

Federal Court



Cour fédérale

**Date: 20191125**

**Dockets: T-2111-16  
T-460-17**

**Citation: 2019 FC 1475**

**Ottawa, Ontario, November 25, 2019**

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

**T-2111-16**

**BETWEEN:**

**SHERRY HEYDER,  
AMY GRAHAM AND  
NADINE SCHULTZ-NIELSEN**

**Plaintiffs**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**T-460-17**

**AND BETWEEN:**

**LARRY BEATTIE**

**Plaintiff**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**PUBLIC ORDER  
(Consolidation, Certification and Settlement Approval)**

**UPON** the motion made by the Plaintiffs, on consent, for an order: (a) consolidating these actions for settlement purposes; (b) certifying these actions as class proceedings for settlement purposes; (c) approving the Settlement between the parties; (d) approving notice of the Settlement and notice of the Opt Out and Claims Periods; and (e) addressing other ancillary matters;

**AND CONSIDERING** the Reasons for Orders issued on today's date;

**THIS COURT ORDERS that:**

**A. Definitions**

1. For the purposes of this Order, the following definitions apply:

- (a) **“Beattie Class Action”** means the action styled *Larry Beattie v The Attorney General of Canada* (Court No T-460-17);
- (b) **“CAF Class”** or **“CAF Class Members”** means all current or former members of the Canadian Armed Forces [CAF] who experienced Sexual Misconduct, as defined in the FSA, up to and including the date of this Order, who have not opted out of the Heyder-Beattie Consolidated Class Action;
- (c) **“Canada”** means Her Majesty the Queen in Right of Canada, the Attorney General of Canada, Her and their current and former respective legal

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

- (d) “**Class Actions**” means:
- i. the Beattie Class Action;
  - ii. the Heyder Class Action;
  - iii. *Amy Graham et al v The Attorney General of Canada* (ONSC No 16-70743-CP);
  - iv. *Glynis Rogers v The Attorney General of Canada* (NSSC No 457658);
  - v. *Alexandre Tessier c Procureur General du Canada* (QSC No 200-06-000209-174, demande pour autorisation); and
  - vi. *Nicola Peffers v The Attorney General of Canada* (BCSC No 16-5018 (Victoria Registry));
- (e) “**Class Members**” means all members of the CAF Class and all members of the DND/SNPF Class;
- (f) “**DND/SNPF Class**” or “**DND/SNPF Class Members**” means all current and former employees of the Department of National Defence [DND] and of the Staff of the Non-Public Funds, Canadian Forces [SNPF], who have experienced Sexual Misconduct, as defined in the FSA, up to and including the date of this Order, who have not opted out of the Heyder-Beattie Consolidated Class Action;
- (g) “**FSA**” means the Final Settlement Agreement executed between the parties on July 10, 2019, attached as **Schedule “A”** to this Order;

- (h) “**Heyder Class Action**” means the action styled *Sherry Heyder, Amy Graham, and Nadine Schultz-Nielsen v The Attorney General of Canada* (Court No T-2111-16);
- (i) “**Opt Out Period**” means the ninety (90) day period commencing on the date of this Order and ending on **February 24, 2020**;
- (j) “**SA**” means the Supplementary Settlement Agreement executed between the parties on October 21, 2019 (Public Version), attached as **Schedule “B”** to this Order;
- (k) “**Settlement**” means the Final Settlement Agreement executed between the parties on July 10, 2019, together with the Supplementary Agreement dated October 21, 2019;

## **B. Consolidation and Amendment**

2. The Heyder Class Action is amended in accordance with the Second Amended Statement of Claim attached as **Schedule “C”**. The Beattie Class Action is amended in accordance with the Amended Statement of Claim attached as **Schedule “D”**. In the event that the Settlement is set aside, this Order to amend these two proceedings shall no longer have force or effect.

3. These actions are consolidated for purposes of settlement pursuant to Rule 105(a) of the *Federal Courts Rules*, and shall be referred to as the **Heyder-Beattie Consolidated Class Action**. In the event that the Settlement is set aside, this Order to consolidate these two proceedings shall no longer have force or effect, without prejudice to the parties' ability to seek consolidation in the future, as they may deem necessary.

**C. Certification**

4. These actions are certified as class proceedings for the purposes of settlement pursuant to Rule 334.16(1) of the *Federal Courts Rules*. In the event that the Settlement is set aside, this Order certifying these proceedings shall no longer have force or effect.
5. The two sub-classes are defined as follows:

**CAF Class**

All current or former CAF Members who experienced Sexual Misconduct up to and including the Approval Date, who have not opted out of the Heyder-Beattie Consolidated Class Action;

**DND/SNPF Class**

All current and former employees of DND and of the Staff of the Non-Public Funds, Canadian Forces, who experienced Sexual Misconduct up to and including

the Approval Date, who have not opted out of the Heyder-Beattie Consolidated Class Action.

6. Sherry Heyder, Amy Graham, Nadine Schultz-Nielsen, and Larry Beattie are appointed as Representative Plaintiffs for the Heyder-Beattie Consolidated Class Action.
7. The Representative Plaintiffs allege, on behalf of the Class Members in the Heyder-Beattie Consolidated Class Action, that the Defendant was negligent, that it breached its fiduciary duty, and that it breached their rights under ss 7 and 15 of the *Canadian Charter of Rights and Freedoms*. The following is certified as the common issue for settlement purposes:

Is the Defendant liable to the Class?

8. Koskie Minsky LLP and Raven, Cameron, Ballantyne & Yazbeck LLP/S.R.L. are appointed as counsel for the Class Members in the Heyder-Beattie Consolidated Class Action.

**D. Opt Out Procedure**

9. Any Class Member who wishes to opt out of the Heyder-Beattie Consolidated Class Action must do so by completing and sending the form attached as Schedule “J” to the FSA to the Administrator, post-marked or sent by e-mail, no later than 90 days from the date of this Order.

**E. Settlement Approval**

10. The Settlement of this action on the terms set out in the FSA, including the Recitals and Schedules, as attached at **Schedule “A”** to this Order, and in the SA, including its Recitals and Schedules, as attached at **Schedule “B”** to this Order, is expressly incorporated by reference into this Order, is fair and reasonable and in the best interests of Class Members, and is approved.
11. The Settlement and this Order are binding on the parties and on every Class Member, including persons under a disability, unless they opt out or are deemed to have opted out on or before the expiry of the Opt Out Period, and are binding whether or not such Class Member claims or receives compensation.

**F. Dismissal and Release**

12. The actions, and the claims of the Class Members and the classes as a whole, are dismissed against Canada, without costs and with prejudice, and such dismissal 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 the Class Actions and relating to the subject matter thereof, and all such claims are released against the Releasees in accordance with Section 13 of the FSA.

**G. Appointments**

13. Epiq Class Actions Services Inc, under the direction of Laura J. Bruneau, Senior Vice President and Managing Director, is appointed as Administrator pursuant to the FSA and SA. The fees, disbursements and applicable taxes of the Administrator shall be paid in accordance with Section 9.03 of the FSA and on the terms set out in the SA, including Schedule A, and Annex 1 (Fee & Service Schedule).
14. No person may bring any action or take any proceeding against the Notice Provider, Administrator, Lead Assessor, Assessor(s), Oversight Committee, or the members of such bodies, or any employees, agents, partners, associates, representatives, successors, or assigns, for any matter in any way relating to the FSA, SA, the public notice campaign, the administration of the FSA or the implementation of this judgment, except with leave of this Court on notice to all affected parties.
15. The Lead Assessor shall be appointed by further order of this Court.

**H. Notice**

16. KCC/Ricepoint Inc is appointed to provide notice of the approval of the Settlement.
17. Within five (5) business days of this Order, notice shall be given of this Order, the approval of the FSA, and the claims period in accordance with the CAF/DND Notice Plan,



attached as **Schedule “E”**, and the Phase II External Notice Program attached as Schedule “D” to the FSA.

18. Canada shall pay the reasonable costs of Phase II Notice up to three hundred and ninety two thousand dollars (CDN \$392,000.00).

19. Notice shall be given in the forms attached as **Schedule “F”** (English) and **Schedule “G”** (French) to this Order.

**I. Honoraria**

20. Sherry Heyder, Amy Graham, Nadine Schultz-Nielsen, Larry Beattie, Glynis Rogers, Alexandre Tessier, and Nicola Peffers shall each receive the sum of ten thousand dollars (CDN \$10,000.00) as an honorarium to be paid in accordance with Section 16.01 of the FSA.

**J. Continuing Jurisdiction and Reporting**

21. The Settlement shall be implemented in accordance with this Order and further orders of this Court.

22. This Court, without in any way affecting the finality of this Order, shall have exclusive and continuing jurisdiction over this action, the Plaintiffs, all of the Class Members, and the

Defendant for the limited purposes of implementing and enforcing and administering the Settlement and this Order, subject to the terms of the Settlement.

23. Class counsel and the Administrator shall report to the Court on the administration of the Settlement at reasonable intervals not less than semi-annually, as requested by the Court, and upon the completion of the administration of the FSA in accordance with Schedule “Q” of the FSA.

“Simon Fothergill”

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Judge