

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) TUESDAY, THE 4TH DAY
)
MR. JUSTICE CUMMING) OF SEPTEMBER, 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*

ORDER

THIS MOTION for certification of this application as a class proceeding was heard this day in the presence of counsel for the Applicant and counsel for the Respondents.

ON READING the Notice of Motion, the evidence filed by the parties, and on hearing submissions of counsel for the Applicant and for the proposed Representative Respondents,

1. THIS COURT ORDERS that this application be and is hereby certified as a class proceeding under the *Class Proceedings Act, 1992*.

2. THIS COURT FURTHER ORDERS that the Respondent Class is identified as “all 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”.

3. THIS COURT FURTHER ORDERS that the relief sought from the Class shall be:

- (a) a declaration that a transfer of assets and liabilities from the Plan to the Contributory Pension Plan for Salaried Employees of McMaster University including Divinity College 2000 (“Plan 2000”) in accordance with the Surplus Sharing Settlement Agreement in respect of the Plan dated as of May 31, 2001 (the “Surplus Sharing Settlement Agreement”) is lawful and is permissible under the terms of any trust applicable to the Plan assets;
- (b) a declaration that the Applicant is entitled, with 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;
- (c) 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*;

- (d) 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.
- (e) 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;
- (f) 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;
- (g) such further and other relief as to this Honourable Court may seem just.

4. THIS COURT FURTHER ORDERS that the response asserted on behalf of the Class will be to seek an order that members of the Class who were entitled to benefits under the Plan at any time between July 1, 2000 and December 31, 2000 and have consented to becoming members of Plan 2000 are entitled to some of the surplus in Plan 2000.

5. THIS COURT FURTHER ORDERS that the common issues for the Class are whether the Applicant is entitled to the relief set out in paragraph 3 above and specifically:

- (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 members of Plan 2000 as provided for in 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.

6. THIS COURT FURTHER ORDERS that A. Leslie Robb and John P. Evans be and are hereby appointed as Representative Respondents for the Class.

7. THIS COURT FURTHER ORDERS that John P. Evans is appointed 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.

8. THIS COURT FURTHER ORDERS that the Representative Respondents send on or before September 14, 2001 by first class mail Notice of Certification in the form attached hereto as Schedule "A" to: (i) the last known address of each identified member of the Class (excluding those who have retained Koskie Minsky in this matter) who was entitled to benefits under the Plan at any time between July 1, 2000 and December 31, 2000; (ii) the last known address of any member of the Class who had no entitlement to benefits under the Plan at any time between July 1, 2000 and December 31, 2000 but who, to the knowledge of the representative respondents, has expressed in writing opposition to the Surplus Sharing Settlement Agreement.

9. THIS COURT FURTHER ORDERS that Notice of Certification in the form attached hereto as Schedule "A" be published on or before September 15, 2001 in each of the *The Globe and Mail* and *The Hamilton Spectator*.

10. THIS COURT FURTHER ORDERS that members of the Class may opt out of the class proceeding by serving by registered mail or facsimile notice of desire to opt out of the proceeding on:

KOSKIE MINSKY
20 Queen Street West, Suite 900
Toronto, Ontario M5H 3R3

Attention: Mark Zigler, Michael Mazzuca
or Ari Kaplan

Fax (416) 977-3316

11. THIS COURT FURTHER ORDERS that notice from members of the Class wishing to opt out of the class proceeding must be received by midnight October 19, 2001, after which a member may not opt out.

SCHEDULE "A"

NOTICE OF CERTIFICATION

[DATE]

TO: THE MEMBERS, PAST MEMBERS, ANNUITANTS AND OTHER BENEFICIARIES 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")

RE: PENSION SURPLUS

Nature of the Proceeding

McMaster University ("McMaster") has commenced an application in the Ontario Superior Court of Justice to permit payment of part of the surplus in the Contributory Pension Plan for Salaried Employees of McMaster University including McMaster Divinity College (the "Plan") to be made to McMaster and to those who have consented to a Surplus Sharing Settlement Agreement.

The application was certified by the Honourable Mr. Justice Cumming on September 4, 2001 as a class proceeding under the *Class Proceedings Act, 1992*.

The outcome of this application will affect whether or not you receive a distribution of any of the surplus in the Plan.

Representatives of the Class

The court has appointed A. Leslie Robb and John P. Evans as the Representative Respondents for all members, past members, annuitants and other beneficiaries at any time between July 1, 2000 and December 31, 2000 inclusive of the Plan.

Legal Representation

The Representatives have retained Mark Zigler and Michael Mazzuca of the law firm of Koskie Minsky to represent them as representatives of the Class in these proceedings. The Representative Respondents propose to work as part of a committee to collectively instruct Koskie Minsky with respect to these proceedings.

The Settlement

The Representative Respondents propose to enter into a settlement agreement with McMaster which provides for part of the surplus in the Plan to be shared between the University and consenting Class Members who had an interest in the plan at any time between July 1, 2000 and December 31, 2000. The settlement agreement does not provide for any payment of surplus to past members of the Plan who withdrew their assets from the Plan prior to July 1, 2000. A motion to approve the settlement will be heard at 10:00 a.m. on October 31, 2001 before the Honourable Mr. Justice Cumming at 130 Queen Street West, Toronto, Ontario. Further information concerning this hearing may be obtained by contacting Koskie Minsky.

Order Binding on All Members of the Class

Please be advised that an order of the court in this application whether favourable or not (including an order approving any settlement) will bind all members of the Class unless such person chooses to opt out of the class proceeding in accordance with the next section.

Opting Out

In order to opt out of the class proceeding you must ensure that written notice to that effect is received by registered mail or fax before midnight on October 19, 2001 by

KOSKIE MINSKY
20 Queen Street West, Suite 900
Toronto, Ontario M5H 3R3

Attention: Mark Zigler, Michael Mazzuca
or Ari Kaplan

Fax (416) 977-3316

If you do not opt out prior to this date, you will be deemed to be a member of the Class. You may wish to obtain independent legal advice with respect to this matter if you choose to opt out of the proceedings.

Inquiries

Inquiries concerning this proceeding should be directed to the lawyer acting for the Representative Respondents being:

KOSKIE MINSKY
20 Queen Street West, Suite 900
Toronto, Ontario M5H 3R3

Attention: Mark Zigler, Michael Mazzuca
or Ari Kaplan

Fax (416) 977-3316

A. Leslie Robb and John P. Evans

Court Appointed Representatives in Ontario Proceeding •

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

SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

ORDER

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