

Federal Court



Cour fédérale

Date: 20230404

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

Ottawa, Ontario, April 4, 2023

PRESENT: The Honourable Mr. Justice Fothergill

Docket: T-2111-16

**CLASS PROCEEDING**

**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**

**(Motion for Various Amendments Relating to Claims Administration and Processing)**

**UPON** the informal request by the parties for an Order, issued *nunc pro tunc* to March 24, 2023, approving the following amendments, agreed to by the parties, to the Final Settlement Agreement and the Second and Third Supplementary Agreements:

- (a) Extending the term of appointment of the Roster Assessors for an indefinite period commencing on March 25, 2023 and ending upon further Order of this Court;
- (b) Appointing additional Roster Assessors;
- (c) Revoking the appointment of four Roster Assessors;
- (d) Amending sections 1.01 and 3.02 of the Third Supplementary Agreement to appoint an additional Associate Lead Assessor;
- (e) Amending paragraph 13 of Schedule “B” to the Third Supplementary Agreement to increase the hourly rate of the Roster Assessors;
- (f) Amending paragraph 44 of Schedule “D” to the Third Supplementary Agreement to increase the hourly rate of the Associate Lead Assessor(s);
- (g) Amending paragraph 12 of Schedule “A” to the Second Supplementary Agreement to increase the hourly rate of the Lead Assessor; and

- (h) Amending paragraph 48(a) of Schedule “Q” to the Final Settlement Agreement (as amended by Schedule “E” to the Third Supplementary Agreement and further amended by Order dated September 17, 2021) to give the Lead Assessor discretion, after January 24, 2023, to extend the 30 day time period referenced in paragraph 44 of Schedule “Q” up to an additional 30 days, and discretion to extend the deadline for such further period as she may determine in the most exceptional extenuating circumstances;

**AND UPON READING** the materials filed, including the Consent of the parties;

**AND UPON** being satisfied that the parties have agreed that the amendments in question are required in order to allow for the administration and assessment of late claims which may be permitted to proceed by the Administrator pursuant to the Order of this Court dated January 6, 2023;

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

**THIS COURT ORDERS that:**

***Extension of the term of appointment for Roster Assessors***

1. The term of appointment of the Roster Assessors set out in paragraph 7 of Schedule “B” to the Third Supplementary Agreement, and extended by Order dated November 8, 2022, shall be further extended for an indefinite period commencing on March 25, 2023 and ending upon further Order of this Court.

***Changes to the Roster of Assessors & appointment of additional Associate Lead Assessor***

2. The terms of the agreement between the parties, entered into on March 24, 2023, and evidenced by the Consent dated March 24, 2023, to appoint additional Roster Assessors, to revoke the appointment of four Roster Assessors, and to appoint one additional Lead Associate Assessor, are approved.
3. The following individuals are newly appointed as Roster Assessors. The appointment of each new Roster Assessor shall be subject to the terms of appointment found at Sections 2.01, 2.02, 2.03, 2.04, and Schedules “B” and “C”, of the Third Supplementary Agreement, and each of the new Roster Assessors shall be paid in accordance with the rates set out therein, as amended by paragraph 13 of this Order:
  - (a) Marie Langlois
  - (b) Sophie Martel
  - (c) Yeong Gin Jean Yoon

4. The Third Supplementary Agreement, as approved by Order dated October 29, 2020, is incorporated by reference into this Order.
5. No person may bring any action or take any proceeding against 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.
6. The appointments as Roster Assessor of Christie Jefferson, Jay Sengupta, Johanne Cavé and Kathleen Keating are revoked as of March 24, 2023.
7. Kathleen Keating is appointed as an Associate Lead Assessor as of March 25, 2023.
8. In accordance with section 19.04 of the Final Settlement Agreement, the definition of “Associate Lead Assessor” in section 1.01 of the Third Supplementary Agreement is amended as follows (changes underlined):

“Associate Lead Assessor” means the person or persons 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. For greater clarity, references to the “Associate Lead Assessor” shall include any and all Associate Lead Assessors appointed by the Court at a given time;
9. In accordance with section 19.04 of the Final Settlement Agreement, section 3.02 of the Third Supplementary Agreement is amended as follows (changes struck through and underlined):

### **3.02 APPOINTMENT OF ~~EMILY MCCARTHY~~ AS THE 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 Parties have further agreed that Kathleen Keating shall be appointed as an Associate Lead Assessor as of March 25, 2023.

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.

10. In accordance with section 19.04 of the Final Settlement Agreement, paragraph 39 of Schedule "D" to the Third Supplementary Agreement is amended as follows  
(changes struck through):

39. The work will be carried out primarily from the Associate Lead Assessor's place of business ~~in Ottawa.~~

#### ***Amendments to the fee structures for assessors***

11. In accordance with section 19.04 of the Final Settlement Agreement, paragraph 12 of Schedule "A" to the Second Supplementary Agreement is amended as follows  
(changes underlined):

Canada shall pay the 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. Beginning on April 1, 2023, the Lead Assessor shall be paid at a rate of \$ [REDACTED] per hour.

12. In accordance with section 19.04 of the Final Settlement Agreement, paragraph 44 of Schedule “D” to the Third Supplementary Agreement is amended as follows (changes underlined):

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. Beginning on April 1, 2023, the Associate Lead Assessor shall be paid at a rate of \$ [REDACTED] per hour.

13. In accordance with section 19.04 of the Final Settlement Agreement, paragraph 13 of Schedule “B” to the Third Supplementary Agreement is amended as follows (changes underlined):

**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.

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

As of April 1, 2023, Roster Assessors who were already appointed on March 24, 2023 shall be paid at a rate of \$ [REDACTED] per hour, and Roster Assessors who are first appointed on or after March 25, 2023 shall be paid at a rate of \$ [REDACTED] per hour for the first twelve month period following their appointment, and shall thereafter be paid at a rate of \$ [REDACTED] per hour.

***Amendment to Schedule “Q” to the Final Settlement Agreement***

14. In accordance with section 19.04 of the Final Settlement Agreement, paragraph 48(a) of Schedule “Q” to the Final Settlement Agreement (as amended by Schedule “E” to the Third Supplementary Agreement and further amended by Order dated September 17, 2021) is amended as follows (changes underlined):

48(a) The Lead Assessor may extend the time periods set out in paragraphs 44-48 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. After the date that is fourteen (14) months from the Individual Application Deadline, the Lead Assessor may extend the time period set out in paragraph 44 by a maximum of 30 days, save in the most exceptional extenuating circumstances, in which case, she may extend the time period set out in paragraph 44 for such further period as she determines.

***Order is issued nunc pro tunc***

15. This Order is issued *nunc pro tunc* to the date on which the parties’ request was filed, namely March 24, 2023.

“Simon Fothergill”

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Judge