

**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*

**NOTICE OF MOTION**

**THE APPLICANT** will make a motion on Tuesday, the 4<sup>th</sup> day of September,  
2001 at 10:00 a.m. or as soon thereafter as the motion can be heard before the Honourable Mr.  
Justice Cumming in chambers at 361 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THIS MOTION IS FOR :**

1. An order certifying this application as a class proceeding pursuant to the *Class Proceedings Act, 1992* R.S.O. 1992, c.6.
2. An order that the respondent class be defined as: “all members, past members, annuitants and other beneficiaries (other than McMaster University) at any time between July 1, 2000 and December 31, 2000 of the Contributory Pension Plan for Salaried Employees of McMaster University including McMaster Divinity College”.
3. An order that the common issue be defined as:
  - (a) whether the Contributory Pension Plan for Salaried Employees of McMaster University including McMaster Divinity College 2000 (Plan 2000) provides for the payment of surplus to the Applicant while Plan 2000 continues its existence;
  - (b) whether it is permissible to transfer assets from the Plan to Plan 2000 and distribute surplus assets from Plan 2000 to the Applicant and beneficiaries of Plan 2000 as provided for in the Surplus Sharing Settlement Agreement dated as of May 31, 2001 entered into by the Applicant and the Representative Respondents (the “Surplus Sharing Settlement Agreement”);
  - (c) who is entitled to surplus assets in Plan 2000 following a transfer of assets and liabilities from the Plan to Plan 2000;
  - (d) the manner in which surplus held in Plan 2000 may be distributed or otherwise dealt with prior to wind-up of either the Plan or Plan 2000;
  - (e) whether the Applicant and the representative respondents are entitled to have the costs of this application on a solicitor and its own client basis paid out of the assets of Plan 2000.
4. An order appointing A. Leslie Robb and John P. Evans as representative respondents for the class.

5. An order appointing John P. Evans as a representative pursuant to Section 10.1 of the *Pension Benefit Act* Regulations on behalf of any person in receipt of a pension payable from the Plan on July 1, 2000 who has neither consented nor objected to the distribution of surplus contemplated by the Surplus Sharing Settlement Agreement.
6. An order approving the form and manner of providing notice to the class.
7. An order that the deadline for opting out of the class be September 30, 2001;
8. Such further and other relief as to this Honourable Court may seem just.

**THE GROUNDS FOR THIS MOTION ARE:**

- (a) the notice of application raises a cause of action;
- (b) there is an identifiable class of two or more persons;
- (c) the claims against the proposed class raise common issues;
- (d) a class proceeding would be the preferable procedure for resolution of this application;
- (e) the proposed representative respondents should fairly and adequately represent the interests of the class, have produced a plan for proceeding that sets out a workable method of advancing the proceeding and notifying class members and do not have an interest in conflict with the interest of other class members;
- (f) sections 5(1) and 17 of the *Class Proceedings Act, 1992*;
- (g) Section 10.1 of the *Pension Benefit Act* Regulations;
- (h) Rule 10 of the *Rules of Civil Procedures*; and
- (i) such further and other grounds as counsel may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

- (a) the application record herein including the affidavit of Karen Belaire sworn August 23, 2001;
- (b) the affidavit of A. Leslie Robb to be sworn;
- (c) the affidavit of John P. Evans to be sworn;
- (d) the written consent of the parties; and
- (e) such further and other material as counsel may advise and this Court may permit.

Date: August 23, 2001

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AND TO: CIBC Mellon Trust Company  
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Attention: Kevin Rowe

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

**SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

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