

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DENNIS F. CAPONI

Plaintiff

- and -

THE CANADA LIFE ASSURANCE COMPANY,  
A.P. SYMONS, D. ALLEN LONEY AND JAMES R. GRANT

Defendants

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION  
(DEFENDANT'S MOTION TO COMPEL ANSWERS TO REFUSALS)  
(RETURNABLE JANUARY 28, 2013)**

The Defendant The Canada Life Assurance Company ("Canada Life") will make a motion to the Court on Monday January 28, 2013 at 10:00 a.m., or as soon after that time as the motion can be heard at 393 University Avenue, Toronto, Ontario, M5G 1E6.

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

**THE MOTION IS FOR:**

- (a) an order compelling the Plaintiff Dennis Caponi to answer the questions listed in Schedule "A" hereto which were either refused during the course of Mr. Caponi's examination for discovery held on February 15, 2012 or which were taken under advisement at the examination for discovery and which to date have not been answered;

- (b) costs of this motion; and,
- (c) such further and other relief as this Honourable Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

- (a) on February 15, 2012, the representative plaintiff in this class proceeding, Dennis Caponi, was examined for discovery;
- (b) in the course of the examination, Mr. Caponi's counsel took under advisement or refused to allow Mr. Caponi to answer the questions set out in Schedule "A";
- (c) to date, the Plaintiff has not provided answers to the questions set forth in Schedule "A";
- (d) the questions listed in Schedule are relevant to issues raised in the pleadings;
- (e) Rules 1.04, 31, 37, and 39 of the *Rules of Civil Procedure*;
- (f) section 12 of the *Class Proceedings Act, 1992* (Ontario); and
- (g) such further and other grounds as counsel may advise and this Honourable Court may permit.

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

- (a) the affidavit of Loretta Choi, sworn December 10, 2012;
- (b) the affidavit of Jill Wagman, sworn December 11, 2012;

- (c) excerpts from the transcripts from the examination of Dennis Caponi on February 15, 2012, and certain of the documents referred to therein;
- (d) the pleadings in this action;
- (e) the Reasons for Decision concerning certification dated January 13, 2009, and the Certification Order arising therefrom dated May 11, 2009; and
- (f) such further and other materials as counsel may advise and this Honourable Court may permit.

December 12, 2012

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James R. Grant.

## SCHEDULE "A"

### REFUSALS CHART

REFUSALS					
Refusals to answer questions on the examination of Dennis Caponi, dated February 15, 2012					
Issue & relationship to pleadings or affidavit	Question No.	Page No.	Specific Question	Answer or precise basis for refusal	Disposition by the Court
1. Paragraphs 13 and 25 of the Statement of Claim (relevant to the allegation that Canada Life was not permitted to wind-up the supplemental plan) and Common Issue 5(b)(i) as per the Order of Cullity J. dated May 11, 2009	116, 120	32	<b>Refusal:</b> To indicate which documents the plaintiff relies upon in support of the assertion in the pleadings, particularly paragraphs 13 and 25 of the statement of claim, that Canada Life had no right to wind up the supplemental plan, separate and apart from the registered plan.		
2. Paragraphs 46, 54(g), 56, and 57 of the Statement of Claim, and Common Issue 5(d) (relevant to the allegation that class members' benefits were not properly calculated)	189	54	<b>Refusal:</b> To advise as to the employment income that Mr. Caponi receives today.		
3. Same as for refusal #2 above	192-194	56	<b>Refusal:</b> To provide information concerning all sources of income received by Mr. Caponi, other than amounts he received from Canada Life, from 2005 onwards. And if any of these sources are likely		

				to change, to so advise or provide best estimates.	
4. Same as for refusal #2 above	195, 220	57, 64		<b>Refusal:</b> To provide Mr. Caponi's tax returns for the period of 2005 to 2011 filed in the U.S. and Canada.	
5. Same as for refusal #2 above	196-200	57-59		<p><b>Refusal:</b> To provide, for those class members who received lump sum payments of \$200,000 or more (before withholding tax) from Canada Life upon the partial windup of the Canada Life supplemental retirement plan in 2005, the following:</p> <p>(i) for those individuals who have retired, a breakdown of yearly income by source. If that source is subject to change prior to the class member's death, to so indicate. Also provide for each individual, the date the individual ceased active employment with Canada Life; and the date that they retired from all sources of employment; and</p> <p>(ii) for those individuals who have not retired, to provide their anticipated yearly income level at their anticipated retirement date, broken down by source of income; and</p> <p>(iii) to provide tax returns of these individuals (both retired and non-retired) from 2005 onwards.</p>	
6. Paragraphs 5 and 10 of the Statement of Defence and Counterclaim of Canada Life (relevant to the allegation that there was no right to partially wind up the supplemental plan and Canada Life's defence	84	21		<p><b>Under Advice:</b> To advise if Mr. Caponi becomes aware of any other class members who received a copy of Exhibit E, a document produced by Canada Life, volume 1, tab 4, labeled "To all employees (levels D, E and F) in head office and subsidiary companies" written by R. Kucharski.</p>	

<p>as to its right, in its sole discretion, to amend the terms upon which it provided supplemental plan benefits as well terminate the provision of supplemental plan benefits)</p>					
<p>7. Paragraph 15, 16, and 42 of the Statement of Claim (relevant to the allegation that the supplemental plan text was not provided to class members)</p>	<p>101</p>	<p>25</p>	<p><b>Under Advisement:</b> Do you have any information about whether any class members asked for or received copies of the supplemental plan prior to 2005?</p>		

**December 12, 2012**

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