

CANADA / JUDGMENT

Tiller v. Canada

2020 FC 322

COURT

Federal Court

DECIDED

10 March 2020

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Tiller v. Canada Court (s) Database Federal Court Decisions Date 2020-03-10 Neutral citation 2020 FC 322 File numbers T-1673-17 Decision Content Date: 20200310 Docket: T-1673-17 Citation: 2020 FC 322 Ottawa, Ontario, March 10, 2020 PRESENT: The Honourable Mr. Justice Phelan CLASS PROCEEDING BETWEEN: CHERYL TILLER, MARY-ELLEN COPLAND AND DAYNA ROACH Plaintiffs and HER MAJESTY THE QUEEN Defendant ORDER (Counsel Fees) WHEREAS this motion was made by the Representative Plaintiffs pursuant to Rule 334.3 of the Federal Courts Rules, SOR/98-106; AND WHEREAS the Defendant takes no position on this motion having agreed to contribute Six Million Dollars (\$6,000,000) to counsel's fees; AND WHEREAS this motion was heard on October 17, 2019; AND UPON HEARING the submissions of counsel for the Representative Plaintiffs; AND UPON READING the motion record of the Representative Plaintiffs; THIS COURT ORDERS that: The Class Counsel fees set out in the fee agreement between the parties executed on June 24, 2019 [the Fee Agreement], attached as Schedule A, are approved subject to amendment of Clause 1.04 to 7% and the consequential amendment in Clause 1.05 to 7%. The Fee Agreement is incorporated by reference into this Order and the definitions set out in the Fee Agreement apply to this Order. The Defendant will pay \$6,000,000.00, plus applicable sales taxes, to Class Counsel as a contribution towards Class Counsel fees. Class Members will make a contribution towards Class Counsel fees in the amount of 7%, plus applicable taxes, of the individual compensation awarded to each eligible Class Member under the Settlement, excluding any amounts paid to her for reimbursement of out-of-pocket expenses incurred to obtain medical documentary evidence to support her claim and travel expenses when required to travel more than 50 kilometers from her residence to attend an in-person interview with the Assessor. Pursuant to the Fee Agreement, 70% of the Class Counsel fees will be payable to Klein Lawyers LLP and 30% will be payable to Higgerty Law. Within 10 days of the Approval Date, Klein Lawyers will provide the Defendant with an invoice for \$4.2 million plus applicable sales taxes and Higgerty Law will provide the Defendant with an invoice for \$1.8 million plus applicable sales taxes representing the Defendant's respective contributions towards Class Counsel fees. These amounts will be paid by the Defendant within 30 days following the Approval Date, as defined in the Settlement Agreement. Class Counsel will hold the amounts paid by the Defendant in trust pending the expiry of any appeal period for the Federal Court approval of the Settlement Agreement or the Federal Court approval of Class Counsel fees. If an appeal of the Settlement Agreement approval or the approval of Class Counsel fees is filed,

Class Counsel will continue to hold the fees paid by Canada in trust pending the final resolution of the appeal(s). Class Counsel will only remove the amounts paid by the Defendant from trust, in satisfaction of their invoices, if no appeal has been filed and the period for appeal has expired, or if any appeal is unsuccessful and all further appeal periods have expired. If the Federal Court approval of the Settlement Agreement is overturned on appeal, Class Counsel will return to the Defendant the amount previously paid for Class Counsel fees. If the approval of Class Counsel fees is overturned or varied on appeal, Class Counsel will return to the Defendant any amount previously paid for Class Counsel fees which is not provided for in the final order of the Federal Court. The Class Counsel fee payable by each Class Member will be calculated by the Administrator who will hold back the Class Counsel fee, plus applicable sales tax, from the compensation otherwise payable to the Class Member. The Administrator will remit 70% of the Class Counsel fee, plus applicable sales tax, to Klein Lawyers and 30% of the Class Counsel fee, plus applicable sales tax, to Higgerty Law on the first business day of each month for all compensation paid to Class Members in the prior month. Klein Lawyers and Higgerty Law will each provide the Defendant with an itemized list of their disbursements, together with receipts or other supporting documentation satisfactory to the Defendant, within 30 days of the issuance of this Order. The Defendant will pay the costs of Klein Lawyers' and Higgerty Law's reasonable disbursements, as agreed between the Parties or as assessed by the Court. Each Party will bear their own costs of this application. Blank "Michael L. Phelan" blank Judge

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