

Federal Court



Cour fédérale

**Date: 20190705**

**Docket: T-1673-17**

**Citation: 2019 FC 895**

**CLASS PROCEEDING**

**BETWEEN:**

**CHERYL TILLER, MARY-ELLEN COPLAND  
AND DAYNA ROACH**

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**REASONS FOR ORDER**

**PHELAN J.**

[1] This is a motion for certification, on consent, for purposes of settlement under Rule 334.16 of the *Federal Courts Rules*, SOR/98-106. The motion also seeks the appointment of the representative plaintiffs, Cheryl Tiller, Mary-Ellen Copland and Dayna Roach, approval of the Notice Plan to inform proposed class members of the settlement, their rights thereunder, the date of the settlement approval hearing and the rights to object and to opt-out.

[2] This class action is brought on behalf of certain female non-members of the Royal Canadian Mounted Police [RCMP] who were subject to systemic gender or sexual orientation based harassment and discrimination as more particularly set out in the definition of Class Members.

[3] The parties' initial motion was the subject of an Interim Order (*Tiller v Canada*, 2019 FC 749) in which the Court expressed concern about the definition of the class given the breadth of proposed common question.

[4] This amended motion seeks to address the concerns raised by the Court and it has done so.

[5] The Court recognizes that on a motion for certification for purposes of a settlement where there is no chance that the action as certified will proceed beyond the settlement approval stage, the Court's approach is more flexible in assessing certification criteria (*Gariepy v Shell Oil Co*, [2002] OJ No 4022 at para 27, 117 ACWS (3d) 690 (Sup Ct J); *Buote Estate v R*, 2014 FC 773 at para 8, 244 ACWS (3d) 538).

[6] In the context of a consent certification for settlement, some issues of liability may not be admitted and the scope of the class and the common question may not be as limited as would otherwise be the case because those open questions become subsumed in the settlement. Even the issue of whether the class action provides the preferable procedure for litigation need not be definitively resolved, as the claims procedure in the proposed settlement will generally satisfy

concerns about the manageability of the class action (see *Bona Foods Ltd v Ajinomoto USA Inc*, [2004] OJ No 908 at para 27, 129 ACWS (3d) 456 (Sup Ct J); *Baxter v Canada (Attorney General)*, 2006 CarswellOnt 7879 at paras 24-25, 83 OR (3d) 481 (Sup Ct J)).

[7] However, the Court is not simply a rubber stamp for whatever the parties have agreed. The Court needs to have concern for the clarity of the class definition so that those who are intended to be included are sufficiently defined and that the common question is likewise workable.

[8] The Court must still ensure that the Notice Plan, and ultimately the settlement, are compliant with the Court's class action rules and common law. The Court cannot ignore Rule 334.16 because the parties have made some form of agreement to settle.

[9] Rule 334.16(1) sets out five conditions for certification: (a) a reasonable cause of action is disclosed by the pleadings; (b) there is an identifiable class of two or more persons; (c) there are common questions of law or fact within the class; (d) the class proceeding is the preferable procedure; and (e) the representative plaintiff can fairly and adequately represent the class.

[10] The pleading discloses reasonable causes of action in raising issues of negligence, breach of section 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11, breach of section 10 of the *Quebec Charter of Human Rights and Freedoms*, CQLR, c C-12 and breach of the *Civil Code of Quebec*, CQLR c C-1991.

[11] On the basis of the amended motion, there is a properly identified class of two or more persons that is defined by objective criteria, without reference to the merits of the action, and with a rational connection between the common issues and the proposed class definition (*Hollick v Toronto (City)*, 2001 SCC 68 at paras 17-20, [2001] 3 SCR 158).

[12] The common question “Is the Defendant liable to the class” meets the low threshold for certification for the purposes of settlement when read in the context of the proposed class definition. It also mirrors the common question in *Merlo v Canada*, 2017 FC 51, 276 ACWS (3d) 281, the class action certified for the purpose of settlement for female RCMP members who had experienced harassment.

[13] For the purposes of this consent motion, the class action is the preferable and just procedure and therefore meets the condition in Rule 334.16(1)(d).

[14] The amended motion satisfies the requirements of Rule 334(1)(e) with respect to the suitability of the representative plaintiffs, including the Litigation and Notice Plan as they currently stand, the lack of conflicts of interest with the class on the common question, and the summary of their agreement with counsel regarding fees and disbursements.

[15] As the Court is satisfied that this action should be certified for settlement purposes, the Plaintiffs are to proceed with the Notice Plan and the costs of such notice and distribution are to be paid by Canada. It is a reasonable plan and complies with Rules 334.32 and 334.34.

[16] As discussed in the Interim Order, the Plaintiffs are to be provided with the list of names and contact information of class members as requested.

[17] Therefore, this Order with respect to certification is granted as consented to by Canada.

"Michael L. Phelan"

---

Judge

Ottawa, Ontario  
July 5, 2019

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKET:** T-1673-17

**STYLE OF CAUSE:** CHERYL TILLER, MARY-ELLEN COPLAND AND  
DAYNA ROACH v HER MAJESTY THE QUEEN

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO  
RULE 369 OF THE *FEDERAL COURTS RULES***

**REASONS FOR ORDER:** PHELAN J.

**DATED:** JULY 5, 2019

**WRITTEN REPRESENTATIONS BY:**

Angela Bespflug  
Janelle O'Connor

FOR THE PLAINTIFFS,  
CHERYL TILER AND MARY-ELLEN COPLAND

Patrick Higgerty, Q.C.

FOR THE PLAINTIFF,  
DAYNA ROACH

**SOLICITORS OF RECORD:**

Klein Lawyers LLP  
Barristers and Solicitors  
Vancouver, British Columbia

FOR THE PLAINTIFFS,  
CHERYL TILLER AND MARY-ELLEN COPLAND

Higgerty Law  
Barristers and Solicitors  
Calgary, Alberta

FOR THE PLAINTIFF,  
DAYNA ROACH

Attorney General of Canada  
Vancouver, British Columbia

FOR THE DEFENDANT