

Federal Court



Cour fédérale

Date: 20170113

Docket: T-1685-16

Citation: 2017 FC 51

Ottawa, Ontario, January 13, 2017

PRESENT: The Honourable Madam Justice McDonald

BETWEEN:

**JANET MERLO AND LINDA GILLIS
DAVIDSON**

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

ORDER AND REASONS

I. Introduction

[1] On October 6, 2016 the Commissioner of the Royal Canadian Mounted Police [RCMP], Bob Paulson, announced that a settlement agreement had been reached in the class action lawsuits filed by Janet Merlo and Linda Gillis Davidson [The Plaintiffs]. The settlement is intended to provide financial redress to females in the RCMP who have experienced gender-based discrimination and harassment. This is a motion for certification of the action as a class

proceeding to allow the parties to move forward with the implementation of this settlement agreement throughout Canada. The parties are in agreement on the terms of the certification. For the reasons that follow, the certification motion is granted.

II. Background

[2] The action for which certification is sought is the consolidation of an action filed in British Columbia in 2012 by Ms. Merlo [Merlo Action], and an action filed in Ontario in 2015 by Ms. Davidson [Davidson Action]. In their action, they make allegations of gender-based bullying, discrimination, and harassment, which both Ms. Merlo and Ms. Davidson say they experienced while they were with the RCMP. In addition, Ms. Davidson alleges discrimination on the basis of sexual orientation. The Plaintiffs allege this harassment and discrimination has impacted their careers within the RCMP, and has caused them to suffer physical and psychological damage, personal expense, and loss of income. The Plaintiffs also bring this action on behalf of those who are entitled to assert a derivative claim in accordance with the applicable family law legislation arising from a family relationship.

[3] The Plaintiffs allege that the RCMP and its management failed to fulfill its statutory, common law, and contractual duties to provide them with a work environment free of discrimination, harassment and bullying. They claim that complaints which were made, were not properly investigated by the RCMP. The Plaintiff, Ms. Davidson, filed grievances in response to the discrimination and harassment she suffered, but she says they were not adjudicated in accordance with the *Royal Canadian Mounted Police Act*, R.S.C., 1985, c. R-10 [RCMP Act]. They also claim that they suffered from retaliatory abuse from male members of the RCMP in

response to their complaints. Both Plaintiffs have been diagnosed with medical conditions as a consequence of the harassment and discrimination they endured while with the RCMP.

[4] Although the claims are made against the RCMP as an institution, the Attorney General of Canada is the proper Defendant by virtue of the operation of section 36 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

[5] Certification as class proceedings was sought in both the Merlo Action in British Columbia and the Davidson Action in Ontario. However, both of these actions were held in abeyance when the parties engaged in settlement discussions in 2015 and into 2016. Those discussions culminated in the settlement agreement announced by Commissioner Paulson, on October 6, 2016.

[6] The Plaintiffs, Janet Merlo and Linda Gillis Davidson, seek an order certifying this action as a class proceeding for the purpose of settlement and appointing them as the representative Plaintiffs.

III. Issue

[7] The sole issue is whether this action should be certified as a class proceeding pursuant to Rule 334.16 of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*].

IV. Analysis

[8] Class action legislation is remedial legislation, which is to be given a broad, liberal and purposive interpretation in order to achieve its foundational policy objectives of access to justice, judicial economy, and behaviour modification (*Hollick v Toronto (City)*, 2001 SCC 68 [*Hollick*] at paras 14-16).

[9] Certification is an initial procedural step to determine if it is appropriate for the matter to proceed as a class proceeding. The analysis at the certification stage is not a review of the merits of the claim, rather, the focus is on the form of the action and whether it can appropriately go forward as a class action (*Hollick* at para 16).

[10] The evidentiary standard on a certification motion is low. In fact, in the settlement context, such as here, courts have generally engaged in a less vigorous analysis of the certification criteria (see *Gariepy v. Shell Oil Co.*, [2002] OJ No 4022 at para 27).

[11] In the *Federal Court Rules*, the criteria for certification of a class proceeding is outlined in Rule 334.16(1) as follows:

334.16 (1) Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if

(a) the pleadings disclose a reasonable cause of action;

334.16 (1) Sous réserve du paragraphe (3), le juge autorise une instance comme recours collectif si les conditions suivantes sont réunies :

a) les actes de procédure révèlent une cause d'action valable;

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| <p>(b) there is an identifiable class of two or more persons;</p> | <p>b) il existe un groupe identifiable formé d'au moins deux personnes;</p> |
| <p>(c) the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;</p> | <p>c) les réclamations des membres du groupe soulèvent des points de droit ou de fait communs, que ceux-ci prédominent ou non sur ceux qui ne concernent qu'un membre;</p> |
| <p>(d) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and</p> | <p>d) le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs;</p> |
| <p>(e) there is a representative plaintiff or applicant who</p> | <p>e) il existe un représentant demandeur qui :</p> |
| <p>(i) would fairly and adequately represent the interests of the class,</p> | <p>(i) représenterait de façon équitable et adéquate les intérêts du groupe,</p> |
| <p>(ii) has prepared a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing,</p> | <p>(ii) a élaboré un plan qui propose une méthode efficace pour poursuivre l'instance au nom du groupe et tenir les membres du groupe informés de son déroulement,</p> |
| <p>(iii) does not have, on the common questions of law or fact, an interest that is in conflict with the interests of other class members, and</p> | <p>(iii) n'a pas de conflit d'intérêts avec d'autres membres du groupe en ce qui concerne les points de droit ou de fait communs,</p> |
| <p>(iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record.</p> | <p>(iv) communique un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre lui et l'avocat inscrit au dossier.</p> |

A. *Reasonable Cause of Action*

[12] For the purpose of determining if the action discloses a reasonable cause of action, it is assumed that the facts outlined in the Statement of Claim are true (*Condon v Canada*, 2015 FCA 159 at para13).

[13] Here, the Statement of Claim asserts claims in negligence, breach of contract and allegations of breach of section 15 of the *Charter*. The Statement of Claim outlines the factual events which form the foundation for these claims.

[14] Based upon the facts contained in the Statement of Claim, I am satisfied that a reasonable cause of action has been established, as required by Rule 334.16(1)(a).

B. *Identifiable Class*

[15] The purpose of a class description is to have a clear definition of those who may be entitled to relief as part of the class, and to provide objective criteria to identify possible members of the class (*Western Canadian Shopping Centres Inc. v Dutton*, 2001 SCC 46 at para 38).

[16] That said, class members are not required to have identical claims (see *Hollick* at para 21) and it is not necessary at the certification stage to be satisfied that each class member would be successful in establishing a claim (*Cloud v Canada (Attorney General)*, [2004] OJ No 4924 [*Cloud*] at para 45).

[17] Here the parties propose the class be defined as follows:

Primary Class Members: All female current and former living Regular Members, Civilian Members and Public Service Employees (who are appointed by the Commissioner of the RCMP under the delegated authority of the Public Service Commission pursuant to the *Public Service Employment Act*, R.S.C., 1985, c. P-32; amended S.C. 2003, c. 22, ss.12 and 13) who worked within the RCMP at any time during the Class Period. The Class Period is September 16, 1974, to the date the Settlement receives court approval.

For the purposes of the Settlement, “Regular Members” includes Regular Members, Special Constables, Cadets, Auxiliary Constables, Special Constable Members, and Reserve Members.

For the purpose of the Settlement, “Public Service Employees” includes Temporary Civilian Employees who, prior to 2014 were appointed under the now-repealed subsection 10(2) of the RCMP Act, R.S.C., 1985, c. R-10.

Secondary Class Members: All persons who have a derivative Claim in accordance with applicable family law legislation arising from a family relationship with a Primary Class Member.

[18] I am satisfied that the class definition of the Primary Class Members, although potentially numbering in the thousands, is nonetheless clearly identifiable.

[19] With respect to the Secondary Class Members, family law classes have been certified in other class proceedings involving claims against government agencies (*Dolmage v Ontario*, 2010 ONSC 1726 at paras 154-155). In the circumstances, I am satisfied that it is appropriate to include a secondary class. Considering that the secondary class is a derivative of the Primary Class, as a class, it is also identifiable.

[20] The Class descriptions meet the requirement of Rule 334.16(1)(b).

C. *Common questions*

[21] The common question is the “substantial ingredient” of each Class Member’s claim (*Hollick*, at para 18). It allows the claim to proceed as a representative one and avoids duplication of fact-finding or legal analysis (*Rumley v British Columbia*, 2001 SCC 69 at para 29).

[22] In *Vivendi Canada Inc. v Dell’Aniello*, 2014 SCC 1, at para 72, the Supreme Court of Canada stated that the common questions requirement constitutes a low bar. In *Pro-Sys Consultants Ltd. v Microsoft Corporation*, 2013 SCC 57 at para 108, the Supreme Court of Canada confirmed that a Court should take a purposive approach in assessing common issues. Additionally, it stated that Class members do not need to be identically situated vis-à-vis the defendant, nor is it necessary that the common issues predominate over non-common issues.

[23] Here, the parties have proposed the following as the common question: Is the Defendant liable to the Class?

[24] The Plaintiffs submit that the liability of the Defendant is the common question which applies to each member of the Class who has a claim arising out of their treatment as a female working within the RCMP. The resolution of this common question is necessary to the resolution of each Class Member’s claim. As well, the answer to this question will avoid duplication of fact-finding and legal analysis.

[25] As noted by the Ontario Court of Appeal in *Cloud*, at paras 64 – 66, even if aspects of liability and damages will have to be assessed individually, that does not remove the advantage of resolving the common issue.

[26] I am satisfied that the common question objective, as required by Rule 334.16(1)(c) is met in this case.

D. *Is a Class Proceeding the Preferable Procedure?*

[27] The preferability analysis takes into consideration the principal goals of class actions as outlined in *Hollick* as follows:

[15] First, by aggregating similar individual actions, class actions serve judicial economy by avoiding unnecessary duplication in fact-finding and legal analysis. Second, by distributing fixed litigation costs amongst a large number of class members, class actions improve access to justice by making economical the prosecution of claims that any one class member would find too costly to prosecute on his or her own. Third, class actions serve efficiency and justice by ensuring that actual and potential wrongdoers modify their behaviour to take full account of the harm they are causing, or might cause, to the public.

[28] Rule 334.16(2) of the *Federal Courts Rules* provides a list of factors that must be considered.

[29] Based upon the information provided by the RCMP, there may be as many as 20,000 females who qualify as Primary Class Members. Considering the potential size of the Primary Class, individual actions would be inefficient and uneconomic. There is no evidence that a significant number of the Class Members have expressed an interest in individually controlling

the prosecution of their own claim. Here, distribution of the costs of the litigation across a class of this size may be the Class Members' only means of achieving access to justice. Finally, there is the reality that a large number of the proposed class members remain employed within the RCMP and may fear reprisal if they pursue individual claims.

[30] These factors strongly weigh in favor certification of this matter as a class proceeding, as it achieves the objectives outlined in *Hollick* of access to justice, judicial economy, and behaviour modification.

E. *Appropriateness of the representative Plaintiffs*

[31] The parties submit that the proposed representative Plaintiffs, Ms. Merlo and Ms. Davidson, adequately represent the interests of the Class. They have both provided evidence of the gender-based discrimination and harassment they personally experienced while working within the RCMP. In their Affidavits, both Ms. Merlo and Ms. Davidson have indicated their willingness to act in this capacity and their willingness to act in the best interests of the Class. Additionally, since commencing their own actions, they have demonstrated a willingness to put forward their stories for scrutiny by the Court, the Defendant, and the public at large. They have also had communication with Class Members across Canada.

[32] I am satisfied that Ms. Merlo and Ms. Davidson meet the requirements to be considered as the representative Plaintiffs for the proposed class action, as required by Rule 334.16(1)(e).

F. *Litigation Plan*

[33] The parties have jointly provided a detailed and robust notice plan that outlines the communication plan and the steps by which the Class Members will be notified of the Certification and the proposed settlement. The plan contains a workable method of advancing the proceeding on behalf of the Class and ensuring a process is in place to allow for the independent assessment of each Class Member's claim. An Independent Assessor has been chosen by the parties who will take steps to notify Class Members of the proceeding and the settlement.

[34] To facilitate providing notice to the Class by direct mailing, the parties request an order that the RCMP, and other federal government departments or agencies that might have contact information on potential Class Members, be directed to provide that information to a designated contact with the RCMP.

[35] I am satisfied that the disclosure of this confidential information is for the benefit of the female to whom it relates and I am further satisfied that the information will be protected by requiring that it is only to be disclosed to the RCMP designated contact and to the Independent Assessor.

V. Conclusion

[36] For the reasons outlined above, I allow the motion for certification of this action as a Class proceeding.

[37] Pursuant to Rule 334.39 (1) of the *Federal Courts Rules* there will be no costs.

ORDER

THIS COURT ORDERS that:

1. For the purposes of this settlement, this action is, by consent, certified as a class proceeding against the Defendant, Her Majesty the Queen. This class proceeding will be decertified if the Settlement Agreement entered into by the parties is not approved by this Court, or if this Court's approval of the Settlement Agreement is reversed on appeal, or if the Defendant exercises its right to terminate the Settlement Agreement pursuant to Article 5.02 of the Settlement Agreement;
2. In the event the Settlement Agreement is not approved and the action is decertified as a class proceeding, the Plaintiffs are at liberty to continue the action and the Defendant retains the right to oppose certification and defend the action;
3. The Class is defined as:
 - a. Primary Class Members: All female current and former living Regular Members, Civilian Members and Public Service Employees (who are appointed by the Commissioner of the RCMP under the delegated authority of the Public Service Commission pursuant to the *Public Service Employment Act*, R.S.C., 1985, c. P-32; amended S.C. 2003, c. 22, ss.12 and 13) who worked within the RCMP at any time during the Class Period. The Class Period is September 16, 1974, to the date the Settlement receives court approval.
 - i. For the purposes of the Settlement, "Regular Members" includes Regular Members, Special Constables, Cadets, Auxiliary Constables, Special Constable Members, and Reserve Members.

- ii. For the purpose of the Settlement, “Public Service Employees” includes Temporary Civilian Employees who, prior to 2014 were appointed under the now-repealed subsection 10(2) of the *RCMP Act*, R.S.C., 1985, c. R-10.
 - b. Secondary Class Members: All persons who have a derivative Claim in accordance with applicable family law legislation arising from a family relationship with a Primary Class Member.
4. Janet Merlo and Linda Gillis Davidson are appointed as the Representative Plaintiffs for the Class;
5. The Representative Plaintiffs allege, on behalf of the Class, that the Defendant was negligent and violated their rights under s. 15 of the *Canadian Charter of Rights and Freedoms* in breaching duties to ensure that Primary Class Members could work in an environment free of gender and sexual orientation based discrimination and harassment;
6. The Class claims the following relief:
 - a. General damages and special damages;
 - b. Punitive damages;
 - c. Damages pursuant to the *Canadian Charter of Rights and Freedoms*;
 - d. Punitive damages pursuant to the *Charter of Human rights and Freedoms and the Civil Code of Quebec*;
 - e. Pre-judgment interest; and
 - f. Costs.
7. The following is certified as the common issue:

- a. Is the Defendant liable to the Class?
8. Klein Lawyers LLP and Kim Orr Barristers P.C., are appointed as Class Counsel;
9. The Notice of Certification and Settlement Approval Hearing, substantially in the form and content attached to this Order as Schedule “A”, is approved [the Notice]. The Notice shall be made available in both English and French. The Notice will be distributed substantially in the manner set out in the Notice Plan attached to this Order as Schedule “B”. The Opt Out Form, substantially in the form and content attached to this Order as Schedule “C” is approved;
10. The cost of publication of the Notice in accordance with the Notice Plan shall be paid by the Defendant;
11. For the purposes of facilitating the Notice and Class Member verification, the RCMP and other federal government departments and agencies who are reasonably expected to have relevant names and contact information shall make reasonable efforts to identify and provide to the RCMP Designated Contact, referred to in Article 3.03(2)(a) of the Settlement Agreement, the names and last known address or other contact information of women who were female Regular Members, Civilian Members or Public Service Employees, as defined in the Settlement Agreement, who worked within the RCMP from September 16, 1974 to date, except where disclosure of such information is prohibited by law;
12. The Designated Contact shall release the information referred to in paragraph 11 above to the Independent Assessor only;

13. Class Members may opt out of the class proceeding by delivering a complete, signed Opt Out Form to Klein Lawyers LLP or Kim Orr Barristers P.C. at the addresses stated on the Opt Out Form on the date specified; and
14. No costs are payable on this motion for certification in accordance with Rule 334.39 of the *Federal Courts Rules*.

"Ann Marie McDonald"

Judge

SCHEDULE A

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

RCMP Gender Harassment and Discrimination Class Action

If you are a female or identified as a female and were an RCMP Regular Member (for purposes of this Proposed Settlement includes Regular Members, Special Constables, Cadets, Auxiliary Constables, Special Constable Members, and Reserve Members), Civilian Member or Public Service Employee (for purposes of this Proposed Settlement includes Temporary Civilian Employees) working within the RCMP, this notice may affect your legal rights. Please read it carefully.

Class action lawsuits were initiated alleging gender based harassment and discrimination within the RCMP. The Defendants, while not admitting liability, have agreed to a settlement of these lawsuits. A federal court class action has been certified on consent, conditional on court approval of the settlement.

Who is Eligible for the Proposed Settlement?

To be eligible to participate in the settlement, you must be a member of the class. The class is defined as:

Primary Class Members: female current and former living Regular Members, Civilian Members and Public Service Employees (who are appointed by the Commissioner of the RCMP under the delegated authority of the Public Service Commission pursuant to the *Public Service Employment Act*, R.S.C., 1985, c. P-32; amended S.C. 2003, c. 22, ss.12, 13) who worked within the RCMP during the Class Period who experienced and/or continue to experience gender and sexual orientation based harassment and discrimination while working in the RCMP during the Class Period, and who have not opted out or are not deemed to have opted out of the Class Action on or before the expiry of the Opt Out Period.

For the purposes of this Settlement "**Regular Members**" includes Regular Members, Special Constables, Cadets, Auxiliary Constables, Special Constable Members, and Reserve Members

For the purposes of this Settlement "**Public Service Employees**" includes Temporary Civilian Employees who, prior to 2014 were appointed under the now- repealed subsection 10(2) of the *RCMP Act*, R.S.C., 1985, c. R-10;

Secondary Class Members: all persons who have a derivative claim in accordance with applicable family law legislation arising from a family relationship with a member of the Primary Class.

If you *do not* wish to participate in the class action, you must deliver a signed Opt-Out Form to Class Counsel received or postmarked no later than *****, 2017. If you do not exclude yourself by that date, you will be included in this lawsuit and will be bound by the court's judgement on the settlement. The Opt-Out Form can be obtained from Class Counsel at the address below. It is also available on Class Counsel's websites.

If you have an ongoing lawsuit with respect to gender or sexual orientation based harassment or discrimination in the RCMP, and you wish to participate in the proposed class action settlement, you must discontinue your lawsuit before ****, 2017. If you do not, you will be deemed by s. 334.21(2) of the Federal Courts Rules, SOR/98 -106 to have opted out of the class action. Please contact your lawyer to discuss your options.

The Terms of the Proposed Settlement

The settlement contains numerous change initiatives directed at eliminating workplace harassment and discrimination in the RCMP. The settlement also provides compensation for members of the Primary Class who experienced gender or sexual orientation based harassment or discrimination while working in the RCMP during the Class Period. Compensation is available for Secondary Class Members where the Primary Class Member's Claim is assessed at either of the two highest severity levels.

You can obtain a copy of the settlement agreement and the applicable schedules by contacting Class Counsel at the address below. These documents are also available on Class Counsel's websites.

The Approval Hearing and Your Right to Participate

A motion to approve the settlement is scheduled to be heard on **, 2017 at 10 am at the Federal Court of Canada, Trial Division, ****. Class Counsel will also ask the court to approve an award of fees and disbursements for their work in achieving the settlement.

If you agree with the proposed settlement, you do not have to do anything at this time. If the court approves the settlement, a notice will be published setting out the procedures for submitting a Claim.

If you disagree with the proposed settlement, you have the right to object. You may do so by delivering a letter to Class Counsel in advance of the hearing, which Class Counsel will then provide to the court. In your letter, you should provide your name, contact information, and a brief statement of the nature and reasons for your objection.

What are the Financial Consequences?

If the settlement is approved by the court and you have not opted out of the class action prior to the opt-out deadline, you will be bound by the terms of the settlement.

The defendants have agreed to pay Class Counsel's disbursements and are making a contribution toward class counsel fees. Class Counsel will request a further class counsel fee of 15% plus applicable sales tax payable from the compensation awarded to class members under the settlement. The award of class counsel fees is subject to court approval.

For More Information

For more information about the settlement, contact Class Counsel at:

SCHEDULE B

NOTICE PLAN

Prepared for the Office of the Independent Assessor

Merlo Davidson Settlement

by

Versailles communication

December 30, 2016

INTRODUCTION

The Government of Canada has agreed to an out-of-court settlement between the RCMP and the plaintiffs («parties») in two provincial class-action lawsuits concerning discrimination and harassment in the RCMP based on gender and/ or sexual orientation.

As part of the settlement the parties agreed to certify the action as a class action in the Federal Court and name an Independent Assessor, the Honourable Michel Bastarache, C.C., Q.C., to conduct the claims assessment process. The parties also agreed that the Independent Assessor would be responsible for notifying potential class members of the certification of the action and that a settlement approval hearing would be held on a specified date as required by the *Federal Courts Rules*. Accordingly, the Independent Assessor has prepared this Notice Plan for the Court's approval consistent with the *Federal Courts Rules* and the underlying principle of proportionality.

BACKGROUND TO THE NOTICE PLAN

There has already been a significant amount of publicity concerning the Merlo Davidson class action and its proposed settlement. On October 6, 2016, the parties held a press conference to announce their intention to settle these class actions which was widely attended by national and local media outlets and reported widely in various media including print and television. There were also approximately 367 social media posts on the subject, in the first 24 hours only.

The Independent Assessor's website (www.merlodavidson.ca) was launched on October 7, 2016. All the information relevant to the proposed settlement and to the Independent Assessor's mandate can be found there, as well as all official documents. The website is updated on an ongoing basis.

The RCMP has created messages to redirect inquiries related to the claim process to the Independent Assessor's Office and website. Class counsel's websites also carry information related to the proposed Class Action.

Statistics indicate sustained interest for the Independent Assessor's website. Available data collected from Google Analytics indicate that the Independent Assessor's website is an effective source of information. See Schedule B.

The Independent Assessor has also created a Facebook page and posts notices on Twitter.

SUMMARY OF THE NOTICE PLAN

This Notice Plan proposes that the following measures be taken to inform potential class members of the certification and upcoming settlement approval hearing:

1. The Notice of Certification and Settlement Approval Hearing and the Notice of Settlement Approval (the Notices) will be mailed directly to potential class members whose names and addresses will be provided to the Assessor by the RCMP.
2. Publishing the Notices on the Merlo Davidson website, class counsel websites, RCMP website and intranet. Posting links to the Notices on social media.
3. Publishing the Notices in major Canadian newspapers. Simultaneously, an advertising campaign on Facebook will also create awareness of the Notices and provide access to them as well as to more detailed information about the settlement.
4. Posting the Notices in all RCMP physical premises.
5. Any other methods stipulated by the Court.

The measures outlined in this Notice Plan will be implemented in concert and will likely be complemented by informal communication between potential class members, their friends and family.

1. DIRECT MAIL TO POTENTIAL CLASS MEMBERS

Following an order of this Court, the RCMP will forward to the Independent Assessor a list of past and present female members and employees from September 16, 1974 to the present. This list will be used to determine to whom the Notices will be mailed and to which address.

The RCMP will make best efforts to ensure that the list is complete and comprehensive by using all the sources of information available to it. The RCMP will also make best efforts to exclude from the list individuals who it knows to be deceased.

The Independent Assessor will send all potential class members, identified by the RCMP, a copy of the Notices.

2. POSTINGS ON WEBSITES AND SOCIAL MEDIA

The Notices will also be posted on the following websites:

- Office of the Independent Assessor;
- RCMP internal and external websites; and,
- Class counsel websites.

In addition, the Independent Assessor will publish a link to the Notices on his Facebook page and on his Twitter account.

Advertisements on Facebook will also be purchased linking to the Notices. This has been shown to be a highly effective way of reaching women, especially younger age groups (see Schedule D).

3. PRINT MEDIA

The Notices will also be publicized in major Canadian newspapers.

A media agency specialized in managing media investments has prepared a plan to reach out to our target audience. The media plan is based on an analysis of the information provided by the RCMP relating to the geographical and age distribution of Class Members (see Schedule D).

The Independent Assessor will place the Notices found at Appendices 1 and 2 of Schedule A to the Settlement Agreement in 32 newspapers selected for the campaign. These Notices will provide the essential information, while referring class members to the merlodavidson.ca website, or to our toll-free telephone number, to obtain other related information.

The newspaper advertising will be combined with a social media campaign on Facebook. This represents a proportional approach to the utilization of print media.

4. POSTING OF THE NOTICES IN RCMP OFFICES

The RCMP will post, for X days, a paper copy of the Notices in all detachments and other RCMP premises in a location that it considers to be visible and accessible to potential class members.

5. OTHER MEASURES

The Court may, in its discretion, require the Independent Assessor to give notice to potential claimants in any manner that is not set out in this Notice Plan.

6. EVALUATION MEASURES

Several indicators will be closely monitored to evaluate the efficiency of the Independent Assessor's Notices and Communication Plan. These include:

Media coverage

- Number of media present at the October 6th press conference
- Coverage
- Follow-up requests

Website and Social Media

- Number of visits to the different pages of the website and social media
- Number of downloads of forms, once they become available

Direct requests to the Independent Assessor

- 1-800 information line (number of calls and topics)
- info@merlodavidson e-mail (number of incoming requests for information and topics)

Direct mail

- Number of envelopes mailed vs. approximate number of women that are or have been in the employ of the RCMP since 1974. See «Target Audience in Schedule D.
- Number of delivered/returned envelopes
- Number of requests for forms, either by telephone or email

Advertising program (traditional and social media)

- Reach and frequency are calculated beforehand using recognized statistical tools. Numerous other measures (outlined in Schedule C) will be used such as shares, likes, engagement rate, etc.

CONCLUSION

This Notice Plan has been prepared in line with best communications practices, in a manner consistent with the *Federal Courts Rules* and with the principle of proportionality in mind.

The combination of targeted mailings, media, Internet, social media campaigns and physical posting in RCMP premises are designed to ensure that almost all class members will receive Notices of the certification of the class action, their right to opt-out, the date of the upcoming settlement approval hearing, and the approval of the settlement.

The measures outlined in this Notice Plan will be implemented in concert and be complemented by informal communications, notably word of mouth between potential class members, their friends and family.

SCHEDULE A

October 6th Press Conference / Media who attended the event :

Global News	La Presse	CTV
Ottawa Citizen	CBC	Globe and Mail
IPolitics	CTV	The Tyee
City TV - Rogers Radio	Agence QMI	TVA
City News	CBC	CPAC
Radio-Canada	Toronto Star	CBC
Radio-Canada	Canadian Press	CBC Vancouver

Overview of the press coverage:

Major television and radio networks featured live coverage of the press conference held October 6, 2016 in the morning. The coverage continued both in print and electronic media on October 7, garnering "... extensive national media coverage, specifically in print. Articles by the Canadian Press and Postmedia were featured in multiple dailies across Canada. Overall, media coverage tended to focus on the statements made yesterday by Commissioner Paulson, Public Safety Minister Ralph Goodale and former RCMP members Janet Merlo and Linda Gillis Davidson, who were also a part of yesterday's press conference, as well as going into details about how the settlement process will work, how claims will be processed, amounts that will be owed, etc. Majority of articles, editorials/opinion pieces and comments/statements from stakeholders noted how yesterday's announcement was a positive step forward."¹

¹ Media snapshot, PSP Media Centre. Detailed analyses of the coverage is also available.

SCHEDULE B

Google Analytics for www.merlodavidson.ca

October 7 to November 23, 2016

Available data collected from Google Analytics indicate that the Independent Assessor's website is an effective source of information. A Google Adwords campaign was conducted between October 14 and November 14, 2016 to position the website with our target audience (see also Schedule C). Promotion of the website will be ramped up as we near the operational stage.

Here are the main statistics pertaining to the website:

Number of visits(October 8 to November 23, 2016)	5 127
Number of pages viewed	18 580
Number of pages per visit	3.62
New visitors	3 382
Returning visitors	1 745
Average number of visits per day	40
Visit average (minutes)	3.2

October 12-14: When the RCMP posted a notice on its website redirecting traffic to our own website, the number of visits increased to 600 visits per day.

Most read pages: English home page (4 483 visits)
Assert your rights (1 767 visits)

The number of returning visitors indicates their interest in following the updates to the website.

By far, most visits originate from Ottawa (1 680 visits, one out of every three visits). The other cities of origin, by decreasing order: Montreal (226), Vancouver (184), Calgary (141), Toronto (115), Surrey (111), Winnipeg (104).

SCHEDULE C

Google Adwords Campaign

A Google Adwords campaign was conducted between October 14 and November 14 to position the website with our target audience.

Predictably, activity is significantly larger in English than in French, as were the statistics collected through Google Analytics.

This campaign increased the number of visitors. It was also very useful in identifying the most effective key words that we will introduce throughout the website for search engine optimization purposes.

The campaign will be re-activated before the Federal Court hearing.

Performance Report – SEM

Campaign period: October 14 to November 14

Campagnes	Impressions	Clics	Taux de clics	Coût par clic	% des possibilités d'impressions
Anglais	5,372	321	5.98 %	CA\$1.52	92.51%
Français	167	25	14.97 %	CA\$1.51	93.30%

E/PACEM

Annonces les plus performantes - EN

Annonces textes	Impressions	Clics vers le site web	Taux de clic	Coût par clic
RCMP Class Action Are you a victim? Are you worried? Are you working or have you retired in the RCMP? Call for free today.	3,547	199	5.61 %	CA\$1.41
Class Action against RCMP Are you a victim of the RCMP? Are you worried or stressed? Are you working or have you retired? Call for free today.	1,080	74	6.85 %	CA\$1.91
Class Action against RCMP Do you work for the RCMP? Are you stressed? Have you retired? Call our toll free number today.	745	48	6.44 %	CA\$1.33

E/PACEM

Annonces les plus performantes - FR

Annonces textes	Impressions	Clics vers le site web	Taux de clic	Coût par clic
Requiescitez les victimes ORC Vous êtes victime de la ORC ? Appelez nous maintenant! Vous y êtes déjà ou avez déjà travaillé ? Appelez nous maintenant.	108	16	14.81 %	CA\$1.52
Requiescitez les victimes ORC Vous êtes victime de la ORC ? Appelez nous maintenant! Vous y êtes déjà travaillé ? Informez-vous. Appelez nous maintenant.	45	8	17.78 %	CA\$1.49
Requiescitez les victimes ORC Vous êtes victime de la ORC ? Appelez nous maintenant! Vous êtes déjà à la ORC ou y avez déjà travaillé ? Appelez nous maintenant.	14	1	7.14 %	CA\$1.49

E/PACEM

Mots-clés les plus performants (Top10) - EN

Mots-clés	Clics	Impressions	CTR	Coût par clic moyen
class action lawsuit rcmp	61	985	6.19%	CA\$1.89
rcmp class action lawsuit	32	267	11.99%	CA\$0.98
rcmp harassment	28	1,350	2.07%	CA\$1.37
RCMP Class Action	22	203	10.84%	CA\$0.95
class action rcmp	21	269	7.81%	CA\$1.92
law suit rcmp	17	225	7.56%	CA\$1.01
rcmp harassment suit	16	485	3.30%	CA\$2.05
merlo davidson	14	49	28.57%	CA\$1.20
rcmp class action	13	96	13.54%	CA\$2.29
Class Action RCMP	11	60	18.33%	CA\$2.02

E/PACEM

Mots-clés les plus performants (Top10) - FR

Mots-clés	Clics	Impressions	CTR	Coût par clic moyen
Harcèlement GRC	13	103	12.62%	CA\$2.25
merlo davidson	6	11	54.55%	CA\$0.53
Recours collectif GRC	5	40	12.50%	CA\$0.73
harcelement grc	1	5	20.00%	CA\$1.61
Discrimination femmes GRC	0	0	0.00%	CA\$0.00
Entente compensation financière femmes membres GRC	0	0	0.00%	CA\$0.00
Femmes membres GRC indemnisation	0	0	0.00%	CA\$0.00
Intimidation femmes membres GRC	0	0	0.00%	CA\$0.00
Poursuite GRC	0	8	0.00%	CA\$0.00

SCHEDULE D

Media Plan

A media plan was prepared by a specialized agency. This agency follows recognized, state-of-the-art best practices.

The advertising will be carried in major Canadian newspapers throughout the country and on Facebook.

Target audience

The approximate total number of RCMP female members or public service employees who presently work for or have in the past worked for the RCMP is 17 552:

- Between April 1, 1974 and 2015, the RCMP "newly hired " 7 940 female members.
- Between April 1, 1998 and 2015, the RCMP appointed 9 612 public service employees.

The number of female RCMP members or public service employees who were working for the RCMP as of November 1, 2015 is 11 691.

Why Newspapers ?

- Well-suited to information-driven advertising.
- The ad can be cut out and retained by the Class Member or by a family member or friend and passed on to her.
- Major newspapers are credible and this credibility reinforces the credibility of the ad.
- Newspapers allow good market penetration, as well as good geographical selectivity.

According to Vividata, regular newspaper readers consume less social media than average.

Selection criteria

A total of 32 Canadian newspapers have been included in our campaign. They were selected according to the following criteria:

- Present in the major cities of all provinces.
- Circulation and number of readers are quantifiable and verifiable.
- Choice of media according to our targets :

-
- Globe & Mail and National Post – national coverage.
 - Paid daily newspapers – wide reach and concentration in a given market.
 - Free dailies (e.g. Metro) – reach a younger audience.

Facebook advertising

According to Vividata, 60 % of Canadian women aged between 18 and 65 are active users of Facebook². Facebook will be particularly useful with the younger demographic:

18 - 34	75%
35 - 41	68%
45 - 54	63%
55 - 64	47%
55 +	32%
Total Canadian women on Facebook :	60%

Why Facebook ?

- Proven efficiency

The initial advertising is amplified by the distribution mechanisms that are specific to social media (i.e. " likes " and " shares "). The campaign's reach is therefore greatly amplified and optimized.

- Well targeted

The targeting capacity of social media ensures that our advertising will reach the intended audience. Our advertising will be specifically aimed at women.

² Compared to 25% of Canadian women on Linked-In, 22% on Twitter and 18% on Instagram.

**SCHEDULE C
OPT OUT FORM**

Merlo and Davidson v. Her Majesty the Queen, Court File No.: T-1685-16

RCMP Gender Harassment and Discrimination Class Action

This is not a Claim Form. Submitting this form excludes you from the class action and the proposed settlement of the class action. Do not use this form if you wish to receive compensation under the proposed settlement.

Name:

Current Address:

Date of Birth:

Dates and locations worked within the RCMP:

Reason for Opting Out:

Date: _____

Signature

To Opt Out of the Class Action, you must sign and deliver this form to Class Counsel at either of the addresses below received or postmarked no later than *****, 2017:

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FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1685-16

STYLE OF CAUSE: JANET MERLO AND LINDA GILLIS DAVIDSON v
HER MAJESTY THE QUEEN

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 9, 2017

ORDER AND REASONS: MCDONALD J.

DATED: JANUARY 13, 2017

APPEARANCES:

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