

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MCMASTER UNIVERSITY

Applicant

- and -

A. LESLIE ROBB and JOHN P. EVANS, on their own behalf and on behalf of all the members, past members, annuitants and other beneficiaries (other than McMaster University) at any time between July 1, 2000 and December 31, 2000 inclusive of the Contributory Pension Plan for Salaried Employees of McMaster University including McMaster Divinity College (the “Plan”), and CIBC MELLON TRUST COMPANY in its capacity as trustee of the Plan

Respondents

PROCEEDING UNDER *the Class Proceedings Act, 1992 S.O. 1992, c. 6*

APPLICATION UNDER Rules 14.05(3)(a), (b), (c), (d), (f), (g) and (h) to the *Rules of Civil Procedure*

AFFIDAVIT OF KAREN BELAIRE

I, **KAREN BELAIRE**, of the City of Hamilton, in the Regional Municipality of Hamilton-Wentworth, **MAKE OATH AND SAY:**

1. I am the Vice-president of Administration at McMaster University (the “University”) and a member of the Contributory Pension Plan for Salaried Employees of McMaster University including McMaster Divinity College (the “Plan”). As such, I have personal knowledge of the matters deposed to in this affidavit, except where such matters are stated to be based on information and belief, in which case I verily believe them to be true.

2. The Applicant University is incorporated, organized and administered pursuant to the *McMaster University Act*, S.O. 1976 C.98.

3. The University is the sponsor and administrator of the Plan. The Plan, which dates back to 1947, is a defined benefit plan which provides retirement and ancillary benefits for most of the University's salaried staff. It is registered under the *Pension Benefits Act* (Ontario) and the *Income Tax Act* (Canada).

4. Between July 1, 2000 and December 31, 2000 a total of 3038 individuals qualified as active members of the Plan. In addition the Plan as at July 1, 2000 had 1,458 inactive members. The inactive members included pensioners, the surviving spouses and beneficiaries of deceased members in receipt of pensions, and those who were no longer employed by the University but had a deferred vested interest under the Plan.

5. The members of the Plan include those associated with various aspects of the University's operations. The 4496 people referred to in paragraph 4 include:

- (a) Past and present faculty members (743 active and 467 inactive). Most faculty members belong to the McMaster University Faculty Association, a non-profit corporation. The McMaster University Faculty Association is a voluntary organization and is not a certified union. The McMaster University Faculty Association, however, typically represents the interests of the faculty members in dealings with the University.
- (b) Clinical faculty (127 active and 89 inactive). The clinical faculty consists of the faculty of the medical school at the University. Most members of the clinical faculty are members of the McMaster University Clinical Faculty Association, an unincorporated voluntary association that typically represents the interests of the clinical faculty in dealings with the University.
- (c) Administrative, office and secretarial staff (1,688 and 535 inactive). These members are representative for collective bargaining purposes by the McMaster University Staff Association ("the Union").

- (d) Library staff (28 active and 21 inactive), some of whom are members of the McMaster University Faculty Association, and others of whom are members of the Union.
- (e) Staff of affiliated entities including, in particular, McMaster Divinity College (57 active and 35 inactive).
- (f) Research staff (53 active and 112 inactive).
- (g) Members of the University's management (312 active and 100 inactive).
- (h) Staff (28 active and 97 inactive).
- (i) One active hourly employee and one inactive hourly employee.
- (j) One other active employees and one other inactive member.

6. The University's Retiree Association is a voluntary organization which seeks to represent the interests of retired employees of the University.

7. Since 1980 annual reports which include valuations of the Plan's assets and liabilities have been prepared by William M. Mercer Limited, a firm of professional actuaries. The valuations have been done on both a going concern basis (which assumes that the Plan continues indefinitely into the future) and on a solvency basis (which assumes that the Plan terminates on the valuation date).

8. For many years, the actuarial valuations have indicated the existence of a growing surplus. That is, the actuarial reports have indicated that the assets in the Plan exceed the amount necessary to satisfy all of the liabilities which have accrued under the Plan.

9. Attached hereto and marked Exhibit "A" to this my Affidavit is a copy of the actuarial report prepared by William M. Mercer Limited as at July 1, 2000. That report indicates that as at July 1, 2000 the Plan had a surplus on a going concern basis of over \$324 million and a surplus of over \$349 million on a solvency basis. This was based on going concern assets of

\$968 million against going concern liabilities of \$643 million and solvency assets of \$966 million against solvency liabilities of \$617 million.

10. Despite contribution holidays taken by the University and from time to time by Plan members, the surplus continues to grow. The growth of the surplus in the Plan is evidenced by the following chart which summarizes the information in the actuarial valuation reports prepared for the Plan:

Date	Surplus on a Going Concern Basis	Surplus on a Solvency Basis
July 1, 1980	\$3.4 Million	N/A
July 1, 1981	\$7.3 Million	N/A
July 1, 1982	\$3.7 Million	N/A
July 1, 1983	\$10.5 Million	N/A
July 1, 1984	\$17.8 Million	N/A
July 1, 1985	\$13.2 Million	N/A
July 1, 1986	\$24.9 Million	N/A
July 1, 1987	\$34.2 Million	N/A
July 1, 1988	\$37.2 Million	\$134.9 Million
July 1, 1989	\$64.3 Million	\$171.3 Million
July 1, 1990	\$31.8 Million	\$158.1 Million
July 1, 1991	\$20.0 Million	\$169.3 Million
July 1, 1992	\$38.7 Million	\$153.8 Million
July 1, 1993	\$87.6 Million	\$174.9 Million
July 1, 1994	\$58.0 Million	\$177.0 Million
July 1, 1995	\$105.3 Million	\$209.5 Million

Date	Surplus on a Going Concern Basis	Surplus on a Solvency Basis
July 1, 1996	\$160.6 Million	\$249.1 Million
July 1, 1997	\$180.6 Million	\$311.5 Million
July 1, 1998	\$258.6 Million	\$320.6 Million
July 1, 1999	\$305.8 Million	\$319.8 Million
July 1, 2000	\$324.3 Million	\$349.7 Million

11. I am advised by John Higgins, the actuary at William M. Mercer Limited who prepared the more recent reports, that unless some deliberate action is taken to reduce the surplus in the Plan, there is no reasonable prospect of the surplus being dissipated under the current regulatory regime applicable to the Plan even if the University and Plan members take contribution holidays indefinitely into the future.

12. In September 1998, a task force was established comprised of representatives of the Union, the McMaster University Faculty Association, the McMaster University Clinical Faculty Association, the McMaster University Retirees Association, and University management to consider possible methods of utilizing all or part of the actuarial surplus under the Plan for the benefit of individual Plan beneficiaries and the University.

13. This task force generated a report which suggested a sharing of part of the surplus in the Plan. The specific proposal in that report was deemed impractical but the report led to the formation of the McMaster Employees' Pension Surplus Committee (the "Plan Member Committee") made up of representatives of the various member groups and associations.

14. The Plan Member Committee retained Koskie Minsky as its counsel and Eckler Partners Limited as its actuarial advisors.

15. After extensive negotiation between the Plan Member Committee and the University, the University and The Plan Member Committee entered into an agreement in

principle which is set out in a letter dated September 28, 2000, a copy of which is attached hereto and marked Exhibit "B". In this letter the University and the Plan Member Committee agreed, subject to member approval, to a distribution in cash of up to \$150,000,000 (plus interest) of the surplus to the University and Plan members with a 50-50 division of the distributed amount between the University and the persons who had an interest in the Plan.

16. At the time of the September 28, 2000 letter agreement, it was appreciated that it would likely be difficult to get unanimous consent of the almost 4,500 active and inactive Plan members to the proposal. The letter agreement contemplated, however, that if more than 90% of members of the Plan agreed, steps would be taken to create a new registered pension plan ("Plan 2000") consisting initially only of those persons from whom agreement to the surplus sharing proposal was received ("the Consenting Group").

17. The September 28, 2000 letter agreement was posted on the University website and on the website of the Faculty Association. A joint press release announcing and describing the surplus sharing proposal was issued. Toll free lines were established to answer questions.

18. Since the September 28, 2000 letter agreement, attempts have been made to ensure that the University has current addresses and correct data for all persons who were beneficiaries under the Plan between July 1 and December 31, 2000.

19. I am advised by Leslie Robb of the Plan Member Committee that the reports and documents attached as Exhibit "C" were sent to all individuals who qualified as active or inactive members of the Plan between July 1, 2000 and December 31, 2000 at addresses supplied by the University. The Plan beneficiaries were provided with an estimate prepared by William M. Mercer Limited indicating the amount he or she would receive under the proposal. Plan beneficiaries were provided with a schedule of the information meetings to be held by the Plan Member Committee, provided with a toll free number to ask questions and were invited to vote on whether or not to accept the proposal and to authorize Koskie Minsky to enter into a formal agreement.

20. I am advised by Leslie Robb of the Plan Member Committee that as at August 15, 2001 the results of the balloting were as follows:

	No. of Members	Yes Votes	No Votes	Percentage Yes Votes
Active Members	3038	3029	1	99.7
Inactive Members	1458	1438	0	98.6
TOTAL	4496	4467	1	99.3

21. As a result of the balloting results, the University has determined that it will cause Plan 2000 to be created and will pursue an application before the Financial Services Commission of Ontario (FSCO) for a transfer of all the liabilities of the Consenting Group under the Plan to Plan 2000 together with a proportionate share of the Plan's assets.

22. Attached hereto and marked Exhibit "D" to this my affidavit is the formal Surplus Sharing Settlement Agreement which has been concluded among the University, the Plan Member Committee and the various associations which represent Plan members.

23. Attached hereto and marked Exhibit "E" to this my affidavit is a copy of the Plan text for Plan 2000 which has been adopted by the Executive Committee of the Board of Governors of the University. The only people who will initially be members of Plan 2000 are those who have consented to the surplus sharing arrangement contained in the Surplus Sharing Settlement Agreement (or for whom consent has been provided pursuant to Section 10.1 of the *Pension Benefits Act Regulations*).

24. An application to approve the transfer of assets from the Plan to Plan 2000 is in the process of being prepared. If the transfer application is approved by FSCO, all of the liabilities of the Consenting Group under the Plan will be transferred to Plan 2000 together with a pro rata share of the Plan's assets. The liabilities of non-consenting members will remain in the Plan together with a pro rata share of the Plan's assets (including a pro rata share of the surplus).

25. It is anticipated that if this application is certified as a class proceeding, that the representative respondents will adhere to the Surplus Sharing agreement in their representative capacity and that the parties will seek to dispose of this application by seeking court approval of the settlement incorporated in the Surplus Sharing Settlement Agreement.

26. As part of the negotiations of the surplus arrangements, the University has made available to the Plan Member Committee and to counsel detailed information and documentation concerning the Plan history. This Plan history is summarized in the section below.

Plan History

27. I have reviewed the historical plan and funding documents which can be located in respect of the Plan. The history set out below is based on a review of those documents.

1947-1966

28. Prior to 1947 there was no contractual or funded retirement pension program for employees of the University. Retirement income was provided by means of compassionate grants.

29. A formal plan was established by the Board effective September 1, 1947. That plan consisted of an outline of benefits contained in minutes of the Board dated April 11, 1947 (attached hereto as Exhibit "F") and contracts between the University and The Manufacturers Life Assurance Company ("Manulife") and between the University and the Government of Canada. The original contract with Manulife is attached as Exhibit "G" and the original contract with the Government of Canada is attached as Exhibit "H". The funding contracts provided a means by which benefits could be financially secured by purchasing annuities for benefits earned each year in-so-far-as possible from the Government of Canada Annuities Branch under the authority of the *Canada Annuities Act* and thereafter from Manulife under group annuity policy No. G-158 ("G-158").

30. Several amendments were made to G-158 after September 1, 1947. Copies of amendments that could be located are attached hereto as Exhibit "I". Effective July 1, 1960, G-158, as amended, was superseded by a restatement attached hereto as Exhibit "J". G-158

continues to be held under the Plan. In 1960 the University stopped purchasing annuities from the Government of Canada Annuities Branch because the premium rate was more expensive than the premium rates of private insurance companies.

Plan Documents 1966 - Present

31. In 1966, after pension standards legislation was introduced in Ontario, the Board of the University adopted more formal written rules that described the pension rights and obligations of the University, employees and other persons entitled to payment from the Plan. Those rules are attached hereto as Exhibit “K” (hereinafter defined as “1966 Plan Text”).

32. On January 26, 1971 the Board adopted with effect from July 1, 1969 a more detailed restatement of the Plan rules which amended the 1966 Plan Text and superseded the 1966 Plan Text (the “1969 Plan Text”). The 1969 Plan Text is attached as Exhibit “L”.

33. The Board made several amendments to the 1969 Plan Text prior to December 1988, all of which are attached as Exhibit “M”.

34. On December 15, 1988 the Board authorized the amendments which were the subject of the litigation referred to in paragraph 38 below. Those amendments are attached hereto as Exhibit “N”.

35. On April 26, 1990 the Board adopted a restated text of the Plan (the “1990 Plan Text”) that superseded all prior versions of the text of the Plan and incorporated all amendments made since the 1969 Restatement except those then subject to dispute in the litigation referred to in paragraph 38 below. A copy of the 1990 Plan text is attached as Exhibit “O”.

36. Attached as Exhibit “P” is a copy of the only amendment located for the period between 1990 and 1992.

37. The Board subsequently adopted a revised text to the Plan as at June 11, 1992, a copy of which is attached hereto as Exhibit “Q”. This text included the 1988 amendments referred to in paragraph 34 above..

38. In 1990, litigation was commenced against the University on behalf of the Plan members which challenged both the University's practice of taking so-called "contribution holidays" and the 1988 Plan amendments. Attached hereto as Exhibit "R" are the reasons for decision of Haley J. in that matter dated June 25, 1991. Attached hereto as Exhibit "S" are the reasons for decision of the Ontario Court of Appeal dated May 31, 1995. Following the decision of the Court of Appeal, the Board adopted the amendments attached hereto as Exhibit "T".

39. Copies of other amendments adopted to the Plan between 1992 and 1997 are attached as Exhibit "U".

40. The Board adopted a restatement of the Plan as at July 1, 1997, a copy of which is attached as Exhibit "V".

41. Copies of amendments to the Plan adopted subsequent to 1997 are attached as Exhibit "W".

42. On August 8, 2001, the Executive Committee of the Board of Governors adopted a new restatement of the Plan as at July 1, 2000. This restatement incorporates amendments to permit implementation of the Surplus Sharing Settlement Agreement. A copy of the Plan restated as at July 1, 2000 is attached as Exhibit "X".

Funding Documents 1966 – Present

43. After 1966, the University used several financial carriers and different funding media to secure benefits promised under the Plan, including G-158 with Manulife (September 1947 to the present); custodial funding arrangements with Canada Trust and later CIBC Mellon Trust Company (March 1967 to the present); and a segregated fund contract with North American Life Company ("Nalaco") (June, 1975 to the present). No further benefits were purchased from Manulife after 1976.

44. In 1966, at the direction of the Executive Committee of the Board, the University requested outside consultants, (Johnson & Higgins (Canada) Limited) to receive and evaluate proposals from different funding agents that consisted of insurance companies and trust

companies, following which the University entered into a funding arrangement with Canada Trust Company ("Canada Trust"). A copy of the 1967 funding agreement with Canada Trust is attached hereto as Exhibit "Y". The 1967 Canada Trust Agreement was amended by agreement made as of October 22, 1975 between the University and Canada Trust. The 1975 agreement is attached hereto as Exhibit "Z". A securities lending agreement that was entered into between Canada Trust and McMaster University on January 3, 1990 is attached as Exhibit "AA". Canada Trust was replaced as Trustee by CIBC Mellon Trust Company in 1999. A copy of the trust agreement between the University and CIBC Mellon Trust Company dated June 30, 1999 is attached as Exhibit "BB".

45. With effect from June 23, 1975, the University entered into a segregated fund contract, policy No. NS-7190 with Nalaco. The contract is attached hereto as Exhibit "CC" and is referred to herein as "NALACO Policy NS-7190. It provides, at the option of the University, for investment of Plan assets in a fund managed by Nalaco and for purchase of annuities at the guaranteed premium rates set out therein. On October 22, 1975 and with effect from June 23, 1975, the University assigned Nalaco Policy No. NS-7190 to Canada Trust. A copy of the assignment agreement is attached hereto as Exhibit "DD".

Historical Employee Communications

46. From time to time, the staff of the University have produced written material in the form of employee booklets and statements to explain rights and obligations or entitlements of persons entitled to retirement and ancillary benefits under the Plan. The University has also produced consolidated Plan texts as an aid in Plan administration and to facilitate discussions of pension matters by staff and committees and sub-committees established by the Board or officers of the University. These documents were not adopted by the Board or filed with applicable regulatory authorities. They have however been widely distributed to members of the McMaster community and are identified below:

- (a) An explanatory booklet dated July 1, 1960, entitled "McMaster University (Including McMaster Divinity College) Pension Plan", is attached as Exhibit "EE" (the "1960 Booklet").

- (b) A copy of a March 1, 1963 reprint of the 1960 Booklet is attached hereto as Exhibit "FF".
- (c) A document entitled "Contributory Pension Plan For Salaried Employees (As Revised July 1, 1969) McMaster University including McMaster Divinity College" is attached hereto as Exhibit "GG".
- (d) On July 1, 1977 a consolidated text of the Plan was prepared by University staff (the "1977 Consolidation"). The purpose of the 1977 Consolidation was to incorporate all previous amendments and to clarify administration. The 1977 Consolidation was not adopted by the Board, but was relied upon by University administrators and various committees and sub-committees, including committees in which members of the faculty, staff and clinical faculty were represented. A copy of this document is attached hereto as Exhibit "HH".
- (e) Effective June 30, 1985, the 1977 consolidation was superseded by another document prepared by staff entitled "Contributory Pension Plan For Salaried Employees of McMaster University Including McMaster Divinity College" (as amended and restated at June 30, 1985), (the "1985 Consolidation"). The 1985 Consolidation was submitted to the Pension Trust Committee (a body that consults and makes recommendations on pension matters affecting the University and Plan members) for information but was not adopted by the Board. A copy of the 1985 Consolidation is attached as Exhibit "II".
- (f) The Handbook for Salaried Staff, a copy of the seventh edition of which is attached as Exhibit "JJ".

SWORN BEFORE ME at the)
City of Hamilton this 23rd day)
of August, 2001)
)
_____)
A Commissioner etc.)

KAREN BELAIRE

Court File No.

MCMASTER UNIVERSITY v. A. LESLIE ROBB, et al
Applicant Respondents

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

AFFIDAVIT OF KAREN BELAIRE

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