



CMH

COURT FILE NUMBER 1901-04984 (JDR)

COURT COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFFS (APPLICANTS) Wiley Hertlein and Glen Mitchell

DEFENDANTS Prince of Peace Lutheran Church of Calgary;
(RESPONDENTS) Lutheran Church – Canada; Lutheran Church –
Canada Financial Ministries; Francis Taman;
Bishop & McKenzie LLP; Ronald Chowne;
Prowse Chowne LLP

DOCUMENT **NOTICE APPROVAL ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

Higgerty Law
Attention: Patrick B. Higgerty, Q.C.
Biscuit Block – Fifth Floor
500, 438 – 11th Ave SE
Calgary, AB T3G 0Y4
Ph: 403-503-8888
Fax: 587-316-2260

DATE ON WHICH ORDER WAS PRONOUNCED: September 8, 2022

NAME OF JUSTICE WHO MADE THIS ORDER: Associate Chief Justice J.D. Rooke

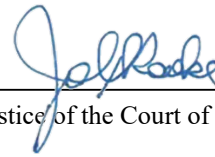
LOCATION OF HEARING: Calgary Courts Centre

UPON THE APPLICATION of the Applicants/Plaintiffs; **AND UPON HAVING REVIEWED** the Notice of Application and all written materials provided by the parties; **AND UPON HEARING** the representations of counsel for the parties;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. An Application to approve the settlement of part of this Action, and for partial certification of this Action as a class proceeding for the purpose of approval of such settlement only, will be heard remotely by Webex on October 7, 2022, at 10:00 am at the Calgary Courts Centre.
2. The Hearing Notice is approved substantially in the same form and content as attached in Schedule "A" in this Order.
3. Counsel for the Plaintiff shall promptly post the Hearing Notice and this order on its website.

4. By September 13, 2022, the Plaintiffs will issue the Hearing Notice substantially in the same manner set out in the Notice Plan which shall form and constitute part of this Order and which is attached as Schedule "B" to this Order.
5. The District Subcommittee shall bear the cost of issuing the Hearing Notice in accordance with the Notice Plan.
6. All capitalized groups of words in this Order which are defined in the Settlement Agreement, which is the subject of this Application, have the same definition in this Order.
7. This Order may be endorsed by Counsel electronically and in counterpart.
8. This Order is granted without costs to any party.



Associate Chief Justice of the Court of King's Bench
October 5, 2022

APPROVED as to Order Granted this ___ day
of September, 2022

EMERY JAMIESON LLP

APPROVED as to Order Granted this ___ day
of September, 2022

FIELD LAW

Phyllis Smith, Q.C and Laura Feehan
Counsel for Prowse Chowne LLP
and Ronald Chowne

Dan Carroll Q.C.,
Counsel for Prince of Peace Lutheran Church of Calgary

APPROVED as to Order Granted this ___ day
of September, 2022

GOWLINGS WLG (CANADA) LLP

APPROVED as to Order Granted this ___ day
of September, 2022

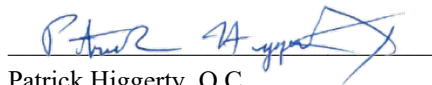
JSS LLP

David Bishop and Ricki Johnston
Counsel for Lutheran Church Canada and
Lutheran Church Canada – Financial Ministries

Carsten Jensen Q.C. and Sean Carrie
Counsel for Francis Taman and Bishop & Mckenzie
LLP, a partnership

APPROVED as to Order Granted this 26 day of September, 2022

HIGGERTY LAW



Patrick Higgerty, Q.C.
Counsel for the Plaintiffs

4. By September 13, 2022, the Plaintiffs will issue the Hearing Notice substantially in the same manner set out in the Notice Plan which shall form and constitute part of this Order and which is attached as Schedule "B" to this Order.
5. The District Subcommittee shall bear the cost of issuing the Hearing Notice in accordance with the Notice Plan.
6. All capitalized groups of words in this Order which are defined in the Settlement Agreement, which is the subject of this Application, have the same definition in this Order.
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Associate Chief Justice of the Court of King's Bench

APPROVED as to Order Granted this __ day
of September, 2022

EMERY JAMIESON LLP

APPROVED as to Order Granted this __ day
of September, 2022

FIELD LAW

Phyllis Smith, Q.C and Laura Feehan
Counsel for Prowse Chowne LLP
and Ronald Chowne

Dan Carroll Q.C.,
Counsel for Prince of Peace Lutheran Church of Calgary

APPROVED as to Order Granted this ²¹__ day
of September, 2022

GOWLINGS WLG (CANADA) LLP

APPROVED as to Order Granted this __ day
of September, 2022

JSS LLP

David Bishop and Ricki Johnston
Counsel for Lutheran Church Canada and
Lutheran Church Canada – Financial Ministries

Carsten Jensen Q.C. and Sean Carrie
Counsel for Francis Taman and Bishop & Mckenzie
LLP, a partnership

APPROVED as to Order Granted this __ day of September, 2022

HIGGERTY LAW

Patrick Higgerty, Q.C.
Counsel for the Plaintiffs

4. By September 13, 2022, the Plaintiffs will issue the Hearing Notice substantially in the same manner set out in the Notice Plan which shall form and constitute part of this Order and which is attached as Schedule "B" to this Order.
5. The District Subcommittee shall bear the cost of issuing the Hearing Notice in accordance with the Notice Plan.
6. All capitalized groups of words in this Order which are defined in the Settlement Agreement, which is the subject of this Application, have the same definition in this Order.
7. This Order may be endorsed by Counsel electronically and in counterpart.
8. This Order is granted without costs to any party.

Associate Chief Justice of the Court of King's Bench

APPROVED as to Order Granted this __ day
of September, 2022

EMERY JAMIESON LLP

APPROVED as to Order Granted this 12 day
of September, 2022

FIELD LAW



Phyllis Smith, Q.C and Laura Feehan
Counsel for Prowse Chowne LLP
and Ronald Chowne

Dan Carroll Q.C.,
Counsel for Prince of Peace Lutheran Church of Calgary

APPROVED as to Order Granted this __ day
of September, 2022

GOWLINGS WLG (CANADA) LLP

APPROVED as to Order Granted this __ day
of September, 2022

JSS LLP

David Bishop and Ricki Johnston
Counsel for Lutheran Church Canada and
Lutheran Church Canada – Financial Ministries

Carsten Jensen Q.C. and Sean Carrie
Counsel for Francis Taman and Bishop & Mckenzie
LLP, a partnership

APPROVED as to Order Granted this __ day of September, 2022

HIGGERTY LAW

Patrick Higgerty, Q.C.
Counsel for the Plaintiffs

4. By September 13, 2022, the Plaintiffs will issue the Hearing Notice substantially in the same manner set out in the Notice Plan which shall form and constitute part of this Order and which is attached as Schedule "B" to this Order.
5. The District Subcommittee shall bear the cost of issuing the Hearing Notice in accordance with the Notice Plan.
6. All capitalized groups of words in this Order which are defined in the Settlement Agreement, which is the subject of this Application, have the same definition in this Order.
7. This Order may be endorsed by Counsel electronically and in counterpart.
8. This Order is granted without costs to any party.

Associate Chief Justice of the Court of King's Bench

APPROVED as to Order Granted this __ day
of September, 2022

EMERY JAMIESON LLP

APPROVED as to Order Granted this __ day
of September, 2022

FIELD LAW

Phyllis Smith, Q.C and Laura Feehan
Counsel for Prowse Chowne LLP
and Ronald Chowne

Dan Carroll Q.C.,
Counsel for Prince of Peace Lutheran Church of Calgary

APPROVED as to Order Granted this __ day
of September, 2022

GOWLINGS WLG (CANADA) LLP

APPROVED as to Order Granted this __ day
of September, 2022

JSS LLP



David Bishop and Ricki Johnston
Counsel for Lutheran Church Canada and
Lutheran Church Canada – Financial Ministries

Carsten Jensen Q.C. and Sean Carrie
Counsel for Francis Taman and Bishop & Mckenzie
LLP, a partnership

APPROVED as to Order Granted this __ day of September, 2022

HIGGERTY LAW

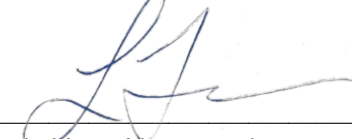
Patrick Higgerty, Q.C.
Counsel for the Plaintiffs

4. By September 13, 2022, the Plaintiffs will issue the Hearing Notice substantially in the same manner set out in the Notice Plan which shall form and constitute part of this Order and which is attached as Schedule "B" to this Order.
5. The District Subcommittee shall bear the cost of issuing the Hearing Notice in accordance with the Notice Plan.
6. All capitalized groups of words in this Order which are defined in the Settlement Agreement, which is the subject of this Application, have the same definition in this Order.
7. This Order may be endorsed by Counsel electronically and in counterpart.
8. This Order is granted without costs to any party.

Associate Chief Justice of the Court of King's Bench

APPROVED as to Order Granted this 23 day
of September, 2022

EMERY JAMIESON LLP



Phyllis Smith, Q.C and Laura Feehan
Counsel for Prowse Chowne LLP
and Ronald Chowne

APPROVED as to Order Granted this ___ day
of September, 2022

FIELD LAW

Dan Carroll Q.C.,
Counsel for Prince of Peace Lutheran Church of Calgary

APPROVED as to Order Granted this ___ day
of September, 2022

GOWLINGS WLG (CANADA) LLP

David Bishop and Ricki Johnston
Counsel for Lutheran Church Canada and
Lutheran Church Canada – Financial Ministries

APPROVED as to Order Granted this ___ day
of September, 2022

JSS LLP

Carsten Jensen Q.C. and Sean Carrie
Counsel for Francis Taman and Bishop & Mckenzie
LLP, a partnership

APPROVED as to Order Granted this ___ day of September, 2022

HIGGERTY LAW

Patrick Higgerty, Q.C.
Counsel for the Plaintiffs

Schedule "A"

HEARING NOTICE

Dear [MERGE FIELD – insert class members' field name],

District Representative Action

Were you a District Depositor in the ABC District Lutheran Church Extension Fund Program, who suffered a loss on your investment and did not opt-out of the Representative Action sanctioned by the Court of King's Bench of Alberta in the related CCAA Proceedings (ABQB No. 1501-00955)?

This notice may affect your legal rights. Please read it carefully.

A class action has been commenced against various Defendants on behalf of the following proposed Class (the "District Representative Action Class"):

- i. a class of people resident in Alberta, including persons, estates of depositors, corporations and societies, sole proprietorships and partnerships and congregations affiliated with the Lutheran-Church Canada (the "**Alberta Lutheran Sub-Class**"); and
- ii. an extra-provincial class of people resident outside of Alberta, including persons, estates of depositors, corporations and societies, sole proprietorships and partnerships and congregations affiliated with the Lutheran-Church Canada (the "**Extra-Provincial Lutheran Sub-Class**"); and
- iii. a class of people resident in Alberta who were resident in Alberta, and the estates of such persons, who were not members of a Lutheran-Church congregation, including corporations and societies, sole proprietorships and partnerships and any other depositors (the "**Alberta Non-Lutheran Sub-Class**"); and
- iv. an extra-provincial class of people resident outside of Alberta, and the estates of such persons, who were not members of a Lutheran-Church congregation, including corporations and societies, sole proprietorships and partnerships and any other depositors (the "**Extra-Provincial Non-Lutheran Sub-Class**"); AND WHO
- v. invested in the Lutheran-Church-Canada Alberta and British Columbia District's Church Extension Fund (the "CEF") as depositors toward the fund.

Except for "**Excluded Persons**" which shall be defined as follows:

- i. A Defendant in this class action; or

- ii. Any past and present subsidiaries, affiliates, officers, directors, senior employees, partners, legal representatives, heirs, successors, predecessors, and assigns of the Defendants; or
- iii. all members of the putative Classes or Sub-Classes who submitted no later than December 15, 2016 an opt-out form in the manner prescribed by the District Sanction Order filed August 5, 2016 in Alberta Court of King's Bench Action No. 1501-00955 (the "CCAA Proceedings").

Following the partial settlement approved by the Court in this Action on November 25, 2021, an additional partial settlement has been reached in this Action with Prince of Peace Lutheran Church of Calgary (the "Settling Defendant"). The Settling Defendant, while not admitting liability, has agreed to a settlement of their portion of this lawsuit subject to court approval and certification of the Action, on terms as set out in a settlement agreement dated April 5, 2022, a copy of which is available for viewing on www.higgertylaw.ca (the "Settlement Agreement"). All capitalized groups of words in this Hearing Notice which are defined in the Settlement Agreement have the same definition in this Hearing Notice.

If you are a member of the District Representative Action Class, **you will automatically be included** in this Representative Action and are not required to take any further steps at this stage.

The Terms of the Proposed Settlement

The Settlement Funds paid by the Settling Defendant are to be allocated to augment the existing litigation holdback fund to cover costs associated with the approval process, potential future costs and disbursements in the Representative Action, and to cover ("self-insure") the Representative Plaintiffs in this Action against potential adverse court costs, or in such other amount as the court may direct. **The settlement funds to be paid are not substantial enough to warrant a feasible cash distribution amongst the large number of Class Members.**

Accordingly, if the settlement is approved, and subject to court approval, members of the Representative Action Class will not be paid a proportionate share of the Settlement Funds at this stage in the litigation. The Subcommittee's intention is that any unexpended holdback funds at the conclusion of this Class Action would be subject to a final distribution amongst the District Depositors.

The net Settlement Funds will be allocated to augment the existing litigation fund based on the following calculation:

Total Settlement Amount \$□

LESS \$□ estimated class counsel legal fees disbursements and GST subject to approval by the Court.

LESS \$□ Estimated third-party professional fees related to court approval, including legal, accounting and IT charges

Net Amount of Settlement Funds available for allocation to the existing litigation holdback \$□

*Note that the above bulleted points are to remain undisclosed but are still part of the above calculation.

A copy of the Settlement Agreement, redacted for the Consideration, can be found on Class Counsel's website (higgertylaw.ca).

The Partial Settlement Approval and Partial Certification Hearing and Your Right to Observe or Participate

An Application to approve the partial settlement of this Action and to partially certify this Action as a class proceeding for the purpose of approving such partial settlement only, is scheduled to be heard on October 7, 2022, at 10:00 am, at the Court of King's Bench of Alberta in Calgary, Alberta at 601 5 St SW remotely by Webex. Class Counsel will also ask the Court to approve an award of fees and disbursements for their work in achieving the settlement.

If you agree with the proposed settlement and wish to participate in it, you do not have to do anything at this time this time.

The Application will proceed before the Court by videoconference. If you wish to attend the Application as an observer, you may do so by using the videoconference link and password found on Class Counsel's website.

If you disagree with the proposed settlement, you have the right to object. To object, you must provide a letter to Class Counsel. Your letter must include your name, contact information, and a brief statement of the nature and reasons for your objection, and be received no later than September 29, 2022. If you wish to attend the Application to speak about your objection, you must also provide a further letter in the same fashion to Class Counsel. Upon such request, you will be provided with a separate password which, when used in conjunction with the videoconference link on Class Counsel's website, will enable the Court to hear you. The Court will decide during the hearing of the Application whether you will be permitted to speak about your objection.

What are the Financial Consequences?

No member of the Representative Action Class, other than the Representative Plaintiffs, will be liable for costs.

Class Counsel has entered into an agreement with the Representative Plaintiffs and the CEF Subcommittee, which was established in the CCAA Proceedings, with respect to legal fees and disbursements. This agreement provides that counsel will not receive payment for their work unless and until the District Representative Action is successful or monies are recovered from the Defendants. The agreement must be approved by the Court.

Definitions

Except as otherwise defined in this Notice, all capitalized words or phrases in this Notice which are defined in the Settlement Agreement have the same definition in this Plan.

FOR MORE INFORMATION, TO MAKE INQUIRIES ABOUT THIS ACTION, PLEASE CONTACT:

HIGGERTY LAW (Putative Class Counsel)

Attention: Patrick Higgerty, Q.C. Biscuit Block
– Fifth Floor
500, 438 – 11th Ave SE
Calgary, AB T2G 0Y4
Tel: 403-503-8888 Fax: 587-316-2260
Email: CEF.Action@higgertylaw.ca
For further information go to www.higgertylaw.ca

MNP LLP (Notice Administrator) Attention: Rick

Anderson
1500, 640 – 5 Ave SW
Calgary, AB T2P 3G4 Tel:
403-538-3187
Email: ceflccsettlement@mnp.ca
For further information: www.mnp.ca/ceflccsettlement

Schedule “B”

Hertlein et al v Schiemann et al (the “District Representative Action”)

**NOTICE PLAN PURSUANT TO THE NOTICE APPROVAL ORDER
PRONOUNCED ON SEPTEMBER 8, 2022 (the “Notice Approval Order”)**

This Notice Plan will apply to the following notices provided for in the Settlement Agreement, namely: the Hearing Notice; and, if that relief is granted, the Approval Notice (collectively the “Notices”).

1. The Plaintiffs will provide the Notices by email, to all members of the District Representative Action Class for whom email addresses are known.
2. Provided that for members of the District Representative Action Class for whom the Plaintiffs do not have their email addresses or whose email addresses do not receive any of the Notices, the Plaintiffs will mail them the Notices directly at their respective last mailing addresses known to the Plaintiffs.
3. The Notices in generic form (not completed for addressee) will be promptly published on the class counsel’s website at www.higgertylaw.ca;
4. Any other methods and the timing for issuance of the Notices shall be as stipulated by order(s) of the Court.
5. Subject to Court approval, the cost of issuing the Notices shall be paid by the CEF Subcommittee.
6. All capitalized groups of words in this Plan which are defined in the Settlement Agreement or in the Notice Approval Order have the same definition in this Plan.