Court File No.: T-210-12

FEDERAL COURT

Class Proceeding

JENNIFER MCCREA

Plaintiff

- and -

ATTORNEY GENERAL OF CANADA AND THE CANADA EMPLOYMENT INSURANCE COMMISSION

Defendants

SETTLEMENT AGREEMENT

WHEREAS the representative plaintiff, Jennifer McCrea, initiated this action on behalf of all persons who, during the period from March 3, 2002 to, and including, March 23, 2013:

i) Applied for and were paid parental benefits under the Employment Insurance Act ("EI Act") or corresponding types of benefits under Quebec's An Act Respecting Parental Insurance;

ii) Suffered from an illness, injury or quarantine while in receipt of parental benefits;

iii) Applied for sickness benefits in respect of the illness, injury or quarantine referred to in ii); and

iv) Were denied a conversion of parental benefits to sickness benefits because:

(a) the person was not otherwise available for work; or
(b) the person had not previously received at least one week of sickness benefits during the benefit period in which the parental benefits were received;

AND WHEREAS the Federal Court of Canada certified this action as a class proceeding on May 7, 2015;

AND WHEREAS the Parties have agreed to settle the Class Action upon the terms contained in this Settlement Agreement; and

NOW THEREFORE, in consideration of the mutual agreements, covenants and undertakings set out in this agreement, the Parties agree with each other as follows:

SECTION ONE

INTERPRETATION

1.01 Definitions

In this Settlement Agreement, the following terms will have the following meanings:

"Administrator" means the Transformation and Integration Service Management branch of ESDC;

"Approval Date" means the date the Court issues its Approval Order;

"Approval Order" means the judgment of the Federal Court, a draft of which is attached as **Schedule "A"**, approving this Settlement Agreement as fair, reasonable and in the best interests of the Class Members as a whole for the purposes of settlement of the Class Action;

"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 Settlement Agreement is situated, or a holiday under the federal laws of Canada applicable in the said Province or Territory;

"Canada" or **"Government of Canada"** means Her Majesty the Queen in Right of Canada, and includes the Canada Employment Insurance Commission;

"Claim" means an application for an Individual Payment completed substantially in the form attached as **Schedule "B"** or as amended by agreement of the Parties, and signed by a Claimant or the Claimant's Estate Executor, or Immediate Family Member where the Estate has been wound up, along with any supporting documentation submitted by the Claimant or the Claimant's Estate Executor, or Immediate Family Member;

"Claimant" is a person who completes a Claim Form and submits it for Individual Payment;

"Claim Form" is the form which Claimants must complete to apply for an Individual Payment and attached as **Schedule "B"** or as amended by agreement of the Parties,

"Claims Deadline" means the five (5) month anniversary of the commencement of the Claims Period;

"Claims Period" means the period from the Implementation Date to the Claims Deadline;

"Class Action" means the action styled as Jennifer McCrea v. Attorney General of Canada and the Canada Employment Insurance Commission, File No. T-210-12, or as amended by Order of this Court;

"Class Counsel" means Cavalluzzo LLP;

"Class Members" mean all persons who meet the class definition described in **Section 4.02**;

"Class Period" means the period from March 3, 2002 to March 23, 2013;

"Court" means the Federal Court of Canada;

"Eligible Class Member" means a Class Member who was alive during any part of the period beginning March 3, 2002 and ending March 23, 2013, and whose eligibility for an Individual Payment is approved in accordance with the provisions of this Settlement Agreement;

"ESDC" means the Department of Employment and Social Development, otherwise known as Employment and Social Development Canada;

"Estate Executor" means the estate executor, administrator or trustee of a deceased Class Member's estate, or the personal representative of a Class Member who is under a disability in accordance with applicable provincial and territorial legislation;

"File Review Project" means ESDC's identification of Class Members through a review of its records;

"Immediate Family Member" means a spouse, child, parent, brother or sister;

"Implementation Date" means the date on which implementation of the settlement commences and is the latest of:

i) the day following the last day on which a Class Member may appeal or seek leave to appeal the Approval Order; or

ii) the day after the date of a final determination of any appeal brought in relation to the Approval Order;

"Individual Payment" means the monetary payment made to an eligible Class Member in accordance with the provisions of this Settlement Agreement;

"Notice Plan" means the program of notice to Class Members set out in **Schedule "C"**;

"Opt Out Period" means the thirty (30) day period commencing from the date of the Approval Date;

"Opt Out Threshold" means the Opt Out Threshold set out in **Section 2.03**;

"Parties" means the Plaintiff and Canada;

"Settlement Agreement" means this document entitled "Settlement Agreement", including the Schedules listed in **Section 1.07**.

1.02 Headings

The division of this Settlement Agreement into Sections and Schedules 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 Settlement Agreement.

1.03 Interpretation

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

1.04 Day For Any Action

Where the day or date 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.

1.05 When Order Final

For the purposes of this Settlement 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.

1.06 Currency

All references to currency herein are to the lawful money of Canada.

1.07 Schedules

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

Schedule “A” – Draft Approval Order
Schedule “B” – Claim Form
Schedule “C” – Notice Plan
Schedule “D” – Notice of Certification, Objection Process, and Settlement Approval Hearing
Schedule “E” – Objection Form
Schedule “F” – Notice of Approval of Settlement, Opt Out Process and Claims Process
Schedule “G” – Opt Out Form
Schedule “H” – Original Statement of Claim, issued January 19, 2012
Schedule “I” – Amended Statement of Claim, issued September 4, 2013
Schedule “J” – Fresh as Amended Statement of Claim

Schedule “K” – Administration Plan
Schedule “L” – Application for Review of Determination
Schedule “M” – Terms of Appointment of Monitor
Schedule “N” – Class Counsel

In the event of a contradiction between the content of the body of this Settlement Agreement and the content of the body of one of the above Schedules, the language of the body of the Settlement Agreement will govern.

1.08 No Other Obligations

All actions, causes of actions, liabilities, claims and demands whatsoever of any nature or kind for damages, contribution, indemnity, costs, expenses or interest which any Class Member ever had, now has or may hereafter have arising against Her Majesty the Queen in Right of Canada, and all current and former Ministers, employees, officials, departments, Crown agents, agencies, and Crown servants in relation to provision of EI benefits during the class period, and actions taken in relation thereto, whether or not such claims were made or could have been made in any proceeding including the Class Actions, will be finally settled on the terms and conditions set out in this Settlement Agreement upon the Implementation Date, and Her Majesty the Queen in Right of Canada, and all current and former Ministers, employees, officials, departments, Crown agents, agencies,and Crown servants will have no further liability except as set out in this Settlement Agreement.

SECTION TWO

EFFECTIVE DATE OF THIS SETTLEMENT AGREEMENT

2.01 Date when Binding and Effective

This Settlement Agreement will become effective and be binding on all the Parties and the Class Members on and after the Implementation Date. The Approval Order will constitute approval of this Settlement Agreement in respect of all Class Members.

2.02 Effective in Entirety

None of the provisions of this Settlement Agreement will become effective unless and until the Court approves all of the provisions of this Settlement Agreement.

2.03 Opt Out Threshold

If the number of Class Members who opt out or who are deemed to have opted out under the Approval Order exceeds two hundred (200), Canada, in her sole discretion, may, within thirty (30) days after the end of the Opt Out Period, exercise the option to void this Settlement Agreement.

SECTION THREE

NOTICE

3.01 Notice Program

The Parties have agreed to the Notice Plan attached as **Schedule "C"**, which entails two phases:

(a) Notice of the Certification Order and of the hearing to approve the Settlement Agreement; and
(b) Notice of the Approval of the Settlement and Opt Out Process.

The Parties have agreed that Notice to the class will be effected by two methods: (a) direct mailing to the Class Members identified through ESDC's File Review Project; and (b) a public notice campaign.

ESDC will purchase advertisements in accordance with the terms of the Notice Plan.

3.02 Content of Notices

Notice of the certification of this action, objection process and the settlement approval hearing will be generally in the form set out in **Schedule "D"**. The objection form will be in the form set out in **Schedule "E"**.

Notice of the approval of the settlement, opt out process and claims process is set out in **Schedule "F"**. The Opt Out Form will be in the form attached as **Schedule "G"**.

3.03 Costs of Effecting Notice

Canada will pay amounts and all applicable taxes for notice in accordance with this Settlement Agreement, save for the costs associated with any notices given by Class Counsel in accordance with the Settlement Agreement. The total costs of the notice plan will not exceed $55,000.

SECTION FOUR

CLASS DEFINITION

4.01 Amendment of Statement of Claim

The Parties agree to amend the class definition in the Amended Statement of Claim, issued September 4, 2013, attached as **Schedule "I"**, and to make other incidental amendments pursuant to the Order of this Court certifying this action dated May 7, 2015. The Fresh as Amended Statement of Claim containing the amendments is attached as **Schedule "J"**.

4.02 Class Definition

The Parties agree that the class is as follows:

> All persons who, during the period from March 3, 2002 to, and including, March 23, 2013:
>
> i) Applied for and were paid parental benefits under the EI Act or corresponding types of benefits under Quebec's An Act Respecting Parental Insurance;

ii) Suffered from an illness, injury or quarantine while in receipt of parental benefits;

iii) Applied for sickness benefits in respect of the illness, injury or quarantine referred to in ii; and

iv) Were denied a conversion of parental benefits to sickness benefits because:

(a) the person was not otherwise available for work; or

(b) the person had not previously received at least one week of sickness benefits during the benefit period in which the parental benefits were received.

SECTION FIVE

INDIVIDUAL PAYMENT

5.01 Eligibility for Individual Payment

Each person who can establish that they meet the class definition and received less than 15 weeks of sickness benefits during the benefit period in which the original application to convert to sickness benefits was made, is eligible for an Individual Payment in respect of that benefit period. A Claim Form must be received during the Claims Period in order to obtain an Individual Payment.

5.02 Deemed Eligible Class Members

For greater certainty, Claimants who were identified through the File Review Project as having met the class definition and have received less than 15 weeks of sickness benefits during the benefit period in which the original application to convert to sickness benefits will be made, will be deemed Eligible Class Members.

5.03 Evidentiary Threshold to Establish an Application to Convert was Made

Claimants who were not identified as a Class Member through the File Review Project will be eligible where it is established that they meet the class definition based on evidence in ESDC's file of the application to convert to sickness benefits in either the: (a) SROC; (b) the checklist for conversion that was in use during the class period; or (c) another record made by ESDC.

Alternatively, ESDC shall consider documentary evidence provided by the person that establishes they made an application to ESDC for a conversion.

5.04 Evidentiary Threshold to Establish an Illness, Injury or Quarantine

All Claimants must attempt to identify either the name and location of their attending physician with whom they sought care, or the name and location of the walk-in clinic or other medical facility attended, in respect of the illness, injury or quarantine for which they sought sickness benefits. Failure to provide such information alone is not necessarily fatal to the Claim. Where a Claimant is unable to provide the name of one's physician or the medical facility attended, ESDC shall consider any other evidence in order to make a determination as to whether the claim may be substantiated, including an attestation as to the nature of the Claimant's illness.

5.05 Evidentiary Threshold to Establish the Number of Weeks of Illness, Injury or Quarantine

All Claimants must attest to the total weeks that the claimant was sick while in receipt of parental benefits during the class period. Where the Claimant otherwise meets the evidentiary thresholds in **Sections 5.02**, **or 5.03** and **5.04**, the Claimant shall receive an Individual Payment based on the greater of: the number of weeks attested to or the weeks recorded in ESDC's records.

5.06 Payment if Deceased

The Estate or family member of a Class Member who is deceased may receive an Individual Payment the Class Member would otherwise be eligible for had she or he not died, provided the Estate Executor, or if the Estate has been wound up, an Immediate Family Member, of the deceased, submits the Claim Form required under **Section 5.01** which establishes the person is the Estate Executor, or where the estate has been wound up, is an Immediate Family Member and is the beneficiary of the residue of the Estate. For greater certainty, only one Individual Payment may be paid in respect of a claim by an Estate or Immediate Family Member.

5.07 Late Claims

ESDC shall consider and accept Claims filed within the 30 day period following the end of the Claims Period, where the Claimant has provided a reason for the failure to provide the Claim within the time allotted. No Claims shall be accepted more than 30 days after the end of the Claims Period without leave of the Court.

5.08 Calculation of Individual Payment

Upon receipt of a completed Claim, each Claimant who is determined to be an Eligible Class Member under **section 5.01**, shall be paid an Individual Payment in an amount calculated on the following basis:

$$(A - B) \times C$$

Where:

A = the number of weeks of sickness applied for during the benefit period (or attested to);

B = the number of weeks of sickness benefits paid to the Eligible Class Member during that benefit period; and

C = the Eligible Class Member's applicable weekly rate for that benefit period.

5.09 Payment by Direct Deposit

Where possible, an Individual Payment will be made by Direct Deposit. Where Direct Deposit is not available, cheques for Individual Payments will be issued to each Eligible Class Member or his or her Estate Executor and mailed to the address listed on the Claim Form or as otherwise directed.

5.10 Compensation Inclusive

For greater certainty, the amounts payable to Eligible Class Members under this Settlement Agreement are inclusive of any other forms of damages, compensation or benefits, and all pre-judgment or post-judgment interest or other amounts that may be claimed by Class Members.

SECTION SIX

APPOINTMENT AND DUTIES OF THE ADMINISTRATOR

6.01 Minister of ESDC to be the Administrator

The Parties agree that the Minister of Employment and Social Development, through the Transformation and Integration Service Management branch of ESDC, shall administer the Claims process, and shall process all of the Individual Payments that may be payable to Eligible Class Members in accordance with the Administration Plan attached as **Schedule "K"**.

6.02 Administrator's Duties

The Administrator shall conduct the claims process as outlined in **Section 7** of the Settlement Agreement and the Administration Plan attached as **Schedule "K"**, and more generally shall perform the following duties and responsibilities:

(a) develop and implement systems and procedures for processing, evaluating and making decisions respecting Claims which reflect the need for simplicity in form, including processing the Claims substantially in accordance with **Schedule "K"**;

(b) update payment system and develop procedures for issuing Individual Payments;

(c) provide a final report to the Court on the claims administration process;

(d) provide training and instruction to personnel involved in the Claims administration process, and to assign personnel in such reasonable numbers as are required for the performance of its duties within the time periods prescribed;

(e) receive and respond to all enquiries and correspondence respecting the validation of Claims, reviewing and evaluating all Claim Forms, making decisions in respect of all Claims, giving notice of its decisions in accordance with the provisions of this Settlement Agreement;

(f) receive and respond to all enquiries and correspondence respecting Individual Payment for valid Claims, and effect the Individual Payment in accordance with the provisions of this Settlement Agreement;

(g) communicate with Claimants and Class Members in either English or French, as the Claimant, Class Member or Eligible Class Member elects;

(h) such other duties and responsibilities as the Court may from time to time by order direct; and

(i) the Administrator shall collaborate with the Monitor to facilitate the sharing of information required for purposes of allowing the Monitor to fulfill its duties.

SECTION SEVEN

CLAIMS ADMINISTRATION

7.01 Claims Process

The Administrator will process all Claims as set out below and substantially in accordance with the Administration Plan attached as **Schedule "K"**.

7.02 Claims Period

The Claims Period will begin on the Implementation Date and will continue for five (5) months, with the possibility of a one (1) month extension of time for late claims, with justification provided by the claimant.

7.03 Administrator's Determination

As soon as possible after a Claim is received following the Implementation Date, but no later than three (3) months after the Claims Deadline (the "**Determination Date**"), the Administrator will determine the Individual Payment due to each Eligible Class Member. Upon making each determination, the Administrator will issue an Individual Payment within sixty (60) days by way of direct deposit, or cheque as requested by the Eligible Class Member.

7.04 Determinations Final

All Administrator's determinations are final and binding as against the Class Member and Canada, and are subject to review only as provided for in this Settlement Agreement. For greater certainty, determinations are not subject to judicial review under section 18.1 of the *Federal Courts Act*, nor are they reviewable through any other means.

SECTION EIGHT

REVIEW OF ADMINISTRATOR'S DETERMINATIONS

8.01 Right of Review

Where the Administrator determines that a Claim is not established and denies an Individual Payment, a Claimant may seek a review of such decision within 30 days by completing and signing an Application for Review of Determination in the form attached as **Schedule "L"**. The Application should be submitted to the Federal Court of Canada.

8.02 Review to be conducted by Designated Prothonotary of the Federal Court

If this settlement is approved, a prothonotary shall be assigned by the Administrator or Chief Justice of the Federal Court to conduct the reviews provided for in this Settlement Agreement (the "Designated Prothonotary"). The Federal Court may appoint one or more prothonotaries as required.

8.03 Assistance with Reviews

Class Counsel and Justice counsel will assist Claimants and ESDC, respectively, in preparing the materials to be submitted to the Designated Prothonotary for all reviews.

8.04 Review Process

On receipt of an Application for Review of Determination, ESDC shall, within 30 days, prepare and send a copy of the relevant records to Class Counsel and the Designated Prothonotary.

Within 15 days of receipt of the file, Class Counsel, or the Claimant may submit written submissions not exceeding five (5) pages. Within 15 days of receiving the Claimant's written submissions, Justice counsel or ESDC may submit written submissions not exceeding five (5) pages.

8.05 Decisions by Prothonotary

Upon review of the materials filed by the Claimant and ESDC, the Designated Prothonotary shall determine whether the Claimant is an Eligible Class Member or not, and having made such determination:

(a) uphold the Administrator's Determination; or

(b) reverse the Administrator's Determination and refer the Claim back to the Administrator for calculation and processing of the Individual Payment to the Class Member.

8.06 Prothonotary Decisions Final

All Decisions made by a Prothonotary under this Settlement Agreement are final and binding as against the Class Member and Canada, and may not be reviewed in any circumstances. For greater certainty, Decisions of a Prothonotary pursuant to **Section 8.05** are not subject to judicial review under section 18.1 of the *Federal Courts Act*, nor are they reviewable through any other means.

8.07 Destruction of Records used in Review Process

Within one year of the conclusion of the review process, the Designated Prothonotary will destroy the copies of the files containing relevant records, but will maintain all records of decision and related lists as the Federal Court determines in its sole discretion is appropriate in the circumstances.

8.08 Amendments

Amendments to this Section (Section Eight) may only be made by court order, on consent of the parties, to facilitate the review process.

SECTION NINE

APPOINTMENT AND DUTIES OF THE MONITOR

9.01 Appointment of the Monitor

The parties have agreed that Mr. Gordon McFee shall be appointed to act as a Monitor in relation to ESDC's administration of the Settlement Agreement and that the Monitor shall act in accordance with the Settlement Agreement and the Terms of Appointment of the Monitor attached as **Schedule "M"**.

In exercising any of his or her powers or in performing any of his or her duties and functions under the Settlement Agreement, the Monitor shall act honestly and in good faith.

9.02 Monitor's Duties

The Parties agree that the Monitor shall provide oversight with respect to the administration and implementation of the Settlement Agreement. More specifically, the monitor shall:

(a) review the summary reports prepared by the Administrator, and such other documents as may be necessary to monitor the administration of the Settlement Agreement;

(b) review the Claims Forms and/or ESDC records that are relevant to Claims that have been denied for the purpose of identifying systemic issues relating to the Claims Process at an early stage;

(c) maintain, or cause to be maintained, accurate accounts of its activities, preparing such financial statements, reports and records as are required by the Court, in a

form and with content as directed by the Court, and submitting them to the Court so often as the Court directs;

(d) perform such other duties and responsibilities as the Court may order from time to time; and

(e) provide a Final Report to the Court within 120 days of the Claims Deadline.

9.03 Costs of the Monitor

Canada will pay the reasonable fees, disbursements, and all applicable taxes, of the Monitor, in accordance with the Terms of Appointment of the Monitor attached as **Schedule "M"**, up to a maximum of $100,000.

SECTION TEN

PREVENTION OF DOUBLE RECOVERY AND RELEASE

10.01 Full and Final Release From Previous Actions

Class Members who have received benefits following an appeal to the Board of Referees, Umpire, Social Security Tribunal, a judicial review application to the Federal Court or Federal Court of Appeal, or a payment of damages or other compensation through a judgment or award in civil proceedings, of any of the claims made or which could have been made in respect of the payment of EI sickness benefits, are not entitled to an Individual Payment under this Settlement Agreement.

10.02 Deemed Release of Canada by all Class Members

Upon approval by the Court of this Settlement Agreement, the Plaintiff and Class Counsel agree that all current and future legal proceedings, actions, and claims, based on the matters pleaded or which could have been pleaded in the Class Action with respect to known or unknown acts or omissions, are barred, and that all Class Members, Estate Executors and Immediate Family Members of all deceased Class Members who have not opted out during the Opt Out Period,

will be bound by a deemed release in the form set out in the draft Approval Order (**Schedule "A"**).

10.03 Cessation of Litigation

The Plaintiff and Class Counsel further agree that all necessary steps will be taken to obtain or effect a dismissal of the Class Action, as follows:

(a) Upon execution of this Settlement Agreement, the Plaintiff and Class Counsel will cooperate with Canada and make best efforts to obtain approval of this Settlement Agreement and general participation by Class Members in all aspects of this Settlement Agreement.

(b) Each counsel listed in **Schedule "N"** undertakes not to commence or assist or advise on the commencement or continuation of any actions or proceedings against Her Majesty the Queen in Right of Canada, and all current and former Ministers, employees, officials, departments, Crown agents, agencies,and Crown servants calculated to or having the effect of undermining this Settlement Agreement;

(c) Each counsel listed in **Schedule "N"** who commences or continues litigation against any person or persons who may claim contribution or indemnity from Canada in any way relating to or arising from any claim which is released by this Settlement Agreement, agrees that they will limit such claims to exclude any portion of any responsibility of Her Majesty the Queen in Right of Canada, or any of the current and former Ministers, employees, officials, departments, Crown agents, agencies, and Crown servants and further agrees to indemnify Canada, in the event Canada or any of the current and former Ministers, employees, officials, departments, Crown agents, agencies, and Crown servants are found liable in relation to such a claim.

10.04 Discontinuance of Appeals

Upon execution of this agreement, the representative plaintiff shall discontinue her appeal before the Social Security Tribunal, and Class Counsel will make best efforts to secure the discontinuance of the appeal filed by Carissa Kasbohm.

SECTION ELEVEN

SETTLEMENT APPROVAL

11.01 Settlement Approval

The Parties agree that they will seek the Court's approval, in Toronto or other such place as the Parties may agree, of this Settlement Agreement in full and final settlement of all claims, as negotiated in this Settlement Agreement.

11.02 Approval of Motion Materials

The motion for approval of this Settlement Agreement will be prepared by the Plaintiff and Class Counsel, and must be approved by Canada prior to being filed with the Court.

SECTION TWELVE

ADDITIONAL PAYMENTS BY CANADA

12.01 Honorarium

Canada will pay the sum of **$10,000.00** to Jennifer McCrea as an honorarium for acting as representative plaintiff in this proceeding, within sixty (60) days of the Implementation Date.

SECTION THIRTEEN

LEGAL FEES

13.01 Legal Fees

Within sixty (60) days of the Implementation Date, Canada shall pay to Class Counsel its legal fees and disbursements in the amount of $2,212,389, together with any applicable taxes thereon, which amount is in addition to the compensation paid to Eligible Class Members. Class Counsel agree that no amounts shall be deducted from any payments made to Eligible Class Members.

13.02 Approval of Legal Fees

Canada shall take no position on the motion to approve the legal fees of Class Counsel.

13.03 No Other Fees to be Charged to Class Members

In consideration of the payment for legal fees in **Section 13.01**, Class Counsel agree to provide reasonable assistance to Claimants or Class Members throughout the claims process at no additional charge and are precluded from seeking any further payment from Canada or the Claimants or Class Members on account of legal fees or for any other reason, for work performed in relation to this settlement.

13.04 Pre-Approval of Fees Required

The Parties will request that the Court order that no fees may be charged to Eligible Class Members in relation to submitting a Claim under this Settlement Agreement by counsel not listed on **Schedule "N"** without prior approval of the Court.

SECTION FOURTEEN

CONDITIONS AND TERMINATIONS

14.01 Settlement Agreement is Conditional

This Settlement Agreement will not be effective unless and until it is approved by the Court or confirmed on appeal, and if such approval is not granted, this Settlement Agreement will thereupon be terminated and none of the Parties will be liable to any of the other Parties hereunder for such termination.

14.02 Amendments

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

SECTION FIFTEEN

CONFIDENTIALITY

15.01 Use of and Confidentiality of Records held by Canada

Nothing in this agreement will restrict the retention of documents held by the Government of Canada. All records received by ESDC in relation to the settlement will be handled in accordance with all applicable legislation concerning government records.

15.02 Use of and Confidentiality of Records held by Class Counsel and the Monitor

Any information provided, created or obtained in the course of this settlement, whether written or oral, will be kept confidential by Class Counsel and the Monitor, and will not be used for any purpose other than the implementation of this settlement unless otherwise agreed by the Parties or as otherwise provided by law. The Monitor shall destroy all documents and

information in its possession containing Claimant or Class Member information, other than the draft and final reports created, no later than two years following the filing of its Final Report.

15.03 Confidentiality of Negotiations

Save as may otherwise be agreed between the Parties, or as may be 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 Settlement Agreement continues in force and in perpetuity, notwithstanding the termination or voiding of this Settlement Agreement.

SECTION SIXTEEN

GENERAL

16.01 Applicable Law

This Settlement Agreement will be governed by and construed in accordance with the laws of the province or territory where the Eligible Class Member resides and the laws of Canada applicable therein.

16.02 No Admission of Liability

This Settlement Agreement is not to be construed as an admission of liability by Canada.

16.03 Entire Agreement

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

16.04 Benefit of this Settlement Agreement

This Settlement Agreement will enure to the benefit of and be binding upon all Class Members, their family members, and their respective heirs and Estate Executors.

16.05 Counterparts

This Settlement 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 Settlement Agreement.

16.06 Official Languages

As soon as practicable after the execution of this Settlement Agreement, Canada will arrange for the preparation of an authoritative French version for purposes of giving notice to Class Members, and for use at the Approval Hearing. The French version shall be of equal weight and force at law.

IN WITNESS WHEREOF the Parties have executed this Settlement Agreement.

HER MAJESTY THE QUEEN IN RIGHT OF CANADA, as represented by the Attorney General of Canada

Signed this 22 day of August, 2018 at Toronto, Ontario.

BY: Christine Mohr

ATTORNEY GENERAL OF CANADA
Per: Christine Mohr
For the Defendant

BY: Cynthia Koller

ATTORNEY GENERAL OF CANADA
Per: Cynthia Koller
For the Defendant

BY: _____

ATTORNEY GENERAL OF CANADA
Per: Heather Thompson
For the Defendant

THE PLAINTIFF, as represented by Class Counsel, CAVALLUZZO LLP

Signed this 22nd day of August, 2018 at Toronto, Ontario.

BY: _____

Stephen J. Moreau
For the Plaintiff Class

BY: _____

Tassia Poynter
For the Plaintiff Class

SCHEDULE "A" - DRAFT APPROVAL ORDER

FEDERAL COURT

Date: 2018

Court File No.: T-210-12

Toronto, Ontario

PRESENT: The Honourable Madam Justice Catherine Kane

JENNIFER MCCREA

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

ORDER

WHEREAS the Plaintiff and the Defendant have entered into a Final **Settlement Agreement** dated August 22, 2018 (the "**Settlement Agreement**") in respect of the claims of the Plaintiff and Plaintiff Class against the Defendants;

AND WHEREAS this Honourable Court approved the form of notice and plan for distribution of the notice of this motion by Order dated (the "Notice Order");

AND UPON READING the Plaintiff's motion record and written submissions;

UPON BEING ADVISED of the Defendant's consent to the form of this Order;

AND UPON HEARING the motion made by oral submissions of counsel for the Plaintiff, and all interested parties, including any objections, written and oral;

THIS COURT ORDERS THAT:

1. For the purposes of this Order, the following definitions shall apply:

"Administrator" means the Transformation and Integration Service Management branch of ESDC;

"Approval Date" means the date that this Order is executed;

"Approval Orders" means this Order and the Order approving counsel fees in this matter;

"Canada" or **"Government of Canada"** means Her Majesty the Queen in Right of Canada;

"Claimant" means a person who completes a Claim Form and submits it for Individual Payment, but is not necessarily a class member;

"Class Counsel" means Cavalluzzo LLP;

"Class Members" mean all persons who meet the class definition set out in paragraph 3 below;

"Implementation Date" means the date on which implementation of the settlement commences and is the latest of:

i) the day following the last day on which a Class Member may appeal or seek leave to appeal the Approval Order; or

ii) the day after the date of a final determination of any appeal brought in relation to the Approval Order;

"Opt Out Period" means the sixty (60) day period commencing from the Implementation Date;

"Settlement Agreement" means the final **Settlement Agreement,** including the Schedules listed at **Section 1.07** of the agreement, executed between the parties on August 22, 2018, and attached as an Appendix to this Order.

2. All applicable parties have adhered to and acted in accordance with the Notice Order dated , 2018.

CLASS DEFINITION

3. The class includes all persons who, during the period from March 3, 2002 to, and including, March 23, 2013:

   i) Applied for and were paid parental benefits under the EI Act or corresponding types of benefits under Quebec's An Act Respecting Parental Insurance;

   ii) Suffered from an illness, injury or quarantine while in receipt of parental benefits;

   iii) Applied for sickness benefits in respect of the illness, injury or quarantine referred to in ii; and

   iv) Were denied a conversion of parental benefits to sickness benefits because:

      (a) the person was not otherwise available for work; or
      (b) the person had not previously received at least one week of sickness benefits during the benefit period in which the parental benefits were received.

OPT OUT PROCESS

4. Any class member who wishes to opt out of this class action must do so by completing and sending to Class Counsel the form attached as **Schedule "G"** to the **Settlement Agreement** within 30 days of the date of this Order.

5. No Class Member may opt out of this class proceeding after the Opt Out Deadline.

6. Class Counsel shall serve on the parties and file with the Court, within two (2) weeks of the expiry of the Opt Out Deadline, an affidavit listing all persons who have opted out of the class proceeding, if any.

7. No person other than the parties or the Court may access the affidavit listing all persons who have opted out of the clas proceeding and the said affidavit and any exhibits may only be filed under seal.

SETTLEMENT APPROVAL

8. The Settlement of this action on the terms set out in the **Settlement Agreement**, and as expressly incorporated by reference into this Order, is fair and reasonable and in the best interests of Class Members as a whole, and is approved.

9. The Settlement Agreement and this Order are binding on the Parties and on every Class Member and Claimant, including persons under a disability, unless they opt out on or before the expiry of the Opt Out Period, and are binding whether or not such Class Member claims or receives compensation.

10. The **Settlement Agreement** shall be implemented in accordance with this Order and further orders of this Court.

DISMISSAL AND RELEASE

10. The present action, and the claims of the Class Members and the Class as a whole, are dismissed against the Defendants and the Government of Canada, without costs and with prejudice and such dismissal shall be a defence and absolute bar to any subsequent action against the Defendant in respect of any of the Claims or any aspect of the Claims made in the Class Actions and relating to the subject matter hereof, and are released against the **Releasees** in accordance with **Section 10** of the **Settlement Agreement**, in particular as follows:

(a) Each Class Member, their Estate Executors, and their respective legal representatives, successors, heirs and assigns ("**Releasors**") fully, finally and forever release and discharge Her Majesty the Queen in Right of Canada, and all current and former Ministers, employees, officials, departments, Crown agents, agencies, and Crown servants **("Releasees")** from any and all actions, suits, proceedings, causes of action, common law, Quebec civil law and statutory liabilities, equitable obligations, contracts, claims, losses, costs, 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 **Releasor** may ever have had, may now have, or may in the future have, directly or indirectly arising from or in any way relating to or by way of any subrogated or assigned right or otherwise with respect to or in relation to any aspect of the Class Actions and this release includes any such claim made or that could have been made in any proceeding including the Class Actions whether asserted directly by the **Releasor(s)** or by any other person, group or legal entity on behalf of or as representative of the **Releasor(s);**

(b) The **Releasors** agree that if they make any claim or demand or take any actions or proceedings against another person or persons in which any claim could arise against a Releasee for damages or contribution or indemnity and/or other relief over under the provisions of the *Negligence Act,* R.S.O. 1990, c. N-3, or its counterpart in other jurisdiction in relation to the Class Actions, then the **Releasors** will expressly limit their claims to exclude any portion of responsibility of the **Releasees**;

(c) Canada's obligations and liabilities under the **Settlement Agreement** constitute the consideration for the releases and other matters referred to in the **Settlement Agreement** and such consideration is in full and final settlement and satisfaction of any and all claims referred to therein and the **Releasors** are limited to the benefits provided and compensation payable pursuant to the **Settlement Agreement**, in whole or in part, as their only recourse on account of such claims.

12. This Order, including the releases referred to in paragraph 11 above, and the **Settlement Agreement** are binding upon all Class Members, including those persons who are under a disability.

ADMINISTRATION

13. The Department of Employment and Social Development, otherwise known as Employment and Social Development Canada ("ESDC"), shall administer the claims process in accordance with the **Settlement Agreement.** The cost of Administration shall be borne by ESDC.

APPOINTMENT OF MONITOR

14. Mr. Gordon McFee is appointed as Monitor of the claims process. The fees, disbursements and applicable taxes of the Monitor shall be paid in accordance with **Section 9,** and **Schedule "M"** of the **Settlement Agreement**.

15. No person may bring any action or take any proceeding against the Administrator or the Monitor or the members of such bodies, or any employees, agents, partners, associates, representatives, successors or assigns, for any matter in any way relating to the **Settlement Agreement**, the public notice campaign, administration of the **Settlement Agreement** or the implementation of this judgment, except with leave of this Court on notice to all affected parties.

OPT OUT THRESHOLD

16. In the event that the number of persons who appear to be eligible for compensation under the **Settlement Agreement** and who opt out of this class proceeding exceeds two hundred (200), Canada may exercise the option to void the **Settlement Agreement** and this judgment will be set aside in its entirety, subject only to the right of Canada at its sole discretion to waive compliance pursuant to **Section 2.03** of the **Settlement Agreement**.

NOTICE

17. Notice of the Settlement Approval shall be provided, and distributed in the form provided for in **Schedule "F"** to the **Settlement Agreement**.

CLASS COUNSEL FEES, NOTICE FEES AND HONORARIUMS

18. The legal fees, disbursements and applicable taxes owing to Class Counsel shall be determined by further order of this Court.

19. No fee may be charged to Class Members in relation to claims under the **Settlement Agreement** without prior approval of the Federal Court.

20. The Representative Plaintiff Jennifer McCrea shall receive the sum of $10,000 as an honorarium to be paid in accordance with **Section 12.01** of the **Settlement Agreement**.

CONTINUING JURISDICTION AND REPORTING

21. This Court, without in any way affecting the finality of this Order, reserves exclusive and continuing jurisdiction over this action, the Plaintiff, all of the Class Members, and the Defendant for the limited purposes of implementing and enforcing and administering the **Settlement Agreement** and this Order.

22. This Court may issue such further and ancillary orders, from time to time, as are necessary to implement and enforce the provisions of the **Settlement Agreement**.

23. The Monitor shall report back to the Court on the Administration of the **Settlement Agreement** at reasonable intervals and upon completion of the administration, in accordance with **Section 9.02** of the **Settlement Agreement** or as requested by the Court.

_____

Madam Justice Catherine Kane

SCHEDULE "B" – CLAIM FORM

PART 1 – ESTATE INFORMATION

For persons administering the estate of a client, please complete this form on behalf of the estate and Service Canada will be in contact with you to assist with the processing of this claim.

Check the box below and complete Part 2 with the information of the Deceased Person

□ I am claiming on behalf of a deceased client and am an administrator or executor duly authorized to file this claim.

Name of Legal Representative: _____

Telephone number: ( )

PART 2 - APPLICANT INFORMATION

1. First Name of Applicant	**2. Last Name of Applicant**

3. Social Insurance Number of Applicant

4. Permanent Home Address of Applicant (include street address, city/town, province/territory, and postal code)

5. Mailing Address of Applicant (if different from Permanent Home Address)

6. Telephone Number of Applicant	**7. Alternate Telephone Number of Applicant**
( )	**( )**

8. Which official language do you prefer to use to communicate with us?

□ English □ French

PART 3 - INFORMATION REGARDING INCAPACITY

9. DOCTOR OR CLINIC INFORMATION

While in receipt of parental benefits during the Class Period (March 3, 2002 to March 23, 2013), I suffered from an illness, injury or quarantine and was under the medical care of a physician.

Name of Doctor or Clinic (if known)	**Telephone number** (if known)
	( )

10. DATES OF ILLNESS, INJURY OR QUARANTINE

Please provide us with your best recollection and information in answering this question.

□ I was ill, injured or quarantined for _____ weeks from:

_____/_____/_____ to: _____/_____/_____

Date (dd/mm/yyyy) Date (dd/mm/yyyy)

_____/_____/_____ to: _____/_____/_____

Date (dd/mm/yyyy) Date (dd/mm/yyyy)

_____/_____/_____ to: _____/_____/_____

Date (dd/mm/yyyy) Date (dd/mm/yyyy)

11. Privacy Statement and Consent

The information you provide is collected in accordance with the Privacy Act. Your personal information will be administered in accordance with the requirements of the *Privacy Act* and the *Department of Employment and Social Development Act.*

I consent to the use and disclosure of the information contained in this form for purposes of administering the EI Sickness Class Action, namely, to determine eligibility, the amount of an Individual Payment, and for purposes as may be required by the Court and Court-appointed Monitor.

_____ _____/_____/_____

Applicant's or Legal Representative's Signature Date (dd/mm/yyyy)

PART 4 – DECLARATION AND SIGNATURE

12. I DECLARE THAT:

- This application form was completed by me, the applicant, or the legal representative of a deceased person.
- The information provided in this form is true, based on my personal records, experience and knowledge
- If the information described above is false or misleading, I may be required to repay the compensation that I receive.

_____ _____/_____/_____

Applicant's or Legal Representative's Signature Date (dd/mm/yyyy)

PART 5 – DIRECT DEPOSIT INFORMATION

Direct Deposit is only available if your Financial Institution is located in Canada and only to applicants whose names appear on the account, not to legal representatives of deceased persons.

13. Please attach an unsigned personalized cheque. Write the word "VOID" on the cheque or complete the information below:

_____ _____ _____

Branch Number Institution Number Account Number

_____

_____ ( ) _____

Name(s) on account Telephone number of Financial Institution

Note: Payments will be issued via direct deposit or personalized cheque. If you request direct deposit and your banking information changes or you move, please let us know as soon as possible by calling one of our toll-free numbers: 1-800-206-7218 (Enquiries); 1-800-529-3742 (TTY) or 1-877-486-1650 (International only)

SCHEDULE "C" - NOTICE PLAN

A. PURPOSE

The purpose of this Notice Plan is to:

(a) outline the process by which Canada has identified Class Members and their current addresses;

(b) set out the process for providing notice to Class Members of Certification and the Hearing to Approve the Settlement Agreement (Phase I Notice); and

(c) if approved, set out the process for notice of the approval of the Settlement and the process for opting out (Phase II Notice).

B. IDENTIFICATION OF CLASS MEMBERS

Class Definition

The Class includes all persons who, during the period from March 3, 2002 to, and including, March 23, 2013:

i) Applied for and were paid **parental benefits** under the EI Act or corresponding types of benefits under Quebec's An Act Respecting Parental Insurance;
ii) Suffered from an illness, injury or quarantine while in receipt of **parental benefits**;
iii) Applied for **sickness benefits** in respect of the illness, injury or quarantine referred to in ii; and
iv) Were denied a conversion of parental benefits to sickness benefits because:
    (a) the person was not otherwise available for work; or
    (b) the person had not previously received at least one week of sickness benefits during the benefit period in which the parental benefits were received.

Methodology to Identify Class Members

ESDC, with input from Class Counsel, completed an extensive File Review Project to identify potential class members through various file extracts. A total of four extracts were performed, with 1,880 Class Members and potential Class Members identified.

C. METHOD OF NOTICE

All direct mailings will be sent, via regular mail, to an individual's most recent address as provided periodically by the Canada Revenue Agency.

Phase I Notice

On or before the date set by the Court, Canada will give notice of the Certification Order and of the hearing to approve the Settlement Agreement.

The Phase I Notice or a link to the Notice shall also be posted in the following locations:

(a) The "Canada" website, in English and French;
(b) ESDC's Facebook page, in English and French;
(c) ESDC's Twitter account, in English and French;
(d) Class Counsel's website, at www.cavalluzzo.com;
(e) Class Counsel's Facebook page via https://www.facebook.com/M.O.M.lawsuit/

(f) The Globe and Mail newspaper (online edition); and
(g) La Presse newspaper (online edition).

The Phase I Notice shall also be sent by direct mailing, via regular mail, to identified Class Members. Class Counsel will also send an email to all individuals who have contacted Cavalluzzo LLP about this class proceeding. The Phase I Notice direct mailing will include: the Phase I Long Form Notice, and the Objection Form.

Phase II Notice

If the Settlement is approved, the Defendants will give notice of the Approval of the Settlement and Opt Out Process.

The Phase II Notice or a link to the Notice shall be posted to the same websites, Facebook pages, Twitter accounts and newspapers as the Phase I Notice.

The Phase II Notice shall also be sent by direct mailing, via regular mail, to identified Class Members. Class Counsel will also send an email to any individuals who have contacted Cavalluzzo about this class proceeding. The Phase II Notice direct mailing will include: a covering letter, the Phase II Long Form, the Opt Out Form, and the Claim Form.

Reminders during the Claims Period

Reminders regarding the Approval of the Settlement will be sent by direct mailing, via regular mail, to identified Class Members at three points during the Claims Period.

D. OPT OUT PROCESS

As set out in the Settlement Agreement, Class Members may opt out of the class proceeding by delivering to Class Counsel a completed Opt Out Form in the form attached as **Schedule "G"** to the Settlement Agreement.

Class members are to deliver the completed Opt Out Form to Class Counsel by mail or email at the following address, no later than 5:00 p.m. on [**insert date**]:

EI Sickness Benefits Class Action
Cavalluzzo LLP
Barristers & Solicitors
474 Bathurst Street, Suite 300
Toronto, Ontario
M5T 2S6

Tel: 1-844-964-5559 (toll free in Canada or 416-964-5559)
Fax: (416) 964-5895
Email: EIsicknesscase@cavalluzzo.com

No class member may opt out after the Opt Out deadline established by the Court.

Within two (2) weeks of the end of the Opt-Out Period, Class Counsel will report to the Court and the Defendant by affidavit, and provide the names and addresses of those persons, if any, who have opted out of this class action, along with copies of the Opt-Out Forms.

E. COSTS OF NOTICE

Costs of mailing the Notice to class members will be borne by Canada.

Costs of posting a link to the Notices in the Globe and Mail (online) and La Presse (online) will be borne by Canada.

Costs of posting the notice on websites, Facebook, and Twitter will be borne by the party responsible for maintaining those sites.

SCHEDULE "D" - NOTICE OF CERTIFICATION, OBJECTION PROCESS AND SETTLEMENT APPROVAL HEARING

[SHORT FORM NOTICE]

LEGAL NOTICE

Did you apply for, and were denied, a conversion of parental benefits to sickness benefits under the *Employment Insurance Act*?

A proposed settlement may affect you. Please read this notice carefully.

The Federal Government of Canada ("**Canada**") and Jennifer McCrea of Calgary, Alberta (the "**Representative Plaintiff**") have reached a proposed settlement in a class action lawsuit.

WHAT IS THIS CLASS ACTION ABOUT?

This lawsuit alleges that during the period from March 3, 2002 to March 23, 2013, officials with Service Canada and the Canada Employment Insurance Commission were negligent in denying sickness benefits to individuals who were in receipt of parental leave benefits under the *Employment Insurance Act* ("***EI Act***") and were ill, injured, or in quarantine during their parental leave. Canada is defending this action.

The Federal Court certified this class action on May 7, 2015, which means that it is permitted to proceed to trial as a class action. This case has not yet gone to trial and there has been no judicial decision made on the merits of this lawsuit.

The certified class action seeks a declaration that the *EI Act* was administered negligently and damages.

The Representative Plaintiff is represented by Cavalluzzo LLP ("**Class Counsel**").

The proposed settlement must first be approved by the Federal Court before there is any compensation available to members of the class.

WHO IS INCLUDED?

The proposed settlement provides for monetary compensation to the following individuals ("**Class Members**"):

All persons who, during the period from March 3, 2002 to, and including, March 23, 2013:

i) Applied for and were paid **parental benefits** under the EI Act or corresponding types of benefits under Quebec's An Act Respecting Parental Insurance;

ii) Suffered from an illness, injury or quarantine while in receipt of **parental benefits**;

iii) Applied for **sickness benefits** in respect of the illness, injury or quarantine referred to in ii; and

iv) Were denied a conversion of parental benefits to sickness benefits because:

(a) the person was not otherwise available for work; or

(b) the person had not previously received at least one week of sickness benefits during the benefit period in which the parental benefits were received.

A person is also a Class Member where they applied to convert to sickness benefits while in receipt of maternity benefits if the illness, injury or quarantine continued into the parental portion of their benefit period.

Estates of Class Members may be eligible. A claim must be filed by the Estate Executor for deceased class members.

If the settlement is approved, all Class Members except those who validly "Opt Out" or are deemed to have opted out of the settlement will be bound by the proposed settlement, will be covered by the releases in the proposed settlement, and will not have the right to sue Canada for alleged harm caused by denied conversion of parental benefits to sickness benefits under the *EI Act* during the class period from March 3, 2002 to March 23, 2013.

WHAT DOES THE PROPOSED SETTLEMENT PROVIDE?

If approved, the settlement provides:

(a) Class Members who establish that they applied for sickness benefits for an illness, injury, or quarantine during their parental leave, and were denied, are eligible for compensation.

(b) ESDC will determine the amount of your payment. Canada has agreed to make payments to eligible Class Members in an amount that is equivalent to the amount of sickness benefits that they would otherwise have received.

HOW DO I GET ANY MONEY?

The proposed settlement must be approved by the Federal Court. If it is approved, you may make a claim for money. To do so, you must complete a Claim Form and send it to ESDC during the Claims Period. More information on how to make a claim will be available in a further notice if the proposed settlement is approved.

HOW MUCH MONEY WILL I GET?

The amount of compensation that you receive will depend on your weekly EI benefit rate and the number of weeks you were ill, injured, or in quarantine while in receipt of parental benefits from March 3, 2002 to March 23, 2013. The details are explained in the proposed Settlement Agreement. A copy of the proposed Settlement Agreement is available online at: www.cavalluzzo.com

Class Counsel are also seeking approval of legal fees and disbursements in the amount of $2,212,389, together with applicable taxes thereon. The legal fees will be paid by Canada in addition to the compensation paid to eligible Class Members. The Federal Court will decide if the amount of the legal fees is fair and reasonable.

WHAT IF I AGREE OR DO NOT AGREE WITH THE PROPOSED SETTLEMENT?

Class members may participate in the settlement approval hearing. If you do not agree with the proposed settlement, you have two options:

1. Participate to Support or Object to the Settlement in writing:

You may mail or email a letter that includes your name, address and telephone number and explain why you support or object to the proposed settlement. You may also use the Objection Form which can be found at: www.cavalluzzo.com. You must mail or email your letter or Objection Form on or before **November 15, 2018** to: **EI Sickness Benefits Class Action**, c/o Cavalluzzo LLP, 474 Bathurst Street, Suite 300, Toronto, Ontario, M5T 2S6, or to: EIsicknesscase@cavalluzzo.com

2. Participate to Support or Object to the Settlement in person at the approval hearing:

You may attend the Federal Court at 180 Queen Street West, Suite 200, Toronto, Ontario M5V 3L6, on **December 3 and 4, 2018** at **9:30 a.m**. each day, to participate in the settlement approval hearing and voice your support or concerns. If you wish to object in person, you must mail or email an Objection Form in writing on or before **November 15, 2018** to: **EI Sickness Benefits Class Action**, c/o Cavalluzzo LLP, 474 Bathurst Street, Suite 300, Toronto, Ontario, M5T 2S6, or to: EIsicknesscase@cavalluzzo.com

WHAT IF I DO NOTHING?

If you do not object in writing or in person and the settlement is approved, you will be bound by the terms of the settlement whether you file a claim or not, unless you opt out before the Opt Out Deadline. There will be no other opportunity to object or commence any proceeding.

If you have commenced a legal proceeding against Canada relating to denied conversion of parental benefits to sickness benefits under the *EI Act* from March 3, 2002 to March 23, 2013, and you do not discontinue it on or before the Opt Out Deadline**,** you will be deemed to have Opted Out of the settlement.

WHERE CAN I FIND OUT MORE INFORMATION?

Visit www.cavalluzzo.com, https://www.facebook.com/M.O.M.lawsuit/ or call 1-844-964-5559 (toll free in Canada) or 416-964-5559.

[LONG FORM NOTICE]

PROPOSED SETTLEMENT OF THE
EI SICKNESS BENEFITS CLASS ACTION

Did you apply for, and were denied, a conversion of parental benefits to sickness benefits under the *Employment Insurance Act*?

A proposed settlement may affect you. Please read this notice carefully.

The Federal Court authorized this notice. This is not a solicitation from a lawyer.

Jennifer McCrea (the "**Representative Plaintiff**") sued the Federal Government of Canada ("**Canada**"), alleging negligence in the denial of sickness benefits to individuals who were in receipt of parental leave benefits under the *Employment Insurance Act* ("***EI Act***") and were ill, injured, or in quarantine during their parental leave.

The Federal Court certified this class action on May 7, 2015, meaning that it is permitted to proceed to trial as a class action. This case has not yet gone to trial and there has been no judicial decision made on the merits of this lawsuit. The Representative Plaintiff and Canada have now reached a proposed settlement that provides compensation to certain individuals, however only upon approval of the settlement by the Federal Court.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS PROPOSED SETTLEMENT:

PARTICIPATE: To support or object to the proposed settlement, you may:

(1) **Write** to express your views if you support or object to the proposed settlement; or
(2) **Attend a hearing** and ask to speak in the Federal Court about the proposed settlement.

DO NOTHING: Give up any right you might have to object to the proposed settlement.

Your legal rights and options, including the deadlines to exercise them, are explained in this notice.

Your legal rights are affected even if you do nothing. Please read this notice carefully.

The Federal Court is required to determine whether the proposed settlement is fair and reasonable.

The Court will hear submissions about the approval of the proposed settlement in Toronto, Ontario on **December 3, 2018 at 9:30 a.m.,** and about the proposed legal fees, in Toronto, Ontario on **December 4, 2018 at 9:30 a.m**. Money will only be made available if the Federal Court approves the proposed settlement and after any appeals are resolved. Please be patient.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?

PROPOSED SETTLEMENT

HOW TO RECEIVE A PAYMENT?

THE LAWYERS REPRESENTING YOU

OBJECTING TO THE PROPOSED SETTLEMENT

THE APPROVAL HEARING

GETTING MORE INFORMATION

BASIC INFORMATION

1. Why did I get this notice?

The Federal Court authorized this notice to let you know about a proposed settlement and about your options before the Court decides whether to approve the proposed settlement. This notice explains the lawsuit, the proposed settlement, and your legal rights.

2. What is a class action?

In a class action, one or more people called the “representative plaintiff(s)” sue on behalf of people who have similar claims. All of the people with a similar claim are called a “class” or “class members”. The court resolves the similar claims for all class members, except for those who clearly exclude themselves from the class action lawsuit.

3. What does this class action lawsuit complain about?

Jennifer McCrea, of Calgary, Alberta (“**Representative Plaintiff**”), commenced the lawsuit and is represented by Cavalluzzo LLP (“**Class Counsel**”). The Federal Government of Canada (**"Canada"**) is defending the case.

During the class period from March 3, 2002 to March 23, 2013, the *EI Act* provided for 15 weeks of maternity leave benefits for biological mothers, including surrogate mothers, who cannot work because they are pregnant or have recently given birth, and 35 weeks of parental leave benefits for parents who are caring for a newborn or newly adopted child or children. Sickness leave benefits are for people unable to work because of sickness, injury, or quarantine. This lawsuit alleges that during the period from March 3, 2002 to March 23, 2013, officials with Service Canada and the Canada Employment Insurance Commission were negligent in denying sickness benefits to individuals who were in receipt of parental leave benefits under the *EI Act* and were ill, injured, or in quarantine during their parental leave.

4. Has there been a trial?

The Federal Court certified this class action on May 7, 2015, which means that it is permitted to proceed to trial as a class action. This case has not yet gone to trial and there has been no judicial decision made on the merits of this lawsuit.

The certified class action seeks a declaration that the *EI Act* was administered negligently and damages.

5. Why is there a proposed settlement?

The Representative Plaintiff and Canada have agreed to a proposed settlement. By agreeing to the proposed settlement, the parties avoid the costs and uncertainty of a trial and potential delays in obtaining judgment, and Class Members receive the compensation described in this notice and in the proposed settlement agreement. In this case, it also means that the Class Members will not need to testify in court. The Representative Plaintiff and Class Counsel think the proposed settlement is in the best interests of all Class Members.

WHO IS INCLUDED IN THE PROPOSED SETTLEMENT?

6. Who is included in the proposed settlement?

The Class Members included in the proposed settlement include:

All persons who, during the period from March 3, 2002 to, and including, March 23, 2013:

i) Applied for and were paid **parental benefits** under the EI Act or corresponding types of benefits under Quebec's An Act Respecting Parental Insurance;
ii) Suffered from an illness, injury or quarantine while in receipt of **parental benefits**;
iii) Applied for **sickness benefits** in respect of the illness, injury or quarantine referred to in ii; and
iv) Were denied a conversion of parental benefits to sickness benefits because:
    a) the person was not otherwise available for work; or
    b) the person had not previously received at least one week of sickness benefits during the benefit period in which the parental benefits were received.

A person is a Class Member where they applied to convert to sickness benefits while in receipt of maternity benefits if the illness, injury or quarantine continued into the parental portion of their benefit period.

Estates of Class Members may be eligible. A claim must be filed by the Estate Executor for deceased class members.

If the settlement is approved, all Class Members, except those who validly Opt Out of the settlement, will be bound by the proposed settlement and will be covered by the releases in the proposed settlement.

7. What if I am not sure whether I am included in the proposed settlement?

If you are not sure whether you are included in the proposed settlement, you may call toll free 1-844-964-5559 (toll free in Canada) or 416-964-5559 or visit www.cavalluzzo.com or https://www.facebook.com/M.O.M.lawsuit/

PROPOSED SETTLEMENT

8. What does the proposed settlement provide?

If approved, the settlement provides:

(a) Class Members who establish that they applied for sickness benefits for an illness, injury, or quarantine during their parental leave, and were denied, are eligible for compensation.

(b) ESDC will determine the amount of your payment. Canada has agreed to make payments to eligible Class Members in an amount that is equivalent to the amount of sickness benefits that they would otherwise have received.

9. What am I giving up in the proposed settlement?

Once the proposed settlement becomes final, you will give up your right to sue Canada for the claims being resolved by this proposed settlement. You will be "releasing" Canada, which

means you cannot sue Canada for anything in respect of a denied conversion of parental benefits to sickness benefits from March 3, 2002 to March 23, 2013.

The proposed Settlement Agreement describes the released claims with specific descriptions, so please read it carefully. If you have any questions about what this means, you may contact Class Counsel or your own lawyer. You are responsible for paying your own lawyer's fees.

A copy of the proposed Settlement Agreement is available at: www.cavalluzzo.com

10. May I remove myself from the proposed settlement?

Yes. If the proposed settlement is approved, a notice will be sent out describing the process for removing yourself from the proposed settlement, called "Opting Out".

If you do not wish to be a part of the class action you must Opt Out before the Opt Out Deadline which means you will not be bound by any order made in this class action and will not be eligible for compensation. You may hire and pay for your own lawyer and commence your own lawsuit. If you want to commence your own lawsuit, you must Opt Out. If you Opt Out, you must abide by all applicable limitation periods and should consult a lawyer.

Further information on how to Opt Out will be available if the proposed settlement agreement is approved.

HOW TO RECEIVE A PAYMENT IF THE PROPOSED SETTLEMENT IS APPROVED

11. How will I receive a payment?

To ask for a payment, all Class Members must complete and submit a Claim Form. All claims will be assessed by the ESDC. Eligible Class Members will not need to testify in court. Once the claim is verified by the Claim Administrator, Class Members will receive full compensation as soon as reasonably possible.

More information about the claims process, including the Claim Form, will be provided in a further notice if the settlement is approved.

Before anyone can file a Claim Form or be assessed, the Federal Court must decide whether to grant final approval of the proposed settlement and any appeals must be resolved (see "**The Approval Hearing**" below). If there are appeals, resolving them could take time. Please be patient.

12. How will payments be calculated?

The ESDC will review your Claim Form and determine if you qualify for a payment. If you do, the ESDC will determine the amount of your payment based on the process described in the Settlement Agreement.

13. What if I disagree with the decision?

If you wish to dispute the decision, you may seek a review before a Prothonotary of the Federal Court.

14. What if my claim is denied?

If your claim is denied, you will receive a notice of the decision. There will be a process to seek a review of the denial decision, with more information to be provided in a further notice if the settlement is approved.

THE LAWYERS REPRESENTING YOU

15. Who is Class Counsel?

The lawyers representing the Plaintiff and the class are: Cavalluzzo LLP. If you want to be represented by or receive advice from another lawyer, you may hire one at your own expense.

16. Do I have to pay Class Counsel anything?

No. Class Counsel is asking for the approval of fees and disbursements in the amount of $2,212,389, together with applicable taxes thereon. This amount will be paid directly by the Government of Canada and separately from the compensation paid to class members. Class Counsel will not be paid unless the Federal Court declares that the proposed legal fees are fair and reasonable.

You will not need to pay any legal fees out of your own pocket for services from Class Counsel relating to the claims process. If a Class Member retains other lawyers or a representative, the Class Member must pay the fees, disbursements and taxes for their services on whatever basis they privately agree.

PARTICIPATING IN THE PROPOSED SETTLEMENT

You may participate in the hearing to voice your support for the proposed settlement, or, you may object to the proposed settlement if you do not like some part of it. The Court will consider your views.

17. How do I tell the Court if I support the proposed settlement?

To express your support for the proposed settlement, you may write a letter that includes the following:

- Your name, address, and telephone number;
- A statement saying that you support the EI Sickness Benefits Class Action proposed settlement;
- The reasons you support the proposed settlement, along with any supporting materials; and
- Your signature.

You may mail or email your letter to:

EI Sickness Benefits Class Action
c/o Cavalluzzo LLP, 474 Bathurst Street, Suite 300, Toronto, Ontario, M5T 2S6

Email: EIsicknesscase@cavalluzzo.com

18. How do I tell the Court if I do not like the proposed settlement?

To object to the proposed settlement, you may either:

(a) **Make a written objection:** Write a letter or fill out an Objection Form that includes the following information:
- Your name, address, and telephone number;
- A statement saying that you object to the EI Sickness Benefits Class Action proposed settlement;
- The reasons you object to the proposed settlement, along with any supporting materials; and
- Your signature.

(b) **Make an oral objection at the approval hearing:** You must fill out an Objection Form indicating that you intend to appear at the hearing to object. The approval hearing before the Federal Court is scheduled to be heard in Toronto, Ontario on December 3, 2018 at 9:30 a.m.

All objecting letters and Objection Forms must be sent on or before **November 15, 2018** to:

EI Sickness Benefits Class Action
c/o Cavalluzzo LLP, 474 Bathurst Street, Suite 300
Toronto, Ontario, M5T 2S6
Email: EIsicknesscase@cavalluzzo.com

THE APPROVAL HEARING

The Federal Court will hold a hearing in Toronto, Ontario on **December 3, 2018 at 9:30 a.m.** to decide whether to approve the proposed settlement, and in Toronto, Ontario on **December 4, 2018 at 9:30 a.m**. to decide whether to approve Class Counsel's request for legal fees and taxes. You may attend and you may ask to speak, but you do not have to.

19. When/where will the Court decide whether to approve the proposed settlement?

The Federal Court will hold an Approval Hearing in Toronto, Ontario on **December 3, 2018 at 9:30 a.m.,** and **December 4, 2018 at 9:30 a.m.**

The hearing date could be moved to a different date or time without additional notice. If you plan to attend the hearing, it is recommended in advance of the hearing date to check

www.cavalluzzo.com or https://www.facebook.com/M.O.M.lawsuit/ or call 1-844-964-5559 (toll free in Canada) or 416-964-5559.

At the hearing, the Federal Court will consider whether the proposed settlement is fair, reasonable, and in the best interests of the Class. The Court will also decide whether the amount of fees and disbursements requested by Class Counsel are reasonable and fair. If there are objections, the Court will listen to those people who submitted an Objection Form asking to speak at the hearing, and the Court will consider those objections along with those submitted in writing.

After the hearing, the Court will decide whether to approve the proposed settlement. It is not known how long these decisions will take.

20. Do I have to attend the hearing?

No. Class Counsel will answer any questions the Court may have on behalf of the Class.

You and/or your own lawyer are welcome to attend at your own expense to participate in the hearing – either to show your support for, or to object to, the proposed settlement. If you send a written objection, you do not need to attend the hearing to talk about it. Your written objection will be considered by the Court as long as you send it on time.

21. May I speak at the hearing?

Yes. If you wish to speak at the hearing, you must submit an Objection Form and indicate that you wish to speak at an approval hearing.

22. What if I do nothing?

If you do nothing, you are deemed to accept the proposed settlement. The approval hearing will proceed and the Court will consider whether the proposed settlement is fair, reasonable, and in the best interests of the Class. This will occur without your views on the matter, and you will have no further opportunity to make objections to the Court.

GETTING MORE INFORMATION

23. How do I get more information?

This notice summarizes the proposed settlement. For full details, a copy of the proposed Settlement Agreement is available at: www.cavalluzzo.com

If you have any questions, you may send them to: EI Sickness Benefits Class Action, Cavalluzzo LLP, 474 Bathurst Street, Suite 300, Toronto, Ontario M5T 2S6, or email EIsicknesscase@cavalluzzo.com, or call 1-844-964-5559 (toll free in Canada) or 416-964-5559.

GOOGLE/FACEBOOK/TWITTER NOTICE

EI Sickness Benefits Class Action

Did you receive parental benefits under the *Employment Insurance Act* from March 3, 2002 to March 23, 2013, and did you apply to convert those benefits to sickness benefits? If your request to convert parental benefits to sickness benefits was denied, a proposed settlement may affect your rights.

Website: www.cavalluzzo.com
Facebook: https://www.facebook.com/M.O.M.lawsuit/
Email: EIsicknesscase@cavaluzzo.com
Telephone: 1-844-964-5559 (toll free in Canada) or 416-964-5559

SCHEDULE "E" - OBJECTION FORM

ONLY USE THIS FORM IF YOU **OBJECT** TO THE PROPOSED SETTLEMENT

To: **EI Sickness Benefits Class Action**
Cavalluzzo LLP
474 Bathurst Street, Suite 300
Toronto, Ontario
M5T 2S6

- or -

mailto:EIsicknesscase@cavalluzzo.com

RE: EI Sickness Benefits Class Action Settlement

My name is _____.

For the reasons stated below, I object to (please specify):

☐ the terms of settlement.

☐ the proposed fees and taxes of Class Counsel.

Persons submitting an objection are required to complete and deliver this Objection Form by no later than **November 15, 2018.**

I object for the following reasons (please attach extra pages if you require more space):

_____

_____

_____

_____

_____

☐ I have enclosed copies of documentation supporting my objections.

☐ I have **NOT** enclosed documentation supporting my objections and I do not intend to provide any.

☐ I do **NOT** intend to appear at the hearing of the motion to approve the proposed settlement, and I understand that my objection will be filed with the Federal Court prior to the hearing of the motion on **December 3 and/or 4, 2018 at 9:30 a.m.** in Toronto, Ontario.

☐ I intend to appear, in person or by counsel, and to make submissions at the hearing on **December 3 and/or 4, 2018 at 9:30 a.m.** in Toronto, Ontario.

MY ADDRESS FOR SERVICE IS:	**If applicable, MY LAWYER'S ADDRESS FOR SERVICE IS (note: you do not need a lawyer to object):**
Name: _____	Name: _____
Address:_____	Address: _____
_____	_____
_____	_____
Tel.: _____	Tel.: _____
Fax: _____	Fax: _____
Email: _____	Email: _____

Date: _____ Signature:_____

Cavalluzzo LLP will collect, use and/or disclose this form and any enclosures, data, information, reports, material or other documents of any nature which are disclosed, revealed or transmitted to them with this form solely for the purpose of disclosing the objection or submission to the Federal Court and to Her Majesty in Right of Canada pursuant to the terms of the Parties' Settlement Agreement. The use and disclosure of any personal information received by the Government of Canada is subject to all applicable laws that may require the use, disclosure or retention or disclosure of the personal information disclosed, including the *Access to Information Act*, the *Privacy Act* and *Department of Employment and Social Development Act*.

SCHEDULE "F" – NOTICE OF APPROVAL OF SETTLEMENT, OPT OUT PROCESS AND CLAIMS PROCESS

[SHORT FORM NOTICE]

LEGAL NOTICE

Did you apply for, and were denied, a conversion of parental benefits to sickness benefits under the *Employment Insurance Act*?

A settlement has been approved by the court. Please read this notice carefully.

A settlement between the Federal Government of Canada ("**Canada**") and Jennifer McCrea of Calgary, Alberta (the "**Representative Plaintiff**") has been approved by the court.

The class action lawsuit commenced by Ms. McCrea alleged that during the period from March 3, 2002 to March 23, 2013, officials with Service Canada and the Canada Employment Insurance Commission were negligent in denying sickness benefits to individuals who were in receipt of parental leave benefits under the *Employment Insurance Act* ("***EI Act***") and were ill, injured, or in quarantine during their parental leave. Canada is defending this action.

WHO IS INCLUDED?

The settlement provides for certain benefits and compensation to the following individuals ("**Class Members**"):

All persons who, during the period from March 3, 2002 to, and including, March 23, 2013:

i) Applied for and were paid **parental benefits** under the EI Act or corresponding types of benefits under Quebec's An Act Respecting Parental Insurance;
ii) Suffered from an illness, injury or quarantine while in receipt of **parental benefits**;
iii) Applied for **sickness benefits** in respect of the illness, injury or quarantine referred to in ii; and
iv) Were denied a conversion of parental benefits to sickness benefits because:

   (a) the person was not otherwise available for work; or
   (b) the person had not previously received at least one week of sickness benefits during the benefit period in which the parental benefits were received.

A person is a Class Member where they applied to convert to sickness benefits while in receipt of maternity benefits if the illness, injury or quarantine continued into the parental portion of their benefit period.

Estates of Class Members may be eligible. A claim must be filed by the Estate Executor or, if the Estate has been wound up, an immediate family member, of a deceased class member.

All Class Members except those who validly "opt out" of the Settlement will be bound by the Settlement, will be covered by the releases in the Settlement, and will not have the right to sue Canada for alleged harm caused by denied conversion of parental benefits to sickness benefits under the *EI Act* during the class period from March 3, 2002 to March 23, 2013.

WHAT DOES THE SETTLEMENT PROVIDE?

The settlement provides:

(a) Class Members who establish that they applied for sickness benefits for an illness, injury, or quarantine during their parental leave, and were denied, are eligible for compensation.

(b) ESDC will determine the amount of your payment. Canada has agreed to make payments to eligible Class Members in an amount that is equivalent to the amount of sickness benefits that they would otherwise have received.

HOW DO I GET THIS MONEY AND THESE BENEFITS?

You must complete a Claim Form and send it to the Claim Administrator at: Administrator of the EI Sickness Benefits Class Action, 140 Promenade du Portage, Building Promenade due Portage, Phase IV, Mail Stop 212, Gatineau, QC, K1A 0J9 by [**claims deadline**]. A copy of the Claim Form is available at www.cavalluzzo.com. You are not eligible for any compensation if you opt out.

HOW MUCH MONEY WILL I GET?

Your payment will depend on your weekly EI benefit rate and the number of weeks of sickness you were ill, injured or quarantined while in receipt of parental benefits from March 3, 2002 to March 23, 2013. The details are explained in the Settlement Agreement, a copy of which is available here: www.cavalluzzo.com

The Court approved a payment to Class Counsel in the amount of [**amount, plus tax**]. You do not need to pay Class Counsel any money, nor will any counsel fees be deducted from the amount that you receive.

WHAT IF I DO NOT WANT TO BE BOUND BY THE SETTLEMENT?

If you do not want to be bound by the settlement, you must opt out of the class action by **[insert date]**. If you opt out, you will not be entitled to any compensation for the class action settlement. If you opt out, any claim you may have against Canada with respect to a denied conversion of parental benefits to sickness benefits from March 3, 2002 to March 23, 2013 will **not** be released.

To opt out of the settlement, you must submit an Opt Out Form to the Class Counsel. A copy of the Opt Out Form is available at www.cavalluzzo.com

If you have commenced a legal proceeding against Canada relating to a a denied conversion of parental benefits to sickness benefits from March 3, 2002 to March 23, 2013, and you do not discontinue it on or before [insert date] you will be deemed to have Opted Out of the settlement.

WANT MORE INFORMATION?

Visit, call or email:

Class Counsel:
Website: www.cavalluzzo.com
Facebook: https://www.facebook.com/M.O.M.lawsuit/
Email: EIsicknesscase@cavaluzzo.com
Telephone: 1-844-964-5559 (toll free in Canada) or 416-964-5559

Administrator of the EI Sickness Benefits Class Action
140 Promenade du Portage
Building Place du Portage, Phase IV Mail Stop 212
Gatineau QC K1A 0J9
Website: [insert link]
Telephone: 1-800-206-7218 (Enquiries)
1-800-529-3742 (TTY)
1-877-486-1650 (International only)

DO YOU KNOW ANYONE WHO MAY BE PART OF THE EI SICKNESS BENEFITS CLASS ACTION?

Please share this information with them.

[LONG FORM NOTICE]

SETTLEMENT OF THE EI SICKNESS BENEFITS CLASS ACTION

Did you apply for, and were denied, a conversion of parental benefits to sickness benefits under the *Employment Insurance Act*?

A settlement may affect you. Please read this notice carefully.

The Federal Court authorized this notice. This is not a solicitation from a lawyer.

Jennifer McCrea (the "**Representative Plaintiff**") sued the Federal Government of Canada ("**Canada**"), alleging negligence in the denial of sickness benefits to individuals who were in receipt of parental leave benefits under the *Employment Insurance Act* ("***EI Act***") and were ill, injured, or in quarantine during their parental leave.

The court has now approved a settlement between the Representative Plaintiff and Canada that provides compensation to certain individuals who were denied sickness benefits while in receipt of parental leave benefits under the *EI Act*.

Your legal rights are affected even if you do nothing. Please read this notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

MAKE A CLAIM: You may make a claim for money. To do so, you must complete a Claim Form and send it to the ESDC by [**claims deadline**]. A copy of the Claim Form is available at www.cavalluzzo.com.

OPT OUT: If you do not want to be bound by the settlement, you must opt out of the class action by **[insert date]**. If you opt out, you will not be entitled to any benefits or compensation from the settlement, and your claim against Canada in respect of a denied conversion of parental benefits to sickness benefits from March 3, 2002 to March 23, 2013 will not be released. To opt out of the settlement, you must submit an Opt Out Form to Class Counsel. A copy of the Opt Out Form is available at www.cavalluzzo.com.

If you have commenced a legal proceeding against Canada relating to a denied conversion of parental benefits to sickness benefits from March 3, 2002 to March 23, 2013 and you do not discontinue it on or before **[insert date]** you will be deemed to have Opted Out of the settlement.

WHAT THIS NOTICE CONTAINS

BASIC INFORMATION

WHO IS INCLUDED IN THE SETTLEMENT?

SETTLEMENT

HOW TO RECEIVE A PAYMENT?

THE LAWYERS REPRESENTING YOU

GETTING MORE INFORMATION

BASIC INFORMATION

1. Why did I get this notice?

The Federal Court authorized this notice to let you know about a settlement and about all of your options. This notice explains the lawsuit, the settlement, and your legal rights.

2. What is a class action?

In a class action, one or more people called the representative plaintiff(s) sue on behalf of people who have similar claims. All of the people with a similar claim are called a class or class members. The court resolves the similar claims for all class members, except for those who clearly exclude themselves from the class action lawsuit.

3. What does this class action lawsuit complain about?

Jennifer McCrea, of Calgary, Alberta (“**Representative Plaintiff**”), commenced the lawsuit and is represented by Cavalluzzo LLP (“**Class Counsel**”). The Federal Government of Canada ("**Canada**") is defending.

During the class period from March 3, 2002 to March 23, 2013, the *EI Act* provided for 15 weeks of maternity leave benefits for biological mothers, including surrogate mothers, who cannot work because they are pregnant or have recently given birth, and 35 weeks of parental leave benefits for parents who are caring for a newborn or newly adopted child or children. Sickness leave benefits are for people unable to work because of sickness, injury, or quarantine. This lawsuit alleges that during the period from March 3, 2002 to March 23, 2013, officials with Service Canada and the Canada Employment Insurance Commission were negligent in denying sickness benefits to individuals who were in receipt of parental leave benefits under the *EI Act* and were ill, injured, or in quarantine during their parental leave.

4. Why is there a settlement?

On [**insert date**], the Court approved a settlement between the Representative Plaintiff and Canada. By agreeing to the settlement, the parties avoid the costs and uncertainty of a trial and delays in obtaining judgment, and Class Members receive the benefits described in this notice and in the agreement. In this case, it also means that the Class Members will not need to testify in court. The court found that the settlement is fair and reasonable and in the best interests of all Class Members.

WHO IS INCLUDED IN THE SETTLEMENT?

5. Who is included in the settlement?

The settlement includes:

All persons who, during the period from March 3, 2002 to, and including, March 23, 2013:

i) Applied for and were paid **parental benefits** under the EI Act or corresponding types of benefits under Quebec's An Act Respecting Parental Insurance;
ii) Suffered from an illness, injury or quarantine while in receipt of **parental benefits**;
iii) Applied for **sickness benefits** in respect of the illness, injury or quarantine referred to in ii; and
iv) Were denied a conversion of parental benefits to sickness benefits because:

    a) the person was not otherwise available for work; or
    b) the person had not previously received at least one week of sickness benefits during the benefit period in which the parental benefits were received.

A person is a Class Member where they applied to convert to sickness benefits while in receipt of maternity benefits if the illness, injury or quarantine continued into the parental portion of their benefit period.

Estates of Class Members may be eligible. A claim must be filed by the Estate Executor or, if the Estate has been wound up, an immediate family member, of a deceased class member.

All Class Members except those who validly Opt Out of the settlement or are deemed to have opted out will be bound by the settlement and will be covered by the releases in the settlement.

6. What if I am not sure whether I am included in the settlement?

If you are not sure whether you are included in the settlement, you may call 1-844-964-5559 (toll free in Canada) or 416-964-5559 with questions or visit www.cavalluzzo.com or https://www.facebook.com/M.O.M.lawsuit/ or [ESDC site].

SETTLEMENT BENEFITS

7. What does the settlement provide?

The settlement provides:

(a) Class Members who establish that they applied for sickness benefits for an illness, injury, or quarantine during their parental leave, and were denied, are eligible for compensation.

(b) ESDC will determine the amount of your payment. Canada has agreed to make payments to eligible Class Members in an amount that is equivalent to the amount of sickness benefits that they would otherwise have received.

More details are available the Settlement Agreement, which is available at www.cavalluzzo.com or [ESDC site].

8. What am I giving up in the settlement?

If you do not opt out of the settlement, you will give you will give up your right to sue Canada for the claims being resolved by this proposed settlement. You will be "releasing" Canada, which means you cannot sue Canada for anything in respect of a denied conversion of parental benefits to sickness benefits from March 3, 2002 to March 23, 2013.

The Settlement Agreement describes the released claims with specific descriptions, so read it carefully. If you have any questions about what this means, you may contact Class Counsel or your own lawyer.

9. May I remove myself from the settlement?

Yes. If you do not wish to be a part of the class action you must "Opt Out" by **[insert date]**. Opting out means you will not be bound by any order made in this class action and will not be eligible for compensation. You will be able to hire and pay for your own lawyer and commence your own lawsuit. If you want to commence your own lawsuit, you must Opt Out. If you Opt Out, you must abide by all applicable limitation periods and should consult a lawyer.

If you have commenced a legal proceeding against Canada relating to a denied conversion of parental benefits to sickness benefits from March 3, 2002 to March 23, 2013, and you do not discontinue it on or before [insert date], you will be deemed to have Opted Out of the settlement.

To opt out of the settlement, you must submit an Opt Out Form to Class Counsel at **EI Sickness Benefits Class Action,** Cavalluzzo LLP, 474 Bathurst Street, Suite 300, Toronto, Ontario, M5T 2S6, or to mailto:EIsicknesscase@cavalluzzo.com

A copy of the Opt Out Form is available at www.cavalluzzo.com.

HOW TO RECEIVE A PAYMENT

10. How will I receive a payment?

To ask for a payment, all Class Members must complete and submit a Claim Form. All claims will be assessed by ESDC. Eligible Class Members will not need to testify in court. Once the claim is verified by the Claim Administrator, Class Members may receive a payment as soon as reasonably possible.

The Claim Form is available at www.cavalluzzo.com or [ESDC site] or by calling 1-844-964-5559 (toll free in Canada) or 416-964-5559.

11. How will payments be calculated?

ESDC will review your Claim Form and determine if you qualify for a payment. If you do, ESDC will determine the amount of your payment based on the process described in Question 7.

12. What if my claim is denied?

If your claim is denied, you will receive a notice of the decision.

13. What if I disagree with decision?

If you wish to dispute the decision you may seek a review before a Prothonotary of the Federal Court.

THE LAWYERS REPRESENTING YOU

14. Who is Class Counsel?

The lawyers representing the Plaintiff and the class are: Cavalluzzo LLP. If you need help filling out your Claim Form, you should contact these lawyers and they will help you at no cost to you.

If you want to be represented by or receive advice from another lawyer, you may hire one at your own expense.

15. How will Class Counsel be paid?

Class Counsel will be paid fees and disbursements in the amount of [**insert amount**], together with applicable taxes thereon. This amount will be paid directly by the Government of Canada and separately from the compensation paid to class members.

You will not need to pay any legal fees out of your own pocket unless you request additional services from Class Counsel. If a Class Member retains other lawyers or a representative, the Class Member must pay the fees, disbursements and taxes for their services on whatever basis they privately agree.

GETTING MORE INFORMATION

16. How do I get more information?

This notice summarizes the settlement. For full details, a copy of the Settlement Agreement is available at: www.cavalluzzo.com or [ESDC site].

Class Counsel:
EI Sickness Benefits Class Action, Cavalluzzo LLP, 474 Bathurst Street, Suite 300, Toronto, Ontario M5T 2S6
Website: www.cavalluzzo.com
Facebook: https://www.facebook.com/M.O.M.lawsuit/
Email: EIsicknesscase@cavaluzzo.com
Telephone: 1-844-964-5559 (toll free in Canada) or 416-964-5559

Administrator of the EI Sickness Benefits Class Action
140 Promenade du Portage
Building Place du Portage, Phase IV Mail Stop 212
Gatineau QC K1A 0J9
Website: [insert link]
Telephone: 1-800-206-7218 (Enquiries)
1-800-529-3742 (TTY)
1-877-486-1650 (International only)

GOOGLE/FACEBOOK/TWITTER NOTICE

EI Sickness Class Action

Did you receive parental benefits under the *Employment Insurance Act* from March 3, 2002 to March 23, 2013, and did you apply to convert those benefits to sickness benefits? If your request to convert parental benefits to sickness benefits was denied, a settlement may affect your rights.

Visit, call or email:

Class Counsel
Website: www.cavalluzzo.com
Facebook: https://www.facebook.com/M.O.M.lawsuit/
Email: EIsicknesscase@cavaluzzo.com
Telephone: 1-844-964-5559 (toll free in Canada) or 416-964-5559

Administrator of the EI Sickness Benefits Class Action
140 Promenade du Portage
Building Place du Portage, Phase IV Mail Stop 212
Gatineau QC K1A 0J9
Website: [insert link]
Telephone: 1-800-206-7218 (Enquiries)
1-800-529-3742 (TTY)
1-877-486-1650 (International only)

SCHEDULE "G" - OPT OUT FORM

OPT OUT FORM – EXCLUSION FROM RECEIVING MONEY

To: **EI Sickness Benefits Class Action**
Cavalluzzo LLP
474 Bathurst Street, Suite 300
Toronto, Ontario
M5T 2S6
- or -
EIsicknesscase@cavalluzzo.com

This is NOT a claim form. If you submit this form, you will not receive any money or benefits from the EI Sickness Benefits Class Action settlement. You may wish to consult Class counsel or obtain independent legal advice at your own cost prior to opting out.

To opt out, this coupon must be properly completed and received at the above-noted address no later than [insert date].

1. PERSONAL IDENTIFICATION

Last Name	**First Name**	**Middle Name**	**Date of Birth** / / YYYY MM DD
Other Names Used	**Social Insurance Number**		
Address	**City**	**Province**	**Postal Code**
Home Phone	**Work Phone**	**Cell Phone**	**Email Address**
Mailing Address (if different from above)	**City**	**Province**	**Postal Code**

2. REPRESENTATIVE IDENTIFICATION (IF APPLICABLE)

Representative Last Name	**First Name**	**Relationship to Class Member**	
Mailing Address	**City**	**Province**	**Postal Code**
Telephone	**Facsimile**	**Email Address**	

3. I WISH TO OPT OUT

I have read and understood the Court-Approved Notice of Approval of Settlement and I believe that I am a member of the class in this lawsuit.

I want to **opt-out** (be excluded) of this class proceeding and understand that by opting out, I cannot receive any possible benefits, financial or otherwise, which members of the class may obtain as a result of this class action.

I understand that any lawsuit I have against Canada with respect to the denied conversion of parental benefits to sickness benefits under the *Employment Insurance Act* ("*EI Act*") must be commenced within a specified time period or it might be legally barred. I understand that the time period will resume running against me if I opt out of this class proceeding. I understand that by opting out, I take full responsibility for the resumption of the running of any relevant time periods and for taking all necessary legal steps to protect any claim I may have.

I confirm that by signing this form, and by answering "yes" in the below box, I am forever waiving my right to any money or benefits in this settlement for any harm caused to me by the denied conversion of parental benefits to sickness benefits under the *EI Act*.

I decline payment and benefits from the settlement: _____

[Yes or No]

4. SIGNATURE

_____
Date

Name of Class Member	Signature of Class Member
Name of Witness	Signature of Witness

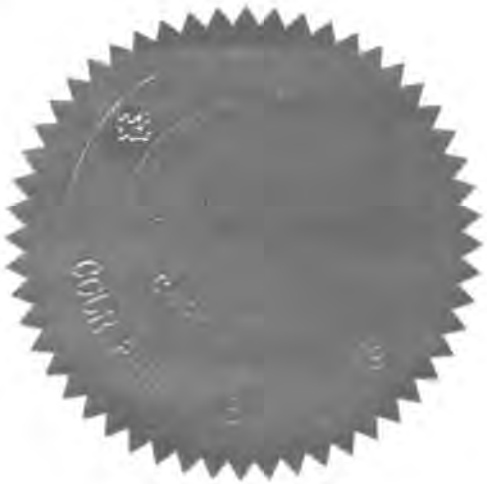
If Class Member is Deceased or Disabled:

Name of Estate Administrator or Guardian of Property	Signature of Estate Administrator or Guardian of Property

If the class member is deceased or disabled, you must enclose a copy of the document appointing you as guardian of property or estate administrator.

Cavalluzzo LLP will collect, use and/or disclose this form and any enclosures, data, information, reports, material or other documents of any nature which are disclosed, revealed or transmitted to them with this form solely for the purpose of disclosing the objection or submission to the Federal Court and to Her Majesty in Right of Canada pursuant to the terms of the Parties' Settlement Agreement. The use and disclosure of any personal information received by the Government of Canada is subject to all applicable laws that may require the use, disclosure and retention or disclosure of the personal information disclosed, including the *Access to Information Act,* the *Privacy Act* and *Department of Employment and Social Development Act*.

SCHEDULE "H" - ORIGINAL STATEMENT OF CLAIM
ISSUED JANUARY 19, 2012



Court File No.: T-210-12

FEDERAL COURT

JENNIFER MCCREA AND
CARISSA KASBOHM

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA AND
THE CANADA EMPLOYMENT INSURANCE COMMISSION

Defendants

STATEMENT OF CLAIM TO THE DEFENDANTS
(Proposed Class Proceeding)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Court Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: January 19, 2012

Issued by: _____
(Registry Officer) Jeff Weir Registry Officer

Address of local office: 180 Queen Street West, Suite 200
Toronto, ON M5V 3L6

TO: THE ATTORNEY GENERAL OF CANADA
234 Wellington Street
Bank of Canada
10th Floor
Ottawa, ON K1A 0G9

Tel: (613) 946-4755
Fax: (613) 954-1920

TO: THE CANADA EMPLOYMENT INSURANCE COMMISSION
c/o THE ATTORNEY GENERAL OF CANADA
234 Wellington Street
Bank of Canada
10th Floor
Ottawa, ON K1A 0G9

Tel: (613) 946-4755
Fax: (613) 954-1920

and

HUMAN RESOURCES & SKILLS DEVELOPMENT CANADA
EI Appeals Division
Place Vanier - Tower B / Tour B
11th Floor / 11e étage
355 North River Road
OTTAWA ON K1A 0L1

Christopher Wolfenden

Tel: (888) 632-3050
Fax: (613) 995-5008

CLAIM

1. The following terms used throughout this statement of claim have the meanings indicated:

(a) "**Attorney General**" means the defendant, the Attorney General of Canada;

(b) "**Class**" and "**Class Members**" mean all persons who, during the **Class Period**:

i. applied for and received **parental leave** benefits;

ii. suffered from an illness, injury, or disability during the course of their **parental leave**; and,

iii. EITHER

(1) applied for **sickness leave** benefits for which they were rejected because they were on **parental leave** or not otherwise available to work at the time of their **sickness leave** application;

or,

(2) were advised orally or in writing by the defendants, the **Commission**, or **HRSDC**, that they did not qualify for **sickness leave** because they were on **parental leave** or not otherwise available to work at the time of their **sickness leave** application, on which advice and representations they relied in not applying for **sickness leave**.

(c) "**Class Period**" means the period from March 3, 2002 to, and including, the date of trial of the present action;

(d) "**Commission**" means the Canada Employment Insurance Commission, a defendant in the present action and a body corporate continued by section 20 of the

Department of Human Resources and Skills Development Act, S.C. 2005, c. 34, and includes all agents, servants, employees, and assigns of the Canada Employment Insurance Commission;

(e) "***EI Act***" means the *Employment Insurance Act*, S.C. 1996, c. 23, as amended from time to time;

(f) "**HRSDC**" means the Department of Human Resources and Skills Development Canada established by the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34, and includes all agents, servants, employees, and assigns of the Department of Human Resources and Skills Development Canada, and includes where material its predecessor, the Department of Human Resources established by the *Department of Human Resources Act*, S.C. 1996, c. 11;

(g) "**Kasbohm**" means Carissa Kasbohm, one of the plaintiffs;

(h) "**McCrea**" means Jennifer McCrea, one of the plaintiffs;

(i) "**parental leave**" means parental employment insurance leave or parental employment insurance benefits as set out in the ***EI Act***, and in particular Part I thereof;

(j) "**Rougas**" and "**Rougas Decision**" mean, respectively, Natalya Rougas and a June 30, 2011 decision of an Umpire under the ***EI Act*** on a claim for sickness leave benefits filed by Rougas, which Decision is cited as CUB 77039;

(k) "***Rules***" mean the *Federal Courts Rules*, SOR 98/106 established pursuant to the *Federal Courts Act*, R.S.C. 1985, c. F-7;

(l) "**sickness leave**" means sickness employment insurance leave or sickness employment insurance benefits as set out in the ***EI Act***, and in particular Part I thereof; and,

(m) "**the 2002 amendment**" means an amendment to the ***EI Act*** which came into force on March 3, 2002 pursuant to the *Budget Implementation Act, 2001*, S.C. 2002, c. 9 (Bill C-49), and in particular Part 3 thereof.

2. The plaintiffs claim on their own behalf and on behalf of all Class Members:

(a) an order pursuant to the *Rules* certifying this action as a class proceeding and appointing them as the representative plaintiffs;

(b) a declaration that the defendants negligently administered and failed to implement the *EI Act* – including through negligent misrepresentations about the *EI Act* – in a manner that caused damage to the plaintiffs and Class Members, as particularized below;

(c) a declaration that the defendants were unjustly enriched by these actions, as particularized below, to the detriment of the plaintiffs and Class Members, and that there exists no juridical reason to allow the defendants to retain the amounts by which they were unjustly enriched;

(d) special damages and general damages for negligence, misfeasance, or unjust enrichment in the amount of $450,000,000.00 or such other sums as this court finds appropriate at the trial of the common issues or at a reference or references under the *Rules*;

(e) prejudgment interest on the amount set out in paragraph 2(d) at the rate of five per cent per annum pursuant to the *Interest Act*, R.S.C. 1985, c. I-15, or at a rate to be established by this Honourable Court pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;

(f) postjudgment interest on the amount set out in paragraph 2(d);

(g) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

(h) costs of this action plus the costs of the distribution of any award under the *Rules*, including the costs of notice associated with this distribution and the fees to a person administering the distribution pursuant to Rule 334.28 of the *Rules*; and,

(i) such further and other relief as to this Honourable Court seems just.

THE NATURE OF THE ACTION

3. This action concerns the defendants' failure, during the Class Period, to implement the 2002 amendment.

4. The 2002 amendment provides that all persons eligible to collect employment insurance benefits under the *EI Act* who suffered from an illness, injury, or disability before or during their parental leave, could then collect up to fifteen (15) weeks of sickness leave benefits.

5. Instead of implementing the 2002 amendment, the Commission – on or shortly after March 3, 2002 – implemented a far more modest change to the detriment of the Class. In particular, the Commission at all times during the Class Period implemented the 2002 amendment as if it was designed merely to provide sickness leave benefits to women for a period of illness, injury, or disability suffered while pregnant and before the commencement of any parental leave.

6. Further, the plaintiffs plead that – shortly after the 2002 amendment – the defendants took active steps to defeat any chance that anyone, including the plaintiffs and Class Members, would ever be able to successfully obtain a sickness leave benefit for an illness, injury, or disability suffered during a parental leave, and despite the provisions of the 2002 amendment.

7. Until the Rougas Decision was released, as particularized below, nobody, including the plaintiffs and Class Members, had ever apparently received from the Commission a sickness leave benefit for an illness, injury, or disability suffered during a parental leave.

8. The defendants have refused to implement the Rougas Decision. The plaintiffs' applications for sickness benefits during a parental leave period were rejected after the Rougas Decision was released and the

defendants had determined not to seek judicial review therefrom.

THE PARTIES

Jennifer McCrea

9. McCrea resides in the City of Calgary. During the Class Period, McCrea gave birth to a child, applied for and was in receipt of parental leave benefits, suffered from an illness, injury, or disability during the course of her parental leave, and applied for sickness leave benefits.

10. McCrea's application for sickness leave benefits was denied because she was on parental leave or not otherwise available to work at the time of her sickness leave application.

11. On October 15, 2010, prior to the birth of her child, McCrea was informed by her family doctor that she was suffering from high blood pressure. She was advised to cease working immediately.

12. McCrea informed her employer of her health status and took a flexible leave from her employment as an Office Manager with Safe Self Storage Inc., a Calgary area storage company. Her employer advised her that she was welcome to return at any point during her leave.

13. McCrea also made an application for employment insurance sickness benefits. As she was expecting the birth of her child within the weeks subsequent to her initial claim, a Service Canada representative advised her that she would be placed directly on maternity benefits as opposed to sickness benefits.

14. McCrea gave birth to Logan McCrea on October 31, 2010 and

spent several months spending time with and caring for this child.

15. McCrea was found eligible for fifty (50) weeks of combined maternity and parental benefits inside of a benefit period that was scheduled to extinguish on October 20, 2011.

16. On May 9, 2011, McCrea had an MRI performed. McCrea suffers from an uncommon genetic mutation which greatly increases her risk of developing breast cancer. As such, she has been closely monitored for symptoms of the disease.

17. The results of the MRI were abnormal, and on July 9, 2011 she underwent an MRI-guided biopsy.

18. McCrea was diagnosed with breast cancer on July 18, 2011.

19. On July 29, 2011 McCrea met with a surgical specialist. Given McCrea's medical history, the surgeon recommended a bilateral mastectomy. Surgery was scheduled for August 11, 2011.

20. McCrea's physicians were initially of the opinion that she would require at least three (3) weeks of recovery time from the date of the surgery.

21. On August 2, 2011, McCrea contacted a Service Canada office by phone and spoke with a Commission agent regarding how to go about making a claim for sickness leave. She requested a conversion of her parental leave to sickness leave beginning August 11, 2011.

22. McCrea was advised by the Commission at that time that if the sickness leave claim was successful, her parental leave benefits would be temporarily suspended and sickness leave benefits would be paid during

her period of recovery from surgery.

23. McCrea underwent a bilateral mastectomy on August 11, 2011. Following surgery, McCrea became incapacitated. In particular, she was unable to lift her arms and movement was difficult and painful. McCrea also underwent a period of recovery from the emotional trauma commonly associated with the bilateral mastectomy procedure.

24. During this period after the surgery, McCrea was unable to work or do any of the household tasks required to care for her two young children. McCrea's husband and mother completely took over the child care duties while she recovered.

25. On August 19, 2011, McCrea saw her doctor for a post-operative follow up. Her doctor determined that she required additional weeks of recuperation, until at least September 26, 2011. McCrea's treating physician wrote a letter to Service Canada indicating she would remain incapacitated during this period.

26. McCrea provided this updated information in-person at a Service Canada office. During this visit to the Service Canada office, she inquired about the status of her benefits. She was told by a Commission agent to phone the central Service Canada hotline during the following week.

27. On August 30, 2011, after making repeated attempts to contact the hotline and receive an update, McCrea received a phone call from a Service Canada worker inquiring about her work availability.

28. On September 19, 2011, McCrea was advised for the first time by the Commission that they took the position she was ineligible for sickness benefits.

29. McCrea was told over the phone, and later in writing, that as she had indicated that she was on a parental leave and had not proven that she would be available for work if she was not sick, she was not eligible for sickness benefits. The Commission thus denied McCrea's claim for sickness benefits in its entirety.

Carissa Kasbohm

30. Kasbohm resides in the City of Calgary. During the Class Period, Kasbohm gave birth to a child, applied for and was in receipt of parental leave benefits, suffered from an illness, injury or disability during the course of her parental leave and applied for sickness leave benefits.

31. Kasbohm's application for sickness leave was denied because she was on parental leave or not otherwise available to work at the time of her sickness leave application.

32. Throughout the latter stages of her pregnancy, Kasbohm experienced severe fatigue, nausea and body bruising. On October 1, 2010, Kasbohm was forced to cease working as a chef at a popular Calgary restaurant due to these symptoms. Her employer advised her that she was welcome to return at any time following her recovery and at any point during her anticipated maternity and parental leave.

33. On October 14, 2010, during a maternity check up, she was diagnosed with thrombotic thrombocytopenic purpura ("TTP"), a rare and serious blood disorder. Kasbohm was immediately admitted to hospital.

34. On October 16, 2010, Kasbohm gave birth to her first son, Castiel Kasbohm.

35. On or around October 31, 2010, she applied for and was found eligible for fifty (50) weeks of combined maternity and parental benefits in respect of the birth of Castiel Kasbohm.

36. From October 2010 through January 2011, Kasbohm underwent treatment in respect of her TTP diagnosis. This included, but was not limited to, blood transfusions, chemotherapy-like pharmacological interventions, and twenty-nine (29) rounds of plasmapheresis, in which the patient's blood plasma is replaced with donor plasma.

37. During this period of time, she was completely disabled and unable to work or care for her child. Care for Castiel Kasbohm was provided by her husband, mother and grandmother.

38. In December, 2010 Kasbohm was advised by Hospital staff that she should apply to convert her EI maternity and parental leave benefits to EI sickness leave benefits.

39. Kasbohm attempted to do so at or around this time, and was told over the phone by a Commission agent that she was ineligible for sickness benefits due to her being in receipt of maternity benefits. She was informed by the Commission at that time that she would be eligible for sickness benefits at the end of her claim as long as she applied prior to the exhaustion of her parental leave benefits.

40. In September 2011, Kasbohm was advised by her physicians that she would be medically unable to return to work following the end of her parental leave. She again applied for EI sickness benefits and provided the Commission with medical documentation which indicated that she was incapacitated.

41. More particularly, Kasbohm applied for sickness leave during a

period in which she was still receiving parental leave benefits.

42. Throughout October, 2011, Kasbohm attempted to contact Service Canada to inquire about the status of her sickness benefits claim. On November 9, 2011 Kasbohm was contacted by the Commission and informed that it appeared she would not be eligible for benefits.

43. Kasbohm subsequently received correspondence from the Commission on or about November 10, 2011 indicating that she had been ruled ineligible for sickness benefits as she was not "otherwise available for work".

44. Kasbohm's disease has gone into temporary remission. However, she fatigues rapidly and gets sick easily in whole or in part because she took a course of medication which will act as an immuno-suppressant for years to come. She was unable to return to work following the expiration of her maternity and parental leave, and remains without income of any kind.

The Commission

45. During the Class Period, the Commission was responsible for administering, interpreting, and enforcing the *EI Act* correctly whenever a claimant applied for employment insurance benefits, including parental leave and sickness leave benefits.

46. During the Class Period, the Commission was an agent of the defendant Attorney General, or more particularly, an agent of Her Majesty in right of Canada pursuant to the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34 and the *Department of Human Resources Act*, S.C. 1996, c. 11.

47. During the Class Period, all officers and employees of the

Commission were employed by HRSDC.

HISTORY OF THE 2002 AMENDMENT

The History of the *EI Act*

48. The federal government has administered an employment insurance scheme since the early 1940s. Its purpose initially had been to provide temporary income replacement to workers facing involuntary unemployment. As the next paragraphs demonstrate, the purpose of EI changed over time to incorporate new social norms and thinking, and the *EI Act* is now widely regarded as a form of "social" insurance designed to provided economic support during periods of temporary interruptions of employment.

49. In the early 1970s, EI was expanded to reflect changing norms in the Canadian labour market, including the increased presence of women into the workforce. This era of reform included the introduction of "special benefits" that provided income replacement for workers unable to work due to sickness or pregnancy.

50. In the 1980s, the *EI Act* was further expanded to recognize periods of unemployment taken by parents to care for their adoptive or natural born children, defined in paragraph 1 as "parental leave". Parental leave has always been classified as a "special benefit", like sickness and maternity leave.

51. In 1990, the federal government enhanced the *EI Act*'s special benefit provisions by allowing claimants to combine their maternity, parental, and sickness benefits up to a certain amount of weeks. The "bundling" of special benefit entitlements was subject to a strict cap on the

maximum amount of benefit weeks allowed. Under the 1996 version of the *EI Act*, for instance, this cap was set at thirty (30) weeks.

52. By 2001, the amount of parental benefits available to claimants was increased from 10 to 35 weeks in order to enable parents to spend more time at home during their child's early period of life. Following the introduction of enhanced parental leave benefits in the 2000 federal budget, s.12(5) of the *EI Act* was amended to provide for a 50 week bundling of special benefits cap.

The *McAllister-Windsor* Decision

53. On March 9, 2001, the Canadian Human Rights Tribunal issued the *McAllister-Windsor* decision. The complainant in that case challenged the prohibition on stacking special benefits beyond the then 30-week legislated cap. After the cap was extended to 50 weeks, the challenge incorporated a challenge to that cap as well. The Canadian Human Rights Tribunal found that the operation of the provision had an exclusive adverse effect on women and disabled claimants, as only those claimants who sought to combine their full entitlements to 15 weeks of maternity leave, 35 weeks of parental leave, and 15 weeks sickness leave benefits, would be subject to a cap limiting the benefits to 50 combined weeks.

54. As a result of the decision, HRDC ("HRDC", as it was stylized prior to 2003) was ordered by the Tribunal to cease applying the provisions of the *EI Act* in a discriminatory manner.

The Response of HRDC to *McAllister-Windsor*

55. HRDC considered several options in respect of how the department would respond to the ruling. Following the release of the decision, the Ministers of HRDC and Finance were informed by Departmental staff that

the government had until March 3, 2002 to come into compliance with the Human Rights Tribunal directive.

56. By November 30, 2001, HRDC had drafted a proposal calling for an amendment to the *EI Act*. The amendment was intended to provide an extension of the 50-week cap on benefits by one week for every week of sickness benefits claimed during pregnancy and "during a parental benefit claim", thereby ensuring the *EI Act* did not discriminate against any claimant on the basis of gender or disability.

57. The HRDC proposal was approved. An amendment to the *EI Act* intended to implement the proposal was included in changes to the EI program announced in relation to the December 10, 2001 Federal budget. It is this amendment that became the 2002 amendment defined above.

58. HRDC staff prepared a set of question-and-answer statements for their Minister's use in discussing the proposed change. In these statements, it was consistently indicated that the 2002 amendment was intended to provide an exception to the 50 week cap for special benefits by extending it by one week for each week of sickness benefits taken by biological mothers during their pregnancy or during their parental leave claim.

59. HRDC advised the Minister to inform the media and relevant stakeholders that the amendment was needed because, "[i]n practice, some biological mothers who claim sickness benefits during their pregnancy or while receiving parental benefits may be unable to claim all of their special benefits".

Bill C-49 [the 2002 amendment]

60. In 2001, the Government introduced Bill C-49, the *Budget*

Implementation Act, 2001. Included in Part 3 of the legislation were improvements to the *EI Act*. These improvements included the new provisions designed to ensure that claimants who qualified for maternity, parental and sickness benefits would be provided with an expanded benefit period of up to sixty-five (65) weeks. It is this that constitutes the 2002 amendment.

61. The plaintiffs plead and rely on the official statements of all representatives of the Government who spoke to the Bill in the House of Commons, Senate, and in Parliamentary committees. Without exception, these statements confirmed that the government's intent was to directly implement HRDC's proposed response to the *McAllister-Windsor* directive and decision. Every government representative that spoke to this portion of the Bill indicated that the 2002 amendment would ensure that the cap on special benefits would be extended for each week of sickness leave taken by a mother during their pregnancy or during their parental leave.

62. Further to paragraph 61, the plaintiffs plead and rely more particularly on the following the statements:

(a) The statements contained in the November 30, 2001 "EI Court Challenges" briefing document prepared for the Minister of Finance, and in particular the statement indicating the HRDC proposal would "[e]xtend the 50-week cap on benefits for women by one week for every week of sickness benefits claimed during pregnancy, and during a parental benefits claim.";

(b) The statements contained in the 2002 document prepared for the Minister of HRDC titled "Briefing Note: Program Amendments Included in Budget Implementation Bill",

and in particular the statements indicating that the 50 week cap to special benefits in the EI Act would "be extended by one week of sickness benefits up to 65 weeks when paid to biological to mothers during their pregnancy or during their parental benefit claim" (sic) and that the amendment was needed because "[i]n practice, some biological mothers who claim sickness benefits during their pregnancy or while receiving parental benefits may be unable to claim all of their special benefits";

(c) The statements contained in a document entitled "Medically Required Extension of Cap on Special Benefits: Why Making Changes" produced for the Minister of HRDC, indicating the change was made to benefit mothers "who claim sickness benefits during their pregnancy or while receiving parental benefits [who] may be unable to claim all of their special benefits";

(d) The statements contained in a document entitled "Medically Required Extension of Cap on Special Benefits: More Benefits to Biological Mothers", indicating the Bill C-49 change would mean "the total number of weeks of special benefits a claimant could receive would be extended by a limited number of weeks for biological mothers when they use sickness benefits during pregnancy or during a parental benefit claim.";

(e) The February 6, 2002 statement of the Hon. John McCallum, made to the House of Commons, that Bill C-49 "increases [the EI Act benefits] ceiling by one week for each week of sick leave taken by a mother during her pregnancy or

while she is receiving parental benefits, so that she may benefit fully from the special benefits.";

(f) The February 20, 2002 statement of the Hon. John McCallum to the Standing Committee on Finance that "Bill C-49 further improves the delivery of parental benefits under EI [...] To enable a mother to receive her full entitlement of special benefits, effective March 3, 2002 this cap will increase by one week for each week of sickness benefits she takes while pregnant or while receiving parental benefits.";

(g) The March 19, 2002 statement of the Hon. Anne C. Cools, made to the Senate in respect of the C-49 changes to the EI Act, that "to enable a mother to receive her full entitlement of special benefits, [the legislative] cap increases by one week for each week of sickness benefits she take while pregnant or receiving parental benefits."; and,

(h) The statement contained in a backgrounder published on the Employment Insurance Commission's website following the coming into force of Bill C-49 that indicated the change was in respect of those mothers "who claim sickness benefits during their pregnancy, or while receiving parental benefits".

THE RESPONSE OF THE EI COMMISSION TO THE 2002 AMENDMENT

63. The Commission and the defendants did not adopt the 2002 amendment following its coming into force. In particular, the change described in the proposal which they had drafted for the relevant Ministers and which was now set out in the 2002 amendment was simply not

implemented.

64. The defendants' actions during this time laid the foundation upon which the Commission would, throughout the Class Period, wrongly and tortiously administer the EI program and incorrectly and tortiously advise the Class Members regarding their entitlement to sickness benefits.

65. In the months that followed the coming into force of the 2002 amendment, the Commission took active steps to ensure the 2002 amendment would not be implemented. In particular, the Commission did not describe the 2002 amendment as being designed to benefit parental benefit recipients who suffered from an illness, injury or disability during their parental leave.

66. Instead, the Commission implemented narrow aspects of the 2002 amendment in such a way as to defeat all sickness leave claims by the Class Members. In particular, the Commission incorrectly adopted "availability to work" criteria to 2002 amendment claims such that no claimant who made a sickness leave claim while on a parental leave would be deemed by the Commission to be sufficiently "available for work" and, thus, no claimant would ever qualify for sickness benefits. This implementation ignored the clear wording of the very proposal the Commission and HRDC had drafted and submitted to the relevant Ministers, and which had subsequently been passed by as the 2002 amendment by Parliament.

67. The Commission's revised position regarding the scope of the 2002 amendment was confused and inconsistent, but for the most part the position misrepresented entirely the purpose and effect of the 2002 amendment.

68. The defendants' internal and external communications during the Class Period at times described the 2002 amendment as providing sickness leave benefits to women "before or after" the commencement of a maternity leave, while other public communications assured claimants that benefits would be available "before or after" a maternity or parental leave.

69. In addition to denying claimants who sought sickness leave benefits during their maternity or parental leave periods, the latter "before or after maternity or parental leave" explanation of the change incorrectly purported to make benefits available to claimants who file a claim "after" a parental leave. In fact, a sickness leave claim filed by a claimant after their parental leave was impossible to make, as all eligible claimants seeking to file a new claim after their parental leave claim had been exhausted would be rejected. In practice, these claimants would find that their original parental claim would be expired, and that they lacked sufficient qualifying hours to make a valid fresh claim. Thus, a sickness leave claim submitted following a parental leave claim could not succeed, the Commission's representations notwithstanding.

70. Further to this misrepresentation, the "before or after" explanation of the effect of the change was an entirely inaccurate reflection of the Commission's own understanding of the 2002 amendment, as is reflected in the materials the Commission produced in proposing the change and the Hansard statements of the parliamentarians responsible for the Bill pleaded above. These materials, without exception, expressly indicated the change was being made in respect of sickness benefit claims made before or during a parental leave claim only. At no point in any of the documents drafted by the Commission prior to the passage of the 2002 amendment was there any indication that the change was intended to provide sickness benefits "after" a parental leave claim.

71. The defendants' tortious implementation of the 2002 amendment included, but was not limited to, the following activities:

(1) "Legislative Training" of Commission Employees

72. In the months following the coming into force of the 2002 amendment, the Commission undertook an extensive, country-wide "legislative training" program for Commission employees in respect of the 2002 amendment.

73. Participants in this training were provided with materials and instructions regarding the effect of the 2002 amendment. These materials again reflected that benefits might be available for claimants "before or after" a parental leave, which was not in accordance with the Commission's clear understanding of the amendment as providing for benefits before or during a parental leave claim. Participants to the legislative training were at no point advised that parental leave claimants could make sickness claims while on their parental leave, or that claimants who sought to make a new claim "after" their leave might be disqualified on qualifying-hours grounds.

74. Further, during the course of this training, the Commission did not advise those being trained to cease applying and interpreting the *EI* Act so as to require that all sickness leave claimants must demonstrate that they would otherwise be available for work during each and every day of their sickness leave period. As pleaded above, such an interpretation of the *EI Act* will always defeat a sickness leave claim made during a parental leave.

75. Given the knowledge held by HRDC agents regarding the content

of the 2002 amendment, this training was provided either recklessly or in bad faith.

76. The inadequacy of the training provided to Commission Employees was exacerbated by the fact that, in all written materials such employees would have available to them to review a sickness leave claim made during a parental leave, those materials inaccurately set out or actively defeated the 2002 amendment. Particulars of some of these materials are set out below.

77. In addition to those materials, the Commission failed to create an accurate jurisprudence library, case summaries or digests, or alternatively failed to update its existing jurisprudence library, case summaries or digests, to reflect the presence of the 2002 amendment. The failures included maintaining cases and digests of sickness leave cases which indicated that, for all sickness leave claimants, the claimant must demonstrate an "availability" to work on each and every day of their sickness leave claim.

(2)Improper Updating of the Employment Insurance Website

78. At all times during the Class Period, HRDC and HRSDC maintained an Employment Insurance website currently located on the Internet, or world wide web at the URL http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml.

79. The Employment Insurance website allowed claimants to submit and request information regarding EI claims, and provided those seeking EI benefits with advice and information about the program, its history, the operation of the *EI Act*, and the eligibility of claimants in various scenarios to obtain EI benefits. During the Class Period, claimants were routinely

referred to the website by Commission agents. The website was portrayed by the defendants as a trustworthy source of information regarding employment insurance.

80. During a brief period shortly after the coming into force of the 2002 amendment, the website published some information regarding the 2002 amendment which at points accurately described the effect of the 2002 amendment. On April 10, 2002, the Commission posted a backgrounder under the website's "What's New?" section at the URL:

http://web.archive.org/web/20020402054832/http://www.hrdc-drhc.gc.ca/ae-ei/menu/budget2001_e.shtml.

This backgrounder characterized the 2002 amendment as affecting biological mothers "who claim sickness benefits during their pregnancy, **or while receiving parental benefits**" and stated the change was meant to ensure "full access to special benefits for **these mothers**", while indicating the 2002 amendment would allow "full access to special benefits for mothers who claim sickness benefits before or after their maternity claim".

81. This backgrounder was present on the website for approximately 18 months and was removed on or around January, 2004. Following the removal of this language, the website would never again use language indicating a sickness leave claim would be possible while receiving special benefits, including parental leave benefits.

82. On or about July 18, 2002, the Commission updated its website's Frequently Asked Questions ("FAQ") section in respect of "Maternity, parental and sickness benefits". This update, which was present on the website throughout the Class Period, advised claimants that "A combination of maternity, parental and sickness benefits can be received

up to a combined maximum of 50 weeks".

83. The website's FAQ document, following the passage of the 2002 amendment and throughout the Class Period, included a proviso for claimants who "received sickness benefits before or after [their] maternity benefits." In this section, the website illustrated that sickness leave benefits would only be available to those claimants who received sickness benefits before their parental benefits commenced. The scenarios set out by the defendants on their website highlighted that claimants seeking a sickness leave benefit following the commencement of parental benefits would be ineligible for further benefits.

84. Further, not one scenario described in the FAQ document on the website set out a situation whereupon an eligible claimant would be entitled to receive sickness leave benefits for an illness, injury, or disability suffered during a parental leave.

85. During the Class Period, the website has consistently provided inaccurate information to those seeking information on the changes introduced by the 2002 amendment. On July 24, 2008, the website published a document which purported to describe the *EI Act*'s "Recent Legislative Context". This document informed the public that, effective March 3, 2002, the 2002 amendment would "ensure access to special benefits for biological mothers who claim sickness benefits prior to or following maternity or parental benefits".

86. On October 16, 2009, the website published a similar document indicating that the 2002 amendment changed the maximum number of combined weeks of special benefits from 50 to 65 weeks, and that "these provisions ensure full access to special benefits for biological mothers who claim sickness benefits prior to or following maternity or parental benefits."

87. Visitors to the website during the Class Period, then, would be alternately advised that sickness leave benefits would be available to them if they applied for them prior to or following a maternity claim or prior to or following a maternity or parental claim.

88. No Class Members, and no visitor to the website, would have ever been advised that they would be eligible for sickness leave benefits if a claim was made during a parental leave claim.

89. Further, the plaintiffs plead that, at all times during the Class Period, the Commission maintained on its website an interpretation of the sickness leave requirement that all sickness leave claimants must demonstrate that they would otherwise be available for work during each and every day of their sickness leave period. As pleaded above, such an interpretation of the *EI Act* will always defeat a sickness leave claim made during a parental leave.

90. The plaintiffs plead, and the fact is, that in addition to the websites and documents set out above but excluding the FAQ document set out earlier, the defendants at all material times in all documentation prepared by the defendants, in printed or electronic format, materially misrepresented the scope of the 2002 amendment. In particular, these material misrepresentations of fact, including by facts stated expressly or by material omission were:

(a) statements that only those making a sickness leave claim before or after a maternity leave or parental leave claim would be eligible to obtain a sickness leave claim; and,

(b) statements that all sickness leave claimants had to demonstrate that, on every day of their sickness leave, they were otherwise

available for work, a legal requirement that would always defeat a sickness leave claim made during a parental leave period.

91. In its first monitoring and assessment report drafted by HRDC for its Minister, for instance, which report was drafted shortly after the 2002 amendment was enacted, HRDC wrote that "[e]ffective March 3, 2002, [the 2002 amendment] ensure[s] full access to special benefits for biological mothers who claim sickness benefits prior to or following maternity or parental benefits".

92. This language, limiting the 2002 amendment to sickness leave claims filed before or after maternity or parental leave periods, was consistently used in each written, electronic, and publically available document produced by the defendants during the Claim Period, including in most of the documents pleaded and relied on with more particularity above and below.

(3)Failure to Update the Digest of Benefit Entitlement Principles

93. The plaintiffs plead and rely upon the Commission's Digest of Benefit Entitlement Principles in effect from time to time during the Class Period. The version published on February 21, 2004 remains available at the URL:

http://web.archive.org/web/20040221011714/http://www.hrdc-drhc.gc.ca/ae-ei/loi-law/guide-digest/13_2_0_e.shtml.

94. At all times during the Class Period, the Digest contained and contains the principles applied by the Commission when making decisions on claims for benefits under the *EI Act*. It is intended as a reference tool for all users, including those without a legal background or knowledge of

employment insurance, and including all Class Members.

95. Further, the Digest was one of the primary documents, if not the primary document, made available to the Commission to assist it in implementing the *EI Act* during the Class Period.

96. While the Digest was revised multiple times following the March 3, 2002 coming into force of the 2002 amendment, language indicating that claimants may have an entitlement to combinations of special benefits beyond 50 weeks did not appear in the Digest until September, 2006. Thus, any claimant referred to the Digest as a source of authoritative information regarding their entitlement to special benefits would remain wholly unaware until September 2006 that any change may have been made by the 2002 amendment.

97. Further, all employees or agents of the Commission charged with the duty of reviewing claims and implementing the *EI Act* would, on reviewing the Digest until September, 2006, remain wholly unaware that any change may have been made by the 2002 amendment.

98. This lack of updating included, but was not limited to, Chapter 13.2.1 of the Digest, regarding "Limits to the Number of Weeks of Special Benefits Payable". In the period between March 3, 2002 and September, 2006 this section stated:

> Special benefits may be paid in any combination, provided the claimant proves entitlement for each type of benefit, for a maximum total payable of 50 weeks. For example a qualified claimant could receive 5 weeks sickness, 15 weeks maternity and 30 weeks parental benefits, provided she is able to prove entitlement to each type of benefit.

99. Thus, prior to the update that was made in September, 2006, the

Commission inaccurately advised claimants of their entitlements under the 2002 amendment. The Digest, as it read prior to September, 2006, plainly instructed potential claimants and claims administrators that parental benefit recipients had no entitlement to a combination of special benefits beyond 50 weeks of benefits.

100. Further, in all sections of the Digest pertinent to sickness leave claims, and at all times during the Class Period, the Digest erroneously instructed potential claimants that they must always prove, on each day of their sickness leave, an "availability for work", wholly ignoring the impact of the 2002 amendment.

101. The Commission, at no time during or following the coming into force of the 2002 amendment, updated the Digest to alert EI claimants that they could make a valid sickness leave claim while on a parental leave.

102. The Commission, at no time during or following the coming into force of the 2002 amendment, updated the Digest to alert Commission employees, staff, and agents, that they must accept a sickness leave claim made by a claimant who is on a parental leave.

(4) Consistent Rejection of Maternity-Parental-Sickness Claims

103. Following the coming into force of the 2002 amendment, front-line Commission employees, agents, and representatives began denying all sickness leave claims made by claimants while on a maternity or parental leave.

104. In many cases, these denials would follow the confused verbal and written advice to claimants made by inadequately trained front-line staff. In some circumstances, Class Members were told outright at the beginning of the process that the defendants took the position they had no entitlement to benefits. In others, Class Members were initially instructed by Commission agents to either wait until the expiry of their parental leave claim before applying, or alternatively, to ensure the apply prior to their expiry of parental benefits.

105. When claimants did make claims, these confusions were resolved by "elevating" claims to more senior representatives of the Commission. The result of elevated claims was unanimous. Higher-ranking Commission employees arrived at a single, incorrect resolution to all 2002 amendment claims made by maternity or parental claim recipients: these claimants could not claim sickness benefits due to not meeting the availability requirements set out in s.18 of the *EI Act*.

(5) Aggressive Approach to Claimant Appeals

106. In all cases where Class Members who were affected by a denial as set out above appealed the Commission's decision denying a sickness leave claim, the Commission fought vigorously against any claim of entitlement to sickness leave benefits by claimants during a maternity or parental leave.

107. A system of appeals is set out in Part VI of the *EI Act*, upon which the plaintiffs plead and rely. This system includes a first-stage appeal at the Board of Referees, and provides any party a further right of appeal to an Umpire.

108. Almost invariably, claimants who appear before the EI appeals

system do not have legal representation and are not legally trained. Further, due to the tremendous value placed on expediency within the first stage of the EI Appeals process, claimants have extremely limited amounts of time to compile an evidentiary record from the date they receive a decision to the scheduling of a hearing date. In the case of combined maternity-parental-sickness claimants, those seeking to appeal the Commission's decision would also invariably be caring for newborn children and would be recovering from or battling an injury, illness, or disability.

109. While these claimants were at a considerable disadvantage vis-à-vis the Commission in the appeals process, the defendants expended considerable resources in defending all appeals made in respect of combined maternity-parental-sickness claims made under the 2002 amendment. In those cases where claimants were successful at the first stage of appeal, the Commission would invariably appeal to the Umpire. At the Umpire stage, claimants would be forced to again defend the record put before the Board of Referees. And again, claimants would typically be at a disadvantage in regards to resources and legal representation.

110. Further, throughout the Class Period, the Commission acted both as the party which had rejected the Class Members' claims and as the litigant prosecuting appeals to the Board of Referees and the Umpire. Throughout the Class Period, the Commission controlled the materials presented to the Board of Referees as well as the submissions made to the Board. During the Class Period, the defendants never once presented the Board or an Umpire materials setting out the purpose and effect of the 2002 amendment.

111. This strategy resulted in the dismal failure of a long series of maternity-parental-sickness benefit claimants who had their claims

dismissed, primarily on the ground that they were unable to demonstrate 'availability for work'.

NATALYA ROUGAS OBTAINS SICKNESS LEAVE BENEFITS

112. Rougas became, in 2011, the first person to unequivocally obtain the sickness leave benefits promised by Parliament in the 2002 amendment.

113. Rougas obtained these sickness leave benefits over a year and half after first applying for them.

114. Rougas, like the plaintiffs, was an eligible employment insurance claimant, gave birth to a child, and took a maternity and parental leave from her employment, all while caring for herself or her child.

115. Towards the end of her parental leave period, in January 2010, Rougas was diagnosed with breast cancer.

116. Rougas had to undergo significant treatment for this illness and as a result was unable to return to work.

117. Towards the end of her parental leave, on or about January 16, 2010, Rougas applied for sickness leave benefits.

118. At the time she applied, Rougas was incorrectly advised orally over the telephone by the defendants that her application for sickness leave benefits would not be permitted under the *EI Act* but that it would be accepted if she applied after the end of her parental leave period. Rougas applied for sickness leave benefits anyway notwithstanding these two misrepresentations.

119. On or about February 22, 2010, Rougas' parental leave claim was

rejected by letter because she "[could] not prove that if [she] were not sick [she] would be working because [she] was on parental leave with an expected return to work date of February 1, 2010".

120. On or about March 8, 2010, Rougas appealed this decision to a Board of Referees.

121. On May 11, 2010 Rougas appeared at the appeal without counsel and with her husband, Stavros Rougas. Rougas' appeal was dismissed on that same day.

122. On July 7, 2010, Rougas appealed the Board of Referees decision to an Umpire established under the *EI Act*.

123. Rougas expended considerable amounts as disbursements given her financial constraints to pursue her appeal. A large part of these were to cover the cost of an access to information search that yielded the key legislative history materials concerning the purpose of the 2002 amendment.

124. The Umpire who wrote the Rougas Decision admitted these legislative history materials into evidence and relied extensively on them in support of the Rougas Decision.

125. The defendants, before and during the hearing of Rougas' appeal, argued that these legislative history materials ought not to be admitted into evidence.

126. The plaintiffs plead that the Rougas Decision conclusively determines that, since the 2002 amendment, all Class Members who made a sickness benefits claim were eligible for sickness benefits.

127. Further, or in the alternative, the plaintiffs plead that the Rougas

Decision conclusively determines that, since the 2002 amendment, all Class Members who were advised by the defendants that they could not make a sickness benefits claim because they were on parental leave or not otherwise available for work, ought not to have been so advised.

No Judicial Review of the Rougas Decision

128. The defendants had a right under the *Federal Courts Act*, R.S.C. 1985, c. F-7 to seek judicial review of the Rougas Decision to the Federal Court of Appeal.

129. On or about August 17, 2011 , the defendants announced that they were not seeking judicial review of the Rougas Decision.

130. In so doing, the defendants, in a prepared written statement read by a spokesperson for the Minister of Human Resources and Skills Development Canada, stated that "[i]n regards to Ms. Rougas' case, it was indeed unfortunate and as a government we are committed to maintaining fairness...".

131. Notwithstanding the Rougas Decision and its confirmation that the 2002 amendment provides for the payment of sickness benefits to Class Members, including the plaintiffs and Rougas, the aforesaid spokeswoman of the Minister of Human Resources and Skills Development Canada misrepresented in the same written statement that "[t]he changes required [as a result of the Rougas Decision] are legislative".

132. The plaintiffs plead that no legislative changes are required and that, since the 2002 amendment, the necessary legislative provisions have been in place to permit all Class Members to obtain sickness leave benefits.

The Rougas Decision is Not Being Implemented

133. Despite the Rougas Decision and the defendants' decision not to seek judicial review from it, the Rougas Decision is not being implemented.

134. In particular, the Commission denied McCrea's and Kasbohm's sickness leave application on the very grounds that were rejected in the Rougas Decision, namely, that at the time they applied for sickness leave benefits, the plaintiffs were not otherwise available for work.

CAUSES OF ACTION

Misfeasance in Public Office

135. As described above, the defendants engaged in a deliberate effort to implement the 2002 amendment in a manner not in accordance with the purpose, effect, and text of the *EI Act* and other applicable sources of law, causing foreseeable damage to the Class Members.

136. The defendants implemented the 2002 amendment within its public role as the administrator of Employment Insurance benefits. The defendants' agents undertook to operationalize the 2002 amendment within their role as public officials and as employees of the defendants.

137. The defendants, and specifically their agents with responsibilities in respect of legislative policy, had intimate knowledge of the intent and scope of the 2002 amendment as a result of their central role in proposing and drafting the legislation.

138. At some point shortly following the coming into force of the 2002

amendment, agents of the defendants in possession of this information pursued a 2002 amendment implementation program which they knew was unlawful and did not properly encompass the scope of the 2002 amendment.

139. Agents of the defendants responsible for this misfeasance following the coming into force of the 2002 amendment were:

a) the persons, department or branch responsible for legislative policy who provided knowingly false information to the Commission and the public at large in respect of the 2002 amendment following its coming into force;

b) the persons, department or branch responsible for creating the legislative training program under which the defendants' employees were provided with misleading information regarding the operation of the 2002 amendment;

c) the persons, department or branch tasked with overseeing, drafting, and implementing the Employment Insurance website, and specifically, those who requested and implemented the removal and/or publication of information that obscured the effect of the 2002 amendment; and,

d) The persons, department or branch responsible for developing the Commission's response to Class Members' inquiries and appeals of claims that the defendants had knowledge were allowable under the 2002 amendment.

140. At all times, the defendants knew, or ought to have known, that their misapplication of the *EI Act* would cause damages to the Class

Members. It was an obvious result of these actions that certain Class Members who would otherwise have entitlement to benefits would be denied, causing both special and general damages.

141. As a result of the defendants' misfeasance, the Class Members did suffer special and general damages as detailed below.

General Duty of Care, Negligence, and Negligent Implementation of the Statutory Scheme

142. At all times during the Class Period, the defendants owed a duty of care to Class Members that was breached by its negligent conduct in respect of administering the Employment Insurance scheme, and in particular the 2002 amendment.

143. It was foreseeable that negligently implementing an income compensation scheme would cause the Class Members to suffer damages in relation to the loss of their entitlements, as well as the time, frustration and emotional upset associated with the pursuit of improperly denied claims.

144. The Class Members were in a relationship of proximity to the defendants. They had entered into a special relationship with the defendants as a result of their previous engagement in the claims process managed by the defendants in its statutory role as the administrator of Employment Insurance benefits.

145. The defendants communicated directly, specifically, and repeatedly with each Class Member in respect of their maternity, parental, and sickness leave claims. The defendants had already approved, in the case of all Class Members, their valid maternity and parental leave claims.

146. Further, all Class Members were in a position of reliance upon the Commission to administer their benefit claims with reasonable diligence, as all members of the Class were persons in the vulnerable position of having to simultaneously care for one or more young children while also coping with an injury, illness, or disability.

147. The defendants breached the duty of care owed to the Class to properly ascertain the scope of its statutory authority and implement the Employment Insurance program with reasonable diligence. Particulars of the defendants' negligence include the failures pleaded above, and also include:

a) The defendants' post-March 3, 2002 fostering of a description of the *EI Act* that recklessly or willfully disregarded the defendants' own knowledge of the intent of the 2002 amendment;

b) The defendants' implementation of a "legislative training" regime for its employees which contained inaccurate representations of the effect of the *EI Act* and the 2002 amendment specifically;

c) The defendants' failure throughout the Class Period to properly train its front-line staff, such that the plaintiffs and Class Members were subject to changing, inconsistent, contradictory and ultimately incorrect advice from agents of the defendants regarding their entitlement to benefits;

d) The defendants' negligent maintenance of its publically available Employment Insurance website, such that throughout the Class Period the website contained misleading, contradictory and incorrect statements regarding the 2002 amendment;

e) The defendants' negligent failure to update its key document, the Digest of Benefit Entitlement Principles, in a timely manner to reflect the coming-into-force of the 2002 amendment;

f) The defendants' failure, when the Digest was updated, to properly describe the effect of the amendment, and to retain misleading and inaccurate descriptions of the relevant entitlement principles; and,

g) The defendants' aggressive approach to denying sickness leave claims by Class Members and then representing itself on appeals to the Board of Referees and Umpire to successfully oppose such appeals.

148. The plaintiffs have suffered damages, detailed below, as a result of this negligent conduct.

Negligent Misstatement and Detrimental Reliance

149. The plaintiffs and Class Members relied to their detriment upon the negligent representations of the defendants.

150. The defendants engaged in a course of communications with each Class Member. These included:

a) Verbal representations during in-person meetings with agents of the defendants at physical Service Canada kiosk locations;

b) Verbal representations to Class Members made over the

telephone by Service Canada agents;

c) Written representations in formal correspondence delivered to the Class Members in respect of their claims; and,

d) Written advisements in the form of communications tools to which the Class Members were referred, such as the defendants' website, the Digest of Benefit Entitlement Principles and the EI Jurisprudence Library.

151. The negligent representations of the defendants were consistent and included at least one or any combination of the following:

a) that Class Members had no entitlement to sickness benefits as they had not proven they were available for work during the period of a maternity or parental leave;

b) that an expanded benefit period under s.10(13) of the *EI Act* could only be accessed by claimants who claimed for sickness benefits before or after a maternity leave;

c) that an expanded benefit period under s.10(13) of the *EI Act* could only be accessed by claimants who claimed for sickness benefits before or after a maternity or parental leave; and,

d) that sickness benefits could be obtainable by making a fresh claim following a parental leave.

152. In making these consistent and inaccurate statements to the Class Members, the defendants ought reasonably to have foreseen that these Class Members would rely upon the misrepresentations as accurate.

Reliance by the Class Members was reasonable in the circumstances. The defendants therefore owed them a duty of care.

153. The defendants breached the duty of care owed to the Class Members by making these representations negligently, carelessly, or wilfully and recklessly, given their role in proposing and drafting the 2002 amendment, their general expertise and knowledge regarding the operation of the *EI Act* and its legislative history, and their statutory mandate as the relevant governmental authority in respect of EI benefit entitlement.

154. The Class Members relied on these representations to their detriment. This detrimental reliance included:

a) foregoing sickness benefit claims they would have been entitled to but for the representations of the Commission; and,

b) making fresh sickness benefit claims following the exhaustion of their parental leave that were subsequently legitimately denied by the Commission.

155. The Class Members have suffered losses as described below as a result of this detrimental reliance.

Unjust Enrichment

156. The plaintiffs plead that the defendants, as a result of their conduct, have been unjustly enriched in the amount of benefits improperly denied to the Class Members.

157. The Class Members are all persons who have worked in Canada

and paid sufficient employment insurance premiums over many years, and specifically, paid sufficient premiums during the Class Period to qualify as a "major attachment claimant" as defined by the *EI Act*.

158. During the Class Period, Employment Insurance premiums were collected from, and on behalf of, the Class Members as a regulatory charge at a rate sufficient to ensure the Employment Insurance Account (or the "Employment Insurance Operating Account" after January 1, 2009) was able to pay the benefit amounts authorized to be charged to it.

159. Amounts authorized to be charged to the account included sickness benefit payments to which the Class Members were entitled, but were, as outlined above, systematically excluded from as a result of the defendants' conduct.

160. The defendants wrongfully failed to pay the Class Members the benefits to which they were entitled, and were therefore enriched in the amount of benefits that Class Members were entitled to, but did not, receive.

161. Class Members suffered a deprivation. This deprivation included, but was not limited to:

a) the quantum of improperly denied sickness benefits they applied for; or,

b) the quantum of sickness benefits they were improperly advised not to apply for which they were entitled to.

162. There is not a single juristic reason why the defendants, having simultaneously engaged in a wrongful claim prevention campaign against

the Class Members, while receiving EI premiums intended to compensate for those benefits, should retain the surplus amounts so collected.

THE PLAINTIFFS AND THE CLASS MEMBERS SUFFERED DAMAGES

163. The plaintiffs claim for damages in the monetary amount they have lost in either improperly denied sickness benefits, or the amount of sickness benefits foregone or abandoned as a result of the defendants' wrongful intervention in the claims process as described above. This category of damages includes, but is not limited to:

a) damages in the amount of sickness benefit claims made by Class Members, improperly denied by the Commission, and not pursued through the EI appeals process;

b) damages in the amount of sickness benefit claims made by Class Members, denied by the Commission, and pursued unsuccessfully through the EI appeals process;

c) damages in the amount of sickness benefit claims which were made unsuccessfully by Class Members following a parental leave; and,

d) damages in the amount of sickness benefit claims never submitted by Class Members due to the negligent and/or wrongful advisements of the Commission that they had no entitlement to such benefits.

164. Further, the plaintiffs claim general damages for inconvenience, loss of time, frustration, anxiety, mental distress and emotional upset related to the pursuit and denial of wrongfully denied claims by Class

Members.

RELEVANT LEGISLATION

165. The plaintiffs plead and rely upon the *EI Act*, the *Regulations* to the *EI Act*, the *Canada Labour Code* R.S.C. 1985 c. L-2, the *Employment Standards Act*, 2000, S.O. 2000, c. 41, the *Employment Standards Code*, R.S.A. 2000, c. E-9, an *Act Respecting Labour Standards*, R.S.Q., c. N-1.1, all other Canadian provincial legislation in respect of employment standards, the *Rules*, the *Federal Courts Act*, R.S.C. 1985, c. F-7, the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34, the *Department of Human Resources Act*, S.C. 1996, c. 11, the *Interest Act*, R.S.C. 1985, c. I-15, and the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

PLACE OF TRIAL

The plaintiffs propose that this action be tried at Toronto.

January 19, 2012

Stephen J. Moreau, LSUC #48750Q
Benjamin Rossiter, LSUC #59939N

CAVALLUZZO HAYES SHILTON
McINTYRE & CORNISH LLP
Barristers & Solicitors
474 Bathurst Street, Suite 300
Toronto, ON M5T 2S6

Tel: (416) 964-1115
Fax: (416) 964-5895

Solicitors for the Plaintiffs

Court File No.: T-210-12

FEDERAL COURT

BETWEEN:

JENNIFER MCCREA ~~AND~~
~~CARISSA KASBOHM~~

Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA AND
THE CANADA EMPLOYMENT INSURANCE COMMISSION

Defendants

AMENDED STATEMENT OF CLAIM TO THE DEFENDANTS (Proposed Class Proceeding)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Court Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: January 19, 2012

Issued by: _____

(Registry Officer)

Address of local office: 180 Queen Street West, Suite 200
Toronto, ON M5V 3L6

TO: THE ATTORNEY GENERAL OF CANADA
234 Wellington Street|
Bank of Canada
10th Floor
Ottawa, ON K1A 0G9

Tel: (613)946-4755
Fax: (613) 954-1920

TO: THE CANADA EMPLOYMENT INSURANCE COMMISSION
c/o THE ATTORNEY GENERAL OF CANADA
234 Wellington Street
Bank of Canada
10th Floor
Ottawa, ON K1A 0G9

Tel: (613)946-4755
Fax: (613) 954-1920

and

HUMAN RESOURCES & SKILLS DEVELOPMENT CANADA
EI Appeals Division
Place Vanier - Tower B / Tour B
11th Floor / 11e étage
355 North River Road
OTTAWA ON K1A 0L1

Christopher Wolfenden

Tel: (888) 632-3050
Fax: (613) 995-5008

CLAIM

1. The following terms used throughout this statement of claim have the meanings indicated:

   (a) "**Attorney General**" means the defendant, the Attorney General of Canada;

   (b) "**Class**" and "**Class Members**" mean all persons who, during the **Class Period**:

      i. applied for and received **parental leave** benefits;

      ii. suffered from an illness, injury, or disability during the course of their **parental leave**; and,

      iii. EITHER

         (1) applied for **sickness leave** benefits for which they were rejected because they were on **parental leave** or not otherwise available to work at the time of their **sickness leave** application;

         or,

         (2) were advised orally or in writing by the defendants, the **Commission**, or **HRSDC**, that they did not qualify for **sickness leave** because they were on **parental leave** or not otherwise available to work at the time of their **sickness leave** application, on which advice and representations they relied in not applying for **sickness leave**.

   (c) "**Class Period**" means the period from March 3, 2002 to, and including, the date of trial of the present action;

   (d) "**Commission**" means the Canada Employment Insurance Commission, a defendant in the present action and a body corporate continued by section 20 of the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34, and includes all agents, servants, employees, and assigns of the Canada Employment Insurance Commission;

(e) "***EI Act***" means the *Employment Insurance Act*, S.C. 1996, c. 23, as amended from time to time;

(f) "**HRSDC**" means the Department of Human Resources and Skills Development Canada established by the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34, and includes all agents, servants, employees, and assigns of the Department of Human Resources and Skills Development Canada, and includes where material its predecessor, the Department of Human Resources established by the *Department of Human Resources Act*, S.C. 1996, c. 11;

(g) "**Kasbohm**" means Carissa Kasbohm, ~~one of the plaintiffs~~;

(h) "**McCrea**" means Jennifer McCrea, the plaintiff;

(i) "**parental leave**" means parental employment insurance leave or parental employment insurance benefits as set out in the ***EI Act***, and in particular Part I thereof;

(j) "**Rougas**" and **"Rougas Decision**" mean, respectively, Natalya Rougas and a June 30, 2011 decision of an Umpire under the ***EI Act*** on a claim for sickness leave benefits filed by Rougas, which Decision is cited as CUB 77039;

(k) "***Rules***" mean the *Federal Courts Rules*, SOR 98/106 established pursuant to the *Federal Courts Act*, R.S.C. 1985, c. F-7;

(l) "**sickness leave**" means sickness employment insurance leave or sickness employment insurance benefits as set out in the ***EI Act***, and in particular Part I thereof; and,

(m) "**the 2002 amendment**" means an amendment to the ***EI Act*** which came into force on March 3, 2002 pursuant to the *Budget Implementation Act, 2001*, S.C. 2002, c. 9 (Bill C-49), and in particular Part 3 thereof.

2. The plaintiff~~s~~ claim<u>s</u> on <u>her</u> own behalf and on behalf of all Class Members:

(a) an order pursuant to the *Rules* certifying this action as a class proceeding and appointing them as the representative plaintiff~~s~~;

(b) a declaration that the defendants negligently administered and failed to implement the *EI Act* – including through negligent misrepresentations about the *EI Act* – in a manner that caused damage to the plaintiffs and Class Members, as particularized below;

(c) a declaration that the defendants were unjustly enriched by these actions, as particularized below, to the detriment of the plaintiffs and Class Members, and that there exists no juridical reason to allow the defendants to retain the amounts by which they were unjustly enriched;

(d) special damages and general damages for negligence, misfeasance, or unjust enrichment in the amount of $450,000,000.00 or such other sums as this court finds appropriate at the trial of the common issues or at a reference or references under the *Rules*;

(e) prejudgment interest on the amount set out in paragraph 2(d) at the rate of five per cent per annum pursuant to the *Interest Act*, R.S.C. 1985, c. I-15, or at a rate to be established by this Honourable Court pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;

(f) postjudgment interest on the amount set out in paragraph 2(d);

(g) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

(h) costs of this action plus the costs of the distribution of any award under the *Rules*, including the costs of notice associated with this distribution and the fees to a person administering the distribution pursuant to Rule 334.28 of the *Rules*; and,

(i) such further and other relief as to this Honourable Court seems just.

THE NATURE OF THE ACTION

3. This action concerns the defendants' failure, during the Class Period, to implement the 2002 amendment.

4. The 2002 amendment provides that all persons eligible to collect employment insurance benefits under the *EI Act* who suffered from an illness, injury, or disability before or during their parental leave, could then collect up to fifteen (15) weeks of sickness leave benefits.

5. Instead of implementing the 2002 amendment, the Commission – on or shortly after March 3, 2002 – implemented a far more modest change to the detriment of the Class. In particular, the Commission at all times during the Class Period implemented the 2002 amendment as if it was designed merely to provide sickness leave benefits to women for a period of illness, injury, or disability suffered while pregnant and before the commencement of any parental leave.

6. Further, the plaintiffs pleads that – shortly after the 2002 amendment – the defendants took active steps to defeat any chance that anyone, including the plaintiffs and Class Members, would ever be able to successfully obtain a sickness leave benefit for an illness, injury, or disability suffered during a parental leave, and despite the provisions of the 2002 amendment.

7. Until the Rougas Decision was released, as particularized below, nobody, including the plaintiffs and Class Members, had ever apparently received from the Commission a sickness leave benefit for an illness, injury, or disability suffered during a parental leave.

8. The defendants have refused to implement the Rougas Decision. The ~~plaintiffs'~~ plaintiff's application~~s~~ for sickness benefits during a parental leave period ~~were~~ was rejected after the Rougas Decision was released and the defendants had determined not to seek judicial review therefrom.

THE PARTIES

Jennifer McCrea

9. McCrea resides in the City of Calgary. During the Class Period, McCrea gave birth to a child, applied for and was in receipt of parental leave benefits, suffered from an illness, injury, or disability during the course of her parental leave, and applied for sickness leave benefits.

10. McCrea's application for sickness leave benefits was denied because she was on parental leave or not otherwise available to work at the time of her sickness leave application.

11. On October 15, 2010, prior to the birth of her child, McCrea was informed by her family doctor that she was suffering from high blood pressure. She was advised to cease working immediately.

12. McCrea informed her employer of her health status and took a flexible leave from her employment as an Office Manager with Safe Self Storage Inc., a Calgary area storage company. Her employer advised her that she was welcome to return at any point during her leave.

13. McCrea also made an application for employment insurance sickness benefits. As she was expecting the birth of her child within the weeks subsequent to her initial claim, a Service Canada

representative advised her that she would be placed directly on maternity benefits as opposed to sickness benefits.

14. McCrea gave birth to Logan McCrea on October 31, 2010 and spent several months spending time with and caring for this child.

15. McCrea was found eligible for fifty (50) weeks of combined maternity and parental benefits inside of a benefit period that was scheduled to extinguish on October 20, 2011.

16. On May 9, 2011, McCrea had an MRI performed. McCrea suffers from an uncommon genetic mutation which greatly increases her risk of developing breast cancer. As such, she has been closely monitored for symptoms of the disease.

17. The results of the MRI were abnormal, and on July 9, 2011 she underwent an MRI-guided biopsy.

18. McCrea was diagnosed with breast cancer on July 18, 2011.

19. On July 29, 2011 McCrea met with a surgical specialist. Given McCrea's medical history, the surgeon recommended a bilateral mastectomy. Surgery was scheduled for August 11, 2011.

20. McCrea's physicians were initially of the opinion that she would require at least three (3) weeks of recovery time from the date of the surgery.

21. On August 2, 2011, McCrea contacted a Service Canada office by phone and spoke with a Commission agent regarding how to go about making a claim for sickness leave. She requested a conversion of her parental leave to sickness leave beginning August 11, 2011.

22. McCrea was advised by the Commission at that time that if the sickness leave claim was successful, her parental leave benefits would be temporarily suspended and sickness leave benefits would be paid during her period of recovery from surgery.

23. McCrea underwent a bilateral mastectomy on August 11, 2011. Following surgery, McCrea became incapacitated. In particular, she was unable to lift her arms and movement was difficult and painful. McCrea also underwent a period of recovery from the emotional trauma commonly associated with the bilateral mastectomy procedure.

24. During this period after the surgery, McCrea was unable to work or do any of the household tasks required to care for her two young children. McCrea's husband and mother completely took over the child care duties while she recovered.

25. On August 19, 2011, McCrea saw her doctor for a post-operative follow up. Her doctor determined that she required additional weeks of recuperation, until at least September 26, 2011. McCrea's treating physician wrote a letter to Service Canada indicating she would remain incapacitated during this period.

26. McCrea provided this updated information in-person at a Service Canada office. During this visit to the Service Canada office, she inquired about the status of her benefits. She was told by a Commission agent to phone the central Service Canada hotline during the following week.

27. On August 30, 2011, after making repeated attempts to contact the hotline and receive an update, McCrea received a phone call from a Service Canada worker inquiring about her work availability.

28. On September 19, 2011, McCrea was advised for the first time by the Commission that they took the position she was ineligible for sickness benefits.

29. McCrea was told over the phone, and later in writing, that as she had indicated that she was on a parental leave and had not proven that she would be available for work if she was not sick, she was not eligible for sickness benefits. The Commission thus denied McCrea's claim for sickness benefits in its entirety.

Carissa Kasbohm

30. Kasbohm, formerly a Plaintiff in the within action, resides in the City of Calgary. During the Class Period, Kasbohm gave birth to a child, applied for and was in receipt of parental leave benefits, suffered from an illness, injury or disability during the course of her parental leave and applied for sickness leave benefits.

31. Kasbohm's application for sickness leave was denied because she was on parental leave or not otherwise available to work at the time of her sickness leave application.

32. Throughout the latter stages of her pregnancy, Kasbohm experienced severe fatigue, nausea and body bruising. On October 1, 2010, Kasbohm was forced to cease working as a chef at a popular Calgary restaurant due to these symptoms. Her employer advised her that she was welcome to return at any time following her recovery and at any point during her anticipated maternity and parental leave.

33. On October 14, 2010, during a maternity check up, she was diagnosed with thrombotic thrombocytopenic purpura ("TTP"), a

rare and serious blood disorder. Kasbohm was immediately admitted to hospital.

34. On October 16, 2010, Kasbohm gave birth to her first son, Castiel Kasbohm.

35. On or around October 31, 2010, she applied for and was found eligible for fifty (50) weeks of combined maternity and parental benefits in respect of the birth of Castiel Kasbohm.

36. From October 2010 through January 2011, Kasbohm underwent treatment in respect of her TTP diagnosis. This included, but was not limited to, blood transfusions, chemotherapy-like pharmacological interventions, and twenty-nine (29) rounds of plasmapheresis, in which the patient's blood plasma is replaced with donor plasma.

37. During this period of time, she was completely disabled and unable to work or care for her child. Care for Castiel Kasbohm was provided by her husband, mother and grandmother.

38. In December, 2010 Kasbohm was advised by Hospital staff that she should apply to convert her EI maternity and parental leave benefits to EI sickness leave benefits.

39. Kasbohm attempted to do so at or around this time, and was told over the phone by a Commission agent that she was ineligible for sickness benefits due to her being in receipt of maternity benefits. She was informed by the Commission at that time that she would be eligible for sickness benefits at the end of her claim as long as she applied prior to the exhaustion of her parental leave benefits.

40. In September 2011, Kasbohm was advised by her physicians that she would be medically unable to return to work following the end of her parental leave. She again applied for EI sickness benefits and provided the Commission with medical documentation which indicated that she was incapacitated.

41. More particularly, Kasbohm applied for sickness leave during a period in which she was still receiving parental leave benefits.

42. Throughout October, 2011, Kasbohm attempted to contact Service Canada to inquire about the status of her sickness benefits claim. On November 9, 2011 Kasbohm was contacted by the Commission and informed that it appeared she would not be eligible for benefits.

43. Kasbohm subsequently received correspondence from the Commission on or about November 10, 2011 indicating that she had been ruled ineligible for sickness benefits as she was not "otherwise available for work".

44. Kasbohm's disease has gone into temporary remission. However, she fatigues rapidly and gets sick easily in whole or in part because she took a course of medication which will act as an immuno-suppressant for years to come. She was unable to return to work following the expiration of her maternity and parental leave, and remains without income of any kind.

The Commission

45. During the Class Period, the Commission was responsible for administering, interpreting, and enforcing the *EI Act* correctly whenever a claimant applied for employment insurance benefits, including parental leave and sickness leave benefits.

46. During the Class Period, the Commission was an agent of the defendant Attorney General, or more particularly, an agent of Her Majesty in right of Canada pursuant to the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34 and the *Department of Human Resources Act*, S.C. 1996, c. 11.

47. During the Class Period, all officers and employees of the Commission were employed by HRSDC.

HISTORY OF THE 2002 AMENDMENT

The History of the *EI Act*

48. The federal government has administered an employment insurance scheme since the early 1940s. Its purpose initially had been to provide temporary income replacement to workers facing involuntary unemployment. As the next paragraphs demonstrate, the purpose of EI changed over time to incorporate new social norms and thinking, and the *EI Act* is now widely regarded as a form of "social" insurance designed to provided economic support during periods of temporary interruptions of employment.

49. In the early 1970s, EI was expanded to reflect changing norms in the Canadian labour market, including the increased presence of women into the workforce. This era of reform included the introduction of "special benefits" that provided income replacement for workers unable to work due to sickness or pregnancy.

50. In the 1980s, the *EI Act* was further expanded to recognize periods of unemployment taken by parents to care for their adoptive or natural born children, defined in paragraph 1 as "parental leave".

Parental leave has always been classified as a "special benefit", like sickness and maternity leave.

51. In 1990, the federal government enhanced the *EI Act*'s special benefit provisions by allowing claimants to combine their maternity, parental, and sickness benefits up to a certain amount of weeks. The "bundling" of special benefit entitlements was subject to a strict cap on the maximum amount of benefit weeks allowed. Under the 1996 version of the *EI Act*, for instance, this cap was set at thirty (30) weeks.

52. By 2001, the amount of parental benefits available to claimants was increased from 10 to 35 weeks in order to enable parents to spend more time at home during their child's early period of life. Following the introduction of enhanced parental leave benefits in the 2000 federal budget, s.12(5) of the *EI Act* was amended to provide for a 50 week bundling of special benefits cap.

The McAllister-Windsor Decision

53. On March 9, 2001, the Canadian Human Rights Tribunal issued the *McAllister-Windsor* decision. The complainant in that case challenged the prohibition on stacking special benefits beyond the then 30-week legislated cap. After the cap was extended to 50 weeks, the challenge incorporated a challenge to that cap as well. The Canadian Human Rights Tribunal found that the operation of the provision had an exclusive adverse effect on women and disabled claimants, as only those claimants who sought to combine their full entitlements to 15 weeks of maternity leave, 35 weeks of parental leave, and 15 weeks sickness leave benefits, would be subject to a cap limiting the benefits to 50 combined weeks.

54. As a result of the decision, HRDC ("HRDC", as it was stylized prior to 2003) was ordered by the Tribunal to cease applying the provisions of the *EI Act* in a discriminatory manner.

The Response of HRDC to *McAllister-Windsor*

55. HRDC considered several options in respect of how the department would respond to the ruling. Following the release of the decision, the Ministers of HRDC and Finance were informed by Departmental staff that the government had until March 3, 2002 to come into compliance with the Human Rights Tribunal directive.

56. By November 30, 2001, HRDC had drafted a proposal calling for an amendment to the *EI Act*. The amendment was intended to provide an extension of the 50-week cap on benefits by one week for every week of sickness benefits claimed during pregnancy and "during a parental benefit claim", thereby ensuring the *EI Act* did not discriminate against any claimant on the basis of gender or disability.

57. The HRDC proposal was approved. An amendment to the *EI Act* intended to implement the proposal was included in changes to the EI program announced in relation to the December 10, 2001 Federal budget. It is this amendment that became the 2002 amendment defined above.

58. HRDC staff prepared a set of question-and-answer statements for their Minister's use in discussing the proposed change. In these statements, it was consistently indicated that the 2002 amendment was intended to provide an exception to the 50 week cap for special benefits by extending it by one week for each week of

sickness benefits taken by biological mothers during their pregnancy or during their parental leave claim.

59. HRDC advised the Minister to inform the media and relevant stakeholders that the amendment was needed because, "[i]n practice, some biological mothers who claim sickness benefits during their pregnancy or while receiving parental benefits may be unable to claim all of their special benefits".

Bill C-49 [the 2002 amendment]

60. In 2001, the Government introduced Bill C-49, the *Budget Implementation Act, 2001*. Included in Part 3 of the legislation were improvements to the *EI Act*. These improvements included the new provisions designed to ensure that claimants who qualified for maternity, parental and sickness benefits would be provided with an expanded benefit period of up to sixty-five (65) weeks. It is this that constitutes the 2002 amendment.

61. The plaintiffs ~~plead~~ pleas and ~~rely~~ relies on the official statements of all representatives of the Government who spoke to the Bill in the House of Commons, Senate, and in Parliamentary committees. Without exception, these statements confirmed that the government's intent was to directly implement HRDC's proposed response to the *McAllister-Windsor* directive and decision. Every government representative that spoke to this portion of the Bill indicated that the 2002 amendment would ensure that the cap on special benefits would be extended for each week of sickness leave taken by a mother during their pregnancy or during their parental leave.

62. Further to paragraph 61, the plaintiffs ~~plead~~ pleas and ~~rely~~ relies more particularly on the following the statements:

(a) The statements contained in the November 30, 2001 "EI Court Challenges" briefing document prepared for the Minister of Finance, and in particular the statement indicating the HRDC proposal would "[e]xtend the 50-week cap on benefits for women by one week for every week of sickness benefits claimed during pregnancy, and during a parental benefits claim.";

(b) The statements contained in the 2002 document prepared for the Minister of HRDC titled "Briefing Note: Program Amendments Included in Budget Implementation Bill", and in particular the statements indicating that the 50 week cap to special benefits in the EI Act would "be extended by one week of sickness benefits up to 65 weeks when paid to biological to mothers during their pregnancy or during their parental benefit claim" (sic) and that the amendment was needed because "[i]n practice, some biological mothers who claim sickness benefits during their pregnancy or while receiving parental benefits may be unable to claim all of their special benefits";

(c) The statements contained in a document entitled "Medically Required Extension of Cap on Special Benefits: Why Making Changes" produced for the Minister of HRDC, indicating the change was made to benefit mothers "who claim sickness benefits during their pregnancy or while receiving parental benefits [who] may be unable to claim all of their special benefits";

(d) The statements contained in a document entitled "Medically Required Extension of Cap on Special Benefits: More Benefits to Biological Mothers", indicating the Bill C-49 change would mean "the total number of weeks of special benefits a claimant could receive would be extended by a limited number of weeks for biological mothers when they use sickness benefits during pregnancy or during a parental benefit claim.";

(e) The February 6, 2002 statement of the Hon. John McCallum, made to the House of Commons, that Bill C-49 "increases [the EI Act benefits] ceiling by one week for each week of sick leave taken by a mother during her pregnancy or while she is receiving parental benefits, so that she may benefit fully from the special benefits.";

(f) The February 20, 2002 statement of the Hon. John McCallum to the Standing Committee on Finance that "Bill C-49 further improves the delivery of parental benefits under EI [...] To enable a mother to receive her full entitlement of special benefits, effective March 3, 2002 this cap will increase by one week for each week of sickness benefits she takes while pregnant or while receiving parental benefits.";

(g) The March 19, 2002 statement of the Hon. Anne C. Cools, made to the Senate in respect of the C-49 changes to the EI Act, that "to enable a mother to receive her full entitlement of special benefits, [the legislative] cap increases by one week for each week of sickness benefits she take while pregnant or receiving parental benefits."; and,

(h) The statement contained in a backgrounder published on the Employment Insurance Commission's website following the coming into force of Bill C-49 that indicated the change was in respect of those mothers "who claim sickness benefits during their pregnancy, or while receiving parental benefits".

THE RESPONSE OF THE EI COMMISSION TO THE 2002 AMENDMENT

63. The Commission and the defendants did not adopt the 2002 amendment following its coming into force. In particular, the change described in the proposal which they had drafted for the relevant Ministers and which was now set out in the 2002 amendment was simply not implemented.

64. The defendants' actions during this time laid the foundation upon which the Commission would, throughout the Class Period, wrongly and tortiously administer the EI program and incorrectly and tortiously advise the Class Members regarding their entitlement to sickness benefits.

65. In the months that followed the coming into force of the 2002 amendment, the Commission took active steps to ensure the 2002 amendment would not be implemented. In particular, the Commission did not describe the 2002 amendment as being designed to benefit parental benefit recipients who suffered from an illness, injury or disability during their parental leave.

66. Instead, the Commission implemented narrow aspects of the 2002 amendment in such a way as to defeat all sickness leave claims by the Class Members. In particular, the Commission incorrectly adopted "availability to work" criteria to 2002 amendment claims

such that no claimant who made a sickness leave claim while on a parental leave would be deemed by the Commission to be sufficiently "available for work" and, thus, no claimant would ever qualify for sickness benefits. This implementation ignored the clear wording of the very proposal the Commission and HRDC had drafted and submitted to the relevant Ministers, and which had subsequently been passed by as the 2002 amendment by Parliament.

67. The Commission's revised position regarding the scope of the 2002 amendment was confused and inconsistent, but for the most part the position misrepresented entirely the purpose and effect of the 2002 amendment.

68. The defendants' internal and external communications during the Class Period at times described the 2002 amendment as providing sickness leave benefits to women "before or after" the commencement of a maternity leave, while other public communications assured claimants that benefits would be available "before or after" a maternity or parental leave.

69. In addition to denying claimants who sought sickness leave benefits during their maternity or parental leave periods, the latter "before or after maternity or parental leave" explanation of the change incorrectly purported to make benefits available to claimants who file a claim "after" a parental leave. In fact, a sickness leave claim filed by a claimant after their parental leave was impossible to make, as all eligible claimants seeking to file a new claim after their parental leave claim had been exhausted would be rejected. In practice, these claimants would find that their original parental claim would be expired, and that they lacked sufficient qualifying hours to make a valid fresh claim. Thus, a sickness leave claim submitted

following a parental leave claim could not succeed, the Commission's representations notwithstanding.

70. Further to this misrepresentation, the "before or after" explanation of the effect of the change was an entirely inaccurate reflection of the Commission's own understanding of the 2002 amendment, as is reflected in the materials the Commission produced in proposing the change and the Hansard statements of the parliamentarians responsible for the Bill pleaded above. These materials, without exception, expressly indicated the change was being made in respect of sickness benefit claims made before or during a parental leave claim only. At no point in any of the documents drafted by the Commission prior to the passage of the 2002 amendment was there any indication that the change was intended to provide sickness benefits "after" a parental leave claim.

71. The defendants' tortious implementation of the 2002 amendment included, but was not limited to, the following activities:

(1) "Legislative Training" of Commission Employees

72. In the months following the coming into force of the 2002 amendment, the Commission undertook an extensive, country-wide "legislative training" program for Commission employees in respect of the 2002 amendment.

73. Participants in this training were provided with materials and instructions regarding the effect of the 2002 amendment. These materials again reflected that benefits might be available for claimants "before or after" a parental leave, which was not in accordance with the Commission's clear understanding of the amendment as providing for benefits before or during a parental leave claim. Participants to the legislative training were at no point

advised that parental leave claimants could make sickness claims while on their parental leave, or that claimants who sought to make a new claim "after" their leave might be disqualified on qualifying-hours grounds.

74. Further, during the course of this training, the Commission did not advise those being trained to cease applying and interpreting the *EI* Act so as to require that all sickness leave claimants must demonstrate that they would otherwise be available for work during each and every day of their sickness leave period. As pleaded above, such an interpretation of the *EI Act* will always defeat a sickness leave claim made during a parental leave.

75. Given the knowledge held by HRDC agents regarding the content of the 2002 amendment, this training was provided either recklessly or in bad faith.

76. The inadequacy of the training provided to Commission Employees was exacerbated by the fact that, in all written materials such employees would have available to them to review a sickness leave claim made during a parental leave, those materials inaccurately set out or actively defeated the 2002 amendment. Particulars of some of these materials are set out below.

77. In addition to those materials, the Commission failed to create an accurate jurisprudence library, case summaries or digests, or alternatively failed to update its existing jurisprudence library, case summaries or digests, to reflect the presence of the 2002 amendment. The failures included maintaining cases and digests of sickness leave cases which indicated that, for all sickness leave claimants, the claimant must demonstrate an "availability" to work on each and every day of their sickness leave claim.

(2) Improper Updating of the Employment Insurance Website

78. At all times during the Class Period, HRDC and HRSDC maintained an Employment Insurance website currently located on the Internet, or world wide web at the URL http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml.

79. The Employment Insurance website allowed claimants to submit and request information regarding EI claims, and provided those seeking EI benefits with advice and information about the program, its history, the operation of the *EI Act*, and the eligibility of claimants in various scenarios to obtain EI benefits. During the Class Period, claimants were routinely referred to the website by Commission agents. The website was portrayed by the defendants as a trustworthy source of information regarding employment insurance.

80. During a brief period shortly after the coming into force of the 2002 amendment, the website published some information regarding the 2002 amendment which at points accurately described the effect of the 2002 amendment. On April 10, 2002, the Commission posted a backgrounder under the website's "What's New?" section at the URL:

> http://web.archive.org/web/20020402054832/http://www.hrdc-drhc.gc.ca/ae-ei/menu/budget2001_e.shtml.

This backgrounder characterized the 2002 amendment as affecting biological mothers "who claim sickness benefits during their pregnancy, **or while receiving parental benefits**" and stated the change was meant to ensure "full access to special benefits for **these mothers**", while indicating the 2002 amendment would allow "full access to special benefits for mothers who claim sickness benefits before or after their maternity claim".

81. This backgrounder was present on the website for approximately 18 months and was removed on or around January, 2004. Following the removal of this language, the website would never again use language indicating a sickness leave claim would be possible while receiving special benefits, including parental leave benefits.

82. On or about July 18, 2002, the Commission updated its website's Frequently Asked Questions ("FAQ") section in respect of "Maternity, parental and sickness benefits". This update, which was present on the website throughout the Class Period, advised claimants that "A combination of maternity, parental and sickness benefits can be received up to a combined maximum of 50 weeks".

83. The website's FAQ document, following the passage of the 2002 amendment and throughout the Class Period, included a proviso for claimants who "received sickness benefits before or after [their] maternity benefits." In this section, the website illustrated that sickness leave benefits would only be available to those claimants who received sickness benefits before their parental benefits commenced. The scenarios set out by the defendants on their website highlighted that claimants seeking a sickness leave benefit following the commencement of parental benefits would be ineligible for further benefits.

84. Further, not one scenario described in the FAQ document on the website set out a situation whereupon an eligible claimant would be entitled to receive sickness leave benefits for an illness, injury, or disability suffered during a parental leave.

85. During the Class Period, the website has consistently provided inaccurate information to those seeking information on the changes

introduced by the 2002 amendment. On July 24, 2008, the website published a document which purported to describe the *EI Act*'s "Recent Legislative Context". This document informed the public that, effective March 3, 2002, the 2002 amendment would "ensure access to special benefits for biological mothers who claim sickness benefits prior to or following maternity or parental benefits".

86. On October 16, 2009, the website published a similar document indicating that the 2002 amendment changed the maximum number of combined weeks of special benefits from 50 to 65 weeks, and that "these provisions ensure full access to special benefits for biological mothers who claim sickness benefits prior to or following maternity or parental benefits."

87. Visitors to the website during the Class Period, then, would be alternately advised that sickness leave benefits would be available to them if they applied for them prior to or following a maternity claim or prior to or following a maternity or parental claim.

88. No Class Members, and no visitor to the website, would have ever been advised that they would be eligible for sickness leave benefits if a claim was made during a parental leave claim.

89. Further, the plaintiffs pleads that, at all times during the Class Period, the Commission maintained on its website an interpretation of the sickness leave requirement that all sickness leave claimants must demonstrate that they would otherwise be available for work during each and every day of their sickness leave period. As pleaded above, such an interpretation of the *EI Act* will always defeat a sickness leave claim made during a parental leave.

90. The plaintiffs pleads, and the fact is, that in addition to the websites and documents set out above but excluding the FAQ document set out earlier, the defendants at all material times in all documentation prepared by the defendants, in printed or electronic format, materially misrepresented the scope of the 2002 amendment. In particular, these material misrepresentations of fact, including by facts stated expressly or by material omission were:

(a) statements that only those making a sickness leave claim before or after a maternity leave or parental leave claim would be eligible to obtain a sickness leave claim; and,

(b) statements that all sickness leave claimants had to demonstrate that, on every day of their sickness leave, they were otherwise available for work, a legal requirement that would always defeat a sickness leave claim made during a parental leave period.

91. In its first monitoring and assessment report drafted by HRDC for its Minister, for instance, which report was drafted shortly after the 2002 amendment was enacted, HRDC wrote that "[e]ffective March 3, 2002, [the 2002 amendment] ensure[s] full access to special benefits for biological mothers who claim sickness benefits prior to or following maternity or parental benefits".

92. This language, limiting the 2002 amendment to sickness leave claims filed before or after maternity or parental leave periods, was consistently used in each written, electronic, and publically available document produced by the defendants during the Claim Period, including in most of the documents pleaded and relied on with more particularity above and below.

(3) Failure to Update the Digest of Benefit Entitlement Principles

93. The plaintiffs pleads and ~~rely~~ relies upon the Commission's Digest of Benefit Entitlement Principles in effect from time to time during the Class Period. The version published on February 21, 2004 remains available at the URL:

> http://web.archive.org/web/20040221011714/http://www.hrdc-drhc.gc.ca/ae-ei/loi-law/guide-digest/13_2_0_e.shtml.

94. At all times during the Class Period, the Digest contained and contains the principles applied by the Commission when making decisions on claims for benefits under the *EI Act*. It is intended as a reference tool for all users, including those without a legal background or knowledge of employment insurance, and including all Class Members.

95. Further, the Digest was one of the primary documents, if not the primary document, made available to the Commission to assist it in implementing the *EI Act* during the Class Period.

96. While the Digest was revised multiple times following the March 3, 2002 coming into force of the 2002 amendment, language indicating that claimants may have an entitlement to combinations of special benefits beyond 50 weeks did not appear in the Digest until September, 2006. Thus, any claimant referred to the Digest as a source of authoritative information regarding their entitlement to special benefits would remain wholly unaware until September 2006 that any change may have been made by the 2002 amendment.

97. Further, all employees or agents of the Commission charged with the duty of reviewing claims and implementing the *EI Act* would, on reviewing the Digest until September, 2006, remain wholly unaware that any change may have been made by the 2002 amendment.

98. This lack of updating included, but was not limited to, Chapter 13.2.1 of the Digest, regarding "Limits to the Number of Weeks of Special Benefits Payable". In the period between March 3, 2002 and September, 2006 this section stated:

> Special benefits may be paid in any combination, provided the claimant proves entitlement for each type of benefit, for a maximum total payable of 50 weeks. For example a qualified claimant could receive 5 weeks sickness, 15 weeks maternity and 30 weeks parental benefits, provided she is able to prove entitlement to each type of benefit.

99. Thus, prior to the update that was made in September, 2006, the Commission inaccurately advised claimants of their entitlements under the 2002 amendment. The Digest, as it read prior to September, 2006, plainly instructed potential claimants and claims administrators that parental benefit recipients had no entitlement to a combination of special benefits beyond 50 weeks of benefits.

100. Further, in all sections of the Digest pertinent to sickness leave claims, and at all times during the Class Period, the Digest erroneously instructed potential claimants that they must always prove, on each day of their sickness leave, an "availability for work", wholly ignoring the impact of the 2002 amendment.

101. The Commission, at no time during or following the coming into force of the 2002 amendment, updated the Digest to alert EI claimants that they could make a valid sickness leave claim while on a parental leave.

102. The Commission, at no time during or following the coming into force of the 2002 amendment, updated the Digest to alert Commission employees, staff, and agents, that they must accept a sickness leave claim made by a claimant who is on a parental leave.

(4) Consistent Rejection of Maternity-Parental-Sickness Claims

103. Following the coming into force of the 2002 amendment, front-line Commission employees, agents, and representatives began denying all sickness leave claims made by claimants while on a maternity or parental leave.

104. In many cases, these denials would follow the confused verbal and written advice to claimants made by inadequately trained front-line staff. In some circumstances, Class Members were told outright at the beginning of the process that the defendants took the position they had no entitlement to benefits. In others, Class Members were initially instructed by Commission agents to either wait until the expiry of their parental leave claim before applying, or alternatively, to ensure the apply prior to their expiry of parental benefits.

105. When claimants did make claims, these confusions were resolved by "elevating" claims to more senior representatives of the Commission. The result of elevated claims was unanimous. Higher-ranking Commission employees arrived at a single, incorrect resolution to all 2002 amendment claims made by maternity or parental claim recipients: these claimants could not claim sickness benefits due to not meeting the availability requirements set out in s.18 of the *EI Act*.

(5) Aggressive Approach to Claimant Appeals

106. In all cases where Class Members who were affected by a denial as set out above appealed the Commission's decision denying a sickness leave claim, the Commission fought vigorously against any claim of entitlement to sickness leave benefits by claimants during a maternity or parental leave.

107. A system of appeals is set out in Part VI of the *EI Act*, upon which the plaintiffs ~~plead~~ plea and rely. This system includes a first-stage appeal at the Board of Referees, and provides any party a further right of appeal to an Umpire.

108. Almost invariably, claimants who appear before the EI appeals system do not have legal representation and are not legally trained. Further, due to the tremendous value placed on expediency within the first stage of the EI Appeals process, claimants have extremely limited amounts of time to compile an evidentiary record from the date they receive a decision to the scheduling of a hearing date. In the case of combined maternity-parental-sickness claimants, those seeking to appeal the Commission's decision would also invariably be caring for newborn children and would be recovering from or battling an injury, illness, or disability.

109. While these claimants were at a considerable disadvantage vis-à-vis the Commission in the appeals process, the defendants expended considerable resources in defending all appeals made in respect of combined maternity-parental-sickness claims made under the 2002 amendment. In those cases where claimants were successful at the first stage of appeal, the Commission would invariably appeal to the Umpire. At the Umpire stage, claimants would be forced to again defend the record put before the Board of

Referees. And again, claimants would typically be at a disadvantage in regards to resources and legal representation.

110. Further, throughout the Class Period, the Commission acted both as the party which had rejected the Class Members' claims and as the litigant prosecuting appeals to the Board of Referees and the Umpire. Throughout the Class Period, the Commission controlled the materials presented to the Board of Referees as well as the submissions made to the Board. During the Class Period, the defendants never once presented the Board or an Umpire materials setting out the purpose and effect of the 2002 amendment.

111. This strategy resulted in the dismal failure of a long series of maternity-parental-sickness benefit claimants who had their claims dismissed, primarily on the ground that they were unable to demonstrate 'availability for work'.

NATALYA ROUGAS OBTAINS SICKNESS LEAVE BENEFITS

112. Rougas became, in 2011, the first person to unequivocally obtain the sickness leave benefits promised by Parliament in the 2002 amendment.

113. Rougas obtained these sickness leave benefits over a year and half after first applying for them.

114. Rougas, like the plaintiffs, was an eligible employment insurance claimant, gave birth to a child, and took a maternity and parental leave from her employment, all while caring for herself or her child.

115. Towards the end of her parental leave period, in January 2010, Rougas was diagnosed with breast cancer.

116. Rougas had to undergo significant treatment for this illness and as a result was unable to return to work.

117. Towards the end of her parental leave, on or about January 16, 2010, Rougas applied for sickness leave benefits.

118. At the time she applied, Rougas was incorrectly advised orally over the telephone by the defendants that her application for sickness leave benefits would not be permitted under the *EI Act* but that it would be accepted if she applied after the end of her parental leave period. Rougas applied for sickness leave benefits anyway notwithstanding these two misrepresentations.

119. On or about February 22, 2010, Rougas' parental leave claim was rejected by letter because she "[could] not prove that if [she] were not sick [she] would be working because [she] was on parental leave with an expected return to work date of February 1, 2010".

120. On or about March 8, 2010, Rougas appealed this decision to a Board of Referees.

121. On May 11, 2010 Rougas appeared at the appeal without counsel and with her husband, Stavros Rougas. Rougas' appeal was dismissed on that same day.

122. On July 7, 2010, Rougas appealed the Board of Referees decision to an Umpire established under the *EI Act*.

123. Rougas expended considerable amounts as disbursements given her financial constraints to pursue her appeal. A large part of these were to cover the cost of an access to information search that yielded the key legislative history materials concerning the purpose of the 2002 amendment.

124. The Umpire who wrote the Rougas Decision admitted these legislative history materials into evidence and relied extensively on them in support of the Rougas Decision.

125. The defendants, before and during the hearing of Rougas' appeal, argued that these legislative history materials ought not to be admitted into evidence.

126. The plaintiff~~s~~ plead<u>s</u> that the Rougas Decision conclusively determines that, since the 2002 amendment, all Class Members who made a sickness benefits claim were eligible for sickness benefits.

127. Further, or in the alternative, the plaintiff~~s~~ plead<u>s</u> that the Rougas Decision conclusively determines that, since the 2002 amendment, all Class Members who were advised by the defendants that they could not make a sickness benefits claim because they were on parental leave or not otherwise available for work, ought not to have been so advised.

No Judicial Review of the Rougas Decision

128. The defendants had a right under the *Federal Courts Act*, R.S.C. 1985, c. F-7 to seek judicial review of the Rougas Decision to the Federal Court of Appeal.

129. On or about August 17, 2011 , the defendants announced that they were not seeking judicial review of the Rougas Decision.

130. In so doing, the defendants, in a prepared written statement read by a spokesperson for the Minister of Human Resources and Skills Development Canada, stated that "[i]n regards to Ms. Rougas'

case, it was indeed unfortunate and as a government we are committed to maintaining fairness...".

131. Notwithstanding the Rougas Decision and its confirmation that the 2002 amendment provides for the payment of sickness benefits to Class Members, including the plaintiff~~s~~ and Rougas, the aforesaid spokeswoman of the Minister of Human Resources and Skills Development Canada misrepresented in the same written statement that "[t]he changes required [as a result of the Rougas Decision] are legislative".

132. The plaintiff~~s~~ pleads that no legislative changes are required and that, since the 2002 amendment, the necessary legislative provisions have been in place to permit all Class Members to obtain sickness leave benefits.

The Rougas Decision is Not Being Implemented

133. Despite the Rougas Decision and the defendants' decision not to seek judicial review from it, the Rougas Decision is not being implemented.

134. In particular, the Commission denied McCrea's and Kasbohm's sickness leave application on the very grounds that were rejected in the Rougas Decision, namely, that at the time they applied for sickness leave benefits, the plaintiff~~s~~ ~~were~~ was not otherwise available for work.

CAUSES OF ACTION

Misfeasance in Public Office

135. As described above, the defendants engaged in a deliberate effort to implement the 2002 amendment in a manner not in accordance with the purpose, effect, and text of the *EI Act* and other applicable sources of law, causing foreseeable damage to the Class Members.

136. The defendants implemented the 2002 amendment within its public role as the administrator of Employment Insurance benefits. The defendants' agents undertook to operationalize the 2002 amendment within their role as public officials and as employees of the defendants.

137. The defendants, and specifically their agents with responsibilities in respect of legislative policy, had intimate knowledge of the intent and scope of the 2002 amendment as a result of their central role in proposing and drafting the legislation.

138. At some point shortly following the coming into force of the 2002 amendment, agents of the defendants in possession of this information pursued a 2002 amendment implementation program which they knew was unlawful and did not properly encompass the scope of the 2002 amendment.

139. Agents of the defendants responsible for this misfeasance following the coming into force of the 2002 amendment were:

    (a) the persons, department or branch responsible for legislative policy who provided knowingly false information to the

Commission and the public at large in respect of the 2002 amendment following its coming into force;

(b) the persons, department or branch responsible for creating the legislative training program under which the defendants' employees were provided with misleading information regarding the operation of the 2002 amendment;

(c) the persons, department or branch tasked with overseeing, drafting, and implementing the Employment Insurance website, and specifically, those who requested and implemented the removal and/or publication of information that obscured the effect of the 2002 amendment; and,

(d) The persons, department or branch responsible for developing the Commission's response to Class Members' inquiries and appeals of claims that the defendants had knowledge were allowable under the 2002 amendment.

140. At all times, the defendants knew, or ought to have known, that their misapplication of the *EI Act* would cause damages to the Class Members. It was an obvious result of these actions that certain Class Members who would otherwise have entitlement to benefits would be denied, causing both special and general damages.

141. As a result of the defendants' misfeasance, the Class Members did suffer special and general damages as detailed below.

General Duty of Care, Negligence, and Negligent Implementation of the Statutory Scheme

142. At all times during the Class Period, the defendants owed a duty of care to Class Members that was breached by its negligent conduct in respect of administering the Employment Insurance scheme, and in particular the 2002 amendment.

143. It was foreseeable that negligently implementing an income compensation scheme would cause the Class Members to suffer damages in relation to the loss of their entitlements, as well as the time, frustration and emotional upset associated with the pursuit of improperly denied claims.

144. The Class Members were in a relationship of proximity to the defendants. They had entered into a special relationship with the defendants as a result of their previous engagement in the claims process managed by the defendants in its statutory role as the administrator of Employment Insurance benefits.

145. The defendants communicated directly, specifically, and repeatedly with each Class Member in respect of their maternity, parental, and sickness leave claims. The defendants had already approved, in the case of all Class Members, their valid maternity and parental leave claims.

146. Further, all Class Members were in a position of reliance upon the Commission to administer their benefit claims with reasonable diligence, as all members of the Class were persons in the vulnerable position of having to simultaneously care for one or more young children while also coping with an injury, illness, or disability.

147. The defendants breached the duty of care owed to the Class to properly ascertain the scope of its statutory authority and implement the Employment Insurance program with reasonable diligence. Particulars of the defendants' negligence include the failures pleaded above, and also include:

(a) The defendants' post-March 3, 2002 fostering of a description of the *EI Act* that recklessly or willfully disregarded the defendants' own knowledge of the intent of the 2002 amendment;

(b) The defendants' implementation of a "legislative training" regime for its employees which contained inaccurate representations of the effect of the *EI Act* and the 2002 amendment specifically;

(c) The defendants' failure throughout the Class Period to properly train its front-line staff, such that the plaintiffs and Class Members were subject to changing, inconsistent, contradictory and ultimately incorrect advice from agents of the defendants regarding their entitlement to benefits;

(d) The defendants' negligent maintenance of its publically available Employment Insurance website, such that throughout the Class Period the website contained misleading, contradictory and incorrect statements regarding the 2002 amendment;

(e) The defendants' negligent failure to update its key document, the Digest of Benefit Entitlement Principles, in a timely manner to reflect the coming-into-force of the 2002 amendment;

(f) The defendants' failure, when the Digest was updated, to properly describe the effect of the amendment, and to retain misleading and inaccurate descriptions of the relevant entitlement principles; and,

(g) The defendants' aggressive approach to denying sickness leave claims by Class Members and then representing itself on appeals to the Board of Referees and Umpire to successfully oppose such appeals.

148. The plaintiff~~s~~ ~~have~~ has suffered damages, detailed below, as a result of this negligent conduct.

Negligent Misstatement and Detrimental Reliance

149. The plaintiff~~s~~ and Class Members relied to their detriment upon the negligent representations of the defendants.

150. The defendants engaged in a course of communications with each Class Member. These included:

(a) Verbal representations during in-person meetings with agents of the defendants at physical Service Canada kiosk locations;

(b) Verbal representations to Class Members made over the telephone by Service Canada agents;

(c) Written representations in formal correspondence delivered to the Class Members in respect of their claims; and,

(d) Written advisements in the form of communications tools to which the Class Members were referred, such as the

defendants' website, the Digest of Benefit Entitlement Principles and the EI Jurisprudence Library.

151. The negligent representations of the defendants were consistent and included at least one or any combination of the following:

(a) that Class Members had no entitlement to sickness benefits as they had not proven they were available for work during the period of a maternity or parental leave;

(b) that an expanded benefit period under s.10(13) of the *EI Act* could only be accessed by claimants who claimed for sickness benefits before or after a maternity leave;

(c) that an expanded benefit period under s.10(13) of the *EI Act* could only be accessed by claimants who claimed for sickness benefits before or after a maternity or parental leave; and,

(d) that sickness benefits could be obtainable by making a fresh claim following a parental leave.

152. In making these consistent and inaccurate statements to the Class Members, the defendants ought reasonably to have foreseen that these Class Members would rely upon the misrepresentations as accurate. Reliance by the Class Members was reasonable in the circumstances. The defendants therefore owed them a duty of care.

153. The defendants breached the duty of care owed to the Class Members by making these representations negligently, carelessly, or wilfully and recklessly, given their role in proposing and drafting the 2002 amendment, their general expertise and knowledge regarding the operation of the *EI Act* and its legislative history, and

their statutory mandate as the relevant governmental authority in respect of EI benefit entitlement.

154. The Class Members relied on these representations to their detriment. This detrimental reliance included:

(a) foregoing sickness benefit claims they would have been entitled to but for the representations of the Commission; and,

(b) making fresh sickness benefit claims following the exhaustion of their parental leave that were subsequently legitimately denied by the Commission.

155. The Class Members have suffered losses as described below as a result of this detrimental reliance.

Unjust Enrichment

156. The plaintiffs pleads that the defendants, as a result of their conduct, have been unjustly enriched in the amount of benefits improperly denied to the Class Members.

157. The Class Members are all persons who have worked in Canada and paid sufficient employment insurance premiums over many years, and specifically, paid sufficient premiums during the Class Period to qualify as a "major attachment claimant" as defined by the *EI Act*.

158. During the Class Period, Employment Insurance premiums were collected from, and on behalf of, the Class Members as a regulatory charge at a rate sufficient to ensure the Employment Insurance Account (or the "Employment Insurance Operating

Account" after January 1, 2009) was able to pay the benefit amounts authorized to be charged to it.

159. Amounts authorized to be charged to the account included sickness benefit payments to which the Class Members were entitled, but were, as outlined above, systematically excluded from as a result of the defendants' conduct.

160. The defendants wrongfully failed to pay the Class Members the benefits to which they were entitled, and were therefore enriched in the amount of benefits that Class Members were entitled to, but did not, receive.

161. Class Members suffered a deprivation. This deprivation included, but was not limited to:

(a) the quantum of improperly denied sickness benefits they applied for; or,

(b) the quantum of sickness benefits they were improperly advised not to apply for which they were entitled to.

162. There is not a single juristic reason why the defendants, having simultaneously engaged in a wrongful claim prevention campaign against the Class Members, while receiving EI premiums intended to compensate for those benefits, should retain the surplus amounts so collected.

THE PLAINTIFFS AND THE CLASS MEMBERS SUFFERED DAMAGES

163. The plaintiffs claim for damages in the monetary amount they have lost in either improperly denied sickness benefits, or the amount of sickness benefits foregone or abandoned as a result of the

defendants' wrongful intervention in the claims process as described above. This category of damages includes, but is not limited to:

(a) damages in the amount of sickness benefit claims made by Class Members, improperly denied by the Commission, and not pursued through the EI appeals process;

(b) damages in the amount of sickness benefit claims made by Class Members, denied by the Commission, and pursued unsuccessfully through the EI appeals process;

(c) damages in the amount of sickness benefit claims which were made unsuccessfully by Class Members following a parental leave; and,

(d) damages in the amount of sickness benefit claims never submitted by Class Members due to the negligent and/or wrongful advisements of the Commission that they had no entitlement to such benefits.

164. Further, the plaintiffs claim general damages for inconvenience, loss of time, frustration, anxiety, mental distress and emotional upset related to the pursuit and denial of wrongfully denied claims by Class Members.

RELEVANT LEGISLATION

165. The plaintiffs pleads and ~~rely~~ relies upon the *EI Act*, the *Regulations* to the *EI Act*, the *Canada Labour Code* R.S.C. 1985 c. L-2, the *Employment Standards Act*, 2000, S.O. 2000, c. 41, the *Employment Standards Code*, R.S.A. 2000, c. E-9, an *Act Respecting Labour Standards*, R.S.Q., c. N-1.1, all other Canadian provincial legislation in respect of employment standards, the *Rules*, the *Federal Courts Act*, R.S.C. 1985, c. F-7, the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34, the *Department of Human Resources Act*, S.C. 1996, c. 11, the *Interest Act*, R.S.C. 1985, c. I-15, and the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

PLACE OF TRIAL

The plaintiffs proposes that this action be tried at Toronto.

September 4, 2013

Stephen J. Moreau, LSUC #48750Q
~~Benjamin Rossiter, LSUC #59939N~~
Amanda Darrach, LSUC # 51257O

CAVALLUZZO ~~HAYES~~ SHILTON McINTYRE & CORNISH LLP
Barristers & Solicitors
474 Bathurst Street, Suite 300
Toronto, ON M5T 2S6

Stephen J. Moreau, LSUC #48750Q

Tel: 416-964-1115
Fax: 416-964-5895

Lawyers for the Plaintiff

Service of a copy hereof admitted
this 4th *day of* September *20* 13.

Lawyers for the Deputy
for: Attorney General

SCHEDULE "J" - FRESH AS AMENDED STATEMENT OF CLAIM

Court File No.: T-210-12

FEDERAL COURT

B E T W E E N:

JENNIFER MCCREA

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

Defendant

FRESH AS AMENDED STATEMENT OF CLAIM TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff~~s~~. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Court Rules serve it on the plaintiff~~'s~~ solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the

United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: January 19, 2012

Issued by: _____

(Registry Officer)

Address of local office: 180 Queen Street West, Suite 200
Toronto, ON M5V 3L6

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA
c/o Nathalie G. Drouin
DEPUTY ATTORNEY GENERAL OF CANADA
Department of Justice, Ontario Regional Office
120 Adelaide Street West
Suite #400
Toronto, Ontario M5H 1T1
Per: Christine Mohr/Cynthia Koller
Tel: (647) 256-7538 / (647) 256-7514

CLAIM

1. The following terms used throughout this statement of claim have the meanings indicated:

   (a) "**Class**" and "**Class Members**" mean all persons who, during the **Class Period**:

      i. applied for and were paid parental benefits under the ***EI Act*** or corresponding types of benefits under Quebec's *An Act Respecting Parental Insurance*;

      ii. suffered from an illness, injury, or quarantine while in receipt of **parental benefits**;

      iii. applied for **sickness benefits** in respect of the illness, injury, or quarantine referred to in ii.; and,

      iv. were denied a conversion of parental benefits to sickness benefits because either

         (1) the person was **not otherwise available for work**; or

         (2) the person had not previously received at least one week of **sickness benefits** during the benefit period in which the **parental benefits** were received.

   (b) "**Class Period**" means the period from March 3, 2002 to, and including, March 23, 2013;

   (c) "**Commission**" means the Canada Employment Insurance Commission, a body corporate continued by section 20 of the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34, and during the Class Period an agent of Her Majesty in right of Canada, the Defendant herein, which Commission includes all agents, servants, employees, and assigns of the Canada Employment Insurance Commission;

   (d) **"EI"** means employment insurance or employment insurance benefits, as the case may be, and these as provided for in the ***EI Act***;

   (e) "***EI Act***" means the *Employment Insurance Act*, S.C. 1996, c. 23, as amended from time to time;

   (f) "**HRSDC**" means the Department of Human Resources and Skills Development Canada established by the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34, and includes all agents,

servants, employees, and assigns of the Department of Human Resources and Skills Development Canada, and includes where material its predecessor, the Department of Human Resources ("HRDC") established by the *Department of Human Resources Act*, S.C. 1996, c. 11, and where material, its successors, including the Department of Employment and Social Development;

(g) "**McCrea**" means Jennifer McCrea, the plaintiff;

(h) **"otherwise available for work"** includes, where applicable, the concept of "otherwise working" as that term is used in the EI Act in reference to recipients of EI benefits who, prior to the interruption of their work, were self-employed. For greater clarity, the term "otherwise working" refers to the concept as enacted by the *Fairness for the Self-Employed Act*, S.C. 2009, c. 33, amending the EI Act effective January 1, 2010;

(i) "**parental benefits**" means employment insurance benefits payable because the person is caring for one or more new-born children of the person or one or more children placed with the person for the purpose of adoption under the ***EI Act***, or corresponding types of benefits as provided by *An Act Respecting Parental Insurance*, and the regulations under both statutes, but does not include pregnancy benefits provided under the ***EI Act*** or equivalent benefits under *An Act Respecting Parental Insurance* payable to a mother for the purposes of recovery from the pregnancy and birth of a child or children, known colloquially as "maternity" benefits;

(j) "**parental leave**" means a leave of absence taken by a person from their employment or self-employment to care for a new-born child of the person or a child who is in the care of the person for the purpose of adoption;

(k) "**Rougas**" and **"Rougas Decision**" mean, respectively, Natalya Rougas and a June 30, 2011 decision of an Umpire under the ***EI Act*** on a claim for sickness benefits filed by Rougas, which Decision is cited as CUB 77039;

(l) "***Rules***" mean the *Federal Courts Rules*, SOR 98/106 established pursuant to the *Federal Courts Act*, R.S.C. 1985, c. F-7;

(m) "**sickness benefits**" means employment insurance benefits payable to a person on account of a prescribed illness, injury or quarantine, and this pursuant to the ***EI Act***; and,

(n) "**the 2002 amendment**" means amendments to the ***EI Act*** which came into force on March 3, 2002 pursuant to the *Budget Implementation Act, 2001*, S.C. 2002, c. 9 (Bill C-49), and in particular Part 3 thereof.

2. The plaintiff claims on her own behalf and on behalf of all Class Members:

(a) an order pursuant to the *Rules* certifying this action as a class proceeding and appointing her as the representative plaintiff;

(b) a declaration that the defendant~~s~~ negligently administered and failed to implement the *EI Act* in a manner that caused damage to the plaintiff~~s~~ and Class Members, as particularized below;

(c) special damages and general damages for negligence in the amount of $450,000,000.00 or such other sums as this court finds appropriate at the trial of the common issues or at a reference or references under the *Rules*;

(d) prejudgment interest on the amount set out in paragraph 2(c) at the rate of five per cent per annum pursuant to the *Interest Act*, R.S.C. 1985, c. I-15, or at a rate to be established by this Honourable Court pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;

(e) postjudgment interest on the amount set out in paragraph 2(c);

(f) an order directing a reference or giving such other directions as may be necessary to determine issues not determined at the trial of the common issues;

(g) costs of this action plus the costs of the distribution of any award under the *Rules*, including the costs of notice associated with this distribution and the fees to a person administering the distribution pursuant to Rule 334.28 of the *Rules*; and,

(h) such further and other relief as to this Honourable Court seems just.

THE NATURE OF THE ACTION

3. This action concerns the defendant's failure, during the Class Period, to implement the 2002 amendment.

4. The 2002 amendment provides that all persons eligible to collect employment insurance benefits under the *EI Act* who suffered from an illness, injury, or disability before or during their parental leave, could then collect up to fifteen (15) weeks of sickness benefits.

5. Instead of implementing the 2002 amendment, the Commission – on or shortly after March 3, 2002 – implemented a far more modest change to the detriment of the Class. In particular, the Commission at all times during the Class Period

implemented the 2002 amendment as if it was designed merely to provide sickness benefits to women for a period of illness, injury, or quarantine suffered while pregnant and before the commencement of any parental leave.

6. Further, the plaintiff pleads that – shortly after the 2002 amendment – the defendant took steps to defeat any chance that anyone, including the plaintiff and Class Members, would ever be able to successfully obtain a sickness benefit for an illness, injury, or quarantine suffered during a parental leave, and despite the provisions of the 2002 amendment.

7. Until the Rougas Decision was released, as particularized below, nobody, including the plaintiff and Class Members, had ever apparently received from the Commission a sickness benefit for an illness, injury, or quarantine suffered during a parental leave.

8. The defendant has refused to implement the Rougas Decision. The plaintiff's application for sickness benefits during a parental leave period was rejected after the Rougas Decision was released and the defendants had determined not to seek judicial review therefrom.

THE PARTIES

Jennifer McCrea

9. McCrea resides in the City of Calgary. During the Class Period, McCrea gave birth to a child, applied for and was in receipt of parental benefits, suffered from an illness, injury, or quarantine during the course of her parental leave, and applied for sickness benefits.

10. McCrea's application for sickness benefits was denied because she was on parental leave or not otherwise available to work at the time of her sickness benefits application.

11. On October 15, 2010, prior to the birth of her child, McCrea was informed by her family doctor that she was suffering from high blood pressure. She was advised to cease working immediately.

12. McCrea informed her employer of her health status and took a flexible leave from her employment as an Office Manager with Safe Self Storage Inc., a Calgary area storage company. Her employer advised her that she was welcome to return at any point during her leave.

13. McCrea also made an application for employment insurance sickness benefits on or about October 20, 2010. As she was expecting the birth of her child within the weeks subsequent to her initial claim, a Service Canada representative advised her that she would be placed directly on maternity benefits as opposed to sickness benefits.

14. McCrea gave birth to Logan McCrea on October 31, 2010 and spent several months spending time with and caring for this child.

15. McCrea was found eligible for fifty (50) weeks of combined maternity and parental benefits inside of a benefit period that was scheduled to extinguish on October 20, 2011.

16. McCrea ultimately received maternity leave benefits payable over 15 weeks and parental benefits paid over 35 weeks, ending on or about, and including, October 15, 2011, and this following a two week waiting period.

17. On May 9, 2011, McCrea had an MRI performed. McCrea suffers from an uncommon genetic mutation which greatly increases her risk of developing breast cancer. As such, she has been closely monitored for symptoms of the disease.

18. The results of the MRI were abnormal, and on July 9, 2011 she underwent an MRI-guided biopsy.

19. McCrea was diagnosed with breast cancer on July 18, 2011.

20. On July 29, 2011 McCrea met with a surgical specialist. Given McCrea's medical history, the surgeon recommended a bilateral mastectomy. Surgery was scheduled for August 11, 2011.

21. McCrea's physicians were initially of the opinion that she would require at least three (3) weeks of recovery time from the date of the surgery.

22. On August 2, 2011, McCrea contacted a Service Canada office by phone and spoke with a Commission agent regarding how to go about making a claim for sickness benefits. She requested a conversion of her parental benefits claim to a sickness benefits claim beginning August 11, 2011.

23. McCrea was advised by the Commission at that time that if the sickness benefits claim was successful, her parental benefits would be temporarily suspended and sickness benefits would be paid during her period of recovery from surgery.

24. McCrea underwent a bilateral mastectomy on August 11, 2011. Following surgery, McCrea became incapacitated. In particular, she was unable to lift her arms and movement was difficult and painful. McCrea also underwent a period of recovery from the emotional trauma commonly associated with the bilateral mastectomy procedure.

25. During this period after the surgery, McCrea was unable to work or do any of the household tasks required to care for her two young children. McCrea's husband and mother completely took over the child care duties while she recovered.

26. On August 19, 2011, McCrea saw her doctor for a post-operative follow up. Her doctor determined that she required additional weeks of recuperation, until at least September 26, 2011. McCrea's treating physician wrote a letter to Service Canada indicating she would remain incapacitated during this period.

27. On or about August 22, 2011, McCrea provided this updated information in-person at a Service Canada office. During this visit to the Service Canada office, she

inquired about the status of her benefits. She was told by a Commission agent to phone the central Service Canada hotline during the following week.

28. On August 30, 2011, after making repeated attempts to contact the hotline and receive an update, McCrea received a phone call from a Service Canada worker inquiring about her work availability.

29. Between August 30, 2011 and September 19, 2011, McCrea called Service Canada and left messages, Service Canada called her and left messages, and on occasion McCrea spoke with Service Canada or HRSDC employees. During those latter calls, employees suggested that McCrea's conversion claim may not be accepted.

30. On September 19, 2011, McCrea was advised for the first time by the Commission that they took the position she was ineligible for sickness benefits. Ms McCrea was so advised by one "Helen Wong" who recorded the conversation on "Service Canada" notes or letterhead and then sent a letter of even date on HRSDC letterhead advising McCrea, formally, that her claim for sickness benefits was denied.

31. McCrea was told over the phone, and later in writing, that as she had indicated that she was on a parental leave and had not proven that she would be available for work if she was not sick, she was not eligible for sickness benefits. The Commission thus denied McCrea's claim for sickness benefits in its entirety.

The Commission, HRSDC, Service Canada, and the Defendant

32. During the Class Period, the Commission was responsible for administering, interpreting, and enforcing the *EI Act* correctly whenever a claimant applied for employment insurance benefits, including parental and sickness benefits.

33. During the Class Period, the Commission was an agent of Her Majesty in right of Canada pursuant to the *Department of Human Resources and Skills Development*

Act, S.C. 2005, c. 34 and the *Department of Human Resources Act*, S.C. 1996, c. 11.

34. During the Class Period, all officers and employees of the Commission were employed by HRSDC.

35. Further, during much of the Class Period, the Commission delegated its powers to administer, interpret, and enforce the *EI Act* to Service Canada, which was an entity or grouping of Commission or HRSDC employees delegated such powers pursuant to provisions in the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34 and the *Department of Human Resources Act*, S.C. 1996, c. 11.

36. At all material times, documents sent to the Class Members or maintained in relation to those Class Members relative to their EI parental, sickness, or other benefits claims were styled with the name "Service Canada" or HRSDC.

37. All references to the Commission thus include references to Service Canada, and vice-versa.

38. At all material times, the Minister of HRSDC was responsible for all matters relating to human resources and skills development in Canada over which Parliament has jurisdiction and which are not by law assigned to any other Minister, department, board or agency of the Government of Canada, and this pursuant to the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34 and the *Department of Human Resources Act*, S.C. 1996, c. 11. At all material times, this responsibility extended to employment insurance benefits provided for in the *EI Act*.

39. The Defendant, Her Majesty the Queen, is joined herein as representative of the Federal Government of Canada, HRSDC, the Minister of HRSDC, the Commission, and Service Canada.

HISTORY OF THE 2002 AMENDMENT

The History of the *EI Act*

40. The federal government has administered an employment insurance scheme since the early 1940s. Its purpose initially had been to provide temporary income replacement to workers facing involuntary unemployment. As the next paragraphs demonstrate, the purpose of EI changed over time to incorporate new social norms and thinking, and the *EI Act* is now widely regarded as a form of "social" insurance designed to provided economic support during periods of temporary interruptions of employment.

41. In the early 1970s, EI was expanded to reflect changing norms in the Canadian labour market, including the increased presence of women into the workforce. This era of reform included the introduction of "special benefits" that provided income replacement for workers unable to work due to sickness or pregnancy.

42. In the 1980s, the *EI Act* was further expanded to recognize periods of unemployment taken by parents to care for their adoptive or natural born children, defined in paragraph 1 as "parental leave". Parental leave has always been classified as a "special benefit", like sickness and maternity leave.

43. In 1990, the federal government enhanced the *EI Act*'s special benefits provisions by allowing claimants to combine their maternity, parental, and sickness benefits up to a certain amount of weeks. The "bundling" of special benefit entitlements was subject to a strict cap on the maximum amount of benefit weeks allowed. Under the 1996 version of the *EI Act*, for instance, this cap was set at thirty (30) weeks.

44. By 2001, the amount of parental benefits available to claimants was increased from 10 to 35 weeks in order to enable parents to spend more time at home during their child's early period of life. Following the introduction of enhanced parental benefits in the 2000 federal budget, s.12(5) of the *EI Act* was amended to provide for a 50 week bundling of special benefits cap.

The McAllister-Windsor Decision

45. On March 9, 2001, the Canadian Human Rights Tribunal issued the *McAllister-Windsor* decision. The complainant in that case challenged the prohibition on stacking special benefits beyond the then 30-week legislated cap. After the cap was extended to 50 weeks, the challenge incorporated a challenge to that cap as well. The Canadian Human Rights Tribunal found that the operation of the provision had an exclusive adverse effect on women and disabled claimants, as only those claimants who sought to combine their full entitlements to 15 weeks of maternity leave, 35 weeks of parental benefits, and 15 weeks sickness benefits, would be subject to a cap limiting the benefits to 50 combined weeks.

46. As a result of the decision, HRDC ("HRDC", as it was stylized prior to 2003) was ordered by the Tribunal to cease applying the provisions of the *EI Act* in a discriminatory manner.

The Response of HRDC to *McAllister-Windsor*

47. HRDC considered several options in respect of how the department would respond to the ruling. Following the release of the decision, the Ministers of HRDC and Finance were informed by Departmental staff that the government had until March 3, 2002 to come into compliance with the Human Rights Tribunal directive.

48. By November 30, 2001, HRDC had drafted a proposal calling for an amendment to the *EI Act*. The amendment was intended to provide an extension of the 50-week cap on benefits by one week for every week of sickness benefits claimed during pregnancy and "during a parental benefit claim", thereby ensuring the *EI Act* did not discriminate against any claimant on the basis of gender or disability.

49. The HRDC proposal was approved. An amendment to the *EI Act* intended to implement the proposal was included in changes to the EI program announced in relation to the December 10, 2001 Federal budget. It is this amendment that became the 2002 amendment defined above.

50. HRDC staff prepared a set of question-and-answer statements for their Minister's use in discussing the proposed change. In these statements, it was consistently

indicated that the 2002 amendment was intended to provide an exception to the 50 week cap for special benefits by extending it by one week for each week of sickness benefits taken by biological mothers during their pregnancy or during their parental leave claim.

51. HRDC advised the Minister to inform the media and relevant stakeholders that the 2002 amendment was needed because, "[i]n practice, some biological mothers who claim sickness benefits during their pregnancy or while receiving parental benefits may be unable to claim all of their special benefits".

Bill C-49 [the 2002 amendment]

52. In 2001, the Government introduced Bill C-49, the *Budget Implementation Act, 2001*. Included in Part 3 of the legislation were improvements to the *EI Act*. These improvements included the new provisions designed to ensure that claimants who qualified for maternity, parental and sickness benefits would be provided with an expanded benefit period of up to sixty-five (65) weeks. It is this that constitutes the 2002 amendment.

53. The plaintiff pleas and relies on the official statements of all representatives of the Government who spoke to the Bill in the House of Commons, Senate, and in Parliamentary committees. Without exception, these statements confirmed that the government's intent was to directly implement HRDC's proposed response to the *McAllister-Windsor* directive and decision. Every government representative that spoke to this portion of the Bill indicated that the 2002 amendment would ensure that the cap on special benefits would be extended for each week of sickness benefits taken by a mother during their pregnancy or during their parental leave.

54. Further to paragraph 53, the plaintiff pleas and relies more particularly on the following statements:

    (a) The statements contained in the November 30, 2001 "EI Court Challenges" briefing document prepared for the Minister of Finance, and in particular the

statement indicating the HRDC proposal would “[e]xtend the 50-week cap on benefits for women by one week for every week of sickness benefits claimed during pregnancy, and during a parental benefits claim.”;

(b) The statements contained in the 2002 document prepared for the Minister of HRDC titled “Briefing Note: Program Amendments Included in Budget Implementation Bill”, and in particular the statements indicating that the 50 week cap to special benefits in the EI Act would “be extended by one week of sickness benefits up to 65 weeks when paid to biological to mothers during their pregnancy or during their parental benefit claim” (sic) and that the amendment was needed because “[i]n practice, some biological mothers who claim sickness benefits during their pregnancy or while receiving parental benefits may be unable to claim all of their special benefits”;

(c) The statements contained in a document entitled “Medically Required Extension of Cap on Special Benefits: Why Making Changes” produced for the Minister of HRDC, indicating the change was made to benefit mothers “who claim sickness benefits during their pregnancy or while receiving parental benefits [who] may be unable to claim all of their special benefits”;

(d) The statements contained in a document entitled “Medically Required Extension of Cap on Special Benefits: More Benefits to Biological Mothers”, indicating the Bill C-49 change would mean “the total number of weeks of special benefits a claimant could receive would be extended by a limited number of weeks for biological mothers when they use sickness benefits during pregnancy or during a parental benefit claim.”;

(e) The February 6, 2002 statement of the Hon. John McCallum, made to the House of Commons, that Bill C-49 “increases [the EI Act benefits] ceiling by one week for each week of sick leave taken by a mother during her pregnancy or while she is receiving parental benefits, so that she may benefit fully from the special benefits.”;

(f) The February 20, 2002 statement of the Hon. John McCallum to the Standing Committee on Finance that “Bill C-49 further improves the delivery of parental benefits under EI […] To enable a mother to receive her full entitlement of special benefits, effective March 3, 2002 this cap will increase by one week for each week of sickness benefits she takes while pregnant or while receiving parental benefits.”;

(g) The March 15, 2002 statement of MP Bryon Wilfert, Parliamentary Secretary to the Minister of Finance, to the House of Commons that "The current 50 week cap on the combined amount of sickness, maternity and parental benefits an individual can receive under EI means women who become ill may not have full access to extended benefits" and that, "[t]o enable a mother to receive her full entitlement to special benefits, effective March 3, 2002 the cap would increase by one week for each week of sickness benefits she took while pregnant or while receiving parental benefits".

(h) The March 19, 2002 statement of the Hon. Anne C. Cools, made to the Senate in respect of the C-49 changes to the EI Act, that “to enable a mother to receive her full entitlement of special benefits, [the legislative] cap increases by one week for each week of sickness benefits she takes while pregnant or receiving parental benefits.”; and,

(i) The statement contained in a backgrounder published on the Employment Insurance Commission’s website following the coming into force of Bill C-49 that indicated the change was in respect of those mothers “who claim sickness benefits during their pregnancy, or while receiving parental benefits”.

THE RESPONSE OF THE EI COMMISSION TO THE 2002 AMENDMENT

55. The Commission and the defendants did not adopt the 2002 amendment following its coming into force. In particular, the change described in the proposal which

they had drafted for the relevant Ministers and which was now set out in the 2002 amendment was simply not implemented.

56. The defendant's actions during this time laid the foundation upon which the Commission would, throughout the Class Period, wrongly and tortiously administer the EI program and incorrectly and tortiously advise the Class Members regarding their entitlement to sickness benefits.

57. In the months that followed the coming into force of the 2002 amendment, the Commission took steps to ensure the 2002 amendment would not be implemented. In particular, the Commission did not describe the 2002 amendment as being designed to benefit parental benefit recipients who suffered from an illness, injury or quarantine during their parental leave.

58. Instead, the Commission implemented narrow aspects of the 2002 amendment in such a way as to defeat all sickness benefits claims by the Class Members. For example, the Commission incorrectly adopted “availability to work” criteria to 2002 amendment claims such that no claimant who made a sickness benefits claim while on a parental leave would be deemed by the Commission to be sufficiently “available for work” and, thus, no claimant would ever qualify for sickness benefits. This implementation ignored the clear wording of the very proposal the Commission and HRDC had drafted and submitted to the relevant Ministers, and which had subsequently been passed as the 2002 amendment by Parliament.

59. The Commission’s revised position regarding the scope of the 2002 amendment was confused and inconsistent, but for the most part the position misrepresented entirely the purpose and effect of the 2002 amendment.

60. The defendant's internal and external communications during the Class Period at times described the 2002 amendment as providing sickness benefits to women “before or after” the commencement of a maternity leave, while other public communications assured claimants that benefits would be available “before or after” a maternity or parental leave.

61. In addition to denying claimants who sought sickness benefits during their maternity or parental leave periods, the latter “before or after maternity or parental leave” explanation of the change incorrectly purported to make benefits available to claimants who file a claim “after” a parental leave. In fact, a sickness benefits claim filed by a claimant after their parental leave was impossible to make, as all eligible claimants seeking to file a new claim after their parental leave claim had been exhausted would be rejected. In practice, these claimants would find that their original parental claim would be expired, and that they lacked sufficient qualifying hours to make a valid fresh claim. Thus, a sickness benefits claim submitted following a parental leave claim could not succeed, the Commission’s representations notwithstanding.

62. Further to this misrepresentation, the “before or after” explanation of the effect of the change was an entirely inaccurate reflection of the Commission’s own understanding of the 2002 amendment, as is reflected in the materials the Commission produced in proposing the change and the Hansard statements of the parliamentarians responsible for the Bill pleaded above. These materials, without exception, expressly indicated the change was being made in respect of sickness benefit claims made before or during a parental leave claim only. At no point in any of the documents drafted by the Commission prior to the passage of the 2002 amendment was there any indication that the change was intended to provide sickness benefits “after” a parental leave claim.

63. The defendant's tortious implementation of the 2002 amendment included, but was not limited to, the following activities:

(1) “Legislative Training” of Commission Employees

64. In the months following the coming into force of the 2002 amendment, the Commission undertook an extensive, country-wide “legislative training” program for Commission employees in respect of the 2002 amendment.

65. Participants in this training were provided with materials and instructions regarding the effect of the 2002 amendment. These materials again reflected that benefits might be available for claimants "before or after" a parental leave, which was not in accordance with the Commission's clear understanding of the 2002 amendment as providing for benefits before or during a parental leave claim. Participants to the legislative training were at no point advised that parental leave claimants could make sickness claims while on their parental leave, or that claimants who sought to make a new claim "after" their leave might be disqualified on qualifying-hours grounds.

66. Further, during the course of this training, the Commission did not advise those being trained to cease applying and interpreting the *EI Act* so as to require that all sickness benefits claimants must demonstrate that they would otherwise be available for work during each and every day of their sickness benefits period. As pleaded above, such an interpretation of the *EI Act* will always defeat a sickness benefits claim made during a parental leave.

67. The inadequacy of the training provided to Commission Employees was exacerbated by the fact that, in all written materials such employees would have available to them to review a sickness benefits claim made during a parental leave, those materials inaccurately set out or actively defeated the 2002 amendment. Particulars of some of these materials are set out below.

68. In addition to those materials, the Commission failed to create an accurate jurisprudence library, case summaries or digests, or alternatively failed to update its existing jurisprudence library, case summaries or digests, to reflect the presence of the 2002 amendment. The failures included maintaining cases and digests of sickness benefits cases which indicated that, for all sickness benefits claimants, the claimant must demonstrate an "availability" to work on each and every day of their sickness benefits claim.

(2) Improper Updating of the Employment Insurance Website

69. At all times during the Class Period, HRDC and HRSDC maintained an Employment Insurance website currently located on the Internet, or world wide web at the URL http://www.servicecanada.gc.ca/eng/sc/ei/index.shtml.

70. The Employment Insurance website allowed claimants to submit and request information regarding EI claims, and provided those seeking EI benefits with advice and information about the program, its history, the operation of the *EI Act*, and the eligibility of claimants in various scenarios to obtain EI benefits. During the Class Period, claimants were routinely referred to the website by Commission agents. The website was portrayed by the defendant as a trustworthy source of information regarding employment insurance.

71. During a brief period shortly after the coming into force of the 2002 amendment, the website published some information regarding the 2002 amendment which at points accurately described the effect of the 2002 amendment. On April 10, 2002, the Commission posted a backgrounder under the website's "What's New?" section at the URL:

> http://web.archive.org/web/20020402054832/http://www.hrdc-drhc.gc.ca/ae-ei/menu/budget2001_e.shtml.

This backgrounder characterized the 2002 amendment as affecting biological mothers "who claim sickness benefits during their pregnancy, **or while receiving parental benefits**" and stated the change was meant to ensure "full access to special benefits for **these mothers**", while indicating the 2002 amendment would allow "full access to special benefits for mothers who claim sickness benefits before or after their maternity claim".

72. This backgrounder was present on the website for approximately 18 months and was removed on or around January, 2004. Following the removal of this language, the website would never again use language indicating a sickness benefits claim would be possible while receiving special benefits, including parental benefits.

73. On or about July 18, 2002, the Commission updated its website's Frequently Asked Questions ("FAQ") section in respect of "Maternity, parental and sickness

benefits". This update, which was present on the website throughout the Class Period, advised claimants that "A combination of maternity, parental and sickness benefits can be received up to a combined maximum of 50 weeks".

74. The website's FAQ document, following the passage of the 2002 amendment and throughout the Class Period, included a proviso for claimants who "received sickness benefits before or after [their] maternity benefits." In this section, the website illustrated that sickness benefits would only be available to those claimants who received sickness benefits before their parental benefits commenced. The scenarios set out by the defendant on its website highlighted that claimants seeking a sickness benefit following the commencement of parental benefits would be ineligible for further benefits.

75. Further, not one scenario described in the FAQ document on the website set out a situation whereupon an eligible claimant would be entitled to receive sickness benefits for an illness, injury, or quarantine suffered during a parental leave.

76. During the Class Period, the website has consistently provided inaccurate information to those seeking information on the changes introduced by the 2002 amendment. On July 24, 2008, the website published a document which purported to describe the *EI Act*'s "Recent Legislative Context". This document informed the public that, effective March 3, 2002, the 2002 amendment would "ensure access to special benefits for biological mothers who claim sickness benefits prior to or following maternity or parental benefits".

77. On October 16, 2009, the website published a similar document indicating that the 2002 amendment changed the maximum number of combined weeks of special benefits from 50 to 65 weeks, and that "these provisions ensure full access to special benefits for biological mothers who claim sickness benefits prior to or following maternity or parental benefits."

78. Visitors to the website during the Class Period, then, would be alternately advised that sickness benefits would be available to them if they applied for them prior to or following a maternity claim or prior to or following a maternity or parental claim.

79. No Class Members, and no visitor to the website, would have ever been advised that they would be eligible for sickness benefits if a claim was made during a parental leave claim.

80. Further, the plaintiff pleads that, at all times during the Class Period, the Commission maintained on its website an interpretation of the sickness benefits requirement that all sickness benefits claimants must demonstrate that they would otherwise be available for work during each and every day of their sickness benefits period. As pleaded above, such an interpretation of the *EI Act* will always defeat a sickness benefits claim made during a parental leave.

81. The plaintiff pleads, and the fact is, that in addition to the websites and documents set out above but excluding the FAQ document set out earlier, the defendant at all material times in all documentation prepared by the defendant, in printed or electronic format, materially misrepresented the scope of the 2002 amendment. In particular, these material misrepresentations of fact, including by facts stated expressly or by material omission were:

    (a) statements that only those making a sickness benefits claim before or after a maternity leave or parental leave claim would be eligible to obtain a sickness benefits claim; and,

    (b) statements that all sickness benefits claimants had to demonstrate that, on every day during which they were claiming sickness benefits, they were otherwise available for work, a legal requirement that would always defeat a sickness benefits claim made during a parental leave period.

82. In its first monitoring and assessment report drafted by HRDC for its Minister, for instance, which report was drafted shortly after the 2002 amendment was enacted, HRDC wrote that “[e]ffective March 3, 2002, [the 2002 amendment] ensure[s] full

access to special benefits for biological mothers who claim sickness benefits prior to or following maternity or parental benefits".

83. This language, limiting the 2002 amendment to sickness benefits claims filed before or after maternity or parental leave periods, was consistently used in each written, electronic, and publically available document produced by the defendants during the Claim Period, including in most of the documents pleaded and relied on with more particularity above and below.

(3) Failure to Update the Digest of Benefit Entitlement Principles

84. The plaintiff pleads and relies upon the Commission's Digest of Benefit Entitlement Principles in effect from time to time during the Class Period. The version published on February 21, 2004 remains available at the URL:

http://web.archive.org/web/20040221011714/http://www.hrdc-drhc.gc.ca/ae-ei/loi-law/guide-digest/13_2_0_e.shtml.

85. At all times during the Class Period, the Digest contained and contains the principles applied by the Commission when making decisions on claims for benefits under the *EI Act*. It is intended as a reference tool for all users, including those without a legal background or knowledge of employment insurance, and including all Class Members.

86. Further, the Digest was one of the primary documents, if not the primary document, made available to the Commission to assist it in implementing the *EI Act* during the Class Period.

87. While the Digest was revised multiple times following the March 3, 2002 coming into force of the 2002 amendment, language indicating that claimants may have an entitlement to combinations of special benefits beyond 50 weeks did not appear in the Digest until September, 2006. Thus, any claimant referred to the Digest as a source of authoritative information regarding their entitlement to special benefits

would remain wholly unaware until September 2006 that any change may have been made by the 2002 amendment.

88. Further, all employees or agents of the Commission charged with the duty of reviewing claims and implementing the *EI Act* would, on reviewing the Digest until September, 2006, remain wholly unaware that any change may have been made by the 2002 amendment.

89. This lack of updating included, but was not limited to, Chapter 13.2.1 of the Digest, regarding "Limits to the Number of Weeks of Special Benefits Payable". In the period between March 3, 2002 and September, 2006 this section stated:

> Special benefits may be paid in any combination, provided the claimant proves entitlement for each type of benefit, for a maximum total payable of 50 weeks. For example a qualified claimant could receive 5 weeks sickness, 15 weeks maternity and 30 weeks parental benefits, provided she is able to prove entitlement to each type of benefit.

90. Thus, prior to the update that was made in September, 2006, the Commission inaccurately advised claimants of their entitlements under the 2002 amendment. The Digest, as it read prior to September, 2006, plainly instructed potential claimants and claims administrators that parental benefit recipients had no entitlement to a combination of special benefits beyond 50 weeks of benefits.

91. Further, in all sections of the Digest pertinent to sickness benefits claims, and at all times during the Class Period, the Digest erroneously instructed potential claimants that they must always prove, on each day of their sickness benefits claim, an "availability for work", wholly ignoring the impact of the 2002 amendment.

92. The Commission, at no time during or following the coming into force of the 2002 amendment, updated the Digest to alert EI claimants that they could make a valid sickness benefits claim while on a parental leave.

93. The Commission, at no time during or following the coming into force of the 2002 amendment, updated the Digest to alert Commission employees, staff, and agents,

that they must accept a sickness benefits claim made by a claimant who is on a parental leave.

(4) Consistent Rejection of Relevant Sickness Benefits Claims

94. Following the coming into force of the 2002 amendment, front-line Commission employees, agents, and representatives began denying all sickness claims made by claimants while on a parental leave.

95. In many cases, these denials would follow the confused verbal and written advice to claimants made by inadequately trained front-line staff. In some circumstances, Class Members were told outright at the beginning of the process that the defendant took the position they had no entitlement to benefits. In others, Class Members were initially instructed by Commission agents to either wait until the expiry of their parental leave claim before applying, or alternatively, to ensure the apply prior to their expiry of parental benefits.

96. When claimants did make claims, these confusions were resolved by "elevating" claims to more senior representatives of the Commission. The result of elevated claims was unanimous. Higher-ranking Commission employees arrived at a single, incorrect resolution to all 2002 amendment claims made by maternity or parental claim recipients: these claimants could not claim sickness benefits due to not meeting the availability requirements set out in s.18 of the *EI Act*.

(5) Aggressive Approach to Claimant Appeals

97. In all cases where Class Members who were affected by a denial as set out above appealed the Commission's decision denying a sickness benefits claim, the Commission fought vigorously against any claim of entitlement to sickness benefits by claimants during a parental leave.

98. A system of appeals is set out in Part VI of the *EI Act*, upon which the plaintiff pleads and relies. This system includes a first-stage appeal at the Board of Referees, and provides any party a further right of appeal to an Umpire.

99. Almost invariably, claimants who appear before the EI appeals system do not have legal representation and are not legally trained. Further, due to the tremendous value placed on expediency within the first stage of the EI Appeals process, claimants have extremely limited amounts of time to compile an evidentiary record from the date they receive a decision to the scheduling of a hearing date. In the case of combined maternity-parental-sickness claimants, those seeking to appeal the Commission's decision would also invariably be caring for newborn children and would be recovering from or battling an injury, illness, or quarantine.

100. While these claimants were at a considerable disadvantage vis-à-vis the Commission in the appeals process, the defendant expended considerable resources in defending all appeals made in respect of combined maternity-parental-sickness claims made under the 2002 amendment. In those cases where claimants were successful at the first stage of appeal, the Commission would invariably appeal to the Umpire. At the Umpire stage, claimants would be forced to again defend the record put before the Board of Referees. And again, claimants would typically be at a disadvantage in regards to resources and legal representation.

101. Further, throughout the Class Period, the Commission acted both as the party which had rejected the Class Members' claims and as the litigant prosecuting appeals to the Board of Referees and the Umpire. Throughout the Class Period, the Commission controlled the materials presented to the Board of Referees as well as the submissions made to the Board. During the Class Period, the defendant never once presented the Board or an Umpire materials setting out the purpose and effect of the 2002 amendment.

102. This strategy resulted in the dismal failure of a long series of maternity-parental-sickness benefit claimants who had their claims dismissed, primarily on the ground that they were unable to demonstrate 'availability for work'.

NATALYA ROUGAS OBTAINS SICKNESS BENEFITS

103. Rougas became, in 2011, the first person to unequivocally obtain the sickness benefits promised by Parliament in the 2002 amendment.

104. Rougas obtained these sickness benefits over a year and half after first applying for them.

105. Rougas, like the plaintiff, was an eligible employment insurance claimant, gave birth to a child, and took a maternity and parental leave from her employment, all while caring for herself or her child.

106. Towards the end of her parental leave period, in January 2010, Rougas was diagnosed with breast cancer.

107. Rougas had to undergo significant treatment for this illness and as a result was unable to return to work.

108. Towards the end of her parental leave, on or about January 16, 2010, Rougas applied for sickness benefits.

109. At the time she applied, Rougas was incorrectly advised orally over the telephone by the defendants that her application for sickness benefits would not be permitted under the *EI Act* but that it would be accepted if she applied after the end of her parental leave period. Rougas applied for sickness benefits anyway notwithstanding these two misrepresentations.

110. On or about February 22, 2010, Rougas' sickness benefits claim was rejected by letter because she "[could] not prove that if [she] were not sick [she] would be working because [she] was on parental leave with an expected return to work date of February 1, 2010".

111. On or about March 8, 2010, Rougas appealed this decision to a Board of Referees.

112. On May 11, 2010 Rougas appeared at the appeal without counsel and with her husband, Stavros Rougas. Rougas' appeal was dismissed on that same day.

113. On July 7, 2010, Rougas appealed the Board of Referees decision to an Umpire established under the *EI Act*.

114. Rougas expended considerable amounts as disbursements given her financial constraints to pursue her appeal. A large part of these were to cover the cost of an access to information search that yielded the key legislative history materials concerning the purpose of the 2002 amendment.

115. The Umpire who wrote the Rougas Decision admitted these legislative history materials into evidence and relied extensively on them in support of the Rougas Decision.

116. The defendant, before and during the hearing of Rougas' appeal, argued that these legislative history materials ought not to be admitted into evidence.

117. The plaintiff pleads that the Rougas Decision conclusively determines that, since the 2002 amendment, all Class Members who made a sickness benefits claim were eligible for sickness benefits.

No Judicial Review of the Rougas Decision

118. The defendant had a right under the *Federal Courts Act*, R.S.C. 1985, c. F-7 to seek judicial review of the Rougas Decision to the Federal Court of Appeal.

119. On or about August 17, 2011 , the defendant announced that it was not seeking judicial review of the Rougas Decision.

120. In so doing, the defendant, in a prepared written statement read by a spokesperson for the Minister of Human Resources and Skills Development Canada, stated that "[i]n regards to Ms. Rougas' case, it was indeed unfortunate and as a government we are committed to maintaining fairness...".

121. Notwithstanding the Rougas Decision and its confirmation that the 2002 amendment provides for the payment of sickness benefits to Class Members, including the plaintiff and Rougas, the aforesaid spokeswoman of the Minister of

Human Resources and Skills Development Canada misrepresented in the same written statement that “[t]he changes required [as a result of the Rougas Decision] are legislative”.

122. The plaintiff pleads that no legislative changes are required and that, since the 2002 amendment, the necessary legislative provisions have been in place to permit all Class Members to obtain sickness benefits.

The Rougas Decision is Not Being Implemented

123. Despite the Rougas Decision and the defendant's decision not to seek judicial review from it, the Rougas Decision is not being implemented.

124. In particular, the Commission denied McCrea’s sickness benefits application on the very grounds that were rejected in the Rougas Decision, namely, that at the time she applied for sickness benefits, the plaintiff was not otherwise available for work.

CAUSE OF ACTION

General Duty of Care, Negligence, and Negligent Implementation of the Statutory Scheme

125. At all times during the Class Period, the defendant owed a duty of care to Class Members that was breached by its negligent conduct in respect of administering the Employment Insurance scheme, and in particular the 2002 amendment.

126. It was foreseeable that negligently implementing an income compensation scheme would cause the Class Members to suffer damages in relation to the loss of their entitlements, as well as the time, frustration and emotional upset associated with the pursuit of improperly denied claims.

127. The Class Members were in a relationship of proximity to the defendant. They had entered into a special relationship with the defendant as a result of their previous

engagement in the claims process managed by the defendants in its statutory role as the administrator of Employment Insurance benefits.

128. The defendant communicated directly, specifically, and repeatedly with each Class Member in respect of their maternity, parental, and sickness benefits claims. The defendant had already approved, in the case of all Class Members, their valid maternity and parental benefits claims.

129. The defendant engaged in a course of communications with each Class Member. These included:

(a) Verbal representations during in-person meetings with agents of the defendants at physical Service Canada kiosk locations;

(b) Verbal representations to Class Members made over the telephone by Service Canada agents;

(c) Written representations in formal correspondence delivered to the Class Members in respect of their claims; and,

(d) Written advisements in the form of communications tools to which the Class Members were referred, such as the defendant's website, the Digest of Benefit Entitlement Principles and the EI Jurisprudence Library.

130. Further, all Class Members were in a position of reliance upon the Commission to administer their benefit claims with reasonable diligence, as all members of the Class were persons in the vulnerable position of having to simultaneously care for one or more young children while also coping with an injury, illness, or quarantine.

131. The defendant breached the duty of care owed to the Class to properly ascertain the scope of its statutory authority and implement the Employment Insurance program with reasonable diligence. Particulars of the defendant's negligence include the failures pleaded above, and also include:

(a) The defendant's post-March 3, 2002 fostering of a description of the *EI Act* that disregarded the defendant's own knowledge of the intent of the 2002 amendment;

(b) The defendant's implementation of a “legislative training” regime for its employees which contained inaccurate representations of the effect of the *EI Act* and the 2002 amendment specifically;

(c) The defendant's failure throughout the Class Period to properly train its front-line staff, such that the plaintiff and Class Members were subject to changing, inconsistent, contradictory and ultimately incorrect advice from agents of the defendants regarding their entitlement to benefits;

(d) The defendant's negligent maintenance of its publically available Employment Insurance website, such that throughout the Class Period the website contained misleading, contradictory and incorrect statements regarding the 2002 amendment;

(e) The defendant's negligent failure to update its key document, the Digest of Benefit Entitlement Principles, in a timely manner to reflect the coming-into-force of the 2002 amendment;

(f) The defendant's failure, when the Digest was updated, to properly describe the effect of the 2002 amendment, and to retain misleading and inaccurate descriptions of the relevant entitlement principles; and,

(g) The defendant's aggressive approach to denying sickness benefits claims by Class Members and then representing itself on appeals to the Board of Referees and Umpire to successfully oppose such appeals.

132. The plaintiff has suffered damages, detailed below, as a result of this negligent conduct.

THE PLAINTIFF AND THE CLASS MEMBERS SUFFERED DAMAGES

133. The plaintiff claims for damages in the monetary amount they have lost in either improperly denied sickness benefits, or the amount of sickness benefits foregone or abandoned as a result of the defendant's wrongful intervention in the claims process as described above. This category of damages includes, but is not limited to:

    (a) damages in the amount of sickness benefit claims made by Class Members, improperly denied by the Commission, and not pursued through the EI appeals process; and,

    (b) damages in the amount of sickness benefit claims made by Class Members, denied by the Commission, and pursued unsuccessfully through the EI appeals process.

134. Further, the plaintiff claims general damages for inconvenience, loss of time, frustration, anxiety, mental distress and emotional upset related to the pursuit and denial of wrongfully denied claims by Class Members.

RELEVANT LEGISLATION

135. The plaintiffs pleads and relies upon the *EI Act*, the *Regulations* to the *EI Act*, the *Canada Labour Code* R.S.C. 1985 c. L-2, the *Employment Standards Act*, 2000, S.O. 2000, c. 41, the *Employment Standards Code*, R.S.A. 2000, c. E-9, an *Act Respecting Labour Standards*, R.S.Q., c. N-1.1, all other Canadian provincial legislation in respect of employment standards, the *Rules*, the *Federal Courts Act*, R.S.C. 1985, c. F-7, the *Department of Human Resources and Skills Development Act*, S.C. 2005, c. 34, the *Department of Human Resources Act*, S.C. 1996, c. 11, the *Interest Act*, R.S.C. 1985, c. I-15, and the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50.

PLACE OF TRIAL

The plaintiff proposes that this action be tried at Toronto.

September 4, 2013

Stephen J. Moreau, LSUC #48750Q

Amanda Darrach, LSUC # 51257O

CAVALLUZZO LLP
Barristers & Solicitors
474 Bathurst Street, Suite 300
Toronto, ON M5T 2S6

Stephen J. Moreau, LSUC #48750Q

Tel: 416-964-1115
Fax: 416-964-5895

Lawyers for the Plaintiff

SCHEDULE “K” - ADMINISTRATION PLAN

Introduction

1. This document is intended to set out the administration and implementation plan of the Minister of Employment and Social Development Canada (“ESDC”). More particularly, the Transformation and Integrated Service Management branch of ESDC will have primary responsibility to review claims for and process payment of damages in accordance with the terms of the Settlement Agreement entered into between the parties.

2. The work completed by ESDC on the File Review Project will substantially expedite the processing of claims. ESDC possesses the expertise and information required to calculate and pay Individual Payments. ESDC also possesses the requisite experience and knowledge to process the claims, which are based on amounts of statutory sickness benefits not paid. To that end, ESDC has assembled an experienced team of processing agents to administer claims, including payment of damages.

3. The Plan includes:

   (a) a sample of the documents to be used to communicate with class members;

   (b) the information to be shared between ESDC and Cavalluzzo LLP, counsel for the Plaintiff and Class (“Cavalluzzo” or “Class Counsel”); and

   (c) a schedule for reporting to Class Counsel and the Court with respect to the processing of claims.

4. This plan is a living document and may require modifications from time-to-time in order to ensure that the Court and Claimants are provided with the relevant information, as well as to address the various possible administrative matters that may arise in the course of the Claims Process.

5. Capitalized terms used in this Schedule shall have the meaning assigned to them in the Settlement Agreement.

Roles and Responsibilities

6. ESDC will be responsible for receiving, reviewing and processing Claims.

7. Department of Justice Counsel (“Justice”) will assist, as required, to ensure the timely administration of settlement and the implementation of this Plan.

8. Where requested by a claimant, Cavalluzzo will provide legal advice and assistance with the claims process at no additional cost to either Canada or class members. Class Counsel will continue to liaise with Justice to ensure timely processing of claims at no additional cost to either ESDC or class members.

9. Subject to applicable laws that may require disclosure, all information exchanged between the parties will be treated as confidential and subject to a secure transmission protocol via either password or encryption.

10. When ESDC is communicating with Claimants, its written communications will include a message to the effect that should Claimants have any questions concerning the appeal process and the class action process generally, advice may be sought from Cavalluzzo LLP, 474 Bathurst Street, Suite 300, Toronto Ontario M5T 2S6, which can be contacted at 1-844-964-5559 (toll free in Canada) or 416-964-5559 or by e-mail at EIsicknesscase@cavaluzzo.com.

11. Throughout the Claims Period, Cavalluzzo agrees to advise Justice of any change in their toll-free service or e-mail address.

12. Cavalluzzo and Justice shall work cooperatively in implementing this Plan.

Procedures and Guidance Documents

13. A dedicated group of processing agents employed by ESDC will be assigned to process payments to class members ("Agents").

14. All Agents will receive training with respect to issues in this litigation, including parameters of the class definition. The processing agents will be supervised by an experienced manager.

15. ESDC will prepare all necessary documentation to ensure that Claims will be administered in a consistent fashion. The following documents will be finalized prior to the commencement of the Claims Period:

(a) Payment Process User Guide for the Employment Insurance (EI) Sickness Benefits Class Action;
(b) Checklist to review the EI Sickness Class Action Claim Form:
(c) Determination Letter; and
(d) Quality Monitoring Checklist for NHQ Staff.

Initial Review and Processing

16. ESDC will complete an initial review of the Claim Form to ensure all required information has been provided. Where the information is incomplete, ESDC shall contact the claimant to request missing information.

Provision of Medical Information on file to Claimants

17. Where a request is made with respect to disclosure of any medical evidence on file, ESDC will provide the information verbally. Only in exceptional cases will ESDC provide copies of the medical certificate prior to submission of Claims.

Internal Review where denial proposed

18. Where the Agents determine that a Claimant is not an Eligible Class Member, before a denial is issued, the case will be referred to an internal review committee formed by ESDC.

19. The internal review committee may review the file, obtain additional information from the Claimant where appropriate, and confirm or deny the proposal to deny the Claim.

20. Where it is determined that a Claimant is not eligible to receive a payment under the Settlement Agreement, that person will be advised of their right to submit an application for Review of Determination to a prothonotary designated by the Federal Court of Canada.

21. ESDC may reconsider its decision at its own initiative or after consultation with the Monitor, regardless of whether an appeal is filed or not, so long as such decision is made prior to 30 days after the end of the claims period.

Quality-Control Measures

22. ESDC will conduct routine quality control to ensure the accuracy of Claims processing.

23. An option for the EI Sickness Benefits Class Action will be added to Service Canada's 1-800 number which will redirect callers to agents who will be able to provide assistance to in completing the claims forms, answering questions and providing updates on the status claims.

Reports to the Parties and the Monitor

24. ESDC will make best efforts to provide weekly reports detailing the status of the completed Claims received from Claimants, including any applications being processed at that time, to Justice, Cavalluzzo and the Monitor. The reports will include the following information:

(a) Number of Claims submitted;

(b) Number of Claims allowed (including the amounts paid per claimant);

(c) Number of Claims denied and a summary of the reasons for denials;

(d) Number of Claims in progress; and

(e) Number of appeals filed and their outcomes.

Reports to the Court

25. Within 120 days of the expiry of the Claims Period and Extension Period, ESDC proposes to provide to the Court a final report, detailing the following information:

(a) Number of claims submitted;

(b) Number of claims allowed (including the amounts paid per claimant);

(c) Number of claims denied;

(d) Number of appeals filed; and

(e) Summary of the disposition of all appeals.

Reminders during the Claims Period

26. Reminders regarding the Approval of the Settlement will be sent by direct mailing, via regular mail, to identified Class Members at three points during the Claims Period:

(a) In or about April 2019;

(b) In or about May 2019; and

(c) In or about June or July 2019.

SCHEDULE "L" - APPLICATION FOR REVIEW OF DETERMINATION

EI SICKNESS CLASS ACTION

APPLICATION FOR REVIEW OF CLAIMS DECISION DETERMINATION

PART 1 – ESTATE INFORMATION	
For persons administering the estate of a client, please complete this form on behalf of the estate. ***Check the box below and complete Part 2 with the information of the Deceased Person*** □ I am seeking a review on behalf of a deceased client and am an administrator or executor duly authorized to file this claim. **Name of Legal Representative: _____** **Telephone number:** ( )	
PART 2 - APPLICANT INFORMATION	
1. First Name of Applicant	**2. Last Name of Applicant**
3. Social Insurance Number of Applicant	
4. Permanent Home Address of Applicant (include street address, city/town, province/territory, and postal code)	
5. Mailing Address of Applicant (if different from Permanent Home Address)	
6. Telephone Number of Applicant **( )**	**7. Alternate Telephone Number of Applicant** **( )**
8. Which official language do you prefer to use to communicate with us? □ English □ French	
PART 3 – REQUEST FOR REVIEW OF DECISION	
9. Date of Decision **Please attach a copy of the Decision Letter**	
10. Please set out the reasons you are seeking a review of the Decision. Please enclose any documents you think are relevant to the appeal. Please feel free to enclose additional pages to explain the basis on which you believe the decision is wrong.	

11. Privacy Statement and Consent

The information you provide is collected in accordance with the Privacy Act. Your personal information will be administered in accordance with the requirements of the *Privacy Act* and the *Department of Employment and Social Development Act*.

I consent to the use and disclosure of the information contained in this form for purposes of administering the EI Sickness Class Action, namely, to determine eligibility, the amount of an Individual Payment, and for purposes as may be required by the Court and Court-appointed Monitor.

_____ _____/_____/_____

Applicant's or Legal Representative's Signature Date (dd/mm/yyyy)

PART 4 – DECLARATION AND SIGNATURE

12. I DECLARE THAT:

- This application form was completed by me, the applicant, or the legal representative of a deceased person.
- The information provided in this form is true, based on my personal records, experience and knowledge
- If the information described above is false or misleading, I may be required to repay any compensation that I receive.

_____ _____/_____/_____

Applicant's or Legal Representative's Signature Date (dd/mm/yyyy)

INSTRUCTIONS

This form should be submitted to:

Federal Court of Canada
180 Queen St. West
Toronto, ON
M5V 3L6
Attention: Designated Prothonotary – EI Sickness Class Action

A file containing the documents relevant to ESDC's decision on your claim will be created and provided to the Federal Court and Class Counsel. If you have any questions about the review process, please contact Class Counsel at **EI Sickness Benefits Class Action**, c/o Cavalluzzo LLP, 474 Bathurst Street, Suite 300, Toronto, Ontario, M5T 2S6, or to: EIsicknesscase@cavalluzzo.com

SCHEDULE "M" - TERMS OF APPOINTMENT OF MONITOR

Definitions

1. In these Terms of Appointment, the following terms are defined:

   "Claimant information" means any information from any source whatsoever about an individual making a Claim under the Settlement Agreement, whether the claim is approved or not;

2. Capitalized terms used in these Terms of Appointment and not otherwise defined shall have the same meanings as contained in the **Settlement Agreement**.

General

3. For greater certainty, the obligations set out in these Terms of Appointment are enforceable as a court order.

4. Any Party to the Settlement Agreement or any other person with authorization of the Court may seek enforcement of the obligations contained herein.

5. The Monitor must be able to provide services in both official languages.

6. The Monitor must perform all services personally.

Access to Files

7. The Monitor shall work with the Administrator to facilitate the sharing of information required for the purposes of allowing the Monitor to fulfill its duties.

Security and Confidentiality Requirements

8. The Monitor's appointment is conditional on ensuring that all persons involved in the project have obtained, and will maintain, a valid security clearance at the level of Protected "B" or greater for the duration of the project.

9. In addition to the obligation set out at **Section 16.02** of the Settlement Agreement, the Monitor must sign the following non-disclosure agreement, before he is given access to any claimant information by ESDC:

Non-Disclosure Agreement

In the course of my work pursuant to the order of the Federal Court in Court File No. T-210-17, I, _____, may be given access to information by or on behalf of claimants or Canada in connection with the EI Sickness Benefits Class Action claims process. Such information may include information that is confidential or proprietary to third parties, and information conceived, developed or produced by ESDC as part of its mandate. For the purposes of this Non-Disclosure Agreement, information includes but is not limited to: any documents, instructions, guidelines, data, material, advice or any other information whether received orally, in printed form, recorded electronically, or otherwise and whether or not labeled as proprietary or sensitive, that is disclosed to a person or that a person becomes aware of during the performance of the EI Sickness Benefits Class Action Claims Process administered by ESDC.

I shall not reproduce, copy, use, divulge, release or disclose, in whole or in part, in whatever manner or form, any information described above to any person other than a person employed by Canada or Class Counsel and only as I have been expressly authorized to do and on a need to know basis in accordance with the Court order. I shall safeguard the same and take all necessary and appropriate measures, including those set out in any written or oral instructions jointly by Canada and Class Counsel, to prevent the disclosure of, access to or use of this information in contravention of this Non-Disclosure Agreement.

I shall use any information provided to the Monitor by a claimant or on behalf of Canada solely for the purpose of the claims process and I have no right of ownership whatsoever with respect to this information.

I agree that the obligation of this agreement will continue in force and in perpetuity, notwithstanding the termination or voiding of the Settlement Agreeement entered into between the Parties**.**

_____
Name (printed)

_____
Signature

10. The Monitor shall ensure that all Claimant and Class Member information is stored in a secure location and that only authorized persons who have signed the non-disclosure agreement are permitted to access the information. Printed material will be stored in a locked container in an area that is subject to continuous monitoring by the Monitor.

11. The Monitor shall not store or record Claimant and Class Member information electronically except in accordance with a manner and on devices approved by the Parties or, failing agreement, the Court.

12. The Monitor shall promptly notify the Parties of any incident or concern that confidential information has been disclosed to or otherwise obtained by unauthorized persons.

13. The Monitor shall receive copies of documents containing Claimant and Class Member information.

14. Information shall be returned or destroyed in accordance with the Settlement Agreement or as may otherwise be directed by the Court.

Reporting

15. The Monitor shall provide a Final Report to the Court within 120 days of the Claims Deadline.

16. The Reports shall set out the following:

    (a) The number of Claims that the Monitor reviewed during the period reported on;

    (b) Any issues identified by the Monitor arising in the Claims Process or Prothonotary Review Process which require adjustment or consultation with the Parties or the Designated Prothonotary;

    (c) A report on the outcome or results of such consultations, and any changes that were made to address the issues;

    (d) The Monitor's opinion on the integrity and accuracy of the Claims Process; and

    (e) The total fees charged by the Monitor in relation to the settlement.

Period of Retainer

17. The Monitor shall commence his or her appointment on March 15, 2019, being the first day of the Claims Period.

18. The Monitor shall terminate his or her appointment no later than December 15, 2019, unless the Court orders otherwise.

Professional Fees

Fee Structure

19. Canada shall pay the Monitor for its services in monitoring the settlement based on the following fee structure, to a limitation of expenditure of $100,000 inclusive of applicable taxes and disbursements.

Hourly fee:	$175

20. The Monitor shall certify that his hourly fee is not in excess of the lowest price charged anyone else, including its most favoured customer, for like quality and quantity of the products/services.

21. The Monitor must not perform any work that would result in Canada's liability exceeding the $100,000 limitation of Canada's expenditure, except with the express written authorization of the Parties or, failing agreement, the authorization of the Court.

22. The Monitor shall notify the Parties when the cost of services rendered reaches 70% of $100,000.

Invoicing and Payment Schedule

23. In consideration of the Monitor satisfactorily completing all of its obligations under the Settlement Agreement and these Terms of Appointment, Canada shall pay the Monitor's professional fees in accordance with these terms or any further terms as may be required by Canada and agreed to by the Parties in writing, on a monthly basis, for the work covered by the invoice where:

    (a) An accurate and complete invoice and any other documents required by the FSA have been submitted in accordance with invoicing instructions to be provided by Canada prior to the first billing period; and

    (b) All documents have been verified by Canada.

24. Fees set out above include all services rendered; no additional compensation for annual leave, statutory holidays, sick leave, travel, overhead, or any other expense shall be payable.

Insurance

25. The Monitor must obtain, maintain in full force and effect throughout the duration of the administration of the claims process, pay for and renew, such insurance as may be required, and in amounts commensurate with the Monitor's responsibiltiies in relation to its role in this settlement.

26. If the policies are written on a claims-made basis, coverage must be in place for a period of at least 12 months after the completion or termination of the administration mandate.

27. The following endorsement must be included in all policies:

    Notice of Cancellation: The Insurer will provide Canada and the Plaintiffs' counsel with thirty (30) days written notice of cancellation.

28. Neither compliance nor failure to comply with the insurance requirements set out herein shall relieve the Monitor of its liabilities and obligations pursuant to its appointment.

29. Litigation Rights: Notwithstanding that the Monitor is not an agent of the Crown, pursuant to subsection 5(d) of the *Department of Justice Act*, S.C. 1993, c. J-2, s. 1, if a suit is instituted for or against Canada which the insurer would, but for this clause, have the right to pursue or defend on behalf of Canada as an additional insured under the Monitor's insurance policy, the insurer must promptly contact the Attorney General of Canada to agree on legal strategies by sending a letter, by registered mail or by courier, with an acknowledgement of receipt to:

Christine Mohr
Senior General Counsel
Department of Justice Canada
120 Adelaide Street West, Suite #400
Toronto, Ontario M5H 1T1
Phone: (647) 256-7538
Email: christine.mohr@justice.gc.ca

30. Canada reserves the right to co-defend any action brought against the Monitor or Canada. All expenses incurred by Canada to co-defend such actions will be at Canada's expense. If Canada decides to co-defend any action brought against the Monitor or it, and Canada does not agree to a proposed settlement agreed to by the Monitor's insurer and the plaintiff(s) that would result in the settlement or dismissal of the action against Canada, then Canada will be responsible to the Monitor's insurer for any difference between the proposed settlement amount and the amount finally awarded or paid to the plaintiffs (inclusive of costs and interest) on behalf of Canada.

SCHEDULE “N” - CLASS COUNSEL

CAVALLUZZO LLP
474 Bathurst Street, Suite 300
Toronto, Ontario
M5T 2S6

Stephen J. Moreau

Telephone: 416-964-5541
Facsimile: 416-964-5895
Email: smoreau@cavalluzzo.com

Tassia Poynter

Telephone: 416-964-5505
Facsimile: 416-964-5895
Email: tpoynter@cavalluzzo.com