

Federal Court



Cour fédérale

Date: 20201029

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

Citation: 2020 FC 1015

Ottawa, Ontario, October 29, 2020

PRESENT: The Honourable Mr. Justice Fothergill

Docket: T-2111-16

BETWEEN:

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

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

Docket: T-460-17

AND BETWEEN:

LARRY BEATTIE

Plaintiff

and

THE ATTORNEY GENERAL OF CANADA

Defendant

**PUBLIC ORDER
(Approval of Third Supplementary Agreement)**

UPON the motion made in writing by the Plaintiffs for an order approving the public and confidential versions of the Third Supplementary Agreement, revoking the appointment of the previous Associate Lead Assessor, appointing a new Associate Lead Assessor, and appointing a roster of Assessors;

AND UPON reading the Plaintiffs' motion record;

AND UPON being informed of the Defendant's consent to the proposed form of Order;

AND UPON being satisfied that it is in the interests of justice to grant the relief sought;

THIS COURT ORDERS that:

1. The terms of the Third Supplementary Agreement between the parties, entered into on September 24, 2020, including its Schedules, as attached at Schedule "A" to this Order, are approved;
2. The appointment of Michelle Flaherty to the position of Associate Lead Assessor pursuant to the Second Supplementary Agreement between the parties, and approved by this Court by Order dated February 21, 2020, is revoked;

3. Emily McCarthy is appointed to the position of Associate Lead Assessor. The appointment of the Associate Lead Assessor shall be subject to the terms of appointment set out in Schedule “D” to the Third Supplementary Agreement which forms part of this Order, and she shall be paid in accordance with the rates set out therein;

4. The following individuals are appointed as Roster Assessors. The appointment of each Roster Assessor shall be subject to the terms of appointment set out in Schedule “B” to the Third Supplementary Agreement which forms part of this Order, and each of the Roster Assessors shall be paid in accordance with the rates set out therein;

1. Constance Backhouse
2. Johanne Cavé
3. Brian Eyolfson
4. Christie Jefferson
5. Kathleen Keating
6. Margaret Leighton
7. Wesley Marsden
8. Beverly Moore
9. Patricia O’Connor
10. Naomi Overend
11. Philippe Patry
12. Susan Ross
13. Jay Sengupta

5. No person may bring any action or take any proceeding against the Lead Assessor, Associate Lead Assessor, or any of the Roster Assessors, or any of their employees, agents, partners, associates, representatives, successors, or assigns, for any matter in any way relating to the Final Settlement Agreement, the Supplementary Agreement, the Second Supplementary Agreement and/or the Third Supplementary Agreement or the implementation thereof, except with leave of this Court on notice to all affected parties.

“Simon Fothergill”

Judge

SCHEDULE "A"

FEDERAL COURT

Class Proceeding

Court File No.: T-2111-16

BETWEEN:

SHERRY HEYDER, AMY GRAHAM and NADINE SCHULTZ-NIELSEN

Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

AND BETWEEN:

Court File No.: T-460-17

LARRY BEATTIE

Plaintiff

- and -

THE ATTORNEY GENERAL OF CANADA

Defendant

PUBLIC THIRD SUPPLEMENTARY AGREEMENT

WHEREAS:

- A. Canada and the Plaintiffs (collectively the "Parties") entered into a Final Settlement Agreement ("**FSA**") dated July 10, 2019;
- B. Pursuant to Sections **9.01, 9.02 and 9.03** of the **FSA**, the Parties agreed that an Administrator, a Lead Assessor and a roster of Assessor(s) would be chosen through a process that is agreed upon, and that the process and terms of appointment of the

Administrators and all Assessor(s) would be set out in a supplementary agreement to be negotiated by the Parties and submitted to the Court for approval;

- C. The Parties chose an Administrator and entered into a Supplementary Agreement ("**SA**") on October 21, 2019, which includes the Administrator's Terms of Appointment;
- D. The Parties subsequently chose a Lead Assessor and an Associate Lead Assessor and entered into a Second Supplementary Agreement ("**SSA**") which includes the Lead and Associate Lead Assessors' Terms of Appointment;
- E. The Parties also set out the process for the appointment of a roster of Assessors in the **SSA**;
- F. The Parties have identified several individuals listed in Schedule "A" to this agreement to carry out the assessments of claims for compensation under Categories B and C, pursuant to the **FSA**, and wish to enter into this **Third Supplementary Agreement ("TSA")** in order to have the Court appoint these individuals as "Roster Assessors" and to set out their Terms of Appointment;
- G. On June 29, 2020, the Associate Lead Assessor, Ms. Michelle Flaherty, indicated her intention to resign her position;
- H. The Parties have agreed to accept Ms. Flaherty's resignation and further agree to seek an order formally revoking the Court's prior appointment of Ms. Flaherty;
- I. The Parties have further agreed that they will seek an order appointing Ms. Emily McCarthy as the Associate Lead Assessor.

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

SECTION ONE

INTERPRETATION

1.01 DEFINITIONS

Capitalized terms used in this **TSA** and not otherwise defined shall have the same meanings as contained in the **FSA**. In this **TSA**, and schedules thereto:

“Administrator” means Epiq Class Action Services Canada Inc. appointed by the Court, by Order dated November 25, 2019, to manage the overall administration of the individual claims process and to perform all other duties and responsibilities assigned in the **FSA**;

“Assessors” or “Roster Assessors” means the individuals who shall be appointed to the roster of Assessors in accordance with the process outlined in **Section Four** of the **SSA**, and who will be responsible for assessing claims under Categories B and C under the **FSA**;

“Associate Lead Assessor” means the person appointed by the Court to work with the Lead Assessor in the performance of the Lead Assessor’s duties and responsibilities under the **FSA**, and the **SSA**, and to perform the duties and responsibilities assigned to the Associate Lead Assessor in this **TSA**;

“Class Member information” means any information about an individual making a claim in accordance with the **FSA**, whether approved or not, from any source whatsoever;

“Court” means the Federal Court as defined in s. 4 of the *Federal Courts Act*, R.S.C. 1985 c. F-7 as am.;

“Final Settlement Agreement” or “FSA” means the Final Settlement Agreement in the Federal Court matter *Heyder et al v AGC*, Court File Number T-2111-18, and *Beattie v AGC*, Court File Number T-460-17, executed by the Parties on July 10, 2019;

“Lead Assessor” means Reva Devins, appointed by the Court to act as the Lead Assessor and to perform the duties and responsibilities assigned in the **FSA**, **SSA** and this **TSA**;

“Joint Committee” means the committee established by s. 4.02 of the **SSA** comprised of one legal counsel representative for the Plaintiffs, one legal counsel for the Defendant, the Lead Assessor and the Associate Lead Assessor, and struck for the purpose of determining a short list of candidates for appointment as Assessors, interviewing the candidates, and making recommendations to the Parties for their appointment;

“Second Supplementary Agreement” or “SSA” means the Agreement entered into by the Parties on February 10, 2020;

“Supplementary Agreement” or “SA” means the agreement entered into by the Parties on October 21, 2019;

“Third Supplementary Agreement” or “TSA” means this agreement.

SECTION TWO

APPOINTMENT OF ROSTER ASSESSORS

2.01 APPOINTMENT OF ROSTER ASSESSORS

Pursuant to **Section 9.02** of the **FSA**, and **Section 4.01** of the **SSA**, the Parties have selected the individuals listed in **Schedule "A"** and agree to propose their appointment to the Court as Assessors. The selected individuals, shall be referred to as "Roster Assessors".

2.02 TERMS AND CONDITIONS

Upon their appointment by the Court, the Roster Assessors shall report to the Lead Assessor and/or Associate Lead Assessor as determined by the Lead Assessor, and shall act at all times in accordance with the **FSA**. The appointment of the Roster Assessors is subject to the Terms of Appointment attached as **Schedule "B"**. **Schedule "B"** shall form part of this **TSA** and shall be incorporated into the Order of the Court approving the agreement and formally appointing the Roster Assessors.

2.03 INDEPENDENCE

The Roster Assessors shall be independent and impartial in their determination of claims.

2.04 ASSESSORS' ROLES

The role of a Roster Assessor is as set out in **Section 4.05** of the **SSA**, which is reproduced here:

4.05 Once appointed, each Assessor shall report to the Lead Assessor and/or Associate Lead Assessor throughout their appointment as required by the Lead Assessor and/or Associate Lead Assessor. Assessors shall perform the functions and duties outlined in the **FSA**, except those specifically assigned in this **SSA** to the Lead Assessor, and shall abide by any terms and conditions which may be set out in the Order appointing them as an Assessor under the **FSA**.

Once appointed, each Assessor shall continue in the role under the supervision, guidance and direction of the Lead Assessor and/or Associate Lead Assessor subject to removal only upon further order of the Court revoking their appointment or at the expiry of the Claims Period. Any Assessor may be removed by way of court order on the mutual consent of the Parties at any time.

SECTION THREE

ASSOCIATE LEAD ASSESSOR

3.01 REVOCATION OF APPOINTMENT OF MICHELLE FLAHERTY

Upon receipt of notice from Ms. Michelle Flaherty that she was no longer able to continue as Associate Lead Assessor, the Parties have agreed to seek an order revoking her appointment by the Court.

3.02 APPOINTMENT OF EMILY MCCARTHY AS ASSOCIATE LEAD ASSESSOR

Provided that the Court makes an order revoking Ms. Flaherty's appointment, the Parties have agreed that a new Associate Lead Assessor shall be appointed.

The Parties have further agreed that Emily McCarthy shall be appointed as the Associate Lead Assessor.

The Associate Lead Assessor shall act in accordance with any delegation given by the Lead Assessor, as well as substantially in accordance with **Schedule "Q"** of the **FSA**. The Associate Lead Assessor shall also act in accordance with the Terms of Appointment of the Associate Lead Assessor attached as **Schedule "D"**, which forms part of this **TSA** and which shall be incorporated into a further Order of the Court, approving the appointment of Ms. McCarthy as the new Associate Lead Assessor.

SECTION FOUR
AMENDMENT TO FSA

4.01 AMENDMENTS TO SCHEDULE "Q"

The Parties have agreed to amend Schedule "Q" of the FSA as set out in **Schedule "E"**, which forms part of this TSA.

SECTION FIVE
GENERAL

5.01 ENTIRE FSA

As set out in **Section 21.03** of the **FSA**, the Parties confirm that the **FSA** executed on July 10, 2019, shall include the **SA**, the **SSA**, and this **TSA**, and together they form the entire agreement between the Parties, subject only to any further Supplementary Agreement as the Parties might require.

5.02 NO CONTRA PROFERENTEM

The Parties acknowledge that they have reviewed and participated in settling the terms of this **TSA** 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 **TSA**.

IN WITNESS WHEREOF the Parties have executed this Third Supplementary Agreement.

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

Signed at Toronto, Ontario this 24th day September, 2020.

BY: 

ATTORNEY GENERAL OF CANADA
For the Defendant

Signed at Ottawa, Ontario, this 24th day September, 2020.

BY: 

ATTORNEY GENERAL OF CANADA
For the Defendant

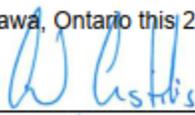
THE PLAINTIFFS, as represented by Class Counsel:

Signed at Toronto, Ontario this 23rd day September, 2020.

BY: 

KOSKIE MINSKY LLP
For the Plaintiffs

Signed at Ottawa, Ontario this 24th day September, 2020.

BY: 

RAVEN, CAMERON, BALLANTYNE & YAZBECK LLP
For the Plaintiffs

SCHEDULE "A"
PROPOSED ROSTER ASSESSORS

Name

1. Constance Backhouse
2. Johanne Cavé
3. Brian Eyolfson
4. Christie Jefferson
5. Kathleen Keating
6. Margaret Leighton
7. Wesley Marsden
8. Beverly Moore
9. Patricia O'Connor
10. Naomi Overend
11. Philippe Patry
12. Susan Ross
13. Jay Sengupta

SCHEDULE "B"

TERMS OF APPOINTMENT OF THE ROSTER ASSESSORS

DEFINITIONS

1. Terms defined in the **FSA**, the **SA**, the **SSA** and in this **TSA** have the same meaning in these Terms of Appointment.

GENERAL

A. Enforcement

2. For greater certainty, the obligations set out in these Terms of Appointment are enforceable as a court order.
3. Any party to the **FSA**, **SA**, **SSA** or **TSA** or a Roster Assessor may seek enforcement in the Federal Court of the obligations contained in these Terms of Appointment.

B. Place of Work

4. The Roster Assessor(s) shall provide their own office space, technology, supplies and resources as required to carry out their roles and responsibilities under the **FSA**, and this **TSA**.
5. Roster Assessors will be provided with dedicated laptop computers for the duration of the claims assessment process, and which may only be used for this purpose and must be returned upon termination of their appointment.
6. The work will be carried out primarily from the Roster Assessor(s)' place of business within Canada.

C. Term of Appointment and Hours of Work

7. The term of appointment shall be from September 15, 2020 to approximately January 24, 2023. This period may be extended or shortened by court order. Such an order may be requested by either of the Parties, or by the Lead Assessor.
8. The Roster Assessor(s) shall set their own hours of work subject to the direction and determination of the Lead Assessor or Associate Lead Assessor.

9. The Roster Assessor(s) shall be paid for any training required by the Lead Assessor.

D. Duties

10. The Roster Assessor(s) shall assess claims for compensation as set out in the **FSA** and within the framework established in **Schedule "Q"**, and as set out in this **TSA**, and subject to further guidance of the Lead Assessor and/or Associate Lead Assessor. In particular, the Roster Assessor(s) shall be responsible for the following:
 - (a) Participating in any required orientation or training, including with respect to the requirements of the FSA, IT and security requirements, and vicarious trauma;
 - (b) reviewing and evaluating individual claims for compensation under Category B, or under both Categories B and C of the Compensation Grid;
 - (c) cooperating with the Administrator as required to facilitate the exchange of information, and the delivery of decisions to Class Members, and other administrative matters, including invoicing;
 - (d) making decisions in respect of individual claims;
 - (e) drafting decision letters, in accordance with protocols and templates provided by the Lead Assessor and/or Associate Lead Assessor;
 - (f) reviewing and deciding Requests for Reconsideration of claims for compensation under Category A if requested to do so by the Lead Assessor;
 - (g) meeting the required service standards for determination of claims, as follows: Category B and Category B/C claims – average of 3-5 hours maximum; reconsideration of Category A decision – 1.5 hour maximum; or seeking permission in advance from the Lead Assessor and/or Associate Lead Assessor to exceed the service standards by more than one hour. The Lead Assessor and/or Associate Lead Assessor shall have sole discretion to assess whether additional hours are required to complete the assessment of a claim, and to authorize same;
 - (h) complying with all direction, guidance and requirements issued by the Lead Assessor and/or the Associate Lead Assessor consistent with their duties and obligations for the oversight and monitoring of the assessment process, and in accordance with **Schedule "Q"** of the **FSA**; and
 - (i) performing additional tasks as assigned by the Lead Assessor, on consent of the Parties.
11. All files shall be assigned to Roster Assessor(s) by the Lead Assessor and/or the Associate Lead Assessor at their sole discretion.
12. The Roster Assessor(s) shall only communicate directly with Class Members as directed by the Lead Assessor and/or Associate Lead Assessor.

PROFESSIONAL FEES**A. Fee Structure**

13. The Roster Assessor(s) shall be paid for professional services personally rendered by them in accordance with these terms, or any further terms as may be agreed by the Parties in writing.

| Number of Completed Claims | Rate |
|-----------------------------------|----------------------|
| 1 - 300 claims | \$ [REDACTED] / hour |
| 301 - 650 claims | \$ [REDACTED] / hour |
| 651 + claims | \$ [REDACTED] / hour |

14. For the purposes of the above fee grid, each "claim" shall be weighted as follows:
- (a) a single claim for compensation under Category B only is equivalent to 1 claim;
 - (b) a Category A Reconsideration Requests is equivalent to 0.5 claim;
 - (c) a combined Category B and C claim is equivalent to 1.5 claims;
15. The Roster Assessor(s) must not perform any work in excess of the equivalent of thirty (30) hours per week spread over each four week period commencing from the date of their appointment, and during each four month period thereafter, except with the express written authorization of the Parties.
16. Where travel is required for the Roster Assessor(s) to attend training, reasonable travel expenses shall be billed to Canada as part of the professional services, on the basis of rates established in the Government of Canada National Joint Council Travel Directive. If the rates for accommodation set out therein are not sufficient to secure reasonable accommodation, with Canada's prior consent, those rates may be exceeded by a reasonable amount.

B. Invoicing and Payment Schedule

17. The Roster Assessors shall submit invoices for work performed to the Lead Assessor and/or Associate Lead Assessor, on a monthly basis. All invoices must be prepared in

accordance with invoicing instructions to be provided by the Administrator and/or Canada prior to the first billing period.

18. The Lead Assessor and/or Associate Lead Assessor shall review and approve the invoices prior to submitting them to the Administrator who has agreed to process payments of the Roster Assessor(s) fees on behalf of Canada.
19. The professional fees cover all compensation for professional services rendered. No additional compensation for annual leave, statutory holidays, sick leave, overhead, or any other expense shall be payable.
20. The Roster Assessor(s) are not employees, servants, officers, agents or any other emanation of Her Majesty the Queen in Right of Canada, the Lead Assessor, the Associate Lead Assessor, the Administrator, the Plaintiffs, or Class Counsel.

CONFIDENTIALITY

21. The Roster Assessor(s) shall execute a non-disclosure agreement in the form attached as **Schedule "C"** prior to commencing the assessment of claims.
22. The Roster Assessor(s) shall ensure that all Class Member information is stored in a secure location and that only authorized persons who have signed the non-disclosure agreement are permitted to access the information. All printed material must be stored in a locked container in an area that is subject to continuous monitoring by the Roster Assessor(s).
23. The Roster Assessor(s) shall not store or record Class Member information electronically except in a manner and on devices approved by the Parties or, failing agreement, the Oversight Committee.
24. The Roster Assessor(s) shall promptly notify the Parties of any incident or concern that confidential information has been disclosed to or otherwise obtained by unauthorized persons.
25. Information shall be returned or destroyed in accordance with the **FSA, SA, SSA or TSA** or as may otherwise be directed by the Court.

REPORTING

26. The Roster Assessor(s) shall provide such reports to the Lead Assessor and/or Associate Lead Assessor as may be requested by them.

INSURANCE

27. The Roster Assessor(s) will not provide legal advice. They shall maintain adequate professional liability insurance, considering the duties and risks associated with this appointment, for a period of at least 12 months after the completion or termination of the assessment mandate. All costs associated with this insurance are the responsibility of, and shall be paid by, the Roster Assessor(s).
28. The Roster Assessor(s) will provide confirmation of insurance coverage and copies of relevant documents to the Lead Assessor or either of the Parties, upon request.
29. The Roster Assessor(s) will provide Canada and the Plaintiffs' counsel with thirty (30) days written notice of cancellation of the professional liability insurance mentioned above.
30. Neither compliance nor failure to comply with the insurance requirements set out herein shall relieve the Roster Assessor(s) of her liabilities and obligations under the **FSA**, or this **TSA**.
31. Notwithstanding that the Roster Assessor(s) are not an agent of the Crown, pursuant to subsection 5(d) of the *Department of Justice Act*, S.C. 1993, c. J-2, s.1, if a suit is instituted for or against Canada which the insurer would, but for this clause, have the right to pursue or defend on behalf of Canada as an additional insured under the Roster Assessor's insurance policy, the insurer must promptly contact the Attorney General of Canada to agree on legal strategies by sending a letter, by registered mail or by courier, with an acknowledgement of receipt to:

Christine Mohr
Senior General Counsel
Department of Justice Canada
120 Adelaide Street West, Suite #400
Toronto, Ontario M5H 1T1
Phone: (416) 953-9546
Email: christine.mohr@justice.gc.ca

32. Canada reserves the right to co-defend any action brought against the Roster Assessor(s) or Canada. All expenses incurred by Canada to co-defend such actions will be at Canada's expense. If Canada decides to co-defend any action brought against the Roster Assessor(s) or it, and Canada does not agree to a proposed settlement agreed to by the Roster Assessor's insurer and the plaintiff(s) that would result in the settlement or dismissal of the action against Canada, then Canada will be responsible to the Roster Assessor(s) insurer for any difference between the proposed settlement amount and the amount finally awarded or paid to the plaintiffs (inclusive of costs and interest) on behalf of Canada.

SCHEDULE "C"

**CAF/DND SEXUAL MISCONDUCT CLASS ACTION SETTLEMENT
ROSTER ASSESSOR'S NON-DISCLOSURE AGREEMENT**

I, _____ recognize that in the course of my work as a Roster Assessor appointed pursuant to the order of the Federal Court dated _____ in Court File No. T-2111-16 and T-460-17, I may be given access to information by or on behalf of claimants or by or on behalf of the Administrator, Lead Assessor, Associate Lead Assessor or Canada in connection with the CAF/DND Sexual Misconduct Class Action claims process.

Such information may include information that is confidential or proprietary to third parties, and information conceived, developed or produced by Epiq Class Action Services, Lead Assessor, or Associate Lead Assessor, in fulfillment of their mandates. For the purposes of this Non-Disclosure Agreement, information includes but is not limited to: any documents, instructions, guidelines, data, material, advice or any other information whether received orally, in printed form, recorded electronically, or otherwise and whether or not labeled as proprietary or sensitive, that is disclosed to a person or that a person becomes aware of during the performance of the CAF/DND Sexual Misconduct Class Action Claims Process administered by Epiq Class Action Services, and by the Lead Assessor, and the Associate Lead Assessor.

I agree that I shall not reproduce, copy, use, divulge, release or disclose, in whole or in part, in whatever manner or form, any information described above to any person other than a person employed by Canada or Plaintiffs' counsel and only as I have been expressly authorized to do by the terms and conditions of my appointment, and/or in accordance with a Court order. I will restrict my use of and access to the Administrator's Systems only to the data and associated documents which are required to carry out my work under the CAF-DND Sexual Misconduct Class Action settlement. I agree that I will not access any information or data that is not specifically required to perform the work assigned to me by the Lead Assessor or the Associate Lead Assessor. I further agree to safeguard the same and take all necessary and appropriate measures, including those set out in any written or oral instructions provided by the Lead Assessor, the Associate Lead Assessor, Epiq Class Action Services, or jointly by Canada and Plaintiffs' counsel, to prevent the disclosure of, access to or use of this information in contravention of this Non-Disclosure Agreement. I shall use any information provided by a claimant or on behalf of Canada solely for the purpose of the claims process and I acknowledge that I have no right of ownership whatsoever with respect to this information.

I agree that the obligation of this agreement will continue in force and in perpetuity, notwithstanding the termination or voiding of this FSA.

Date

Name (printed)

Signature

SCHEDULE "D"

TERMS OF APPOINTMENT OF THE ASSOCIATE LEAD ASSESSOR

DEFINITIONS

33. Terms defined in the **FSA**, **SA**, **SSA** and in this **TSA** have the same meaning in these Terms of Appointment.

GENERAL

A. Enforcement

34. For greater certainty, the obligations set out in these Terms of Appointment are enforceable as a court order.
35. Any party to the **FSA**, **SA**, **SSA**, or this **TSA**, or the Associate Lead Assessor may seek enforcement in the Federal Court of the obligations contained in these Terms of Appointment.

B. Language of work

36. The Associate Lead Assessor must provide services in both official languages.

A. Place of Work

37. The Associate Lead Assessor shall provide her own office space, technology, supplies and resources to carry out her roles and responsibilities under the **FSA** and this **SSA**.
38. The Associate Lead Assessor will be provided with a dedicated laptop computer for the duration of the claims assessment process, and which may only be used for this purpose and must be returned upon termination of her appointment.
39. The work will be carried out primarily from the Associate Lead Assessor's place of business in Ottawa.

ROLES AND RESPONSIBILITIES

40. The Associate Lead Assessor, in conjunction with the Lead Assessor, shall develop protocols and processes for the oversight and monitoring of the assessment process for the Category B and C claims of Class Members substantially in accordance with **Schedule "Q"** of the **FSA**.

41. The Associate Lead Assessor will work with the Lead Assessor and the Administrator to ensure the efficient administration of the Category B and C assessment process and the Associate Lead Assessor's mandate.
42. Such coordination with the Lead Assessor and the Administrator shall begin as soon as is reasonably practicable and shall continue throughout the administration of the **FSA** as may be reasonably required from time to time.
43. The Associate Lead Assessor shall perform any of the duties set out in paragraph 9 of **Schedule "A"** of the **SSA**, that may be delegated to her by the Lead Assessor.

PROFESSIONAL FEES

A. Fee Structure

44. Canada shall pay the Associate Lead Assessor for professional services personally rendered by her in accordance with these terms, or any further terms as may be agreed by the Parties in writing, on a monthly basis at a rate of [REDACTED] per hour.
45. The Associate Lead Assessor must not perform any work that would result in professional fees exceeding \$ [REDACTED] per annum, exclusive of HST, except with the express written authorization of counsel for Canada and the authorization of the Court.
46. If, at any time, the Associate Lead Assessor considers that \$ [REDACTED] per annum, exclusive of HST, will be insufficient to complete the duties and responsibilities of the Associate Lead Assessor under the **FSA**, **SA**, **SSA**, and this **TSA**, the Associate Lead Assessor shall notify the Parties forthwith.
47. The Associate Lead Assessor shall notify the Parties when the cost of professional services rendered reaches 80% of \$ [REDACTED] per annum, exclusive of HST.
48. Travel by the Associate Lead Assessor shall be reasonably limited. Where travel is required for the Associate Lead Assessor to perform her duties, reasonable travel expenses shall be billed to Canada as part of the professional services on the basis of rates established in the Government of Canada National Joint Council Travel Directive. If the rates for accommodation set out therein are not sufficient to secure reasonable accommodation, with Canada's prior consent, those rates may be exceeded by a reasonable amount.
49. Canada will reimburse the Associate Lead Assessor for reasonable expenses incurred in connection with the training of Assessors, as well as other reasonable expenses that may be incurred in the performance of her duties under the **FSA**, **SA**, **SSA**, and this **TSA**, provided the Associate Lead Assessor obtains Canada's consent prior to incurring the expenses.

B. Invoicing and Payment Schedule

50. Canada shall pay the Associate Lead Assessor's professional fees covered by the invoice where:
 - (a) An accurate and complete invoice and any other documents required by the **FSA**, **SSA** and this **TSA** have been submitted in accordance with invoicing instructions to be provided by Canada prior to the first billing period and;
 - (b) All documents have been verified by Canada.
51. Professional Fees include all compensation for professional services rendered; no additional compensation for annual leave, statutory holidays, sick leave, overhead, or any other expense shall be payable.
52. The Associate Lead Assessor is not an employee, servant, officer, agent or other emanation of Her Majesty the Queen in Right of Canada, the Lead Assessor, the Administrator, the Plaintiffs, or Class Counsel.

CONFIDENTIALITY

53. The Associate Lead Assessor shall execute a non-disclosure agreement in a form satisfactory to the Parties.
54. The Associate Lead Assessor shall ensure that all Class Member information is stored in a secure location and that only authorized persons who have signed the non-disclosure agreement are permitted to access the information. Printed material will be stored in a locked container in an area that is subject to continuous monitoring by the Associate Lead Assessor.
55. The Associate Lead Assessor shall not store or record Class Member information electronically except in a manner and on devices approved by the Parties or, failing agreement, the Oversight Committee.
56. The Associate Lead Assessor shall promptly notify the Parties of any incident or concern that confidential information has been disclosed to or otherwise obtained by unauthorized persons.
57. Information shall be returned or destroyed in accordance with the **FSA** or as may otherwise be directed by the Court.

REPORTING

58. The Associate Lead Assessor shall assist the Lead Assessor and the Administrator with the preparation of all reports to the Parties monthly pursuant to paragraph 58 of **Schedule "Q"** of the **FSA**.

59. The Associate Lead Assessor shall provide all information required by the Administrator in order for the Administrator to prepare a report within 90 days of the expiry of the Claims Period pursuant to paragraphs 59 and 60 of **Schedule "Q"** of the **FSA**.

INSURANCE

60. If the Associate Lead Assessor is asked to provide legal advice, she will ensure that she maintain appropriate coverage in relation to the provision of such advice.
61. The Associate Lead Assessor shall otherwise maintain professional liability insurance, that is adequate considering the duties and risks associated with this appointment, for a period of at least 12 months after the completion or termination of the assessment mandate. All costs associated with this insurance shall be paid for by the Associate Lead Assessor.
62. The Associate Lead Assessor will provide confirmation of insurance coverage and copies of relevant documents to the Parties, if requested.
63. The Associate Lead Assessor will provide Canada and the Plaintiffs' counsel with thirty (30) days written notice of cancellation of the professional liability insurance mentioned above.
64. Neither compliance nor failure to comply with the insurance requirements set out herein shall relieve the Associate Lead Assessor of her liabilities and obligations under the **FSA**.
65. **Litigation Rights:** Notwithstanding that the Associate Lead Assessor is not an agent of the Crown, pursuant to subsection 5(d) of the *Department of Justice Act*, S.C. 1993, c. J-2, s.1, if a suit is instituted for or against Canada which the insurer would, but for this clause, have the right to pursue or defend on behalf of Canada as an additional insured under the Associate Lead Assessor's insurance policy, the insurer must promptly contact the Attorney General of Canada to agree on legal strategies by sending a letter, by registered mail or by courier, with an acknowledgement of receipt to:

Christine Mohr
Senior General Counsel
Department of Justice Canada
120 Adelaide Street West, Suite #400
Toronto, Ontario M5H 1T1
Phone: (416) 953-9546
Email: christine.mohr@justice.gc.ca

66. Canada reserves the right to co-defend any action brought against the Associate Lead Assessor or Canada. All expenses incurred by Canada to co-defend such actions will be at Canada's expense. If Canada decides to co-defend any action brought against the Associate Lead Assessor or it, and Canada does not agree to a proposed settlement agreed to by the Associate Lead Assessor's insurer and the plaintiff(s) that would result in the settlement or dismissal of the action against Canada, then Canada will be

responsible to the Associate Lead Assessor's insurer for any difference between the proposed settlement amount and the amount finally awarded or paid to the plaintiffs (inclusive of costs and interest) on behalf of Canada.

SCHEDULE "E"

1. Paragraph 37 of Schedule "Q" is amended to read as follows:

37. in determining if a Claimant is eligible for compensation under Categories B1 or B2, the Assessor(s) must find on a balance of probabilities, all of the following:

(a) that the Claimant has not received prior compensation that would render him or her ineligible pursuant to Section 12.01 of the FSA.

[sub-paragraph (a)-(d) become sub-paragraphs (b)-(e)]

2. Paragraph 39 of Schedule "Q" is amended to read as follows:

39. in assessing eligibility for Category C, the Assessors shall confirm the following:

(a) that the Claimant has not received prior compensation that would render him or her ineligible pursuant to Section 12.01 or 12.02 of the FSA;

(b) that where a Claimant is receiving or has received monetary awards referred to in Section 12.03 of the FSA, the Assessor shall determine the amount(s) that have been received for purposes of calculating any reduction in the award.

[sub-paragraphs (a)-(c) become sub-paragraphs (c)-€]

3. Paragraph 40 of Schedule "Q" is amended to read as follows:

40. Once it is determined that a Claimant meets the requirements in paragraph 39, and is eligible for Category C, the Assessors shall assess the level of harm suffered. This assessment shall be based on all the available evidence and the Assessor(s)' application of the evidence having regard to the indicia set out in the following grid:

[no changes to the grid]

4. New paragraph 48(a) is added as follows:

48(a) The Lead Assessor may extend the time periods set out in paragraphs 46-48 where she deems an extension necessary, subject to the requirement established in paragraph 22 that requires all decisions be completed within fourteen (14) months of the Individual Application Deadline.

5. Paragraphs 49-52 of Schedule "Q" are amended to read as follows:

49. All payments shall be administered by the Administrator. The Administrator shall request funds sufficient to make the Initial Payments, and subsequent payments to Class

Members, on a periodic basis as agreed with Canada. Upon receipt of each request, Canada shall make arrangements to transfer the necessary funds to the Administrator, who will then process the Initial Payments and the Additional or Reduced Payments as the case may be.

50. Once the Claims Period has ended, the Administrator shall determine whether, based on the number of Claims received, there are sufficient funds to pay the Categories B and C claims immediately and if so, it shall proceed to make a request to Canada, who shall transfer to the Administrator, the funds required to make the Additional Payments to the Administrator.

51. Where the Administrator determines that there are not sufficient funds to pay the full amounts assessed, it shall determine the Reduced Payments in accordance with the formula set out in Section 7.19 of the FSA, and shall provide this information to Canada, who shall transfer the funds required to make the Reduced Payments to the Administrator.

52. Where the Administrator determines that the total aggregate amount of the Compensation Amounts is less than the Designated Amount, it shall determine the Augmented Compensation Amounts in accordance with the formula set out in Section 7.18 of the FSA, and shall provide this information to Canada, who shall transfer the funds required to make the Augmented Compensation Amount payments to the Administrator.