

# PRIVILEGED AND CONFIDENTIAL

**THIS AGREEMENT** is made as of the 6th day of October, 2016.

BETWEEN:

**THE ATTORNEY GENERAL OF CANADA,  
representing HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
(the “Defendant”)**

**and**

**JANET MERLO AND LINDA GILLIS DAVIDSON,  
as class action representative plaintiffs**

**WHEREAS:**

A. On March 27, 2012, the plaintiff Janet Merlo commenced Supreme Court of British Columbia Action No. S-122255, *Merlo v. Attorney General of Canada* against the Attorney General of Canada and the Minister of Justice of British Columbia. On March 25, 2015, the plaintiff Linda Gillis Davidson commenced Ontario Superior Court of Justice Action No. CV-15-52473600CP, *Davidson v. Attorney General of Canada*. Ms. Merlo and Ms. Davidson (the “Plaintiffs”) allege that they and fellow female Regular Members, Civilian Members and Public Service Employees who worked within the RCMP were subject to gender and/or sexual orientation based discrimination, bullying and harassment in the workplace and that RCMP leadership failed to exercise their duty to women in the RCMP to ensure that they could work in an environment free of gender and sexual orientation based discrimination and harassment;

B. The Plaintiffs and the Defendant (“the Parties”) recognize and acknowledge that gender and sexual orientation based harassment, gender and sexual orientation based discrimination, and sexual assault, including physical assault in the course of conduct constituting harassment have no place in the RCMP and wish to enter into this Settlement Agreement to:

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- (a) restore confidence in the RCMP as an organization that values equity and equality;
- (b) implement measures to eliminate workplace harassment and discrimination in the RCMP; and
- (c) resolve the Claims of Primary Class Members who experienced and/or continue to experience gender and/or sexual orientation based harassment and discrimination (as defined below) while working in the RCMP during the Class Period;

C. The Parties agree to: a) implement change initiatives and best practices aimed at eliminating Harassment in the RCMP and increasing equality and b) compensate Class Members who suffered injury as a consequence of that Harassment;

D. The Parties entered into an Agreement in Principle on May 25, 2016, for the resolution of the Claims of the Class Members as defined in this Agreement;

E. The Parties wish to settle all outstanding Claims relating to or arising from the allegations that the Primary Class Members were subject to gender and/or sexual orientation based discrimination, harassment and bullying while working within the RCMP;

F. For the purposes of settlement, the Parties, subject to the Approval Order, have agreed to merge the *Merlo* action and *Davidson* action by filing a new statement of claim in the Federal Court, and discontinue the actions commenced in the Supreme Court of British Columbia and the Ontario Superior Court of Justice;

G. The Parties, subject to the Approval Order and the expiration of the Opt Out Period without the Opt Out Threshold being met or waived by the Defendant, have agreed to settle the *Merlo* action and *Davidson* action upon the terms contained in this Agreement;

H. The Parties, subject to the Approval Order, agree to resolve all claims of Class Members relating to allegations of gender and/or sexual orientation based harassment, discrimination and bullying while working in the RCMP upon the terms contained in this Agreement, save and except those actions brought by individuals who opt out or are deemed to

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have opted out of the Class Action in the manner set out in this Agreement and save and except those who have already been compensated or provided a release or consent dismissal order;

**THEREFORE**, in consideration of the mutual agreements, covenants and undertakings set out herein, the Parties agree that all actions, causes of action, liabilities, claims and demands whatsoever of every nature or kind for damages, contribution, indemnity, costs, expenses and interest which any Class Member ever had, now has or may hereafter have arising in relation to the Claims asserted by the Class Members, whether such claims were made or could have been made in any proceeding including the Class Actions, will be finally settled based on the terms and conditions set out in this Agreement upon the Implementation Date, and the Releasees will have no further liability except as set out in this Agreement.

### ARTICLE 1 – INTERPRETATION

#### 1.01 Definitions

In this Agreement, in addition to the terms defined in the description of the Parties and in the recitals set out above, the following terms will have the following meanings:

**“Agreement”** means this settlement agreement, including its recitals and Schedules and Appendices, as amended, supplemented or restated from time to time;

**“Agreement in Principle”** means the Agreement between the Attorney General of Canada, as represented by the Department of Justice and the Plaintiffs, as represented by Klein Lawyers and Kim Orr, signed in counterpart on May 25, 2016. Where there exists an inconsistency between this Agreement and the Agreement in Principle, this Agreement governs;

**“Approval Date”** means the date the Federal Court issues the Approval Order;

**“Approval Order”** means the judgment or order of the Federal Court approving this Agreement as fair, reasonable and in the best interests of the Class Members for the purposes of settlement of the Class Action pursuant to the applicable class proceedings legislation and the common law;

**“Assessor”** means, subject to the approval of the Federal Court, The Honourable Michel Bastarache, C.C., Q.C. agreed upon by the Parties to administer the Claims Process or, in the

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event the Honourable Michel Bastarache, C.C., Q.C. is unable or unwilling to act, another person who is a retired jurist, subject to the approval of the Federal Court;

“**Business Day**” means a day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province or Territory in which the person who needs to take action pursuant to this Agreement is situated or a holiday under the federal laws of Canada applicable in the said Province or Territory;

“**Canada**” or “**Government**” means the Government of Canada;

“**Certification Order**” means the order of the Federal Court certifying the Class Action for settlement purposes;

“**Change Initiatives**” means the initiatives detailed in Schedule E to this Agreement;

“**Child**” means a natural or legally adopted child of the Primary Class Member, or a person for whom the Primary Class Member has custody under a court order or domestic contract, or a person toward whom the Primary Class Member has demonstrated a settled intention to treat as a child of her family, except under an arrangement where the child is placed for valuable consideration in a foster home by a person having lawful custody;

“**Claim**” means a claim made by a Primary Class Member for compensation under this Agreement by submitting a Claim Form, attached as Appendix 1 to Schedule B to the Assessor in accordance with this Agreement;

“**Claimant**” means a Primary Class Member who makes a claim by completing and submitting a Claim Form;

“**Claim Deadline**” means 180 days from the first publication of the Notice of Settlement Approval;

“**Claim Form**” means the application form in Appendix 1 to Schedule B of this Agreement;

“**Class Action**” means the Class Action commenced in the Federal Court;

“**Class Counsel**” means Klein Lawyers LLP and Kim Orr Barristers P.C.;

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“**Class Member**” means a Primary Class Member and/or a Secondary Class Member;

“**Class Period**” means the period from September 16, 1974 to the Approval Date;

“**Claims Process**” means the plan outlined in this Agreement, including Schedules and Appendices, for the submission, assessment, determination and payment of Claims made pursuant to the settlement of the merged *Merlo* action and *Davidson* action as set out in this Agreement;

“**Cohabit**” means to live together in a conjugal relationship outside marriage for a period of not less than three years, or in a relationship of some permanence, if the cohabiting individuals are the natural or adoptive parents of a child;

“**Consent to Disclosure of Information**” means the form in Appendix 2 of Schedule B to this Agreement;

“**Court**” means Federal Court;

“**Davidson action**” means Ontario Superior Court of Justice Action No. CV-15-52473600CP commenced by Linda Gillis Davidson on March 25, 2015;

“**Decision**” means the decision of the Assessor with respect to a Claim and as set out in paragraph 33 of Schedule B to this Agreement;

“**Designated Contact**” means the individual(s) designated as the RCMP point(s) of contact for the Assessor under Schedule D to this Agreement;

“**Family Members**” means the Children and current Spouse of a Primary Class Member as defined in this Agreement;

“**Harassment**” means improper conduct in the workplace by any Regular Member, Special Constable, Cadet, Auxiliary Constable, Special Constable Member, Reserve Member, Civilian Member, Public Service Employee, including any Temporary Civilian Employee, working within the RCMP, male or female, that is directed at and offensive to another Regular Member, Special Constable, Cadet, Auxiliary Constable, Special Constable Member, Reserve Member,

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Civilian Member, Public Service Employee, including Temporary Civilian Employee working within the RCMP, including, but not limited to, at any event or any location related to work, and that the individual engaging in such improper conduct knew or ought reasonably to have known would cause offence or harm. It comprises objectionable act(s) comment(s) or display(s) that demean, belittle, or cause personal humiliation or embarrassment, and any act of intimidation or threat. It also includes harassment within the meaning of the *Canadian Human Rights Act*, R.S.C. 1985, c. H-6, based on sex, sexual orientation, marital status, and family status. Harassment can be a series of incidents but can also be one severe incident which has a lasting impact on the individual. Harassment by members of the public is not harassment for the purposes of this Agreement. In this Agreement, “Harassment” refers collectively to gender and sexual orientation based harassment, gender and sexual orientation based discrimination, and sexual assault, including physical assault in the course of conduct constituting harassment;

**“Implementation Date”** means the latest of:

- (a) the day following the last day on which a Class Member may appeal or seek leave to appeal the Approval Order; and
- (b) the date of a final determination of any appeal brought in relation to the Approval Order;

**“Merlo action”** means Supreme Court of British Columbia Action No.S-122255 commenced by Janet Merlo on March 27, 2012;

**“Opt Out Form”** means the form attached in Schedule H of this Agreement;

**“Opt Out Period”** means the 60 day period following the publication of the Notice of Certification and Settlement Approval Hearing;

**“Opt Out Threshold”** means the Opt Out Threshold set out in Article 5.02 of this Agreement;

**“Parties”** means collectively and individually the signatories to this Agreement;

**“Primary Class Members”** means 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

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the RCMP during the Class Period, who experienced and/or continue to experience gender and/or 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 Agreement only “**Regular Members**” includes Regular Members, Special Constables, Cadets, Auxiliary Constables, Special Constable Members, and Reserve Members

For the purposes of this Agreement only “**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;

“**Released Claims**” means any and all actions, causes of action, common law, Quebec civil law and statutory liabilities, contracts, claims, grievances and complaints, and demands of every nature or kind available, asserted or which could have been asserted whether known or unknown including for damages, contribution, indemnity, costs, expenses and interest which any Class Member ever had, now has, or may hereafter have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned right or otherwise in relation to gender and/or sexual orientation based discrimination, bullying and harassment while working in the RCMP that occurred during the Class Period, and including any such claim made or that could have been made in any proceeding including the Merlo and Davidson actions, whether asserted directly by the Class Member or by any other person, group or legal entity on behalf of or as representative for the Class Member;

“**Releasee**” means the Defendant in the Class Action commenced in the Federal Court merging the *Merlo* and *Davidson* actions, the B.C. (Minister of Public Safety and Solicitor General), and any other applicable provincial and territorial Ministers and governments who are liable for the actions of RCMP members acting as provincial constables under provincial legislation and/or other provincial-federal policing agreements, and their respective officers, agents, servants and employees;

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**“Request for Deadline Extension”** means the form in Appendix 3 to Schedule B of this Agreement, to be submitted when a Claimant makes a request to extend the Claim Deadline;

**“Secondary Class Members”** means all persons who have a derivative Claim, in accordance with applicable family law legislation, arising from a family relationship with a Primary Class Member;

**“Secondary Class Member Claim Form”** means the form in Appendix 1 to Schedule C;

**“Spouse”** means:

- (a) either of two persons who are currently married to each other or who have together, in good faith on the part of a person relying on this clause to assert any right, entered into a marriage that is voidable or void, and are living together; OR
- (b) either of two persons who are not married to each other and have co-habited for a period of not less than three years, or are in a relationship of some permanence; if they are the natural or adoptive parents of a Child;

**“Travel Expenses”** has the meaning set out in the National Joint Council Travel Directive.

**1.02** This Agreement is not to be construed as an admission of liability by any of the defendants named in the *Merlo* action or the *Davidson* action.

### **1.03 Headings**

The division of this Agreement into Articles and Sections and the insertion of a table of contents and headings are for convenience of reference only and do not affect the construction or interpretation of this Agreement. Unless something in the subject matter or context is inconsistent therewith, references to Articles, Sections and Schedules are to Articles, Sections and Schedules of this Agreement.

### **1.04 Extended Meanings**

In this Agreement, words importing the singular number include the plural and vice versa, and words importing persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and governmental authorities. The term “including”



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means “including without limiting the generality of the foregoing”.

### **1.05 No Contra Proferentem**

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

### **1.06 Statutory References**

In this Agreement, unless something in the subject matter or context is inconsistent or unless otherwise provided, a reference to any statute is to that statute as enacted on the date hereof or as the same may from time to time be amended, re-enacted or replaced and includes any regulations made thereunder.

### **1.06 Day for any action**

Where the time on or by which any action required to be taken hereunder expires or falls on a day that is not a Business Day, such action may be done on the next succeeding day that is a Business Day.

### **1.07 Final order**

For the purposes of this Agreement a judgment or order becomes final when the time for appealing or seeking leave to appeal the judgment or order has expired without an appeal being taken or leave to appeal being sought or, in the event that an appeal is taken or leave to appeal is sought, when such appeal or leave to appeal and such further appeals as may be taken have been disposed of and the time for further appeal, if any, has expired.

### **1.08 Schedules**

The following Schedules and Appendices to this Agreement are incorporated into and form part of this Agreement as fully as if contained in the body of this Agreement:

#### SCHEDULE A - NOTICE PLAN

Appendix 1 – Notice of Certification and Settlement Approval Hearing

Appendix 2 – Notice of Settlement Approval

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Appendix 3 – Letter to Class Members by Direct Mail

## SCHEDULE B – CLAIM PROCESS

Appendix 1 – Claim Form

Appendix 2 – Consent to Disclosure of Information

Appendix 3 – Request for Deadline Extension

Appendix 4 – Class Member List and Verification of Class Membership

Appendix 5 – Identification of Previous Claims

Appendix 6 – Compensation Levels

Appendix 7 – Compensation Amounts

Appendix 8 – Request for Reconsideration of a Level 2 Claim

Appendix 9 – Certification of No Prior Compensation

Appendix 10 – Travel Claim

Appendix 11 – Release of Documents and Information held by the RCMP

## SCHEDULE C – SECONDARY CLASS MEMBER CLAIMS

Appendix 1 - Secondary Class Member Claim Form

## SCHEDULE D – RCMP DESIGNATED CONTACT AND CLAIMS SUPPORT PROCESS

## SCHEDULE E – CHANGE INITIATIVES

## SCHEDULE F – JOINT COMMUNICATIONS PLAN

## SCHEDULE G – NO RETALIATION DIRECTIVE

## SCHEDULE H – OPT OUT FORM

### **1.09 Currency**

All references to currency in this Agreement are to lawful money of Canada.

## **ARTICLE 2 – EFFECTIVE DATE OF AGREEMENT**

### **2.01 Date when Binding and Effective**

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This Agreement will become effective and be binding on the Defendant and on all the Class Members (including Persons under Disability) and the Class Action Plaintiffs, on the Implementation Date.

### **2.02 Effective in Entirety**

None of the provisions in this Agreement will become effective unless and until the Court approves all the provisions of this Agreement, including all Schedules.

## **ARTICLE 3 – IMPLEMENTATION OF THE AGREEMENT**

### **3.01 Class Action**

The *Merlo* and *Davidson* actions will be merged into a uniform omnibus Statement of Claim and filed in the Federal Court. The Statement of Claim will name the plaintiffs named in the original Claims and will name as defendant, Her Majesty the Queen.

### **3.02 Content of Class Action**

The Class Action will define the classes, allege claims and seek relief with such modifications to the *Merlo* and *Davidson* claims as is necessary to correspond with this Agreement, including the scope of the Primary and Secondary classes and relief.

### **3.03 Consent Certification/Approval of Notice of Certification and Settlement Approval Hearing**

1) Concurrent applications will be brought for approval of the Notice of Certification and Settlement Approval Hearing and for consent certification of the Class Action for the purposes of settlement in accordance with the terms of this Agreement.

2) At the same time, or at a time to be agreed upon by the Parties, the Parties will make an application seeking orders that:

- (a) the RCMP and Canada release to the Designated Contact information and documents required by the RCMP to compile a List of female Regular Members, Civilian Members and Public Service Employees who have worked within the RCMP during the Class Period as set out in Appendix 4 to Schedule B of this Agreement;

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- (b) the RCMP and Canada compile a list of individuals who have been paid further to a civil claim, grievance or harassment complaint, including a complaint to the Canadian Human Rights Tribunal and/or who have had a prior civil claim, grievance or harassment complaint, including a complaint to the Canadian Human Rights Tribunal, otherwise resolved in respect of the same event(s) and injury(ies) as claimed in the Claim Form, in accordance with Appendix 5 to Schedule B. The list will include the name, date of birth and regimental number, if available, of the individual;
- (c) directing the RCMP to provide the aforementioned lists to the Office of the Assessor in accordance with Appendices 4 and 5 to Schedule B of this Agreement.

### **3.04 Approval Order**

An application to obtain an Approval Order of this settlement will be heard following the expiry of the Opt Out Period. The Approval Order submitted to the Court for approval will include provisions:

- (a) incorporating by reference this Agreement in its entirety including all Schedules and Appendices;
- (b) ordering and declaring that the Order is binding on all Class Members, including Persons Under Disability, unless they opt out or are deemed to have opted out on or before the expiry of the Opt Out Period;
- (c) ordering and declaring that on the expiry of the Opt Out Period all Class Members, unless they have opted out or are deemed to have opted out on or before the expiry of the Opt Out Period, have released the Releasees from any and all actions, including claims made under the Canadian Charter of Rights and Freedoms they have, may have had or in the future may acquire against the Releasees relating to or arising from gender and/or sexual orientation based discrimination, bullying and harassment while working in the RCMP during the Class Period;
- (d) ordering and declaring that on the expiry of the Opt Out Period all Class Members who have not opted out on or before the expiry of the Opt Out Period may not commence any

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- proceedings seeking compensation or other relief arising from or in relation to gender and/or sexual orientation based discrimination, bullying and harassment while working in the RCMP during the Class Period;
- (e) ordering and declaring that the obligations assumed by Canada under this Agreement are in full and final satisfaction of all claims against the Releasees, including claims made under the Canadian Charter of Rights and Freedoms, relating to or arising from gender and/or sexual orientation based discrimination, bullying and harassment while working in the RCMP during the Class Period;
  - (f) ordering and declaring that on the expiration of the Opt Out Period all Class Members who have not opted out may not commence any proceedings seeking compensation or other relief arising from or in relation to gender and/or sexual orientation based discrimination, bullying and harassment while working in the RCMP during the Class Period against any person who may in turn claim against the Defendant;
  - (g) ordering and declaring that the Notice Plan in Schedule A to this Agreement is approved by the Court;
  - (h) ordering the RCMP and Canada to release to the Assessor information and documents required by him or as otherwise required in the Agreement, including Schedules and Appendices, in accordance with the terms of this Agreement;
  - (i) ordering and declaring that judgments or orders will be sought from the Court in such form as is necessary to implement and enforce the provisions of this Agreement and to supervise the ongoing performance of this Agreement;
  - (j) ordering and declaring that the Assessor(s) shall not be compelled to be (a) witness(es) in any civil or criminal proceeding, administrative proceeding, grievance or arbitration where the information sought relates, directly or indirectly, to information obtained by the Assessor(s) by reason of the Settlement or the settlement claims process; and
  - (k) ordering and declaring that no documents received by the Assessor(s) shall be compelled to be produced in any civil or criminal proceeding, administrative proceeding, grievance

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or arbitration where the documents or information therein relate, directly or indirectly, to information sought by the Assessor(s) by reason of the Settlement or the settlement claims process.

### **3.05 Merlo Action and Davidson Action**

Upon approval of the settlement by the Federal Court the Plaintiffs will discontinue their actions in the Supreme Court of British Columbia and in the Ontario Superior Court of Justice, namely *Merlo v. Attorney General of Canada*, Supreme Court of British Columbia Action No. S-122255, and *Davidson v. Attorney General of Canada*, Ontario Superior Court of Justice Action No. CV-15-52473600CP.

### **3.06 Court Materials**

The Parties agree to exchange materials for review and comment prior to filing such materials with the Court.

### **3.07 Time of Filing Court Materials**

The Parties agree that no Court materials relating to this Class Action and this Agreement will be filed with the Federal Court until a date and place for filing is expressly agreed to by the Parties.

## ARTICLE 4 – NOTICE

### **4.01 Notice**

- 1) Canada agrees to pay the reasonable costs of any notices to the class which may be ordered by the Court.
- 2) Subject to the approval of the Court, notice to the class shall be implemented as set out in the Notice Plan attached as Schedule A to this Agreement.

## ARTICLE 5 – OPT OUT PERIOD

### **5.01 Opt Out Period**

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There will be an Opt Out period of 60 days following the first publication of the Notice of Certification and Settlement Approval Hearing.

### **5.02 Opt Out Threshold**

In the event that the number of eligible Claimants opting out or deemed to have opted out under the Certification Order exceeds fifty (50), this Agreement will be rendered void and the Certification Order set aside in its entirety subject only to the right of Canada, in its sole discretion, to waive compliance with this Section of the Agreement. Canada has the right to waive compliance with this Section of the Agreement until thirty (30) days after the end of the Opt Out Period.

### **5.03 Opt Out**

Any Class Member may opt out of this Agreement by delivering to Class Counsel an executed Opt Out Form, attached as Schedule H to this Agreement, within the Opt Out Period.

### **5.04 List of Opt Outs**

Class Counsel shall promptly provide to the Defendant and to the Assessor, after the expiry of the Opt Out Period, copies of all Opt Out Forms received by Class Counsel.

## **ARTICLE 6 - THE ASSESSOR**

### **6.01 Appointment of Assessor**

Subject to the approval of the Court and as agreed upon by the Parties, the Honourable Michel Bastarache, C.C., Q.C. will be appointed the Assessor to administer the Claims Process and to assess the Claims made by Class Members for compensation, with such powers, rights, duties and responsibilities as agreed to by the Parties and approved by the Court. The Assessor is not an agent, servant, or employee of Canada or a government institution for the purposes of the *Access to Information Act*, R.S.C., 1985, c. A-1, the *Privacy Act*, R.S.C., 1985, c. P-21 and the *Library and Archives of Canada Act*, S.C. 2004, c. 11, and acts solely on his own behalf as agreed to jointly by the Parties in the Agreement and authorized by the Court in the Approval Order.

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### **6.02 Alternative Assessor**

If the Honourable Michel Bastarache, C.C., Q.C. is unable or unwilling to act, the Parties will agree upon another person who is a retired jurist and seek the Court's approval.

### **6.03 Additional Assessors**

The Parties and the Assessor may jointly agree to retain one or more additional Assessors to provide for the timely assessment of Claims and if so, to jointly seek the approval of the Court. The additional Assessors are not agents, servants, or employees of Canada or a government institution for the purposes of the *Access to Information Act*, R.S.C., 1985, c. A-1, the *Privacy Act*, R.S.C., 1985, c. P-21 and the *Library and Archives of Canada Act*, S.C. 2004, c. 11 and act solely on their own behalf as agreed to jointly by the Parties in the Agreement and authorized by the Court in the Approval Order.

### **6.04 Assessor's Duties**

Subject to obtaining the approval of the Court, the Assessor's duties and responsibilities will include:

- (a) establishing and staffing an Office of the Assessor;
- (b) implementing the Notice Plan approved by the Court;
- (c) retaining an experienced claims administrator to assist with notice and other administrative functions as required;
- (d) developing a Claim Form for compensating Class Members;
- (e) developing, installing and implementing systems and procedures for receiving, processing, evaluating and making decisions respecting Claims including making all necessary inquiries to obtain information and documents (including consulting medical personnel) to determine the validity of any Claim;
- (f) receiving and responding to all inquiries and correspondence respecting Claims, supplying Claim Forms, reviewing and evaluating all Claims, and rendering decisions in respect of Claims;



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- (g) receiving compensation payments on behalf of the Class Members from the RCMP IN TRUST and forwarding the compensation to the eligible Claimant within a reasonable period of time;
- (h) keeping or causing to be kept accurate accounts of activities, preparing such financial statements, reports and records for administrative and fiscal purposes as are determined by Canada; and
- (i) drafting a report that will provide an overview of the Assessor's observations and recommendations stemming from his work in assessing Claims.

### **6.05 Decisions of the Assessor**

The Assessor will render a Decision in respect of a Claim to a Claimant promptly after the decision is made in accordance with paragraph 33 of Schedule B to this Agreement. A Decision of the Assessor in respect of a Claim will, subject to the limited right of a Claimant assessed at Level 2 to request a reconsideration as set out in the Claims Process in Schedule B of this Agreement, be final and binding upon the Claimant. For further clarity, there is no right of appeal or judicial review from any Decision of the Assessor.

### **6.06 Fees**

The fees, disbursements and other costs of the Assessor, including the Office of the Assessor will be paid by Canada.

## **ARTICLE 7 –CLAIMS PROCESS**

### **7.01 Objective**

The objective of the Claims Process is to provide just compensation for meritorious Claims in a process that is both sensitive to and supportive of Primary Class Members in bringing issues forward and at the same time ensures that Claims are properly, fairly and expeditiously assessed on the basis of adequate and sufficient validation which is proportionate to the severity of the injuries alleged.

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### **7.02 Establishment of the Claims Process**

A Claims Process will be established as set out in Schedule B of this Agreement. The Assessor will assess each Claim and render a decision in accordance with Schedule B.

### **7.03 Claims Process**

1) A Class Member making a Claim will complete a Claim Form identifying herself by name and setting out in detail the particulars of the harassment complained of (including events, actors, location, time frame) and of the alleged injury and damage (collectively referred to as “injury”) caused.

2) The Claimant will send the Claim Form to the Office of the Assessor and, at the same time or within the time allotted in Schedule B, will provide all relevant supporting documentation in her possession or control, including medical records and reports. The Claimant will also provide consent to the release of documents in the possession of the RCMP, medical practitioners, hospitals and government health authorities, and other third parties if consent is required. Relevant documents and information include:

- (a) the particulars of the occurrences of harassment (including where, when and who was involved), any reports made by the Claimant at the time, and resulting actions and results;
- (b) names and contact information of any witness to the harassment;
- (c) evidence of injuries sustained as a result of the alleged harassment, including but not limited to physical and psychological medical records, and provincial healthcare print outs (e.g. OHIP, Pharmanet, or other provincial equivalent), whether in the possession of the RCMP or the Claimant’s healthcare providers;
- (d) the Claimant’s personnel file and any other file in the possession of the RCMP which may be relevant to the Claimant’s career progression (i.e. training, assignments, job competitions); any conduct, complaint or grievance file in relation to the matters in question in the possession of the RCMP; and
- (e) any information or documents relevant to the Claimant’s attempts to mitigate her injury or loss.

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### **7.04 Denial of Claim if Prior Compensation Received**

The Assessor will deny a Claim upon determining that a previous civil claim, grievance or harassment complaint for compensation for harassment, including a complaint to the Canadian Human Rights Tribunal, made by a Claimant with respect to the same event(s) and injury(ies) as claimed in the Claim Form has been resolved. This determination will be made in accordance with Appendix 5 to Schedule B of this Agreement.

### **7.05 Claim Deadline**

1) Applications to the Claims Process will not be accepted prior to the Implementation Date or after the Claim Deadline, subject to an extension being granted in exceptional circumstances in accordance with Schedule B.

2) The Assessor may grant to individual claimants an extension of the Claim Deadline in exceptional circumstances. A Primary Class Member may make a Request for Deadline Extension to the Assessor within 100 days after the expiration of the Claim Deadline for a deadline extension based on exceptional circumstances provided the Claimant includes with the request

(a) a Request for Deadline Extension Form in Appendix 3 to Schedule B of this Agreement;

(b) reasons for the request that demonstrate exceptional circumstances;

(c) a completed Claim Form; and

(d) supporting documentation as set out in Schedule B of this Agreement;

3) Where an eligible Claimant does not submit a claim in the prescribed form and in accordance with this Agreement that Claimant will not be admitted to the process and any such entitlement to make a claim for compensation will be forever extinguished.

4) All Claims which have been submitted prior to the Claim Deadline or further to an extension granted in accordance with this Agreement shall be processed in accordance with Schedule B of this Agreement.

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- 5) No person may submit more than one Claim Form on her own behalf.

### ARTICLE 8 – PAYMENT OF COMPENSATION

#### 8.01 Payment of Compensation

Payment of compensation will be made in accordance with the applicable legislation and government directives and policies. In accordance with Schedule B of this Agreement, funds for the payment of compensation will be provided to the Office of the Assessor by the RCMP IN TRUST within 7 business days of receipt by the RCMP of the documentation from the Assessor requesting funds for payment of compensation, unless exceptional circumstances necessitate an additional period of time in which case the RCMP shall make best efforts to pay compensation expeditiously within such extended periods. The Assessor will make payment to the Claimant within 60 days of the date on which a Decision is rendered by him in respect of a Claimant, in accordance with Schedule B of this Agreement.

#### 8.02 Other Government Benefits

- 1) There will be no amounts deducted from the compensation awarded to a Claimant under this settlement agreement in relation to any benefits paid or payable under the federal *Pension Act*, R.S.C. 1985, c. P-6 (“*Pension Act*”). Nothing in this Agreement prevents government officials who adjudicate or administer pensions under the *Pension Act* from making pension adjustments in accordance with the applicable legislation.
- 2) For the purposes of this Settlement, the defendant will not seek a stay under section 111 of the *Pension Act* in relation to any of the Class Members’ Claims.

### ARTICLE 9 – PROVINCIAL HEALTH INSURERS

#### 9.01 Subrogated and Direct Claims for Recovery

Counsel for the Plaintiffs will contact provincial and territorial health insurers to determine if they will be pursuing a health care cost recovery claim for this action, and if so, the nature of their Claim. Counsel for the British Columbia Ministry of Health has advised that British Columbia will not pursue a health care recovery claim for this action.

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## ARTICLE 10 – RELEASES

### 10.01 Releases

The Approval Order will declare that:

- (a) upon the Approval Date, the Releasees are forever and absolutely released separately and severally by the Class Members from the Released Claims; and
- (b) the Class Members are barred from making any claim or taking or continuing any proceedings arising out of or relating to the Released Claims against any Releasee or other person, corporation or entity that might claim damages and/or contribution and indemnity and/or other relief under the provisions of the *Negligence Act*, R.S.O., 1990, c. N-3, or its counterparts in other jurisdictions, the *Police Act*, RSBC 1996, Chapter 367 or, its counterpart in other jurisdictions, the common law, Quebec civil law or any statutory liability for any relief whatsoever, including relief of a monetary, declaratory, or injunctive nature, from the Releasees.

### 10.02 Cessation of Litigation

- 1) The Parties will cooperate to obtain approval of this Agreement and to facilitate general participation by Primary Class Members in the Claims Process.
- 2) On the Approval Date, Class Counsel will undertake to refrain at any time from commencing or assisting or advising on the commencement or continuation of any action or proceeding against the Releasees in any way relating to or arising from any and all claims asserted in the *Merlo* and *Davidson* actions. Nothing in this Agreement prevents Class Counsel from assisting with the administration of the Agreement, informing Class Members of the provisions of the Agreement, assisting Class Members with their Claims under the Agreement, or advising Class Members to obtain independent legal advice before deciding whether to opt out.

### 10.03 Consent to Dismissal

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Each Class Member who has commenced any action or proceeding relating to the same matters asserted in the Class Action must consent to a dismissal of such action or proceeding against the Releasees without costs before receiving any payment under the Claims Process.

### **ARTICLE 11 – CLASS COUNSEL FEES AND DISBURSEMENTS**

#### **11.01 Legal Fees**

Canada will pay \$12,000,000.00 (twelve million dollars) plus applicable PST, GST and HST to Class Counsel as a contribution toward Class Counsel fees.

#### **11.02 Payment of Legal fees**

Payment shall be made to Class Counsel within 30 days following the Approval Date. The sum of \$6 million plus applicable sales taxes will be paid to each of Klein Lawyers LLP and Kim Orr Barristers P.C.

#### **11.03 Disbursements**

Canada will pay reasonable disbursements to Class Counsel as agreed or assessed by the Court. Class Counsel shall submit itemized Lists of Disbursements together with receipts or other supporting documentation satisfactory to Canada as soon as possible and at least 1 (one) month prior to the settlement approval hearing.

#### **11.04 Claimant Expenses**

Canada will re-imburse a Claimant for out-of-pocket expenses incurred to obtain documentary evidence in support of her Claim and for travel of more than 50 kilometers from her residence if required by the Assessor to attend a personal interview with the Assessor, in accordance with National Joint Council Travel Directive.

### **ARTICLE 12 – CHANGE INITIATIVES**

#### **12.01 Implementation of Change Initiatives**

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The Parties acknowledge that the RCMP has implemented or is in the process of implementing many change initiatives, including those set out in Schedule E of this Agreement. The RCMP agrees to make efforts to implement these change initiatives as soon as practicable, and in any event by December 31, 2017.

### **12.02 Apology**

Without constituting an express or implied admission of fault or liability, the Commissioner of the RCMP will provide the Class Members with an apology, as defined in the *Apology Act*, SO 2009, c 3, at a time to be agreed upon by the parties, regarding Harassment in the RCMP. Such apology will not be admissible in any civil or criminal proceeding, administrative proceeding or arbitration as evidence of the fault or liability of any person in connection with that matter.

### **12.03 No Retaliation**

The RCMP shall issue a directive substantively as set out in Schedule G, that there is to be no retaliation for making a Claim under this settlement.

## **ARTICLE 13 – SCHOLARSHIP FUND**

### **13.01 Establishment of Scholarship Fund by RCMP**

The RCMP will establish a scholarship fund, details of which will be at its discretion, with the objective of recognizing outstanding work in the area of anti-Harassment and the promotion of anti-Harassment principles.

## **ARTICLE 14 – CONFIDENTIALITY**

### **14.01 Confidentiality**

Any information provided, created or obtained in the settlement and Claims Process, whether written or oral, will be confidential by the Parties and their counsel, all Claimants, the

## PRIVILEGED AND CONFIDENTIAL

Assessor(s) and the Designated Contact, except where provided by law, and will not be used for any purpose other than the settlement and Claims Process unless otherwise agreed by the Parties.

### **14.02 Destruction of Class Member Information and Records**

Subject to the requirements of law, within six months of the completion of all Claimant assessments and payments through the Claims Process, the Office of the Assessor will destroy all Class Member information and documentation in its possession.

### **14.03 Confidentiality of Negotiations**

Save as otherwise required by law, the undertaking of confidentiality as to the discussions and all communications, whether written or oral, made in and surrounding the negotiations leading to the Agreement in Principle and this Agreement continues in force.

**14.04** The Assessor(s) shall not give evidence of the fault or liability of any person in connection with this matter in any civil or criminal proceeding, administrative proceeding or arbitration.

## ARTICLE 15 – COMMUNICATIONS

### **15.01 Public Communications**

Save as otherwise required by law, the Parties will not engage in any media or public communications or disclosure of or about this Agreement until a date agreed to in writing by the Parties.

### **15.02 Joint Public Announcement**

At the time agreed upon, the Parties will make a joint public announcement of this Agreement in accordance with the Joint Communication Plan in Schedule F of this Agreement.

## ARTICLE 16– CONDITIONS, AMENDMENT AND TERMINATION

### **16.01 Agreement is Conditional**



## PRIVILEGED AND CONFIDENTIAL

This Agreement will not be effective unless and until it is approved by the Federal Court, and if such approval is not granted by the Federal Court on substantially the same terms and conditions contemplated in this Agreement, this Agreement will thereupon be terminated and none of the Parties will be liable to any of the other Parties hereunder.

### **16.02 Amendments**

Except as expressly provided in this Agreement, no amendment or supplement may be made to the provisions of this Agreement and no restatement of this Agreement may be made unless agreed to by the Parties in writing and any such amendment, supplement or restatement is approved by the Courts without any material differences.

### **16.03 Termination of Agreement**

This Agreement will continue in full force and effect until all obligations under this Agreement are fulfilled.

## ARTICLE 17 - GENERAL

### **17.01 Entire Agreement**

This Agreement, including all recitals, and Schedules and Appendices, constitutes the entire agreement between the Parties with respect to the subject matter herein and cancels and supersedes any prior or other understandings and agreements between the Parties with respect thereto. There are no representations, warranties, terms, conditions, undertakings, covenants or collateral agreements, express, implied or statutory between the Parties with respect to the subject matter hereof other than as expressly set forth or referred to in this Agreement.

### **17.02 Applicable Law**

This Agreement will be governed by the laws of Canada and, where silent, the laws of Ontario.

### **17.03 Counterparts**

## PRIVILEGED AND CONFIDENTIAL

This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original and all of which taken together will be deemed to constitute one and the same Agreement.

### **17.04 Official Languages**

Canada will prepare a French translation of this Agreement. Prior to the Implementation Date, Canada will pay the costs of the preparation of an authoritative French version of this Agreement and such cost shall include costs of review by a designate of the Parties. The authoritative French version shall be executed by the same Parties who executed this Agreement and, once executed, the English and French language versions shall be of equal weight and force at law.

### **17.05 No assignment**

Except as directed by court order, no amount payable under this Agreement can be assigned, and such assignment is null and void.

**IN WITNESS WHEREOF** the Parties have executed this Agreement this        day        of  
, 2016.

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David A. Klein,  
Counsel for the Plaintiff,  
Janet Merlo

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Mitchell Taylor, Q.C.,  
Counsel for the Defendant the  
Attorney General of Canada

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Won J. Kim,  
Counsel for the Plaintiff,  
Linda Gillis Davidson

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Gina M. Scarcella,  
Counsel for the Defendant the  
Attorney General of Canada