

CV-10-397538 OOC

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ONTARIO HOSPITAL ASSOCIATION
on its own behalf and on behalf of the employers
listed on Schedule "A" attached to this
Notice of Application

Applicant

- and -

**ANDY SUMMERS, LEE ROGANO, YVES SHANK, MIKE TRACEY, CAROL
MCDOWELL, KATHA FORTIER, TODD HUTCHINGS, CONNIE DEMEDEIROS
AND NELIA CABRAL**

Respondents

PROCEEDING UNDER the *Class Proceedings Act, 1992*

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

NOTICE OF APPLICATION

TO THE RESPONDENTS:

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

THIS APPLICATION will come on for a hearing before a judge on a date and at a time to be fixed by the Court in Toronto.

IF YOU WISH TO OPPOSE THIS APPLICATION, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38C prescribed by the Rules of Civil Procedure, serve it on the applicant(s) lawyer(s) or, where the applicant does not have a lawyer, serve it on the applicant(s), and file it,

with proof of service, in this court office, and you or your lawyer(s) 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(s) must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant(s) lawyer(s), or where the applicant(s) do(e)s not have lawyer, serve it on the applicant(s), and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days 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 defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

Date: 22 Feb. 2010

Issued by:

S. S. S.

M. Sagaria
Registrar

Registrar
SUPERIOR COURT
OF JUSTICE
393 UNIVERSITY AVE.
10TH FLOOR
TORONTO, ONTARIO
M5G 1E6

COUR SUPÉRIEURE
DE JUSTICE
393 AVE. UNIVERSITY
10E ÉTAGE
TORONTO, ONTARIO
M5G 1E6

TO: THIS HONOURABLE COURT

AND TO: Cavalluzzo Hayes Shilton McIntyre & Cornish LLP
Barristers & Solicitors
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Solicitors for the Respondents

AND TO: **Koskie Minsky LLP**
Barristers & Solicitors
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Susan Philpott
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Solicitors for the Respondents

APPLICATION

1. The applicant makes application for:
 - (a) an Order certifying this proceeding as a Class Proceeding pursuant to the *Class Proceedings Act*, 1992 S.O. 1992, c.6 (the "CPA");
 - (b) an Order defining the Respondent Class as:

All current and former employees of the Participating Employers who have paid a share of premiums for life insurance coverage and/or disability insurance coverage under one or more of Mutual Life Assurance Company of Canada Group Insurance Policy Numbers 2100 and 16000 and who were employed with a Participating Employer and covered under Policy No. 2100 as of December 29, 1997. Participating Employers are defined as the Ontario Hospital Association and those Ontario Hospital Association member employers (or their successors) who participated on December 29, 1997 under the Ontario Hospital Association's Long-term Disability Insurance Policy (Policy Number 2100).
 - (c) an Order that the common issues for the Respondent Class are:
 - (i) who is entitled to the demutualization proceeds arising under one or more of Mutual Assurance Company of Canada Group Insurance Policy Numbers 2100 and 16000, (the "Proceeds"); and
 - (ii) how the Proceeds shall be distributed or otherwise dealt with.
 - (d) an Order that Andy Summers, Lee Rogano, Yves Shank, Mike Tracey, Carol McDowell, Katha Fortier, Todd Hutchings, Connie

De Medeiros and Nelia Cabral be appointed as the Representative Respondents for the Respondent Class;

- (e) an Order appointing the law firms of Cavaluzzo Hayes Shilton McIntyre & Cornish LLP and Koskie Minsky LLP as counsel for the Respondent Class;
- (f) an Order that notice to members of the Respondent Class shall be provided in the form and method as described in the Agreement entered into between the parties (the "Agreement") and that any member of the Respondent Class who does not wish to be bound by the Agreement must opt out of the Respondent Class by way of notice served upon counsel for the Respondent Class within 30 days of the date of the Notice;
- (g) an Order that Respondent Counsel for the Respondent Class will serve counsel for the Applicant and file with the Court a copy of any notice received from any member of the Respondent Class and shall do so within 35 days of the date of the Notice;
- (h) an Order that the proposed settlement as set out in the Agreement entered into between the parties is a full and final resolution of the Application and is approved and adopted by the Court and that the Agreement shall be binding upon all members of the Respondent Class who do not opt out;
- (i) an Order that any member of the Respondent Class who does not opt out of the Agreement and this proceeding pursuant to paragraph (f) above will be enjoined and barred from bringing or prosecuting any action, application or other legal proceeding against any or all of the Ontario Hospital Association or the employers listed on Schedule "A" attached hereto and/or any of

their respective Board members, officers, employees, or their respective heirs, administrators, successors or assigns, for any claim that was, or could have been, raised in this Application;

- (j) an Order that the Ontario Hospital Association and the employers listed on Schedule "A" attached hereto and their respective Board members, officers, employees and their respective heirs, administrators, successors and assigns are fully and finally released from any and all claims by any member of the Respondent Class who does not opt out of the Agreement and this proceeding pursuant to paragraph (f) above that was, or could have been, raised in this Application and that such Order is not to affect the rights of any party to enforce the Order and the settlement of the Application; and
- (k) such further and other relief as to this Honourable Court may seem just.

2. The grounds for the application are:

- (a) The Mutual Life Assurance Company of Canada demutualized and selected December 29, 1997 as the date for purposes of crystallizing the policyholders' entitlements to the proceeds arising out of the demutualization;
- (b) the Applicant is holding demutualization proceeds (the "Proceeds") that it received from the Mutual Life Assurance Company of Canada in respect of Group Insurance Policy No. 2100 (which incorporates Policy No. 16000);
- (c) the Applicant was the policyholder of record for Mutual Life Assurance Company of Canada Group Insurance Policy No. 2100 as of December 29, 1997;

- (d) the members of the Respondent Class were covered under Group Insurance Policy Number 2100 as of December 29, 1997;
- (e) the members of the Respondent Class have paid a share of premiums for life insurance coverage and/or disability insurance coverage under one or more of Policy Numbers 2100 and 16000;
- (f) the Applicant engaged in discussions regarding distribution of the Proceeds with the Ontario Nurses' Association, the Ontario Public Service Employees Union, the Canadian Union of Public Employees, the Service Employees International Union and the Canadian Autoworkers Union (collectively the "Unions") and non-unionized members of the Respondent Class;
- (g) the Applicant, on behalf of the Participating Employers, reached the Agreement for distribution of the Proceeds with the representatives from the Unions (on behalf of the unionized members of the Respondent Class) and with the representatives of the non-union members of the Respondent Class;
- (h) the Agreement is a fair and equitable distribution of the Proceeds which is in the interests of all concerned;
- (i) an Application and a Class Proceeding are the preferable procedures for the resolution of the common issues;
- (j) the *Class Proceedings Act, 1992*;
- (k) Rule 14.05(3)(d), (g) and (h) of the *Rules of Civil Procedure*;

- (l) 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 evidence to be sworn;
- (b) the conditional Agreement, including Schedules thereto between the Ontario Hospital Association on its own behalf and on behalf of the employers listed on Schedule "A" attached to this Notice of Application and to the Agreement and the Ontario Nurses' Association, Ontario Public Service Employees Union, Canadian Union of Public Employees, Service Employees International Union, Canadian Union of Auto Workers, Todd Hutchings, Connie DeMedeiros and Nella Cabral;
- (c) such further material as counsel may advise and this Honourable Court may permit.

Date: February 22, 2010

**HICKS MORLEY HAMILTON
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Solicitors for the Applicant

Schedule A

Demutualization: Participating Organizations

Name	Sites / Original Org. Name
Adult Mental Health Services of Halifax-Norfolk	
Alexandra Hospital	
Alexandra Marine and General Hospital	
Almonte General Hospital	
Association of Allied Health Professionals (SCO Health Services OPSEU Local 486)	
Atikokan General Hospital	
Baycrest Centre for Geriatric Care	
Bethesda Services	
Bloorview Kids Rehab	
Brantwood Residential Development Centre	
Brockville General Hospital	St. Vincent De Paul Hospital Brockville General
Cambridge Memorial Hospital	
Campbellford Memorial Hospital	
Canadian Agency for Drugs and Technologies in Health (CADTH)	
Casey House Hospice	
Centre for Addiction & Mental Health - D1 Site	
Chapleau Health Services/Services De Sante De Chapleau	
Chatham Kent Health Alliance	Chatham Kent Hospital Alliance ST. JOSEPH'S HOSPITAL, Chatham SYDENHAM DISTRICT HOSPITAL
Cochrane Temiskaming Resource Centre	
Collingwood General and Marine Hospital	

Name	Sites / Original Org. Name
Cornwall General Hospital	
Corporation of the County of Lennox & Addington	Lenadoo Home known as John M. Pappert Centre
Crown Ridge Health Care Inc.	
Deep River and District Hospital	
Don Mills Surgical Unit Ltd.	
Dryden Regional Health Centre	
Englehart and District Hospital Inc.	
Erwave District Energy Limited	
EriobakKids Centre	
Espandla General Hospital	
Fairhaven	
Five Counties Children's Centre	
Geraldton District Hospital	
Glengarry Memorial Hospital	Freeport Hospital Grand River Hospital Corp.
Grand River Hospital Corporation	
Grandview Children's Centre	
Grey Bruce Community Health Corp	Bruce Peninsula Health Services Meaford General Hospital Services Saugeen Memorial Hospital Grey Bruce Health Services Centre Grey General Hospital
Grey Bruce Health Services	
Groves Memorial Community Hospital	
Haldimand War Memorial Hospital	
Haldimand Healthcare Services Corporation	Milton District Hospital

Name	Sites /Original Org. Name
Hamilton Health Sciences Corporation	Georgetown Hospital
Hamilton Niagara Haldimand Brant CCAC	Cheokee-McMaster Hospitals
Hamilton Program for Schizophrenia	Brant Community Care Access Centre
Hanover and District Hospital	
Hawkesbury and District General Hospital	
Healthcare Insurance Reciprocal of Canada HIROC	
Hearst Kapuskasing & Smooth Rock Falls Counselling Services	
Homewood Health Centre	
Hôpital Notre-Dame Hospital (Hearst)	
Hôpital régional de Sudbury Regional Hospital Corporation	Sudbury Regional Hospital - Laurentian Site
Homepayne Community Hospital	
Hospitals of Ontario Pension Plan	Hospitals of Ontario Pension Plan
Hotel-Dieu Grace Hospital, Windsor	HOOPP - Investment Management Limited
Humber River Regional Hospital	Humber River Regional Hospital (Keete)
Huron Perth Healthcare Alliance	Humber River Regional Hospital (Finch)
	Humber River Regional Hospital (Church)
	Clinton Public Hospital
	Seaton Community Hospital
	Stratford General Hospital
Huron District Hospital	
Huron District Hospital Corporation	Penetanguishene General Hospital
Institute for Work & Health	
James Bay General Hospital	
John McGivney Children's Centre	

Name	Sites/ Original Org. Name
Joseph Brant Memorial Hospital	
KidsAbility	
Kingston Regional Hospital Laundry	
Kirkland and District Hospital	
Lady Dunn Health Centre	
Lake of the Woods District Hospital	
Lakeridge Health Corporation	Port Perry Division Bowmanville Memorial Division Oshawa Division Whitby Division
Learnington Mennonite Home	
Lennox and Addington Community Mental Health Clinic	
Lennox and Addington County General Hospital	
Limestone Advisory for Child Care Programs	
Lislowe and Wingham Hospitals Alliance	Lislowe Memorial Hospital Wingham and District Hospital
London Hospital Usher Services Inc.	Manitoulin Ambulance Service - Rainbow North EMS
Manitoulin-Sudbury District Social Services Administration Board (DSSAB)	
Manitoulin Health Centre	
Manitouowadge General Hospital	
Manycrest Home for the Aged	
Mattawa General Hospital	
McCausland Hospital	
Michener Institute of Applied Health Sciences	
MICS Group of Hospitals	Ansori General Hospital Bingham Memorial Hospital

Name	Sites / Original Org. Name
Minto Counselling Centre	Lady Minto Hospital
Mohawk Hospital Services Inc.	
Montfort Hospital	
Mount Sinai Hospital	
Muskoka Algonquin Healthcare	Algonquin Health Services South Muskoka Memorial Hospital
Muskoka-Perry Sound Community Mental Health Service	
Niagara Health System	Douglas Memorial Hospital Niagara Health System The Great Niagara General Hospital Welland County General Hospital Port Colborne General Hospital
Niagara Peninsula Children's Centre	
Nipigon District Memorial Hospital	
Norfolk General Hospital	
North Bay General Hospital	
North Durham Health Services (Markham Stouffville Hospital)	Algoma Community Care Access Centre
North East CCAC	
North of Superior Programs	
North York General Hospital	North York Branson Hospital North York General Hospital
Northeast Mental Health Centre	
Northumberland Hills Hospital	
Ontario Hospital Association	
OPTIONS Northwest	
Orillia Soldiers' Memorial Hospital	
Pathways Health Centre for Children	

Name	State's Original Org. Name
Peterborough Regional Health Centre	Providence Manor St. Marys of the Lake Hospital
Providence Care	Prince Edward County Memorial Hospital Quinte Healthcare Corporation
Quinte Healthcare Corporation	Red Lake Margaret Cochenour Memorial Hospital
Red Lake Margaret Cochenour Memorial Hospital	Religious Hospitaliers of Saint Joseph of the Hotel Dieu of Kingston
Religious Hospitaliers of Saint Joseph of the Hotel Dieu of Kingston	Religious Hospitaliers of St. Joseph of the Hotel Dieu of St. Catharines
Religious Hospitaliers of St. Joseph of the Hotel Dieu of St. Catharines	Regina Victoria Hospital
Regina Victoria Hospital	Riverside Health Care Facilities Inc.
Riverside Health Care Facilities Inc.	Ross Memorial Hospital
Ross Memorial Hospital	Rouge Valley Health System
Rouge Valley Health System	Runnymede Healthcare Centre
Runnymede Healthcare Centre	Sault Area Hospitals
Sault Area Hospitals	Schizophrenia Society of Ontario
Schizophrenia Society of Ontario	Sensebrenner Hospital
Sensebrenner Hospital	Sioux Lookout Meno-Ye-Win Health Centre
Sioux Lookout Meno-Ye-Win Health Centre	Smooth Rock Falls Hospital
Smooth Rock Falls Hospital	South Bruce Grey Health Centre
South Bruce Grey Health Centre	South Huron Hospital Association
South Huron Hospital Association	South Muskoka Hospital Foundation
South Muskoka Hospital Foundation	St. Francis Memorial Hospital
St. Francis Memorial Hospital	Durham Site Chesley Site Walkerton Site Kirkcaldine Site

Name	Sites / Original Org. Name
St. John's Rehabilitation Hospital	Hogarth-Westmount Hospital
St. Joseph's Care Group (Thunder Bay)	St. Joseph's Care Group, Thunder Bay
St. Joseph's General Hospital, Elliot Lake	
St. Joseph's Health Care London	
St. Joseph's Health Centre, Guelph	
St. Joseph's Health Centre, Toronto	
St. Joseph's Healthcare Hamilton	St. Joseph's Hospital (Lifecare Centre), Brantford
St. Lawrence Lodge	
St. Mary's General Hospital	
St. Thomas Elgin General Hospital	
Sudbury Hospital Services	
Sudbury Vascular Laboratory	
Sunbeam Residential Development Centre	
Sunnybrook Health Sciences Centre	
Sunnybrook Health Sciences Centre - Holland Orthopaedic & Arthritic Centre	
Temiskaming Hospital	
The Brant Community Healthcare System	The Willett Hospital The Brantford General Hospital
The Easter Seal Society (Provincial Office)	
The Perley and Rideau Veterans Health Centre	
The Religious Hospitalliers of St. Joseph of Cornwall, Ontario (Hotel Dieu Hospital)	
The Royal Victoria Hospital of Barrie	
The Salvation Army Toronto Grace Hospital	
The Scarborough Hospital	The Scarborough Hospital The Scarborough Hospital - Grace Division
The Sisters of St. Joseph of Hamilton	

Name	Sites / Original Org. Name
The Stevenson Memorial Hospital	
Thunder Bay Regional Health Sciences Centre	
Tillsonburg District Memorial Hospital	
Timmins & District Hospital - L'Hopital de Timmins et du district	
Toronto Rehabilitation Institute, Lyndhurst Centre	
Trelis Mental Health and Developmental Services	
Tri-County Addictions Program (Services)	
Trillium Health Centre	Queensway General Hospital
Weeneebayko Health Ahtuskaywin/Weeneebayko General Hospital	
West Lincoln Memorial Hospital	
West Park Healthcare Centre	
West Pary Sound District General Hospital	
William Osler Health Centre	Etobicoke General Hospital Peel Memorial / Brampton Civic
Wilson Memorial General Hospital	

ONTARIO HOSPITAL ASSOCIATION

ANDY SUMMERS ET AL

-and-

(Applicant)

CJ-10-397538 (Respondents) *oo cp*

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at TORONTO

NOTICE OF APPLICATION

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