

**FEDERAL COURT
PROPOSED CLASS PROCEEDING**

BETWEEN:

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

Plaintiffs

-and-

HER MAJESTY THE QUEEN

Defendant

AFFIDAVIT OF JEAN MINER

I, JEAN MINER, of the City of Saskatoon, in the Province of Saskatchewan, Legal Assistant, MAKE OATH AND SAY:

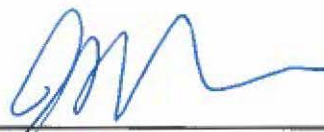
1. I am a legal assistant with the Department of Justice Canada and as such have personal knowledge of the facts and matters herein deposed to except where stated to be on information and belief and where so stated I do verily believe the same to be true.
2. Attached hereto and marked as Exhibit 'A' to this my Affidavit is a copy of correspondence from Leah C. Kosokowsky of the Law Society of Manitoba dated May 9, 2018 to Catharine Moore General Counsel-Civil Litigation Section, National Litigation Sector, Department of Justice Canada.

3. I make this affidavit in support of Canada's position that the Settlement Agreement reached in this matter be approved.

SWORN before me at the City of
Saskatoon, in the Province of
Saskatchewan, this 9th day of May,
2018.



A Commissioner for Oaths in and
For the Province of Saskatchewan.
My Commission expires: November 30, 2021



Jean Miner

ATTORNEY GENERAL OF CANADA

Department of Justice, National Litigation Sector

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Ottawa, ON K1A 0H8
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Per: Catharine Moore and Travis Henderson
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Solicitors for the Defendant.



The Law Society of Manitoba

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May 9, 2018

Ms Catharine Moore
General Counsel-Civil Litigation Section
National Litigation Sector
Department of Justice Canada/Government of Canada
50 O'Connor Street
Ottawa ON
K1A 0H8

This is exhibit A referred to in the
affidavit of Jean Minor
sworn before me this 9th day
of May A.D. 2018
Subeung B
A Commissioner for Oaths in and for
the Province of Saskatchewan.
My Commission Expires NOV. 30/21

Dear Ms Moore:

Re: Proposed Settlement – Sixties Scoop Class Action

As you know, I am a member of a working group comprised of representatives from seven Canadian law societies which has been following the settlement of the class action in order that we can fulfil our mandate to ensure that the public is served by honourable and competent lawyers.

Thank you for the opportunity to provide the working group's views on the proposed settlement as it relates to lawyers' fees and, in particular, to the provision that stipulates that no legal fees can be charged to a claimant without the prior approval of the court. We understand that there have been some objections to this provision on the basis that it deprives claimants of their choice of counsel. We disagree with this position and I will set out below the law societies' views on the matter.

In order to put the balance of my comments in context, I will first set out my understanding of the relevant portion of the proposed settlement. As I understand it, the advocacy has been concluded and pursuant to the proposed settlement, the class of claimants is established as is the amount of compensation (at least the formula for calculating the compensation). Accordingly, in order for an individual to receive compensation under the settlement, that person need only complete an application form and provide some supporting document or information to demonstrate that the person falls within the class. As such, it would not appear

that the individual would be seeking or receiving legal advice nor would the lawyer be advancing a particular claim or position.

I also understand that the form is not lengthy or complicated and, in most cases, could be completed without the assistance of legal counsel. However, in the event that a claimant wishes to obtain assistance, the law firms that are listed in the settlement (or their agents) will provide that assistance at no cost to the claimant.

Finally, if a claimant chooses to use a different lawyer, he or she may do so at his or her own cost. However, no legal fee can be charged to a claimant without the prior approval of the court.

Deprivation of Counsel

Given that the proposed settlement permits individuals to hire counsel of their choice, there appears to be no basis for the argument that the clients are deprived of their choice of counsel. The only limitation is that any legal fees must first be approved by the court.

Furthermore, it would appear that little, if any, legal advice is required and, in all likelihood, the services would be provided by an administrative personnel. As such, there is no deprivation of the ability to seek and obtain legal advice from counsel of choice.

Professional Obligations

Under our respective Codes of Professional Conduct, there are a number of professional obligations that are expected of legal counsel, including:

- *Integrity:* There is an overarching duty to discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity;
- *Honesty and Candour:* When advising a client, a lawyer must be honest and candid and must inform the client of all information known to the lawyer that may affect the interests of the client in the matter;
- *Conflict of Interest:* A lawyer must not act or continue to act for a client where there is a conflict of interest except as permitted under the Code (this includes where there is a conflict between the interest of the client and the interest of the lawyer); and
- *Legal Fees:* A lawyer must not charge or accept a fee or disbursement, including interest, unless it is fair and reasonable and has been disclosed in a timely fashion. A fee will not be fair and reasonable and may subject the lawyer to disciplinary proceedings if it is one that cannot be justified in light of all pertinent circumstances or is so disproportionate to the services rendered as to introduce the element of fraud or dishonesty, or undue profit.

In our view, any lawyer that was approached to assist a client in making a claim under the proposed settlement, would be required to advise the client that the client can obtain the services to complete the form at no cost to the client. The lawyer also would be obliged to disclose to the client the names of the firms that will provide that service at no charge. If a lawyer were to fail to make such disclosure, the lawyer would be breaching the obligation to act with integrity, the obligation of honesty and candour that is owed to the client and would be preferring his/her own interest over the interests of the client.

Legal Fees

As noted above, the services that would be provided to a client in these circumstances would be minimal and would not require the expertise of a lawyer. As such, any fee other than a nominal fee would be inappropriate and would violate the lawyer's obligation to only charge and accept a fee that is fair and reasonable in all of the circumstances.

The law societies are aware of some law firms that have been advertising to assist clients with claims under the proposed settlement for a fee of 15% of the compensation received. We are all of the view, for several reasons, that this is wholly inappropriate and a violation of the lawyers' professional obligations.

First, contingency fee agreements are generally acceptable where lawyers are taking on difficult cases with a real risk that the client may not succeed at the end of the day. The lawyer therefore shares the risk of contributing significant time and overhead with no compensation. Accordingly, having borne the risk of receiving no legal fees at all, the lawyer may be justified in charging and accepting a higher fee, based upon a percentage of recovery.

That is not the case here. There is no risk to the lawyer. Extensive legal services are not contemplated or required. There is no justification for charging fees on a contingent basis.

Furthermore, the amount of fees arising in a contingency fee agreement would be wholly disproportionate and would violate the obligation to ensure that fees are fair and reasonable. In fact, such fees would be so disproportionate to the services provided in this case, as to attract disciplinary action.

For example, if lawyers attempted to charge a contingency fee of 15% and if the average compensation to clients was \$50,000, the lawyer would be paid \$7,500 to complete a form and perhaps gather some documentation. Consider the hours that would translate to, if the lawyer provided the services at an hourly rate.

\$500/hour	15 hours
\$450/hour	16.6 hours
\$400/hour	18.75 hours
\$300/hour	25 hours
\$250/hour	30 hours

If the work required took approximately one hour (leaving aside that the services would likely be provided by administrative personnel), the hourly rate charged to the client would be \$7500/hour.

It should also be noted that, in many jurisdictions, contingency fee agreements are only reviewable by the courts and a request for review must be made within 6 months of the fees being charged. Without the requirement that any legal fees must first be approved by the court, the onus is placed upon clients (some of whom are extremely vulnerable) to then pursue their lawyer in court. This is unlikely to occur and is an unfair burden to be placed on these clients.

The approving court in this case is best equipped to ensure that the fees charged in these cases are fair and reasonable to the clients and that legal counsel are not abusing the trust that is reposed in them. In our view, the requirement that legal fees be pre-approved is essential to ensuring that claimants receive their fair compensation under the proposed settlement of the class action and such requirement would not deprive claimants of their choice of counsel.

Thank you again for the opportunity to share our thoughts. If you have any questions please do not hesitate to contact me.

Yours truly,



Leah C. Kosokowsky
Director of Regulation

LCK/dr