

Federal Court



Cour fédérale

**Date: 20200603**

**Docket: T-1685-16**

**Ottawa, Ontario, June 3, 2020**

**PRESENT: Madam Justice McDonald**

**BETWEEN:**

**JANET MERLO AND LINDA GILLIS  
DAVIDSON**

**Plaintiffs**

**and**

**HER MAJESTY THE QUEEN**

**Defendant**

**ORDER**

**UPON MOTION** by the Plaintiff, Linda Gillis Davidson, pursuant to Rule 369 of the *Federal Courts Rules* and on consent of all parties, for an Order pursuant to Article 16.02 of the Settlement Agreement approved by this Court on May 30, 2017, declaring that any individual alive as at the expiry of the Opt-Out period, being March 29, 2017, and who otherwise meets the certified Primary Class Member definition, shall be deemed to be a Primary Class Member;

**AND UPON** being satisfied that this Order ensures the Settlement Agreement is interpreted and applied in a manner that aligns with its purpose and spirit, protects class members, and ensures the class members can access the benefits to which the parties agreed;

**THIS COURT ORDERS that:**

1. An individual who was alive on March 29, 2017, being the date of the expiry of the Opt-Out Period satisfies the “living” requirement to be a Primary Class Member;
2. A Primary Class Member who submitted a Claim by the Claim Deadline, but who died before the Assessor delivered a decision on the claim, is eligible for compensation pursuant to the Settlement Agreement if that Claim otherwise meets the approved claims criteria;
3. The Assessor shall review Claims of Primary Class Members received by the Claim Deadline that were closed or otherwise denied by the Assessor on the basis that the Claimant was deceased, and where the Claimant meets the definition of Primary Class Member set out in this order, shall proceed to assess the Claim in accordance with the Settlement Agreement;
4. The Settlement Agreement be and is hereby amended to add the following paragraphs:

**Schedule B, Appendix 4**

8.1 Notwithstanding paragraph 8 of Schedule B, Appendix 4 and the definition of Primary Class Members in article 1.01 of the Settlement Agreement, the Assessor shall render a Decision in respect of a Claim submitted by a Claimant prior to the Claim Deadline, or an extension of time granted in accordance with the Settlement Agreement, who is no longer living at the time the Claim comes before the Assessor for review

**Schedule B – Claims Process**

26.1 Notwithstanding paragraph 26 of Schedule B – Claims Process and Article 6.04 of the Settlement Agreement, where the Assessor assesses a Claim pursuant to paragraph 8.1 of Schedule B, Appendix 4, the Assessor may determine that the Claim falls within any of level three to six without conducting an interview for the purposes of determining compensation in accordance with Schedule B, Appendix 6.

33.1 Notwithstanding paragraph 33 of Schedule B – Claims Process and Article 6.05 of the

Settlement Agreement, the Assessor shall reconsider any decision to close or otherwise deny a claim on the basis that the Claimant was not living at the time the Claim came before the Assessor for review, where that decision was made before the implementation of paragraph 8.1 of Schedule B, Appendix 4, and in doing so, the Assessor may assess the Claim in accordance with paragraph 8.1 of Schedule B, Appendix 4. Any such reconsideration decision will be final as if initially made under Article 6.05.

**Settlement Agreement – Article 8 – Payment of Compensation**

8.01.1 Payment of Compensation for Decisions made under Paragraph 33.1, Schedule B, Appendix 4

Article 8.01 applies to any payment of compensation pursuant to a Decision made in accordance with paragraph 33.1 of Schedule B, Appendix 4, with the exception that the payment will be payable to the deceased Claimant's estate.

5. No costs are payable on this motion.

"Ann Marie McDonald"

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Judge