

Federal Court



Cour fédérale

**Date: 20180420**

**Dockets: T-2111-16  
T-460-17**

**Citation: 2018 FC 432**

**Toronto, Ontario, April 20, 2018**

**PRESENT: The Honourable Mr. Justice Fothergill**

**Docket: T-2111-16**

**BETWEEN:**

**SHERRY HEYDER**

**Plaintiff**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**Docket: T-460-17**

**AND BETWEEN:**

**LARRY BEATTIE**

**Plaintiff**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Defendant**

**ORDER AND REASONS**

I. Overview

[1] The Plaintiffs in these two proposed class actions have brought a motion in writing pursuant to Part 5.1 and Rule 369 of the *Federal Courts Rules*, SOR/98-106 for an order that:

- a) *Heyder v The Attorney General of Canada* (Court File No. T-2111-16) and *Beattie v The Attorney General of Canada* (Court File No. T-460-17) proceed with Koskie Minsky LLP and Raven, Cameron, Ballantyne & Yazback LLP/S.R.L. as counsel for the Plaintiffs;
- b) no other class action be permitted in the Federal Court in respect of the facts pleaded in *Heyder v The Attorney General of Canada* (Court File No. T-2111-16) and *Beattie v The Attorney General of Canada* (Court File No. T-460-17) without leave of this Court; and
- c) the order be issued *nunc pro tunc*, effective March 23, 2018, the date on which the motion was filed.

[2] For the reasons that follow, the motion is granted.

## II. Background

[3] These proposed class actions concern allegations of sexual harassment, sexual assault and gender-based discrimination made by current and former women and men serving in the Canadian Armed Forces.

[4] Six overlapping class proceedings were commenced in late 2016 and early 2017 in different jurisdictions within Canada. In September 2017, the Plaintiffs in these proceedings entered into a consortium agreement with the Plaintiffs in the related class actions [Consortium Agreement]. The other actions that are subject to the Consortium Agreement are: *Graham v Attorney General of Canada* (Court File No. 13-80853-CP) commenced in the Ontario Superior Court of Justice; *Rogers v The Attorney General of Canada* (Court File No. 457658) commenced in the Supreme Court of Nova Scotia; *Alexandre Tessier c Procureur General du Canada* (Court File No. 200-06-000209-174) commenced in the Superior Court of Quebec; and *Peffers v The Attorney General of Canada* (Court File No. 165018) commenced in the Supreme Court of British Columbia [collectively, the Provincial Actions].

[5] The parties to the Consortium Agreement have agreed that Court File Nos. T-2111-16 and T-460-17 will be pursued on behalf of national classes, and the Provincial Actions will be held in abeyance. The proceedings before the Federal Court are currently suspended to permit the parties to engage in exploratory settlement discussions.

[6] The Attorney General of Canada has declined to make submissions regarding the Court's discretion to grant or refuse the motion for carriage, despite having been asked to do so. Counsel representing the Attorney General note that they previously agreed to take no position on the motion, but it is unclear why this precludes them from assisting the Court in identifying relevant principles and considerations. It is regrettable that the Court's analysis has not benefited from the perspective of the Attorney General.

### III. Analysis

[7] According to the Plaintiffs, the Court's discretion to grant or refuse a motion for carriage of a proposed class action should be exercised in accordance with the following non-exhaustive considerations:

- a) whether the order is in the best interests of the Plaintiffs, the class members and the Defendant;
- b) whether the order furthers the Federal Court's commitment to robust case management;
- c) whether the order reflects the Federal Court's unique national jurisdiction; and
- d) whether the order promotes the objectives of judicial economy and avoiding a multiplicity of proceedings.

[8] These considerations are derived in large part from Ontario jurisprudence (see, for example, *Mancinelli v Barrick Gold Corporation*, 2016 ONCA 571 at para 13). The policy objectives of Part 5.1 of the *Federal Courts Rules* are inspired by the policy objectives of the *Class Proceedings Act*, 1992, SO 1992, c 6, namely judicial economy, access to justice and behaviour modification (*Murphy v Compagnie Amway Canada*, 2015 FC 958 at para 34). I therefore agree that the considerations proposed by the Plaintiffs are appropriate.

[9] Applying these considerations in the present case, I am satisfied that awarding carriage of the proposed class proceedings in the manner requested is in the best interests of the Plaintiffs, the class members and the Defendant. The case management provisions of Rules 387(a) and 387(b) of the *Federal Courts Rules* are intended to facilitate the early settlement of disputes. The carriage order sought by the Plaintiffs will, among other things, prevent the commencement of overlapping and duplicative class actions which may have the effect of disrupting the settlement discussions that are currently underway.

[10] The order requested will not prejudice any class members. A prospective plaintiff may seek leave to commence an overlapping proceeding if there are compelling reasons to do so. If the present proceedings are certified, the *Federal Courts Rules* require that class members be permitted to opt out if they so choose. If class members opt out, they will not be bound by the outcome of the class actions, and may pursue litigation elsewhere.

[11] The order requested is consistent with Rules 3 and 385(1)(a) of the *Federal Courts Rules*, which promote robust case management to secure the just, most expeditious and least expensive determination of a proceeding on its merits.

[12] Importantly, the order requested furthers the effective exercise of the Federal Court's national class action jurisdiction. In the debates that preceded the enactment of the *Federal Court Act*, SC 1970-71-72, c 1, the then Minister of Justice observed that the Federal Court was designed to achieve two objectives: ensuring that members of the public "have resort to a national court exercising a national jurisdiction when enforcing a claim involving matters which frequently involve national elements"; and making it possible for "litigants who may often live in widely different parts of the country to [have] a common and convenient forum in which to enforce their legal rights" (*House of Commons Debates*, 28th Parl, 2nd Sess, Vol 5 (March 25, 1970) at 5473). The order requested recognizes the national dimensions of the claims, and facilitates their expeditious resolution by providing a common and convenient vehicle for class members who live in widely different parts of the country to enforce their legal rights.

[13] Finally, the order requested is consistent with the objectives of judicial economy and avoiding a multiplicity of proceedings. Imposing a leave requirement before duplicative and overlapping proceedings may be commenced in this Court will promote the efficient use of judicial resources.

IV. Conclusion

[14] The Plaintiffs' motion for carriage of the proposed class actions is granted.

**ORDER**

**THIS COURT ORDERS that:**

1. *Heyder v The Attorney General of Canada* (Court File No. T-2111-16) and *Beattie v The Attorney General of Canada* (Court File No. T-460-17) shall proceed with Koskie Minsky LLP and Raven, Cameron, Ballantyne & Yazback LLP/S.R.L. as counsel for the Plaintiffs.
2. No other class action may be commenced in the Federal Court in respect of the facts pleaded in *Heyder v The Attorney General of Canada* (Court File No. T-2111-16) and *Beattie v The Attorney General of Canada* (Court File No. T-460-17) without leave of this Court.
3. This order is issued *nunc pro tunc*, effective March 23, 2018, the date on which the motion was filed.

“Simon Fothergill”

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Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

**DOCKETS:** T-2111-16, T-460-17  
**DOCKET:** T-2111-16  
**STYLE OF CAUSE:** SHERRY HEYDER v THE ATTORNEY GENERAL OF CANADA  
**DOCKET:** T-460-17  
**STYLE OF CAUSE:** LARRY BEATTIE v THE ATTORNEY GENERAL OF CANADA

MOTION MADE IN WRITING PURSUANT TO R. 369 OF THE *FEDERAL COURTS RULES*,  
CONSIDERED AT TORONTO, ONTARIO.

**ORDER AND REASONS:** FOTHERGILL J.  
**DATED:** APRIL 20, 2018

**WRITTEN SUBMISSIONS:**

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Garth Myers  
  
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