integrity; spiritual well-being; and individual relationships), but the more information you provide will be helpful to the overall assessment of your claim.

THE ASSESSMENT IS NOT BASED ON MEDICAL DIAGNOSES OR CORROBORATIVE REPORTS, AND THEY ARE NOT REQUIRED.

The assessment will be based on the severity and duration of your described impacts that you endured, due to your experiences of Racial Discrimination and/or Racial Harassment in the CAF.

A description of your experiences of racism while in the CAF is required. Your account of your lived experiences will be read by an Assessor, who will assess which category below applies to your claim.

IF YOU CHOOSE TO IDENTIFY ANY WITNESSES OR OTHER INDIVIDUALS IN YOUR NARRATIVE, THEY WILL NOT BE CONTACTED OR QUESTIONED.

MONETARY ASSESSMENT SCHEME – CRITERIA

Level A

Disruption to:

- Personal Dignity, and/or
- Bodily and/or Emotional Integrity, and/or
- Spiritual Well-Being, and/or
- Individual Relationships

persisting for a duration of at **least one month**.

Level B

Significant disruption to:

- Personal Dignity, and/or
- Bodily and/or Emotional Integrity, and/or
- Spiritual Well-Being, and/or
- Individual Relationships

persisting for a duration of at **least six months**.

Level C

Severe disruption to

- Personal Dignity, and/or
- Bodily and/or Emotional Integrity, and/or
- Spiritual Well-Being, and/or
- Individual Relationships

persisting for a duration of at **least two years**.

Please describe if you have experienced impacts on any of the following attributes due to racial discrimination and/or racial harassment, and for how long.

PERSONAL DIGNITY (*Examples: identity, belonging, inclusion, development, opportunity, advancement, faith in leadership, institutional response*)

[open text box]

BODILY AND/OR EMOTIONAL INTEGRITY (*Examples: memory, reaction, concentration, affect, self-worth, stress, fear, vigilance, drug consumption, alcohol consumption, fitness, blood pressure, sleep*)

[open text box]

SPIRITUAL WELL-BEING (*Examples: spirituality, religious practice, faith in humanity, connection to meaning in life*)

[open text box]

INDIVIDUAL RELATIONSHIPS (*Examples: relationship with romantic partner, relationship with children, relationship with family members, relationship with friends, relationship with elders, relationship with community*)

[open text box]

PART 6: Veterans Affairs Canada Benefits

It is acknowledged that you may be hesitant using supports from the Government / DND / CAF. However, these supports are available to you.

While the purpose of this Claim Form is tied to the Settlement itself, we want you to be aware of other benefits that may be available to you from Veterans Affairs Canada (VAC).

You may be entitled to VAC Disability Benefits if you are suffering from a disability resulting from a service-related injury or disease. This support is separate from the Settlement.

You can learn more about these benefits on VAC's website at:
<http://www.veterans.gc.ca/eng/services/afterinjury/disability-benefits>.

You can also contact Veterans Affairs Canada by phone at 1-866-522-2122 (toll-free), Monday to Friday, 8:30 to 16:30, local time.

The staff at any VAC office, CAF Transition Centre or Service Canada office can assist you in person with getting information or making an application. Service Officers with The Royal Canadian Legion or The War Amps of Canada can also assist you with your application, including helping you get all of the information you need to support your application.

PART 7: Certificate/Attestation

Please review and check all statements below to confirm your understanding and acceptance before signing in the space provided:

- I understand that the Administrator will disclose my name, my date of birth, my CAF service number or my social insurance number (as the case may be) and the date of my release (as applicable), to the Government of Canada for the purpose of verifying my service.

The Information you provide will not be disclosed to your co-workers, supervisors, or DND/CAF leadership.

- I recognize that the Administrator and the Assessors do not represent the CAF and are not acting as agent or legal counsel for any party, and that they do not offer legal advice or have any duty to assert or protect legal rights of any party, or to raise an issue not raised by any party.
- I understand that I have access to legal advice through Class Counsel and that I may contact them to seek assistance when submitting a claim.
- I confirm that if someone has helped me with this Claim Form, that person has read to me everything they wrote and included with this Claim Form, if necessary, to allow me to understand the content of this completed Claim Form and any attachments to it, and I confirm that this information is true.
- By signing below, I swear (or solemnly affirm) that the information provided in all parts of this Claim Form is true to the best of my knowledge. I understand that membership in the Class is limited to individuals who have personally experienced Racial Discrimination and/or Racial Harassment while serving in the CAF at any point since April 17, 1985, as those terms are defined on the first page of the Claim Form.

Claimant signature: _____

Date: _____

Witness Name: _____

Witness Signature: _____

Date: _____

The Witness must only see the Claimant sign this page. They are not required to read the Claim nor to verify the accuracy of the events.

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APPENDIX “G” – CLAIMS PROCESS

I. General Principles

1. The claims process is intended to be expeditious and cost effective, and to minimize the burden on Class Members making claims (“**Claimants**”).
2. The Administrator shall determine all claims in accordance with the Final Settlement Agreement (“**FSA**”), including its Appendices.
3. The Administrator shall, in the absence of evidence or clear indications to the contrary, presume that Class Members are acting honestly and in good faith with respect to information provided on the Individual Claim Form (**Appendix “F”**) and included within supporting documentation, if any.
4. Where an Individual Claim Form contains minor omissions or errors, the Administrator shall correct such omissions or errors if the information necessary to correct the error or omission is readily available to the Administrator.
5. The Administrator may request further information from a Claimant, as it deems appropriate.
6. The Claims Process is not meant to be adversarial. It aims to provide payment for meritorious claims, and ensure that claims are properly, fairly and expeditiously assessed on the basis of adequate and sufficient validation, as outlined herein and in the Monetary Assessment Scheme (**Appendix “E”**). To the extent possible, the Claims Process should be restorative and trauma informed in nature.
7. Except with the Claimant’s express written consent, or as otherwise required by law, the information provided by Claimants, including the fact that a Claimant has made a claim and the confirmation of service by Canada, shall be kept confidential by the Parties, counsel for the Parties, and the Administrator. Information provided by Claimants pursuant to the Individual Claim Form will not be disclosed to Claimants’ co-workers, supervisors, or CAF leadership.
8. Capitalized terms not defined in this Schedule have the meaning set forth in the FSA.
9. The Parties, in consultation with the Administrator, may amend the Claims Process or the Individual Claim Form by agreement.

II. Claims Submission

10. An application for Individual Monetary Amounts may be submitted by filling out an Individual Claim Form (**Appendix “F”**). The Individual Claim Form comprehensively outlines the information that is necessary for purposes of assessment by the Administrator.
11. Every Claimant shall submit an Individual Claim Form by the Individual Application Deadline, defined as the 12 month anniversary of the Implementation Date.
12. The Administrator may consider an Individual Claim Form or request for reconsideration received within 30 days after the Individual Application Deadline or reconsideration deadline, where the Administrator is satisfied that the Claimant was delayed from delivering an Individual Claim Form until after the Individual Application Deadline due to a disability on the part of the Class Member, or due to other exceptional instances. No Individual Claim Form shall be accepted for substantive review by the Administrator more than 30 days after the Individual Application Deadline.
13. No more than one Individual Claim Form may be filed on each Claimant’s behalf.

III. Initial Review and Service Verification

14. Within 60 days of receiving an Individual Claim Form, the Administrator shall review the claim (“**Initial Review**”) to verify:
 - (a) the identity of the Claimant, including a piece of government-issued identification establishing the Claimant’s identity;
 - (b) that the information provided in the Individual Claim Form is complete;
 - (c) that the Claimant has not opted out of the settlement;
 - (d) for a person claiming on behalf of a Class Member or a Class Member’s estate, that:
 - (i) the Class Member was alive on the date the FSA was executed; and
 - (ii) that the person has authority to act on behalf of the Class Member’s estate; and
 - (e) for a personal representative claiming on behalf of a Class Member who is subject to a disability, that the personal representative has authority to act on behalf of the Class Member.
15. Upon completing the Initial Review, the Administrator will send the Claimant’s name, service number (or Social Insurance Number, if a service number is

unavailable), date of birth and date that the individual was released from CAF (if applicable) to Canada for confirmation of service in the CAF. The Administrator will provide the above information to Canada by a secure platform as approved by Canada.

16. Within 30 days of receiving this information from the Administrator, Canada will confirm whether the Claimant is or was a member of the CAF at any time on or after 17 April 1985 up until the Approval Date. Where no record of military service is available, Canada will communicate this to the Administrator, which may follow up with the Claimant to determine if they have any additional information that could assist to verify service.

IV. Administrator's Assessment of Eligibility

17. Upon receiving Canada's confirmation of service for a Claimant, the Administrator will render a decision on eligibility ("**Administrator Eligibility Decision**"). In particular, the Administrator will:
 - (a) determine if service in the CAF was confirmed by Canada; and
 - (b) determine eligibility in relation with Part 4 of the claim form.
18. The Administrator's Eligibility Decision will be communicated to a Claimant within 60 days of receiving Canada's confirmation of service. This decision will also offer details about the Restorative Engagement process and how to participate, should Claimants wish to. The decision will also ask Claimants whether they wish to receive a personalized letter of apology. In both cases, Claimants will be asked for their express consent to share their name and preferred contact information to Canada to participate in these initiatives.

V. Restorative Engagement and Apology Letters

19. The Administrator will keep a list of Claimants who have expressed interest in Restorative Engagement (RE) and/or in receiving a personalized apology letter. When requested by Canada, the Administrator will provide monthly reports of eligible class members who have expressed interest in RE and/or a personalized apology letter, along with necessary contact information.

VI. Administrator's Assessment of Payment and Decision

20. Once the Administrator has determined that a Claimant is eligible, the Administrator will render a decision regarding the appropriate payment ("**Administrator Payment Decision**"). In particular, the Administrator will:
 - (a) determine eligibility for the Common Experience Payment ("**CEP**");
 - (b) if an Assessment of Narrative Evidence ("**ANE**") is sought, review the totality of the relevant evidence to determine whether the Claimant was likely subject to service-related racial harassment and/or racial discrimination, as described in the Individual Claim Form; and
 - (c) if the Claimant is found to have likely been subject to service-related racial harassment and/or racial discrimination, assess the appropriate "**ANE Level**" as described in **Appendix "E"**.
21. Beyond the guidance provided in **Appendix "E"**, the Administrator shall assess the appropriate ANE Level by reference to its own skill and judgment and may, as the Administrator deems necessary, consult with its own subject-matter experts.
22. The standard of proof in all cases shall be on a balance of probabilities. For greater certainty, for the Administrator to conclude that a Claimant is eligible for payment at any ANE Level, the Administrator must conclude that, based on the information submitted by the Claimant, it is more likely than not that the Claimant was subject to the service-related racial harassment and/or racial discrimination, and that it caused or contributed to the harm as described in **Appendix "E"**.
23. For greater certainty, Claimants are not required to provide corroborating evidence or medical diagnoses in support of their claim, and the Administrator shall not draw any inferences from the lack of any such corroborating or diagnostic evidence.
24. Subject to section 23 herein, the Administrator may ask Claimants for any additional information the Administrator deems necessary.
25. The Administrator's Payment decision denying a claim for an ANE Level will be sent to an eligible Claimant within 60 days of communicating the Claimant's eligibility decision.
26. Decision letters granting a claim for an ANE Level will not be sent to Claimants until the Administrator has been given permission pursuant to section 34 herein.

VII. Reconsideration

27. Within 30 days of receiving a denial decision as sent pursuant to section 18 or 25 herein, the Claimant may request reconsideration of the denial.

28. Within 60 days of receiving a complete request for reconsideration in the form provided, the Administrator will review the claim and render a decision (“**Reconsideration Decision**”). In addition to considering any new substantive information submitted by the Claimant, the Administrator may correct any administrative errors that become evident (whether or not they are specifically raised by the Claimant on reconsideration).
29. If the Reconsideration Decision confirms the denial, the decision will be communicated to the Claimant within 60 days of receiving the reconsideration request. Reconsideration Decisions may not be reconsidered pursuant to section 28.
30. If the Reconsideration Decision reverses the Administrator’s Eligibility Decision, the Administrator will communicate the decision pursuant to section 18.
31. If the Reconsideration Decision reverses the Administrator’s Payment Decision, so to grant a CEP and/or an ANE Level (as the case may be), that decision will not be communicated to the Claimant until all claims have been assessed (pursuant to section 33).

VIII. Payments Pursuant to Administrator’s Decisions

32. Immediately after the Claims Period has ended, the Administrator will provide a report to the Parties and will provide an estimate as to the time that it will take for it to assess the remaining claims and reconsiderations.
33. Once all claims have been assessed and all Reconsideration Decisions made, the Administrator will determine the sum total of the Aggregate of Assessed Amounts (the “**AAA**”).
 - (a) If the AAA is less than the Designated Amount (*i.e.* \$100,000,000), the Administrator will determine Augmented Amounts in accordance with the formulas set out in clauses 6.05 and 6.06 of the FSA, as the case may be.
 - (b) If the AAA is between the Designated Amount (\$100,000,000) and the Aggregate Payment Cap (*i.e.* \$150,000,000), the Administrator will not need to revise the Individual Monetary Awards.
 - (c) If the AAA exceeds the Aggregate Payment Cap (*i.e.* \$150,000,000), the Administrator will determine Adjusted Payments in accordance with the formula set out in clause 6.07 of the FSA.
34. Within 60 days of the Administrator’s determination under this Part VI, Class Counsel and Canada will advise the Administrator when it can communicate decision letters to Claimants and proceed with payments, as determined in accordance with this Claims Process and clause 6.04 of the FSA.

IX. Management of Claims Raising Concerns

35. The Administrator will consult with Canada and Class counsel when situations of concern arise, including where (for example):
- there is a pattern of claims using the same narrative or identical wording;
 - the information presented in the claim form is unclear or confusing;
 - there is a surge in claims that do not follow the typical pattern of claims submitted; or
 - the Administrator has reason to believe that a claim may be fraudulent or based on a misrepresentation.
36. When situations of concern arise, the Parties may provide joint direction to the Administrator, including:
- to seek clarification and further information from the Claimant; or
 - to deny claims.
37. The Parties may, individually or jointly, refer the matter to the Court should they be unable to provide joint directions to the Administrator.

X. Reporting to the Parties

38. Commencing 30 days after the Claims Period begins, the Administrator will provide the Parties with monthly reports containing the following information:
- (a) the number of claims received in the current month;
 - (b) the number of claims received to date;
 - (c) the number of claims that were assessed in the past month;
 - (d) the number of pending claims; the number of deficient claims; the number of decisions denying eligibility; the number of decisions denying ANE;
 - (e) the number of reconsiderations; the number of reconsideration decisions that were granted; the number of reconsideration decisions that were denied;
 - (f) the language used by the claimant in the Individual Claim Form – French or English;

- (g) the number of claims requesting only a CEP;
- (h) the number of claims requesting both a CEP and an ANE Level;
- (i) the number of claims received from current CAF members;
- (j) the number of claims received from former CAF members;
- (k) the number of claims assessed in the current month, and overall, and broken down by CEP alone *versus* CEP and an ANE Level, and broken down by level of ANE;
- (l) the average time spent on the assessment of CEP claims;
- (m) the average time spent on ANE Level assessments;
- (n) the number of claims received, broken down by province, territory or country of residence;
- (o) the number of claims denied pursuant to Part IX, in the past month and overall;
- (p) the number of claimants interested in the restorative engagement process, broken down by province, territory or country of residence, in the past month and overall;
- (q) the number of claimants asking for a personalized letter of apology, in the past month and overall;
- (r) the number of claimants taking advantage of support services in the current month, and overall; and
- (s) the average time spent on support, in the current month and overall; and
- (t) subject to section 7 herein, any other data as may be requested by Canada.

XI. Reporting to the Court

39. Within 90 days after the last payments to Claimants are sent, the Administrator shall prepare a report to be filed with the Federal Court, including the following information:
- (a) total number of claims submitted;
 - (b) total number of claims determined, and at which ANE Level;
 - (c) total number of claims disallowed; and

- (d) total amounts paid at each ANE Level.
40. The report should also include a summary of all quality control or audit activities undertaken by the Administrator, and the results thereof.