

**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 APPLICATION

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The
claim made by the applicant appears on the following page.

THIS APPLICATION will come on for hearing before the Honourable Mr.
Justice Cumming on Wednesday, October 31, 2001, at 10:00 a.m. or as soon after that time as
may be available at 130 Queen Street West, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer
acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the

Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but not later than 2 p.m. on the day before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to oppose this application but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

Date: August , 2001

Issued by: _____
Address of
Court Office: 393 University Avenue
Toronto, Ontario

TO: KOSKIE MINSKY
Barristers and Solicitors
P.O. Box 52
20 Queen Street West, Suite 900
Toronto, ON M5H 3R3

Tel: (416) 977-8353
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Solicitors for A. Leslie Robb and;
John P. Evans

AND TO: CIBC MELLON TRUST COMPANY

320 Bay Street, 4th Floor
Toronto, Ontario M5H 4A6

APPLICATION

1. The Applicant makes an application for:
 - (a) an order certifying this proceeding as a class proceeding pursuant to the *Class Proceedings Act, 1992*, (the “CPA”) and appointing A. Leslie Robb and John P. Evans as the representatives for the respondent class being comprised of all members, past members, annuitants and other beneficiaries (other than the 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”);
 - (b) an order appointing John P. Evans as a representative pursuant to section 10.1 of the *Pension Benefits Act* Regulation 909 on behalf of any person in receipt of a pension payable from the Plan who has neither consented to nor objected to the distribution of surplus contemplated by the Surplus Sharing Settlement Agreement in respect of the Plan dated as of May 31, 2001 (“the Surplus Sharing Settlement Agreement”);
 - (c) an order for directions with respect to service on the class pursuant to section 17 of the CPA and directions with respect to the cost of any notice required and of the proceeding generally, pursuant to section 22 of the CPA;
 - (d) declaration that the transfer of assets and liabilities from the Plan to the Contributory Pension Plan for Salaried Employees of McMaster University including McMaster Divinity College 2000 (“Plan 2000”) in accordance with the Surplus Sharing Settlement Agreement is, subject to the approval of the Superintendent of Financial Institutions, lawful and is permissible under the terms of any trust applicable to the Plan assets;
 - (e) a declaration that the Applicant is entitled, within the meaning of paragraph 79(1)(b) of the *Pension Benefits Act*, to withdraw surplus from Plan 2000 in

accordance with the terms and provisions of the Surplus Sharing Settlement Agreement;

- (f) a declaration that payment of surplus to the Applicant in accordance with the Surplus Sharing Settlement Agreement is provided for by Plan 2000 within the meaning of paragraph 79(1)(b) of the *Pension Benefits Act*;
- (g) a declaration that upon completion of a transfer of assets from the Plan to Plan 2000 in accordance with the Surplus Sharing Settlement Agreement, 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 Settlement Agreement;
- (h) an order directing distribution to the Applicant and the members of Plan 2000 of a portion of the surplus held by Plan 2000 in accordance with the Surplus Sharing Settlement Agreement;
- (i) an order that the costs of the Applicant and the class representative respondents of this application on a solicitor and his own client basis be paid out of Plan 2000;
- (j) such further and other relief as to this Honourable Court may seem just.

2. The grounds for the application are:

- (a) if the Plan were wound up effective July 1, 2000, it is estimated that it would have surplus funds of over \$300 million;
- (b) the Applicant and approximately 99 percent of the Plan members have entered into an agreement to share part of the surplus in the Plan;

- (c) the transfer of assets and liabilities from the Plan to Plan 2000 will not prejudice any current or past members of the Plan;
- (d) 100 percent of the members of Plan 2000 have agreed that part of the surplus which will be in Plan 2000 following the transfer of assets and liabilities should be shared between the Applicant and the members of Plan 2000;
- (e) Plan 2000 provides for payment of surplus funds to the Applicant;
- (f) the *Pension Benefits Act* and the regulations thereunder;
- (g) the *Class Proceedings Act, 1992*;
- (h) rules 14.05(3)(a), (b), (c), (d), (f), (g) and (h) of the *Rules of Civil Procedure*; and
- (i) such further and other grounds as counsel may advise and this Honourable Court may permit.

3. The following documentary evidence will be used at the hearing of the application:

- (a) The affidavit of Karen Belaire sworn August 22, 2001; and
- (b) such further material as counsel may advise and this Honourable Court may permit.

Date: August 22, 2001

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Solicitors for the Applicant

Court File No.

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

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

NOTICE OF APPLICATION

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