

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) DAY, THE DAY
)
MR. JUSTICE) OF , 2001

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*

JUDGMENT

THIS APPLICATION and a Motion to approve a settlement therein were heard on _____, 2001 in the presence of counsel for the Applicant, counsel for the representative Respondents, and counsel for CIBC Mellon Trust Company ("the Trustee).

ON READING the Notice of Application and the evidence filed by the parties, and on hearing submissions of counsel for the Applicant and the representative Respondents:

1. **THIS COURT ORDERS** and declares that, subject to the consent of the Superintendent of Financial Institutions pursuant to section 81 of the *Pension Benefits Act*, R.S.O. 1990, c.P-8 (the “*Pension Benefits Act*”), a transfer of assets from the Plan to the Contributory Pension Plan for Salaried Employees of McMaster University including McMaster Divinity College 2000 (“Plan 2000”) in the amount and in the manner described in of the Surplus Sharing Agreement which is attached hereto as Appendix A (“the Surplus Sharing Agreement”) is lawful and permissible under the terms of any trust applicable to the Plan assets.

2. **THIS COURT FURTHER ORDERS** that upon completion of a transfer of assets as referred to in paragraph 1, the only members, past members, annuitants and beneficiaries (other than McMaster University) of the Plan who will have any interest in the assets of Plan 2000 are those whose liabilities are transferred from the Plan to Plan 2000 in accordance with the Surplus Sharing Agreement.

3. **THIS COURT FURTHER ORDERS** and declares that, within the meaning of paragraph 79(1)(b) of the *Pension Benefits Act*,

(a) payment of surplus to the Applicant in accordance with the Surplus Sharing Agreement is provided for by Plan 2000; and

(b) upon completion of the transfer of assets referred to in paragraph 1 above, the Applicant is entitled to withdraw surplus from the Plan 2000 in accordance with the terms and provisions of the Surplus Sharing Agreement.

4. **THIS COURT FURTHER ORDERS** that, as soon as is practicable after the later of

(a) the date upon which the transfer of assets from the Plan to Plan 2000 is completed in accordance with paragraph 1 above and the Surplus Sharing Agreement; and

- (b) the date on which a consent from the Superintendent of Financial Services pursuant to subsection 78(1) of the *Pension Benefits Act* is filed by the applicant with this Honourable Court,

there shall be paid from the total surplus in Plan 2000,

- (c) to the Applicant for its own use absolutely, the amount identified in the Surplus Sharing Agreement as the University Portion; and
- (d) for the exclusive benefit of the Surplus Sharing Group (as defined in the Surplus Sharing Agreement), the amount identified in the Surplus Sharing Agreement as the Member Portion,

and McMaster University, the Trustee and their respective directors, officers, employees and agents are hereby authorized and directed to effect such payments.

5. **THIS COURT FURTHER ORDERS** that the representative Respondents have authority to execute and implement the Surplus Sharing Agreement on behalf of the class.

6. **THIS COURT FURTHER ORDERS** that the respondent John P. Evans has, in accordance with section 10.1 of *Pension Benefits Act* Regulation 909, authority to execute and implement the Surplus Sharing Agreement on behalf of any person who on July 1, 2000 was in receipt of a pension payable from the Plan or from Plan 2000 who has neither consented nor objected to the distribution of surplus contemplated by the Surplus Sharing Agreement.

7. **THIS COURT FURTHER ORDERS** that the settlement of this application on the terms set forth in the Surplus Sharing Agreement be and is hereby approved pursuant to section 29(3) of the *Class Proceedings Act*.

8. **THIS COURT FURTHER ORDERS** that the Applicant and the representative Respondents shall have their costs of this application on a solicitor and client basis paid from the assets of Plan 2000 in accordance with the Surplus Sharing Agreement

9. **THIS COURT FURTHER ORDERS** that nothing in this Judgment determines or alters the rights of any person or party to any surplus which remains in either the Plan or Plan 2000 following the transfer referred to in paragraph 1 and the payments referred to in paragraphs 4 and 8 above.

10. **THIS COURT FURTHER ORDERS** that should the Superintendent of Financial Services fail to provide her consent pursuant to section 81 and subsection 78(1) of the *Pension Benefits Act* and file such consents with this Honourable Court, this Judgment shall be null and void and without prejudice to the rights of the parties to proceed with this application and any agreement between the parties incorporated in this Judgment shall be deemed in any subsequent proceedings to have been made without prejudice.

Court File No.

MCMASTER UNIVERSITY v. A. LESLIE ROBB, CHRIS BUTCHER, et al

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

JUDGMENT

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