

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE CULLITY

) MONDAY, THE
)
) 11TH DAY OF MAY, 2009

BEEN:

DENNIS F. CAPONI

Plaintiff

- and -

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

Defendants

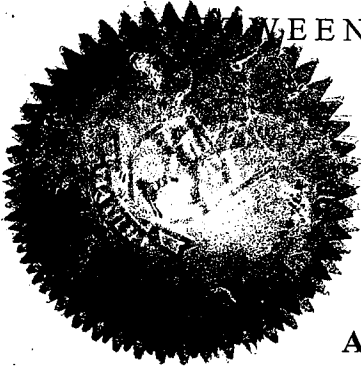
Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the plaintiff for certification of the action as a class proceeding was heard on December 18, 2008, at 361 University Avenue, Toronto, Ontario, with Reasons released on January 13, 2009, with a further submissions being made at a Case Conference on May 11, 2009, the issue of costs being dealt with on consent.

ON READING the material filed, including the following:

- (a) the statement of claim, in which the claims asserted on behalf of the Class are breach of contract, breach of trust and breach of fiduciary duty, and the relief sought includes declarations and damages;



- (b) the motion record of the plaintiff, containing the affidavits of Dennis F. Caponi, dated February 20, 2008, and Marcus A. Robertson, dated February 27, 2008, and the exhibits attached thereto;
- (c) the responding record of the defendant Canada Life Assurance Company containing the affidavit of Hrvoje Lakota, dated June 13, 2008, and the exhibits attached thereto;
- (d) the plaintiff's reply motion record containing the supplementary affidavit of Marcus Robertson dated July 22, 2008; and
- (e) the transcripts of the cross-examinations of Marcus Robertson and Hrvoje Lakota;

AND ON HEARING the submissions of counsel for the plaintiff and the defendants at the hearing on December 18, 2009 and at the Case Conference on May 11, 2009,

1. **THIS COURT ORDERS** that this action be and hereby is certified as a class proceeding.
2. **THIS COURT DECLARES** that the Class is defined as:
 - all persons, wherever resident, who are former employees of the Canada Life Assurance Company, and who were included in the partial wind-up of the Canada Life Canadian Supplemental Pension Plan (the "Supplemental Plan") as of January 31, 2005, and their estates and beneficiaries (collectively, the "Class" or "Class Members")
3. **THIS COURT ORDERS** that Dennis F. Caponi be and hereby is appointed as the representative plaintiff.

4. **THIS COURT ORDERS** that Koskie Minsky LLP be and hereby is appointed class counsel (“Class Counsel”).

5. **THIS COURT ORDERS** that the common issues for the Class are:

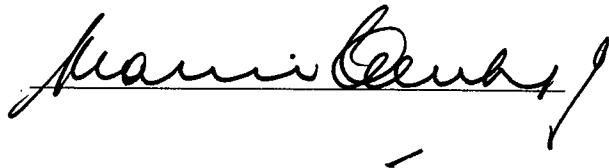
- (a) Does Canada Life Assurance Company “(the “Company”) owe a fiduciary or contractual duty to the Class members to provide the Supplemental Plan benefits out of the Supplemental Plan Trust Fund? If so, did the Company breach any such duty?
- (b) Specifically,
 - (i) was the Company entitled to partially wind-up the Supplemental Plan?
 - (ii) if the Company was entitled to partially wind-up the Supplemental Plan,
 - (1) was proper notice given to the Class Members of the partial wind-up?
 - (2) were the proper common actuarial methods and formulae used to calculate the distributions to the Class members?
- (c) Did the Trustees, or any of them, commit a breach of trust or other fiduciary duty in circumstances that would constitute willful wrongdoing by participating in decisions made by the Company, or in releasing, or permitting the use of, trust funds for the purpose of the partial wind-up?
- (d) Are the Defendants, or any of them, liable in damages to Class members? If so,

- (i) what methodology - including actuarial formulae and assumptions - should be used to calculate the damages? and
- (ii) should the damages be grossed up to compensate for adverse tax consequences, and if so in accordance with what formula?

- (e) Should any declaratory relief be granted and, if so, what relief?
- (f) Should the Defendants, or any of them, pay punitive damages and, if so, in what amount and to whom?

6. **THIS COURT ORDERS** that the form and content of notice of certification, the means by which notice shall be given, and the manner and time limits for opting out are to be dealt with by separate Order.

7. **THIS COURT ORDERS** that the costs of the certification motion are fixed in the amount of \$78,715.00, inclusive of fees, disbursements and GST, payable by the defendant Canada Life Assurance Company, forthwith.



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

MAY 27 2009

PER/PAR:



**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

ORDER

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