

**ONTARIO
SUPERIOR COURT OF JUSTICE**



THE HONOURABLE)
)
JUSTICE BELOBABA)

THURSDAY, THE 12th
DAY OF NOVEMBER, 2020

BETWEEN:

STEPHEN APS

Plaintiff

- and -

FLIGHT CENTRE TRAVEL GROUP (CANADA) INC.

Defendant

**ORDER
(DISTRIBUTION PROTOCOL)**

THIS MOTION, made by the Plaintiff for an Order approving the Distribution Protocol pursuant to the Settlement Agreement entered into by the parties, was heard this day by video conference.

ON READING the materials filed, including the Distribution Protocol attached to this Order as **Schedule "A"** (the "Distribution Protocol"), and on hearing the submissions of counsel for the parties:

AND ON BEING ADVISED that the deadline for opting out of the Proceeding expired on October 30, 2020 and that 28 persons have validly and in a timely manner exercised the right to opt out:

AND ON BEING ADVISED that the parties consent to this Order:

1. **THIS COURT ORDERS** that, in addition to the definitions used elsewhere in this Order, for the purposes of this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT ORDERS** that in the event of a conflict between this Order and the Settlement Agreement, this Order shall prevail.

Distribution Protocol

3. **THIS COURT ORDERS** that this Order, including the Distribution Protocol, is binding upon each member of the Class including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of this Proceeding.
4. **THIS COURT ORDERS** that the Distribution Protocol is fair, reasonable and in the best interests of the Class.
5. **THIS COURT ORDERS** that the Distribution Protocol is hereby approved pursuant to section 26 of the *Class Proceedings Act, 1992* and shall be implemented and enforced in accordance with its terms.

Administration

6. **THIS COURT ORDERS** that Trilogy Class Action Services (the "Administrator") be appointed to implement the terms of the Distribution Protocol and Settlement.
 7. **THIS COURT ORDERS** that the Administrator may apply the Distribution Protocol in assessing the individual entitlements of the Class Members to the Remaining Fund without further order of the Court.
 8. **THIS COURT ORDERS** that if an individual disagrees with the determination by the Administrator regarding their membership in the Class or the amount of their
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entitlement, such dispute shall be referred to the independent Referee for a binding determination. The decision of the Referee is final and not subject to any appeal.

9. **THIS COURT ORDERS** that the Administrator will be remunerated its reasonable fees and disbursements from the Distribution Fund without further approval of the Court.

Notice

10. **THIS COURT ORDERS** that the Administration Form attached hereto as **Schedule "B"** is approved.

11. **THIS COURT ORDERS** that the settlement approval notice attached hereto as **Schedule "C"** (the "Settlement Approval Notice") is approved.

12. **THIS COURT ORDERS** that the Class shall be provided with notice of the approval of the Settlement Agreement and Distribution Protocol, substantially in the form of Schedule "C" by:

- a) mail and email to: (i) anyone who inquired with Class Counsel regarding the within action, to the extent that Class Counsel has their name, mailing address and/or email information; and, (ii) anyone identified by Flight Centre as a Class Member, to the extent that Class Counsel has their name, mailing address and/or email information;
 - b) the publication by Class Counsel on their website, social media pages and promoted on Twitter and Facebook; and
 - c) the public posting in English and French on the websites www.flightcentreclassaction.com and www.flightcentresettlement.com :
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Supervisions and Interpretation

13. **THIS COURT ORDERS** that, for the purposes of administration and enforcement of the Distribution Protocol and the Order, this Court will retain an ongoing supervisory role.

14. **THIS COURT ORDERS** that, in the event that the Settlement Agreement is terminated in accordance with its terms, the Order shall be declared null and void on subsequent motion made on notice.

Signed: Justice Edward P. Osofski

Notwithstanding Rule 59.05, this Judgment [Order] is effective from the date it is made, and is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal Judgment [Order] need be entered and filed unless an appeal or a motion for leave to appeal is brought to an appellate court. Any party to this Judgment [Order] may nonetheless submit a formal Judgment [Order] for original signing, entry and filing when the Court returns to regular operations.

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ON / BOOK NO:
LE / DANS LE REGISTRE NO.

NOV 18 2020

PER / PAR:



SCHEDULE "A"

*Aps v. Flight Centre Travel Group (Canada)
Inc.*

Court File No.: CV-19-00614755-00CP

Administration and Distribution Protocol

A. DEFINITIONS

1. For the purpose of this Administration and Distribution Protocol the defined terms have the same meaning as in the Settlement Agreement, executed on August 21, 2020, unless otherwise specified.
2. In addition, the following definitions apply:
 - (a) *Administration Form* means the form provided for in section D below inclusive of any electronic version;
 - (b) *Applicable Employment Standards Legislation* means *Employment Standards Code*, R.S.A. 2000, c. E-9 (Alberta); *Employment Standards Act*, R.S.B.C. 1996, c. 113 (British Columbia); *Employment Standards Code*, C.C.S.M. c. E110 (Manitoba); *Labour Standards Act*, R.S.N.L. 1990, c.L-2 (Newfoundland); *Labour Standards Code*, 1989, R.S.N.S. c. 246 (Nova Scotia); *Employment Standards Act*, 2000, S.O. 2000, c. 41 (Ontario); *The Saskatchewan Employment Act*, S.S. c.S-15.1 (Saskatchewan); and their respective regulations.
 - (c) *Claims Deadline* means the date by which Class Members must submit Administration Forms;
 - (d) *Court* means the Ontario Superior Court of Justice;
 - (e) *Notification Letter* means the letter, email or text message provided to each Class Member describing their relative share of the Claim Fund as determined by the Claims Administrator;
 - (f) *Post-limitation period* means any time worked in the Class Period on February 21, 2017 or thereafter;
 - (g) *Pre-limitation period* means any time worked in the Class Period prior to February 21, 2017;
 - (h) *Referee* means Mika Imai at Karimjee Law;
 - (i) *Relative Share* means the proportion of the Claim Fund that an individual Class Member will be entitled to.

B. GENERAL PRINCIPLES OF THE ADMINISTRATION

3. This Administration and Distribution Protocol is intended to govern the administration process to distribute the Claim Fund in *Aps v. Flight Centre Travel Group (Canada) Inc.* (the "Action"). This protocol is intended to provide a simple, expeditious and user-friendly distribution to the Class and result in payment to the highest possible proportion of the Class Members.

C. CLAIMS ADMINISTRATOR DUTIES AND RESPONSIBILITIES

4. The Claims Administrator shall administer this Administration and Distribution Protocol in accordance with the provisions of the Orders of the Court, the Settlement Agreement and the ongoing authority and supervision of the Court.

5. The Claims Administrator's duties and responsibilities shall include the following:

- a. providing notice(s) to the Class Members as may be required;
- b. receiving information from the Defendant, including Class Members' contact information and dates of employment;
- c. developing, implementing and operating the administration process including an online claim submission process and website;
- d. making timely calculations of Class Members' Relative Share of the Claim Fund and notifying Class Members;
- e. arranging payment to Class Members in a timely fashion;
- f. reporting the results of the administration process and the intended distributions to Class Counsel in a timely fashion;
- g. maintaining the administration information so as to permit Class Counsel to audit the administration at the discretion of Class Counsel or if ordered by the Court;
- h. responding to Class Member inquiries and communications with Class Counsel;
- i. calculating the withholding of both employee and employer portions of CPP, EI and income tax and remitting same;
- j. preparing and distributing T4A forms to Class Members;
- k. reporting to Class Counsel respecting Claims received and administered and administration expenses;
- l. holding the Claim Fund in an interest-bearing trust account at a Canadian Schedule I bank in Canada and making all payments from the Claim Fund from that account as authorized;

- m. cash management and audit control;
 - n. preparing and submitting reports and records as directed by Class Counsel or the Court; and
 - o. other steps as directed by Class Counsel or the Court, as needed.
6. All information received from the Defendant or the Class Members is collected, used, and retained by the Claims Administrator pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering their Claims.

D. CLAIMS BY CLASS MEMBERS

i. Requirement to Submit Timely Administrative Form

7. Class Members shall complete an Administrative Form in order to be eligible to receive payments from the Claim Fund. This form must be completed and submitted to the Claims Administrator within ninety (90) days of Final Approval.
8. If the Claims Administrator finds that deficiencies exist in an Administration Form, the Claims Administrator shall forthwith notify the Class Member of the deficiencies. The Class Member must correct the deficiencies to the satisfaction of the Claims Administrator by the deadline set out in section 7.
9. Class Members who submit a late Administrative Form for any reason will only be eligible to receive any compensation in the event there are surplus funds remaining after the distribution, for example due to stale dated cheques, or in the event the holdback for administration or taxes exceeds what is required. Payments to Class Members who submit late Administrative Forms are in the discretion of Class Counsel and may be in amounts less than the compensation provided to Class Members who submitted a timely Administrative Form, depending on the sufficiency of funds. There is no appeal regarding the determination that an Administrative Form is late or from the amount of funds provided to Class Members who submitted a late Administrative Form.
10. An Administration Form will not be considered late solely because the Class Member is required to prove their membership in the Class pursuant to the process set out in paragraphs 11-13 below, where the Class Member submitted their Administration Form to the Claims Administrator prior to the deadline and the Administration Form was otherwise complete.

ii. Confirmation of Membership in Class

11. The Claims Administrator shall verify that the Class Member's name appears on the Class List provided by the Defendant. Where an individual submits an Administrative Form and their name is not on the Class List, the Claims Administrator will ask the individual to provide proof of membership in the Class within thirty (30) days. The Claims Administrator and/or Class Counsel may also ask the Defendant to confirm the individual's

employment history and membership in the Class. The Claims Administrator shall determine the individual's membership in the Class within ten (10) days of the date the individual provides proof of Class Membership.

12. Proof of Class Membership may be provided by submission of documents such as employment agreements, tax forms, paystubs, and uniform deduction/return agreements. The Claims Administrator and/or Class Counsel may request the Defendant to review any documents submitted to verify their authenticity.
13. If an individual disagrees with the determination by the Claims Administrator regarding their membership in the Class, such dispute shall be referred to the independent Referee for a binding determination. The individual is responsible for paying the cost of the Referee's fee, not to exceed \$75. The Referee shall issue a written decision within ten (10) days, and is not required to provide reasons. The decision of the Referee is final and not subject to any appeal.

iii. Calculation of Class Member Compensation

14. Class members will be compensated based on their weeks of service within the class period and the province(s) in which they were employed at Flight Centre. Compensation will be adjusted to discount pre-limitation period work by 75% relative to post-limitation period work.
15. Each Class Member's relative share will be calculated in general as follows:
 - (a) Proportionate value of each week worked in the Class Period is weighted by Province, having regard to the following Overtime Thresholds under the Applicable Employment Standards Legislation:
 - i. Alberta and Ontario: 44 hours
 - ii. British Columbia, Saskatchewan, Newfoundland and Manitoba: 40 hours
 - iii. Nova Scotia: 48 hours

Based on a hypothetical 50-hour work week, the ratio of overtime hours worked in these provinces is 3:5:1, which is reflected in the relative value attributable to each week worked in the Class Period.
 - (b) Given the unique statutory exemption for commissioned salespeople in British Columbia, the value of each British Columbia work week will be discounted by 65%.
 - (c) Time worked pre-limitation period will be discounted by 75% relative to time worked post-limitation period to account for the two-year statutory limitation period.
16. For any class member, the value of their claims will be the total post-limitation period weeks + pre-limitation period weeks, taking into account the factors impacting on the value of a given week of service described above, and summarized in Table 1, below:

Table 1

	Nova Scotia	Alberta Ontario	British Columbia	Manitoba Saskatchewan Newfoundland
Value of post-limitation period week	X	3x	0.35 (5x)= 1.75x	5x
Value of pre-limitation period week	0.25(x)	0.25(3)(x)	0.25(1.75)(x)	0.25(5)(x)

17. An example of the operation of the compensation calculation is below:

If a class member from Alberta worked 50 weeks pre-limitation period plus 50 weeks post limitation period, their share would be:

$$= 50(3)(x) + 50(0.25)(3)(x)$$

$$= 150x + 37.5x$$

$$= 187.5x$$

To determine the value of "x" and therefore determine the exact share for each class member, the Claims Administrator will add up the total of all class members' shares as a function of "x" and divide that number into the total value of the Claim Fund.

18. Every Class Member who completes an Administrative Form shall indicate length of service within the class period, including their start date(s) and end date(s), and the province(s) in which they were employed at Flight Centre at all relevant times during the Class Period and confirm that they were employed as a Travel Consultant at such times.
19. The amounts paid pursuant to this settlement are income and the Claims Administrator shall deduct/remit employee and employer portions of CPP, EI and income tax, and prepare T4A forms as necessary. The Defendant is not responsible to withhold any amounts. The Claims Administrator and each member of the Class are responsible for any tax or other amounts payable and will indemnify the Defendant for any liability in this regard.
20. The Claims Administrator will prepare Notification Letters individualized for each Class Member describing their relative share. A Class Member who disputes their relative share must notify the Claims Administrator in writing within fourteen (14) days of the date of the Notification Letter. The Claims Administrator may reconsider and correct any errors identified by the Class Member within five (5) days of the receipt of the Class Member's notification of dispute (e.g. if the Class Member's relative share does not reflect that they applied and were eligible for all four issues). If the Class Member continues to dispute the Claims Administrator's decision, such dispute shall be referred to the independent Referee for a binding determination. The individual is responsible for paying the cost of the

Referee's fee, not to exceed \$75. The Referee shall issue a written decision within ten (10) days, and is not required to provide reasons. The decision of the Referee is final and not subject to any appeal.

21. Amounts may be distributed to Class Members by the Claims Administrator by cheque or e-transfer or electronic funds transfer, within the discretion of the Claims Administrator.
22. Class Members are responsible for providing the Claims Administrator with accurate and timely information to facilitate the distribution of funds. In the case of incomplete, incorrect or missing contact or banking information necessary to distribute funds to a Class Member, and in the case of stale cheques, the Claims Administrator shall make at least one attempt to reach out to the Class Member, and the Class Member shall have thirty (30) days from the date of this attempt to provide the corrected information to the Claims Administrator or to request a fresh cheque in the case of a stale cheque.
23. If the Class Member cannot be located or fails to respond to communication from the Claims Administrator, their funds may be treated as surplus funds available for distribution in accordance with Step 6 described below. The Claims Administrator will provide Class Counsel with information concerning its efforts to contact a Class Member prior to taking this step.

E. DISTRIBUTION PROCESS

24. Generally, the Claims Administration Process will be as follows:

Step 1: Receipt of Administrative Forms and any confirmation of Class Member status/eligibility.

Step 2: Determination of the number of eligible Class Members, confirmation of the amounts available for distribution, and relative share of Class Members.

Step 3: Preparation/distribution of Notification Letters.

Step 4: Distribution to Class Members who submitted timely Administration Forms, and remittances to CPP/E/CRA as necessary.

Step 5: The Claims Administrator will provide a report on the results of the Administration and Distribution to Class Counsel.

Step 6: If there are sufficient funds (i.e. due to stale cheques, amounts leftover from holdback, etc.), Class Counsel may direct the Claims Administrator to make a further distribution to individuals who submitted late Administrative Forms.

Step 7: If any amount is remaining from the Settlement Amount and the Administrative Holdback after the distribution set out above and the payment of any taxes on account of interest earned in the Trust Account, such amount shall be paid to the Ontario Employment Education & Research Centre (OEEERC) within 30

days of Class Counsel's receipt of final Notices of Assessment from the Canada Revenue Agency, or as directed by the Court.

F. ROLE OF COUNSEL

25. Class Counsel shall oversee the claims process and provide advice and assistance to the Claims Administrator regarding this Administration Protocol and Distribution Protocol and the claims process
26. Notwithstanding the foregoing, if, during the administration process, Class Counsel have reasonable and material concerns that the Distribution Protocol is producing an unjust result on the whole or to any material segment of the Class Members or that a modification is required or recommended, they shall move to the Court for approval of a reasonable modification to this Distribution Protocol or for further directions. Class Counsel shall seek input from the Claims Administrator and Defendant before taking any such steps.

G. CONFIDENTIALITY

27. All information received from the Defendant or the Class Members is collected, used, and retained by the Claims Administrator pursuant to, *inter alia*, the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 for the purposes of administering their Claims.

SCHEDULE "B"

Aps v. Flight Centre Travel Group (Canada) Inc.

Court File No.: CV-19-00614755-00CP

Administration Form

You must complete Administrative Form to receive a payment under the class action settlement. You are responsible for completing this Administrative Form in full and delivering it to the Claims Administrator by the deadline (_____, 2021). The Administrative Form must be received by the Claims Administrator by the deadline. Forms may be completed online or delivered by email, fax, or mail to the Claims Administrator. Please note that incomplete, incorrect or deficient forms may be returned by the Claims Administrator and must be corrected by the deadline.

Copies of the Distribution Protocol, Class Action Settlement, and Notices may be viewed online at goldblattpartners.com and flightcentreclassaction.com.

If you have any questions, contact the Claims Administrator or Class Counsel.

1. CLAIMANT INFORMATION

This information is required in order to confirm your identity and membership on the Class List, and to facilitate payment and remittances.

First Name

Last Name

Address

Email Address

Telephone Number

SIN

Date of Birth

Please note you are responsible for ensuring the contact information provided to the Claims Administrator is accurate and up-to-date. In the event of a change of address, etc. please contact the Claims Administrator and Class Counsel.

2. COMMUNICATIONS

I consent to receiving information and communications from the Claims Administrator and Class Counsel at the address, email address, and telephone number (including text messaging) provided above. I understand that the information I have provided above will only be used for administration of this Class Action Settlement. I understand I may withdraw my consent at any time, but that this

may affect the ability of the Claims Administrator and Class Counsel to reach me with important information about the Class Action, including to facilitate/ensure payment.

3. EMPLOYMENT HISTORY

This information is required in order to confirm your identity and membership on the Class List, and your eligibility to receive a payment.

LOCATION (Province and Name of Branch)	START DATE (Day/Month/Year)	END DATE (Day/Month/Year)	I WAS EMPLOYED AS A TRAVEL CONSULTANT DURING THIS TIME
			[CHECK BOX]
			[CHECK BOX]
			[CHECK BOX]
			[CHECK BOX]
			[CHECK BOX]
			[CHECK BOX]

I understand that if my name does not appear on the Class List, I may be contacted by the Claims Administrator and requested to provide additional information or documents to confirm my membership in the Class, and that my eligibility to receive payment depends on satisfactory and timely proof of my membership in the Class.

4. PAYMENT

This information is required in order to process your claim for payment. Please check one

I wish to receive payment by e-transfer to my email address provided above.

I wish to receive payment by electronic funds transfer to my bank account:

Bank account number:

Financial institution:

I wish to receive payment by cheque to the address provided above

Please note you are responsible for ensuring the payment information provided to the Claims Administrator is accurate and up-to-date. In the event of a change of payment information, please contact the Claims Administrator and Class Counsel.

5. CONTACT INFORMATION

In the event of questions or concerns, please contact the Claims Administrator or Class Counsel below:

[Claims Administrator]

Class Counsel

Tanya Atherfold-Desilva, Law Clerk

Goldblatt Partners LLP

T 416.979.4233 or 1-800-387-5422

F 416.591.7333

E tatherfold@goldblattpartners.com

20 Dundas Street W., Suite 1039

Toronto ON M5G 2C2

www.goldblattpartners.com

6. DECLARATION AND AFFIRMATION

I hereby declare and affirm my belief in the accuracy of the information provided in this form.

[CHECK BOX]

Note – it is a criminal offence to intentionally make a false statement

SCHEDULE "C"

NOTICE OF APPROVED CLASS ACTION SETTLEMENT *APS v. FLIGHT CENTRE TRAVEL GROUP (CANADA) INC.*

TO: All current or former Travel Consultants employed by Flight Centre Travel Group (Canada) Inc. in the Provinces of Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia and Newfoundland, for the period from December 2008 to **[the Date Certification is Granted in this Action]**.

A SETTLEMENT HAS BEEN APPROVED IN THE CLASS ACTION AGAINST FLIGHT CENTRE TRAVEL GROUP (CANADA) INC. ("FLIGHT CENTRE")

PLEASE READ THIS CAREFULLY as it describes how to claim your share of the settlement.

For more information about this class action and the settlement, please visit the following website: www.flightcentresettlement.com. If you have questions, you may also contact the Claims Administrator at **[insert contact]**.

What is the settlement?

Flight Centre has agreed to settle the class action for a total all-inclusive payment of \$7 million. The court has now approved the settlement, lawyers' fees and related expenses. You can read the court reasons approving the Settlement Agreement, Fees and Distribution Protocol at **[insert admin website link]**.

What should I do?

If you were a **Travel Consultant, Future Team Leader, Travel Manager and/or Reservation Specialist** in any of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia and/or Newfoundland at any time between December 2008 and **[the Date Certification is Granted in this Action]** go to www.flightcentresettlement.com and complete the form online. You must complete the form by no later than **[filing deadline]**.

After you complete the form and after the Filing Deadline has passed, the Claims Administrator will review your claim to make sure you are eligible to receive a share of the settlement. If you are eligible, you will receive your choice of a cheque, e-transfer or electronic funds transfer.

Your individual payment will be calculated on the basis of the court-approved Distribution Protocol. The amount you receive will depend on how long you worked during the Class Period at Flight Centre, the province where you worked and the number of Class Members who submit claims.

Where can I ask more questions?

Trilogy Class Action Services has been appointed by the court to administer this settlement. Any questions can be sent to Trilogy at **[insert admin contact]**.

You can also contact the lawyers for the Class Members at **[insert class counsel contact]**.

You can read the full Distribution Protocol and Settlement Agreement at **[insert administrator website]**.

Interpretation

This notice contains a summary of some of the terms of the Settlement Agreement and the Distribution Protocol. If there is a conflict between the provisions of this notice and the Settlement Agreement or the Distribution Protocol, the terms of the Settlement Agreement or Distribution Protocol, as applicable, shall prevail.

PLEASE DO NOT CALL FLIGHT CENTRE, THE COURTHOUSE OR THE REGISTRAR OF THE COURT ABOUT THIS SETTLEMENT.

This notice was approved by the Ontario Superior Court of Justice.

STEPHEN APS
Plaintiff and
HIGH CENTRE TRAVEL GROUP
(CANADA) INC.
Defendant

CV-19-6147335-CP

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at TORONTO

**ORDER
(DISTRIBUTION PROTOCOL
APPROVAL)**

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