

Federal Court



Cour fédérale

Date: 20180726

Docket: T-2212-16

Citation: 2018 FC 905

Ottawa, Ontario, July 26, 2018

PRESENT: The Honourable Mr. Justice Phelan

BETWEEN:

**JESSICA RIDDLE, WENDY LEE WHITE, and
CATRIONA CHARLIE**

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

ORDER

WHEREAS by Order of this Honourable Court dated May 11, 2018, this Court approved a Settlement Agreement between the Plaintiffs and the Defendants dated November 30, 2017 (the “Settlement Approval Order);

AND WHEREAS the Settlement Approval Order states that a complete, significant, and detailed review must take place in regard to the Administrator for all eventual work pertaining to the Administrator’s responsibilities, to ensure accurate and effective, wide dissemination of meaningful and pertinent information to the attention of all those who have gone through the “Sixties Scoop” and heirs to those who have been subjected to the “Sixties Scoop” as specified in

the Settlement; and, in addition, to supervise and monitor all future work that must be carried out by the Administrator as it pertains to individual payments to Class Members, heirs and others as respectfully specified in the Settlement who will be part of the Exceptions category;

UPON HEARING the motion made by the Plaintiffs, on consent, for an order appointing a Claims Administration Monitor;

AND UPON BEING ADVISED of the Defendant's consent to the form of this Order;

AND UPON HEARING the oral submissions of counsel for the Plaintiffs and counsel for the Defendant;

THIS COURT ORDERS THAT:

1. CA2 Inc. shall be and is hereby appointed as Claims Administrator Monitor and CA2 Inc.'s proposal to serve as Claims Administrator Monitor attached hereto as Schedule "A" shall be and is hereby approved.
2. CA2 Inc. shall not have any interest in Collectiva Class Action Services Inc. at any time during its appointment as Claims Administrator Monitor or during Collectiva Class Action Services Inc.'s administration of the Sixties Scoop Settlement.
3. CA2 Inc. shall report to the Federal Court no less than every six (6) months from the date of its appointment on the status of monitoring of the claims administration until the final completion of the administration of the settlement.
4. Any disputes between CA2 Inc. and Collectiva Class Action Services Inc. shall be resolved by this case management judge.

5. The fees of CA2 Inc. shall be approved by the Exceptions Committee and paid by Her Majesty the Queen in accordance with CA2 Inc.'s proposal.

“Michael L. Phelan”

Judge

SCHEDULE "A"



**PROPOSAL TO SERVE AS
COURT APPOINTED MONITOR**

Settlement of Sixties Scoop Class Action



Class Action Claims Administration

May 29, 2018

Private and Confidential

Koskie Minsky LLP
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3

Attention: Mr. Garth Myers - Co-Counsel for the Plaintiffs

Department of Justice Canada
234 Wellington Street
East Tower - Room 1001
Ottawa, ON K1A 0H8

Attention: Ms. Catharine Moore – Counsel for the Defendant

Dear Sir/Madam:

**Subject: Proposal to serve as court appointed Monitor
Settlement of the Sixties Scoop Class Action**

Her Majesty the Queen in Right of Canada (the "Defendant") and Jessica Riddle, Wendy Lee White, and Catriona Charlie (the "Representative Plaintiffs") through their counsel, the Department of Justice Canada ("Counsel for the Defendant") as well as Koskie Minsky LLP, Klein Lawyers LLP, and Merchant Law Group LLP ("Co-Counsel for the Plaintiffs") have requested that I submit a proposal to assume the role of the court appointed Monitor in the settlement of the Riddle et al. v Her Majesty the Queen matter (Court File No. T-2212-16).

Background

Pursuant to the Order of the Honourable Mr. Justice Shore of the Federal Court dated May 11, 2018 (the "Order"), Collectiva Class Action Services Inc. has been selected to carry out the duties of the Administrator under the terms the Settlement Agreement dated November 30, 2017 (the "Agreement").

The Order states that a complete, significant, and detailed review must take place for all eventual work pertaining to the Administrator's responsibilities, to ensure accurate and effective dissemination of information to claimants and their heirs, and to supervise and monitor all future work that must be carried out by the Administrator. As a consequence, and as an experienced class action claims administration professional, I propose to serve in a Monitor capacity. The role of the Monitor would be to review and report on compliance with the duties of the Administrator prescribed in the Agreement.

I understand that the Administrator's responsibilities include, but are not limited to, the following:

- establishing processes to evaluate timely claim submissions;
- implementing procedures to distribute compensation payments;
- providing the Exceptions Committee with monthly status reports;
- ensuring sufficient resources are deployed to fulfill prescribed duties;
- tracking claims processing and settlement activities for reporting purposes;
- addressing enquiries and notifying claimants of validation decisions;
- responding to correspondence, including regarding compensation payments;
- accommodating claimant language requests on a best efforts basis;
- maintaining a database to determine amounts to be paid by the Defendant; and
- fulfilling other duties as directed by the Federal Court and the Ontario Superior Court of Justice.

Scope

Based on my experience as court appointed Monitor or Settlement Administrator in similar class proceedings listed in Appendix A, I would suggest that a three-phase approach to oversight may be warranted and would comprise:

- i. reviewing the protocols and procedures established by the Administrator to conduct the settlement administration;
- ii. monitoring the activities/outputs of the Administrator throughout the claims intake, processing, validation, and distribution process; and
- iii. reporting to the courts on the Administrator's fulfillment of the duties required under the terms of the Agreement.

Following initial consultation with the Administrator, I envision the following tasks will be required:

- reviewing the delivery of the claims administration function to identify and eliminate any operational/process inefficiencies;
- examining the correspondence language employed by the Administrator to ensure correctness, promote ease of understanding and reduce claimant enquiries;
- advising on bilingual call centre scripts to ensure accurate information is provided and conveyed concisely to potential claimants;
- reviewing the search process to verify that outreach efforts are in adherence to the Address Search Plan outlined in Schedule N;
- evaluating the control measures adopted by the Administrator to validate class member eligibility, including with Canada and the Provinces, and level of payment entitlement;
- identifying the process of compiling class population data, class member eligibility criteria, and supporting documentation requirements;
- confirming the sufficiency and completeness of the database employed by the Administrator in relation to the reporting objectives;
- testing the effectiveness of the database/claims application in determining whether the Designated or Enhanced Amounts are required;
- reviewing the reporting framework developed by the Administrator for monthly status reporting to identify any deficiencies;

- reconciling trust account activities to confirm that the settlement funds are adequately managed and monitored for instances of fraud;
- addressing ad hoc requests from the Exceptions Committee to provide additional information and services;
- preparing reports for the Exceptions Committee, the Federal Court and the Ontario Superior Court of Justice on a predetermined frequency; and
- participating in discussions with the Administrator and scheduled status meetings with members of the Exceptions Committee.

In addition to reviewing, monitoring, and reporting on the Administrator's compliance with the Agreement, I may also provide input on any additional areas of the settlement administration process, as directed by either:

- the Exceptions Committee; or
- the Federal Court and the Ontario Superior Court of Justice.

Reporting

I will communicate the status of my work to the Exceptions Committee on a predetermined basis throughout the engagement or as requested by the Federal Court and the Ontario Superior Court of Justice. Upon completion of the engagement and as requested by the Exceptions Committee, I will prepare and file an affidavit with the Federal Court and the Ontario Superior Court of Justice detailing my observations and findings.

Any written reports, schedules, documents or other materials prepared or provided by me are to be used only for the purpose of managing the settlement administration and will not be disclosed, published or used, in whole or in part, by the settling parties or their counsel for any other purpose without my prior written permission.

Fees

I propose a three-phase approach to fees in order to reflect the broad components of the settlement administration. The phases identified and the corresponding activities anticipated based on our first discussion with the Administrator are as follows:

Phase 1 – Review of Administrator framework (40 hours)

- a. Review documents related to the settlement including: settlement website, application forms, class member correspondence, etc.;
- b. Review bilingual call centre scripts and escalation procedures to identify any areas for improvement;
- c. Review email templates used by the call centre to respond to email queries and ensure consistency with the Agreement;
- d. Review database schema, claims administration application and online portal to ensure that it satisfies the terms of the Agreement; and
- e. Liaise with the Administrator to identify any areas for improvement in call centre scripts, templates and other communication tools to streamline the interaction process with class members.

Phase 2 – Ongoing monitoring of Administrator duties (10 hours per week)

- a. Monitor opt-out management process by reviewing a statistically valid population to ensure opt-out requests are processed appropriately;

- b. Test a statistically valid sample of telephone calls received by the call centre based on data in the Administrator's Outlook system;
- c. Test a statistically valid sample of email messages received by the call centre based on data in the Administrator's Outlook system;
- d. Test the Individual Payment Application process by reviewing a statistically valid population to ensure validation requests are effectively handled;
- e. Monitor and test weekly payment files to ensure accuracy of calculations and payment information (whether address information in the case of a cheque mailing or banking information in the case of direct deposit);
- f. Addressing ad hoc requests from the Exceptions Committee to provide additional information and services;
- g. Provide ongoing status reporting to the Exceptions Committee on a predetermined basis; and
- h. Participate in discussions with the Administrator and scheduled status meetings with members of the Exceptions Committee.

Phase 3 – Reporting on Administrator compliance with Agreement (50 hours)

- a. Review the report of the Administrator to ensure adherence and consistency with the Agreement; and
- b. Prepare a report of the findings of the Monitor to the Federal Court and the Ontario Superior Court of Justice.

Given the limited information regarding the duration of the settlement administration, the provincial and federal government validation process, and the ultimate number of reconsideration requests, the fee estimate outlined below reflects an approximation of the fees required in order to perform the activities listed herein. Subject to the above, the table below should serve to summarize my estimate of fees assuming a 52-week administration period:

	Total Hours	Blended Rate per Hour	Number of Weeks	Fees (\$)
Phase 1	40	325	n/a	13,000
Phase 2	10	325	52	169,000
Phase 3	50	325	n/a	16,250
Total				198,250

My fees will be based on the amount of professional time required at the hourly billing rates listed below, which vary depending upon the experience level of the team members involved. My invoices will also include reasonable out-of-pocket expenses, such as travel costs, and applicable taxes.

A summary of the hourly billing rates for this engagement has been provided for reference.

Resource	Rate (\$)
Director	490
Manager	330
Consultant	250
Analyst	180

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The Defendant will be responsible for the payment of my accounts. My fees, disbursements, and applicable taxes, will be billed every 2 months. Any dispute on these accounts or the scope of my work shall be resolved between myself and the Exception Committee, or by appeal to the Ontario Superior Court of Justice.

The engagement will be under the direction of Eric Khan and a profile has been attached as Appendix B for reference. Eric will be supported by CA2 Inc. team members who will assist with the testing and review processes throughout the engagement.

Please accept this proposal in consideration for assuming the court appointed Monitor role in the settlement of the Sixties Scoop class action.

I appreciate the opportunity to be considered for this important settlement and invite your questions at 416-579-1889.

Yours very truly,

A handwritten signature in black ink, appearing to read 'EK', followed by a horizontal line extending to the right.

Eric Khan
Director
CA2 Inc.

Appendix A: Class Action Experience

My team's multi-jurisdictional class action experience includes matters involving government, securities, financial services, medical, insurance, pensions, price fixing, and product liability claims. The following is a listing of select engagements:

RCMP Harassment and Discrimination Class Action Settlement

- Merlo and Davidson v. Her Majesty the Queen matter – Federal Court

SISIP Disability Benefit Class Action Settlement

- Manuge v. Her Majesty the Queen matter – Federal Court

RCMP Long Term Disability Class Action Settlement

- Buote and White v. Her Majesty the Queen matter – Federal Court

Residential Schools Class Action Settlement

- Sparvier v. The Attorney General of Canada matter – Queen's Bench of Saskatchewan

Royal Canadian Sea Cadets Class Action Settlement

- White v. The Attorney General of Canada matter - Supreme Court of British Columbia

HRT Breast Cancer Class Action Settlement

- Stanway v. Wyeth Canada Inc. et al. – Supreme Court of British Columbia

Bextra/Celebrex Class Action Settlement

- Waheed/Roblin et al. v. Pfizer Canada et al. matter – Ontario and Quebec Superior Courts

Medtronic Sprint Fidelis Leads Class Action Matter

- Robinson v. Medtronic et al. matter – Ontario Superior Court of Justice

Moonshin Tattoo Class Action Settlement

- Travassos v. Peel Region et al. matter - Ontario Superior Court of Justice

Durham Health Class Action Matter

- Rowlands v. Durham Region Health et al. matter - Ontario Superior Court of Justice

Excess Management Fee Class Action Settlement

- Fantl v. Transamerica Life Canada matter - Ontario Superior Court of Justice

Crocus Investment Fund Class Action Settlements

- Bellan v. The Government of Manitoba et al. matter – Manitoba Court of Queen's Bench

Guidant Pacemaker Recall Class Action Matter

- Lambert and Ibbitson v. Guidant et al. matter – Ontario Superior Court of Justice

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Wal-Mart Privacy Breach Class Action Settlement

- Drew v. Walmart Canada Inc. et al. matter – Ontario Superior Court of Justice

Medtronic Defibrillator Recall Class Action Matter

- Peter v. Medtronic et al. matter – Ontario Superior Court of Justice

Southwestern Resources Securities Class Action Settlement

- Stastny v. Southwestern Resources Corp. matter - Quebec, Ontario, and British Columbia Courts

Atlas Cold Storage Income Trust Securities Class Action Settlement

- Simon et al v. Eimskip Atlas Canada Inc. et al. matter – Ontario Superior Court of Justice

FMF Capital Securities Class Action Settlement

- Gould and Leach v. BMO Nesbitt Burns et al. matter – Ontario and Quebec Superior Courts

Liberty Mutual Non-OEM Auto Parts Class Action Settlement

- Hague and O'Brien v. Liberty Mutual Insurance Co. matter – Ontario Superior Court of Justice

Yorkton Securities Book4Golf Class Action Settlement

- Toevs v. Yorkton Securities Inc. matter – Ontario Superior Court of Justice

Bristol-Myers, Baxter & 3M Breast Implant Settlement

- Harrington v. Dow Corning et al. matter – Supreme Court of British Columbia

Dow Corning Breast Implant Settlements

- Doyer v. Dow Corning Corp. matter - Superior Court of Quebec and Supreme Court of British Columbia

Canadian Vitamins Price Fixing National Settlements

- Vitapharm v. F. Hoffman-La Roche et al. matter - Quebec, Ontario, and British Columbia Courts

Acupuncture Class Action Settlement

- Rose v. Pettle and Testaguzza matter- Ontario Superior Court of Justice

TTC Demutualization Proceeds Class Action Settlement

- Signorile et al. v. the Toronto Transit Commission – Ontario Superior Court of Justice

Appendix B: Profile – Eric Khan

As the Director of CA2 Inc., Eric is routinely appointed by the Courts across Canada and the U.S. to assist with the structuring of settlements and the administration of claims processes.

Involved in more than 25 multi-jurisdictional class action proceedings, Eric's in-depth experience in monitoring and administering complex settlements represents a valuable ally to judges and litigators alike. He has had overall management responsibility for class action/claims processing engagements in a range of areas including government, securities, consumer finance, pension, insurance, medical, product liability and price fixing claims.

Conversant in both official languages, Eric has provided expert testimony to assist the Court at various stages of litigation. Having authored numerous reports to the Court, and published articles and technical papers, Eric is a frequent speaker at mass tort litigation and class action conferences.

As a member of the Law Commission of Ontario's Class Action Advisory Group, Eric provided commentary on the impact and effectiveness of potential recommendations for legislative reform of the Class Proceedings Act.