

*Ontario*  
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MADAM

JUSTICE HOY

BETWEEN:

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THURSDAY, THE 11<sup>th</sup> 27<sup>th</sup> day of  
~~MAY~~ JUNE, 2006 *on ✓*

MONTREAL TRUST COMPANY OF CANADA

Applicant

- and -

JAMES ROBERT ARMSTRONG, KENNETH JAMES MCGREGOR,  
and DONALD ROSS LARGE

Respondents

**APPLICATION UNDER Rules 14.05(3)(a), (d) and (g) of the  
*Rules of Civil Procedure***

**Proceeding under the *Class Proceedings Act, 1992***

**ORDER**

**THIS MOTION**, made by the Applicant for certification of this application as a class proceeding and for related relief was heard this day in the presence of counsel for the Applicants, and counsel for the Respondents, no-one opposing this motion.

**THIS ORDER** replaces the previous Order of Madam Justice Hoy, dated May 11, 2006, in respect of this matter.

**ON READING** the Notice of Motion, the Affidavit of Donald Ross Large, sworn May 3, 2006, and the exhibits thereto, the Affidavit of Kenneth James McGregor, sworn May 3, 2006, the Affidavit of James Robert Armstrong, sworn May 3, 2006, the Affidavit of Odette Ferland, sworn May 4, 2006, the Supplementary Affidavit of Odette Ferland, sworn June 14,

2006, and the exhibits thereto, and the notice contained in the Joint Motion Record, and on hearing the submissions of counsel for the Applicant and the Respondents,

1. **THIS COURT ORDERS** that this motion is properly returnable today, that time for service of the Notice of Motion and Motion Record herein is hereby abridged, and that further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS** that this application is hereby certified as a class proceeding pursuant to the *Class Proceedings Act, 1992 S.O. 1992, c. 6*.

3. **THIS COURT ORDERS** that for the purposes of this class proceeding, the class (the "Class") is defined as:

- (i) all persons who are entitled to benefits or other payments from the Montreal Trust Pension Plan (2001) (the "Plan") on the date the Plan is terminated by the Applicant (the "Wind-Up Date");
- (ii) the estates of all persons who were entitled to benefits or other payments under the Plan on April 17, 2002, if such a person has subsequently died and there are no benefits or other payments owing from the Plan to any other person on the Wind-Up Date as a result of the death of such person;
- (iii) all individuals who were alive on April 17, 2002 who terminated employment with the Applicant on or after December 2, 1993 and were entitled to benefits under the Plan at the time of such termination, or who were deferred vested members on or after that date, whose benefits have been settled and who therefore will not be entitled to benefits or any other payments under the Plan on the date the Plan is terminated by the

Applicant, or the estate of such individual if the individual died or dies after April 17, 2002; and

- (iv) the estates of all persons who were included in a past partial wind-up of the Plan and who died prior to April 17, 2002.

4. **THIS COURT ORDERS** that James Robert Armstrong, Kenneth James McGregor, and Donald Ross Large are appointed as representative respondents (the "Representative Respondents").

5. **THIS COURT ORDERS** that the common issue for the Class is:

Under the terms of the Plan, is the Applicant entitled to the actuarial surplus remaining in the Plan after the payment of all accrued benefits and permissible expenses (the "Surplus"), and does the Plan permit payment of such Surplus to the Applicant?

6. **THIS COURT ORDERS** that pursuant to section 17 of the *Class Proceedings Act*, notice of certification of this application as a class proceeding shall be substantially in the form of the Notice of Certification of a Class Proceeding which is attached as Schedule "A" to this Order (together with the French language version required by paragraph 8 of this Order, the "Notice"), and said form of notice is hereby approved.

7. **THIS COURT ORDERS** that notice pursuant to section 17 of the *Class Proceedings Act* is dispensed with in respect of those individuals who have retained Koskie Minsky LLP to execute the Surplus Sharing Agreement on their behalf.

8. **THIS COURT ORDERS** that the Representative Respondents or their counsel shall arrange to have the Notice translated into the French language and certified by affidavit of the translator, which affidavit is to be filed with the Court.

9. **THIS COURT ORDERS** that:

- (a) the Applicant shall provide the Representative Respondents with a list containing the names and last known addresses of all the members of the Class, their status under the Plan and the province in which they were last employed by the Applicant or one of its affiliates;
- (b) counsel for the Representative Respondents shall, from time to time in response to reasonable requests from the Applicant, provide the Applicant with a list of the "Represented Participants" (as that term is defined in the Surplus Sharing Agreement), a list of those members of the Class who returned retainer forms to them but who are not Represented Participants, as well as information regarding individuals who elect to opt out of the class proceeding as contemplated in paragraphs 12 and 13 below, and information as to the addresses of members of the Class to the extent that information differs from the information provided to the Applicant pursuant to paragraph 9(a) of this Order; and
- (c) the disclosures required pursuant to paragraphs 9(a) and (b), above, are required to comply with this Order, within the meaning of the *Personal Information Protection And Electronic Documents Act*, S.C. 2000, c. 5, and are relevant to the objects of the respective files containing such information, within the meaning of *An Act Respecting The Protection Of Personal Information In The Private Sector*, R.S.Q., c. P-39.1.

10. **THIS COURT ORDERS** that, where such addresses are available, the Representative Respondents shall send a copy of both the English and French versions of the Notice by first class mail to the last-known address of each Class member (other than those Class members to whom paragraph 7 of this Order applies), as provided to the Representative Respondents by the Applicant in accordance with paragraph 9 of this Order, or to such other address as the Representative Respondents believe, after using best efforts to identify a current address, is accurate.

11. **THIS COURT ORDERS** that the Representative Respondents shall arrange to have the English language version of the Notice published once in a weekend edition of each of The Globe and Mail and The Montreal Gazette, and the French language version of the Notice published once in a weekend edition of La Presse (Montréal).

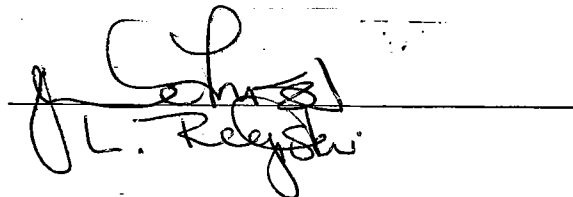
12. **THIS COURT ORDERS** that members of the Class may opt out of the class proceeding by delivering written notice by facsimile to Koskie Minsky LLP at (416) 977-3316, or by mail to Koskie Minsky LLP at 20 Queen Street West, Suite 900, Box 52, Toronto, Ontario M5H 3R3.

13. **THIS COURT ORDERS** that any member of the Class who wishes to opt out of this class proceeding may only do so by delivering written notice in accordance with paragraph 12 of this Order on or before the 30<sup>th</sup> day following the later of the mailing of the Notice or the publication of the Notice, pursuant to paragraphs 10 and 11 of this Order, after which date Class members shall not be permitted to opt out of this class proceeding.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 28 2006

AS DOCUMENT NO.:  
À TITRE DE DOCUMENT NO.:  
PER / PAR:

  
J.L. Regehr

## SCHEDULE "A"

### NOTICE OF CERTIFICATION OF A CLASS PROCEEDING

**TO: MEMBERS, FORMER MEMBERS, SPOUSES AND OTHER BENEFICIARIES ENTITLED TO BENEFITS OR OTHER PAYMENTS FROM THE MONTREAL TRUST PENSION PLAN (2001) (Registration Nos. 6428 (Régie des rentes du Québec) and 0279034 (Canada Revenue Agency)), AND TO CERTAIN OTHER ELIGIBLE INDIVIDUALS (collectively the "Class Members", as defined below)**

**TAKE NOTICE THAT** the Montreal Trust Pension Plan (2001) (the "Plan") will be wound up pursuant to the applicable statutory provisions governing the Plan. As part of the wind-up, and pursuant to all applicable legislation, Montreal Trust Company of Canada (the "Applicant") will take the necessary steps, and file the necessary documents with the Régie des rentes du Québec (the "Application"), to support its request for permission to distribute the Plan's surplus assets (the "Surplus") to itself and the Class Members as set out below.

Pursuant to a Surplus Sharing Agreement, after securing all promised pension benefits and making any necessary adjustments for applicable expenses and other amounts, 50% of the Surplus will be paid to the Sharing Group (defined below), and 50% will be paid to the Applicant. The Sharing Group consists of:

- (i) all persons who are entitled to benefits or other payments from the Plan on the date the Plan is terminated by the Applicant (the "Wind-Up Date");
- (ii) the estates of all persons who were entitled to benefits or other payments under the Plan on April 17, 2002, if such a person has subsequently died and there are no benefits or other payments owing from the Plan to any other person on the Wind-Up Date as a result of the death of such person;
- (iii) all individuals who were alive on April 17, 2002 who terminated employment with the Applicant on or after December 2, 1993 and were entitled to benefits under the Plan at the time of such termination, or who were deferred vested members on or after that date, whose benefits have been settled and who therefore will not be entitled to benefits or any other payments under the Plan on the Wind-Up Date, or the estate of such individual if the individual died or dies after April 17, 2002; and
- (iv) the estates of all persons who were included in a past partial wind-up of the Plan and who died prior to April 17, 2002 (collectively, the "Class Members", who comprise the "Sharing Group").

Information about this proposed surplus sharing arrangement has already been conveyed in an information package mailed to individuals in the Sharing Group in September 2002, during a series of information sessions for the Sharing Group held in various cities across Canada in November/December of 2002 (written notice of which was provided to members of the Sharing Group in November, 2002), in a more detailed information package mailed to Sharing Group members in April 2004, at a further series of information sessions for the Sharing Group held in various cities across Canada in April/May of 2004, and in another information package mailed to

the Sharing Group in October 2005 (information packages and information session invitations were sent to all members of the Sharing Group, where mailing addresses were available).

**ALSO TAKE NOTICE THAT** in connection with the Application, the Applicant has commenced an application in the Superior Court of Justice (the "Court Application") for, among other things, a determination that the Applicant is entitled to a share of the Surplus and that the Surplus Sharing Agreement is valid and binding on all Class Members. The outcome of the Court Application may affect whether you receive a distribution of any Surplus.

The Court Application was certified as a class proceeding by the Honourable Madam Justice Hoy on ● under the *Class Proceedings Act*, 1992, S.O. 1992, c. 6. The Court named Messrs. James Robert Armstrong, Kenneth James McGregor and Donald Ross Large as representative respondents for the Class Members (i.e., all members of the Sharing Group).

The representative respondents have retained the law firm of Koskie Minsky LLP, which firm has been appointed counsel to the Class Members with respect to the Court Application ("Class Counsel"). Pursuant to the Surplus Sharing Agreement, the legal fees of Koskie Minsky LLP will be paid out of the Surplus in the Plan. As such, there is no direct cost to you to participate in this class proceeding if you retain Koskie Minsky LLP as your counsel.

**ANY JUDGMENT THAT IS OBTAINED IN THIS CLASS PROCEEDING, WHETHER FAVOURABLE OR NOT, WILL BIND ALL CLASS MEMBERS UNLESS INDIVIDUAL CLASS MEMBERS OPT OUT OF THE CLASS PROCEEDING IN ACCORDANCE WITH THE PROCEDURE OUTLINED HEREIN. IF YOU WISH TO OPT OUT OF THE CLASS PROCEEDING, YOU MUST DELIVER BY FIRST CLASS MAIL OR BY FAX TO 416-977-3316 A WRITTEN NOTICE OF INTENTION TO OPT-OUT TO KOSKIE MINSKY LLP ON OR BEFORE 5:00 P.M. ON ● , AT THE FOLLOWING ADDRESS:**

**KOSKIE MINSKY LLP  
BARRISTERS AND SOLICITORS  
20 QUEEN STREET WEST  
SUITE 900, BOX 52  
TORONTO, ONTARIO M5H 3R3**

**ATTENTION: MONTREAL TRUST PENSION SURPLUS**

**IF YOU DO NOT OPT OUT ON OR BEFORE ● , YOU WILL BE DEEMED TO BE A CLASS MEMBER AND WILL NOT BE PERMITTED TO OPT OUT OF THE CLASS AT A LATER DATE.**

Please consult [http://www.koskieminsky.com/client\\_links/MontrealTrust/home.aspx](http://www.koskieminsky.com/client_links/MontrealTrust/home.aspx) for detailed information on the surplus sharing arrangement.

**THE PARTIES WILL BE SEEKING JUDGMENT, INCLUDING APPROVAL OF THE SETTLEMENT OF THE APPLICATION ON THE TERMS OF THE SURPLUS SHARING AGREEMENT, ON ● AT 10:00 A.M. AT THE COURT HOUSE AT 361 UNIVERSITY AVENUE, TORONTO.**

Any Class Member is entitled to participate in this class proceeding, subject to the approval of the Court. Such participation shall be in whatever manner and on whatever terms the Court considers appropriate.

If you have any inquiries regarding the class proceeding, please contact Class Counsel at the address provided above, by telephone at 1-888-723-4305, or by email at:

[montrealtrustpension@koskieminsky.com](mailto:montrealtrustpension@koskieminsky.com)

Class Members may also review copies of materials filed with the Court in respect of the Court Application at the offices of Class Counsel in Toronto. To arrange a time to view these documents, please contact Class Counsel by mail, telephone, or email per the contact information noted above.



MONTREAL TRUST COMPANY OF CANADA

and JAMES ROBERT ARMSTRONG et al.

Court File No: 06-CV-307491CP

Applicant

Respondents

*Ontario*  
**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**ORDER**

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