

CITATION: Caponi v. Canada Life et al., 2013 ONSC 1718
COURT FILE NO.: 07-339254CP
DATE: 20130321

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Dennis F. Caponi, Plaintiff

AND:

The Canada Life Assurance Company, A.P. Symons, D. Allen Loney and James R. Grant, Defendants

BEFORE: Conway J.

COUNSEL: *Jonathan Ptak and Jody Brown*, for the plaintiff, moving party

John C. Field, for defendants A.P. Symons, D. Allen Loney and James R. Grant, responding parties

Jeff Galway and Max Shapiro, for defendant The Canada Life Assurance Company ("Canada Life"), responding party

HEARD: March 13 and 14, 2013

ENDORSEMENT

(Plaintiff's Refusals Motions against the Trustees and Canada Life)

Conway J.

[1] This is a class action arising out of the partial wind-up by Canada Life of The Canada Life Canadian Supplemental Retirement Plan (the "SERP") as of January 31, 2005. The plaintiff's claim is against Canada Life and Messrs. Symons, Loney and Grant, the trustees of the SERP at the time of the partial wind-up (the "Trustees"). Cullity J. certified the action as a class proceeding on January 13, 2009.¹

[2] Discoveries of Canada Life's representative and the three Trustees were conducted in February and October 2012, respectively. The plaintiff brings these refusals motions with respect to both discoveries.

¹ Cullity J.'s reasons were released that date: see *Caponi v. Canada Life*, 2009 O.J. No. 114 (S.C.J.). The certification order is dated May 11, 2009.

Overview of the Claim and the Common Issues

[3] The plaintiff is a former employee of Canada Life. He, like the other class members, was a deferred vested member of the SERP at the time of the partial wind-up.

[4] The following is a brief summary of the plaintiff's claim:

- The SERP was a plan offered by Canada Life to supplement the maximum amount permitted under its registered pension plan by the *Income Tax Act* (Canada). Prior to 2001, supplemental benefits were payable directly from Canada Life funds. Class members received annual statements from the company summarizing their pension benefits.
- In January 2001, Canada Life created a funded trust to secure payments under the SERP. At the same time, Canada Life created a supplementary plan text for the SERP that allegedly permitted a wind-up of the SERP. Class members were not notified about the terms of the plan text and continued to receive benefit statements from Canada Life.
- In 2005 the defendants improperly decided to implement a partial wind-up of the SERP. They amended the SERP plan text to permit a retroactive partial wind-up as of January 31, 2005. The defendants started to notify class members in the fall of 2005 that the SERP had been wound up and that they would receive a lump sum payment.
- The defendants were not permitted to wind-up the SERP apart from the registered pension plan. The 2001 plan text and 2005 amendment that purported to allow the partial wind-up were never sent to class members, were unilateral changes to Canada Life's employment obligations to the class members, and were invalid.
- Alternatively, if the partial wind-up was permitted, the defendants did not implement the wind-up properly. They did not provide class members with timely and adequate notice of the wind-up; did not use appropriate actuarial assumptions to calculate and pay the correct amount to class members; applied incorrect formulas and utilized inappropriate interest rates; and failed to compensate class members for the adverse tax consequences of receiving lump sum payments.
- The defendants breached contractual, trust and fiduciary duties to class members in partially winding-up the SERP and the manner in which the partial wind-up was implemented.

[5] Cullity J. certified various common issues for trial. He considered the claims as against Canada Life and the Trustees separately.

[6] With respect to Canada Life, he certified the following common issues:

- (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?

[7] Cullity J. narrowed the scope of the common issues against the Trustees. He did not certify breach of contract. With respect to breach of trust or fiduciary duty, he looked at the trust deed that limited the personal liability of the Trustees to “wilful or individual fraud or wrongdoing” and re-framed the common issue to incorporate that standard. He certified the following common issue (the “Trustee Common Issue”):

- (c) Did the Trustees, or any of them, commit a breach of trust or other fiduciary duty in circumstances that would constitute wilful 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?²

The Refusals

[8] Most of the refusals on these motions concern Mr. Loney. He was a Trustee from 2003 to 2008.³ Before and during that time he was also Vice-President and Chief Actuary of Canada Life. He is now President and CEO of Canada Life.

[9] At Mr. Loney’s discovery, his counsel (Mr. Field) took the position that Mr. Loney was only required to answer questions relating to his role and duties as a Trustee and not to his knowledge or conduct as Chief Actuary of Canada Life.

[10] Canada Life had produced various documents that referred to Mr. Loney, both when the SERP plan text was created in 2001 and around the time of the partial wind-up in 2004/2005. Mr. Loney refused questions about his knowledge and involvement at the time the SERP plan

² Cullity J. also certified common issues with respect to damages for all defendants.

³ Messrs. Grant and Symons are still Trustees of the SERP. Mr. Grant was employed by Great West Life until he retired in 2006. Mr. Symons was an Executive Vice-President of Canada Life until he retired in 1998.

text was created in 2001, before he was appointed a Trustee. He also refused questions about his knowledge or involvement in the partial wind-up, other than in his capacity as a Trustee.

[11] Mr. Field argues that the evidence of the defendants on discovery is that the Trustees were not consulted about or involved in Canada Life's decision to partially wind-up the SERP. Therefore, any questions about Mr. Loney's involvement as Chief Actuary are irrelevant to the claim against him as a Trustee. He argues that the plaintiff is attempting to use the discovery of Mr. Loney as a second discovery of Canada Life.

[12] The plaintiff's position is that all of the refused questions are relevant to the Trustee Common Issue, as informed by the statement of claim. He submits that Mr. Loney's involvement and knowledge about matters related to the SERP, regardless of how or when that knowledge was obtained, are relevant to the issue of whether the Trustees committed "a breach of trust or other fiduciary duty in circumstances that would constitute wilful wrongdoing".

[13] Mr. Loney refused to answer questions about his personal retirement arrangements with Canada Life. Canada Life's representative was also asked, and refused, questions about Mr. Loney's personal retirement arrangements.

[14] Mr. Grant refused to answer 4 questions, all of which relate to his knowledge of Mr. Loney's conduct. Mr. Symon's refusals relate mainly to his review and production of trustee documents.

Law on Refusals in Class Actions

[15] The general rule on a class action is that discoveries are restricted to the issues certified. It is the certification order, as informed by the pleadings, that defines relevance for purposes of discovery: see *1176560 Ontario Ltd. v. Great Atlantic & Pacific Co. of Canada*, [2003] O.J. No. 5703 (S.C.J.), at para. 6.

[16] In *Ramdath v. George Brown College of Applied Arts and Technology*, 2012 ONSC 2747, at para. 37, Strathy J. (citing Perell J.) articulated an approach to refusals in a class action, which requires that the question pass through the following filters: (a) it must not be over-broad and speculative; (b) it must not offend the proportionality principle; (c) it must be relevant having regard to the statement of claim without regard to the common issues; and (d) it must be relevant to the common issues.

[17] To assist in identifying what may or may not be a proper refusal in a class action, Perell J. has developed a list of categories of questions that need not be answered: see *Canadian Imperial Bank of Commerce v. Deloitte & Touche*, 2013 ONSC 917 at para. 81. The categories are questions that are (a) unanswerable; (b) immaterial; (c) irrelevant; (d) untimely; (e) idiosyncratic or uncommon; (f) answered; (g) disproportionate; and (h) privileged. The Trustees and Canada Life submit that the refused questions fall within one or more of those categories.

Analysis

The Trustee Common Issue, as Informed by the Pleadings

[18] The trial judge determining the Trustee Common Issue will have to consider whether any of the Trustees participated in decisions made by Canada Life. The decisions are those alleged in the statement of claim – the decision to partially wind-up the SERP, and all matters related to the partial wind-up (timing, notice to members, calculation of lump sum payments, etc.). The trial judge will have to determine whether the Trustees breached any trust or fiduciary duty (in circumstances that would constitute wilful wrongdoing), by so participating, or in releasing trust funds for the partial wind-up.

[19] This analysis will require the trial judge to consider, among other things, the nature of the Trustees' role with respect to the SERP; the plan text and amendment; the trust deed; the allocation of responsibilities as between Canada Life and the Trustees; what the Trustees did or did not do around the time of the wind-up; and what the Trustees knew about the SERP, the ability of Canada Life to partially wind-up the SERP, the planning and implementation of the partial wind-up, and the implications of the partial wind-up for those affected by it.

[20] Any questions about these matters will be relevant to the Trustee Common Issue and must be answered, unless they are improper for the reasons outlined in paragraphs 16 and 17 above.

Mr. Loney's Personal Retirement Arrangements with Canada Life

[21] The plaintiff asked both Mr. Loney and Canada Life's representative details about Mr. Loney's personal retirement arrangements with Canada Life. The plaintiff argues that since a key element in a breach of fiduciary duty is disloyalty, any preference of Mr. Loney's own interests over that of the trust beneficiaries is a breach of that duty. Therefore, he submits that these details are relevant to the Trustee Common Issue.

[22] The plaintiff has not alleged breach of fiduciary duty in the abstract. He has made specific allegations as to how the Trustees breached a fiduciary duty – by participating in decisions or releasing funds for the partial wind-up. There is no allegation anywhere in the pleading or the Trustee Common Issue that any of the Trustees breached a duty by preferring his own interests (retirement or otherwise) over those of the class members.

[23] These questions are irrelevant to the Trustee Common Issue and are properly refused by both Canada Life and Mr. Loney.

Mr. Loney's Other Refusals

[24] I do not accept Mr. Loney's approach of restricting his answers about the partial wind-up to his knowledge and involvement in his capacity as a Trustee. Nor do I accept that because the defendants' evidence is that the Trustees were not consulted about the wind-up, any further questions about their involvement are improper.

[25] With respect to Mr. Loney's knowledge, he has been sued in his personal capacity.⁴ He is required to answer any proper question about his knowledge, provided it is relevant to the Trustee Common Issue. He cannot parse his knowledge and avoid answering questions depending on when or in what capacity he obtained that knowledge. Mr. Loney's knowledge is his knowledge.

[26] In my view, Mr. Loney's knowledge about all matters concerning the SERP and the partial wind-up is relevant to the Trustee Common Issue. What Mr. Loney knew may shed light on whether what he did or did not do as a Trustee was a breach of duty amounting to wilful misconduct. This includes his awareness of all matters relating to the partial wind-up in 2004 and 2005. It also includes his knowledge about all issues surrounding the creation of the SERP plan text and communication of those terms to members in the 2001 period.

[27] Questions about Mr. Loney's involvement around the time of the partial wind-up are also relevant to the issue of whether he participated in decisions made by Canada Life. Whether any such involvement was as Trustee or Chief Actuary, and what the consequences of any such involvement are, will be matters for the trial judge to decide.

[28] I have set out my orders on Mr. Loney's refusals below. Of the 60 refusals, 56 questions must be answered. Since these relate to entire time frames and lines of questioning, written answers will not be sufficient. The plaintiff should have the opportunity to obtain answers under oath and pose appropriate follow up questions.⁵ I order that Mr. Loney re-attend for examination to answer the refused questions.

	Qn No.	Page No.	Specific refusal	Disposition by the Court
1.	344	93	Q: I am going to ask that you make inquiries as to whether or not there was ever a signed transfer authorization, and to provide it to us, to get a copy [authorization for the payment of monies from the Trust to Canada Life for the payment of lump sums]	Answer required.
2.	335	90	Q. Were you involved in any way in the letters which were ultimately sent along with the lump sum payments in late 2005 and 2006?	Answer required.
3.	303	81	Q. What steps, if any, did you take to ensure the prompt delivery of the lump sum payments to the members of the SERP who were included in the windup?	Answer required.
4.	75-76	22	Q. Okay, it indicates...says "communicate to affected members" [at point number 8 on the list on page 11-6 of Tab 11 of the Supplementary Brief (Exhibit B), memo concerning non-trusteed benefits] Q. Were you aware what that pertained to?	Answer required.

⁴ This is unlike the cases provided by both the plaintiff and the Trustees that consider what a corporate officer may or may not be required to answer on discovery: see *Kay v. Postlums*, [1993] O.J. NO. 188 and the cases cited therein at paras. 25-40.

⁵ See *Senechal v. Muskoka (Municipality)*, [2005] O.J. NO. 1406 (S.C.J.), at paras. 5 and 7.

	Qn No.	Page No.	Specific refusal	Disposition by the Court
5.	80	23-24	Q. Were you aware of the communication plan of Canada Life that was in place, or intended, at the time that this document [Tab 11 of Exhibit B, memo concerning non-trusted benefits] was drafted, which would have been in November of 1998?	Answer required.
6.	88	26-27	Q: Mr. Loney, were you involved in any way with respect to the communications strategy of communicating the supplemental plan text terms to the supplemental plan members in the 1998 to 2001 period?	Answer required.
7.	90	27	Q: If you turn to tab 33 [of Exhibit B], the same brief, this is a memo from Diane Barsoski to assistant vice presidents, directors and managers, pertaining to the supplemental pension plan. You would have received a copy of this memo at the time that it was sent?	Answer required.
8.	91	28	Q. Were you provided a copy of this draft before it was sent?	Answer required.
9.	92	28	Q. Were you consulted about the text, or were you in any way involved in any of the drafting of this document?	Answer required.
10.	95	29	Q. Were you aware of whether or not the supplemental plan members were advised in 2001 as to the ability of Canada Life to wind up the supplemental pension plan?	Answer required.
11.	96	29	Q. Were you aware of whether or not the supplemental plan members were advised in 2001 about the implementation of the new text, that if the plan was wound up, there would be a lump sum paid to each member based on a formula?	Answer required.
12.	98	29	Q: Were you aware in 2001 as to whether or not the supplemental plan members were advised that the lump sum, which may be payable, would or could not be sufficient to replace the pension stream which was set out in the formula?	Answer required.
13.	99	30	Q: Were you aware as to whether or not the supplemental plan members were ever provided a copy of the supplemental plan text?	Answer required.
14.	102	31	Q. Turn to Exhibit B, which is the trustee brief. Please turn to tab 882A [Report on Behalf of the Plan Administrator]. Turn to page 3, at the bottom. It says "communication to supplemental plan members", it says at the bottom of the paragraph that: "...We have reviewed this with Mercer, and we will be reviewing it with Allen Loney and Andrew Brands..." Was this communication referenced in this report, which is attached at Appendix E, ever brought to your attention for comment?	Answer required.
15.	103	31	Q. Did you provide any comments on the "draft number 4" communication, which is identified in Appendix E or any other draft?	Answer required.
16.	104-106	32	Q. If you turn to tab 883B, this is a follow-up report on behalf of the plan administrator to the then existing trustees. If you turn to the very back...	Answer required.

	Qn No.	Page No.	Specific refusal	Disposition by the Court
			Q. This is a handwritten note, which reads: "...Diane, I need to make the final changes from Allen Loney, and then I will include as appendix C..." Can you advise of changes you made to the draft?	
17.	110	33	Q. If you turn to the next tab, tab 884A. This is a copy of the same report, but at the back, rather than a handwritten note, there actually is a draft communication. It is identified as draft number 6. It has handwritten notes on the top left, which says: "...Try again..." Are those your handwritten notes?	Answer required.
18.	111	33-34	Q. Are you aware of whose handwritten note those are [on the last page of the document at tab 884A, Report of the Plan Administrator]?	Answer required.
19.	112-113	34	Q. On the second page on the bottom right, it says: "...Circumstances of windup..." Are those your handwriting? Q. Are you aware of whose handwriting it is?	Answer required.
20.	115	34	Q. Were you involved in any way in the drafting of this document?	Answer required.
21.	116	35	Q. Did you provide any comments, or changes, with respect to this draft?	Answer required.
22.	117-118	35	Q. Did this draft reflect any comments that you had made earlier, and if so, which ones? Q. And, please advise if that is the case, what the basis of those concerns were?	Answer required.
23.	132	38	Q. Were you aware that it was decided at the September 4th 2002 trustees meeting that this communication, draft 6, which is at tab 884A, was not to be sent to the membership; were you aware of that?	Answer required.
24.	133	38	Q. Were you in any way involved, or commented on the decision with respect to not sending this communication?	Answer required.
25.	134	38	Q. Okay. Were you aware of Canada Life's plans as to whether or not a communication of this sort would ever be sent to the plan membership?	Answer required.
26.	135	38-39	Q. Did you ever ask, or suggest to anyone that such a communication, which would advise of the implications of plan windup, to supplementary members ever be sent?	Answer required.
27.	185	50-51	Q. Were you aware of the basis of why Canada Life was considering winding up the SERP?	Answer required.
28.	190-194	51-52	Q. So, the question is, did you receive a copy of this presentation [of the July 2004 presentation by Wally Robinson, at tab 889 of Exhibit C]?	Answer required.
29.	195-6	52-3	Q. On the front page there is Wally's handwriting, and his second note is "Allen's concerns". Did that relate to your concerns? Q. Can you please tell us what those concerns were that you expressed to Mr. Robinson?	Answer required.

	Qn No.	Page No.	Specific refusal	Disposition by the Court
30.	197	53	Q. In the second page, page 2 of the document, the recommendation. This is a summary of the recommendation of Mr. Robinson. Were you aware at that time the summary was including a complete windup of the SERP, being both the retirees and the deferred vesteds?	Answer required.
31.	332	89	Q. You were aware, as chief actuary, that the actuarial standards changed with an effective date of February 1st, 2005, correct?	Answer required.
32.	333	89	Q. You were aware that the actuarial standards which were applied to the calculation of the lump sum values were those which were in effect prior to February 1st, 2005?	Answer required.
33.	198	53	Q. Towards the bottom, it says "timing of communications", it said: "...Deferred members and retirees given notice in the fall..." Were you aware of that being Canada Life's intention?	Answer required.
34.	199	54	Q. Okay, were you aware of what steps were going to be taken to ensure that [distribution of notice] was done in the fall?	Answer required.
35.	200	54	Q. Were you aware of whether or not [notice] needed to be in the fall, and whether or not that had been expressed by any parties?	Answer required.
36.	201	54	Q. Were you aware of whether or not that notice had to be given prior to the windup effective date?	Answer required.
37.	202	54-55	Q. On the third page [page 3 of the presentation at tab 889 of Exhibit C], there is a series of recommendations, again, and the third one is: "...Develop a communication package for the three groups with benefits under the plan: actives, formers and former employees now receiving a monthly benefit..." Were you in any way involved in the development of that communication package?	Answer required.
38.	203	55	Q. Did you take any steps to ensure that that communication package went out in advance of the effective windup date?	Answer required.
39.	232	62	Q. So, my question is, were you aware in January of 2005 that the board resolved to wind up the plan completely, including both retirees and deferred vested?	Answer required.
40.	281	75	Q. So, we are looking at document 229A [memo to trustees]. Q. Okay. And you had become aware of facts prior to the date of this memo?	Answer required.
41.	324, 325	87	Q. Were you involved in any way in the notification process? MR. FIELD: As a trustee? MR. PTAK: My question is general. I can narrow it, if you wish. But my first question, to which I expect you will refuse, is were you aware in the notification process to the members in respect of the	Answer required.

	Qn No.	Page No.	Specific refusal	Disposition by the Court
			SERP windup?	
42.	327	88	Q. Did you take any steps to ensure that notification [of the SERP wind-up] would be promptly sent out?	Answer required.
43.	220	59	Q. Mr. Loney, were you involved in the potential changes, which were mentioned in this minute [Tab 908 of Exhibit B, Minutes of Trustee Meeting, November 2004], which were contemplating being made to the SERP?	Answered at qn 207. No further answer required.
44.	226	60-61	Q. Mr. Loney, were you involved in the potential changes, which were mentioned in this minute?	Answered at qn 207. No further answer required.
45.	233-234	62-63	Q. Was there a concern expressed following the passing of that resolution as to whether or not the retirees should be included in the windup of the SERP? MR. FIELD: How can you think that is a proper question, "Was there a concern expressed" to whom, by whom, et cetera? MR. PTAK: To you.	Answer required.
46.	236	63	Q. You would agree that between January and February of 2005, you were involved in considering alternatives with respect to the retirees, alternatives to a windup, which would include possible purchase of annuities, for their income replacement?	Answer required.
47.	242-247	65-66	Does Mr. Loney have any knowledge about whether the comment "Picking and choosing could backfire badly..." on the original document at tab 932 of Exhibit C refers to picking retirees to carve out of the SERP windup?	Answer required.
48.	254-255	69	Q. Was there any discussion at that time as to whether or not it was appropriate to include the deferred vested members in the SERP?	Answer required.
49.	256	69	Q. Did you have any concerns with respect to the inclusion of the deferred vested in the SERP [wind-up]?	Answer required.
50.	257	69	Q. Did you have any concerns with respect to the inclusion of the retirees in the SERP [wind-up]?	Answer required.
51.	284	76	Q. Okay. Are you aware as to the reason why the retirees were carved out of the SERP windup?	Answer required.
52.	285	76-77	Q. Are you aware of whether [the reason why the retirees were carved out of the SERP windup] was related to the fact that they were already in receipt of a pension, and therefore there was some concern that the commuted value which would be paid to them might be insufficient to replace that pension stream?	Answer required.
53.	293	78-79	Q. But there was the concern with respect to the retirees and whether or not the lump sum values in a windup would be sufficient to replace the pension stream?	Answer required.

	Qn No.	Page No.	Specific refusal	Disposition by the Court
54.	271	72-73	<p>Q. At the bottom of the page [tab 188 of Exhibit C] is an e-mail from Wally Robinson to Al Edwards, it reads:</p> <p>"...In discussion with Allen Loney, he was wondering if we had checked with legal advisor on the commute in January, pay big lump sum in November. Process, he was surprised we could take that long. It didn't seem strange to me at all, from prior experience with pension plan windups, but this is different, so I thought I would raise it with you..."</p> <p>Q. That is a correct statement; you had those concerns?</p>	Answer required.
55.	272	73	<p>Q. What was the basis of your concern, or belief, that there may be an issue in commuting in January, and paying a lump sum in November?</p>	Answer required.
56.	273	73	<p>Q. What steps did you take to satisfy yourself that that was an appropriate method, of paying out a lump... commuting in January, and then paying a lump sum the following November?</p>	Answer required.
57.	310	83	<p>When do you believe the effective date was used with respect to the calculations then, if not January 31st, 2005?</p>	Answer required.
58.	312-313	83-84	<p>Q. You were aware that a lump sum payment based on interest rates then in place on January 31st, 2005, given the declining interest rates, would be less able to generate the same return in order to replace an anticipated pension stream?</p> <p>Q. And therefore, the longer the delay, the...if the interest rates continued to decline, the less amount of return the same lump sum can generate, and therefore, the bigger shortfall with respect to the monthly payment and the return generated by the lump sum would be?</p>	Answer required.
59.	346	93	<p>Q. Do you have an arrangement with respect to your pension entitlement that is different from other Canada Life employees?</p>	Irrelevant. No answer required.
60.	349	94	<p>Q. Okay. I would ask for a copy of that document which sets out the arrangement that you have with respect to your pension entitlement.</p>	Irrelevant. No answer required.

Mr. Grant's Refusals

[29] Mr. Grant's refusals relate to his awareness of Mr. Loney's role in the wind-up process. All of these questions must be answered. They are all relevant to the Trustee Common Issue - whether the Trustees, *or any of them*, participated in decisions made by Canada Life.

	Qn No.	Page No.	Specific refusal	Disposition by the Court
1.	300	72	<p>Q. You were aware that Mr. Loney would have, therefore, had some</p>	Answer

	Qn No.	Page No.	Specific refusal	Disposition by the Court
			role in the wind up process in terms of calculation of the amounts?	required.
2.	303	72	Were you aware of Mr. Loney having any involvement in the notification process to the members?	Answer required.
3.	304	73	Q. Are you aware of whether Mr. Loney had any involvement in the decision as to which members of Canada Life to include in the SERP wind up?	Answer required.
4.	305	73	Q. Are you aware of whether Mr. Loney had any involvement in the calculation of the individual lump sums which would be paid out to each individual member?	Answer required.

Mr. Symons' Refusals

[30] Most of Mr. Symons' refusals relate to the production of trust deeds and minutes. Mr. Symons has answered that he has produced all such documents in his possession and that any others are with Canada Life. The proper route is for the plaintiff to obtain them through Canada Life – it is disproportionate to require Mr. Symons to do so.

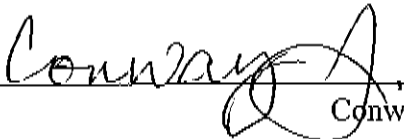
	Qn No.	Page No.	Specific Refusal	Disposition by the Court
1.	78	19	Q: So the undertaking I'm asking for is for Mr. Symons to review the draft Trust Deeds and advise whether or not, to his recollection, if that is the complete set or whether there are others that he may have reviewed, and if so to request and obtain a copy by using best efforts.	Disproportionate. No answer required.
2.	61-71	15-17	To obtain and provide copies of any draft Trust deeds that preceded the Declaration of Trust signed on August 7 th 2002 by Mr. Symons.	Disproportionate. No answer required.
3.	112	28	Q. Well, again, what I would ask you to produce indirectly is minutes, agenda, and any materials provided to the trustees with respect to the June 2nd, 2000 meeting?	Disproportionate. No answer required.
4.	159	38	Q. I will make the same request for you to obtain a copy of the minutes, agenda and any other materials, to the extent that it hasn't already been provided. [for the February 20, 2001 Trustee Meeting]	Disproportionate. No answer required.
5.	169	41-42	Q: my request for you, rather than asking each and every meeting for which minutes haven't been produced, is simply this, to produce all minutes, all agendas, all materials provided to the trustees in advance, and any notes or other documentation relating to those meetings of the trustees between the time period of 2001 and 2006?	Disproportionate. No answer required.

	Qn No.	Page No.	Specific Refusal	Disposition by the Court
6.	346	81	<p>Q. Were you aware of any of these concerns which are set out on this note?</p> <p>A. I was not aware of any of those concerns. As a matter of fact I don't understand some of them.</p> <p>Q. If I were to tell you that they relate to the decision to wind up the retirees and then subsequently to carve out the retirees, would you have any knowledge of any concerns being raised by anyone about that?</p>	<p>Answered. Speculative. No answer required.</p>

Disposition

[31] An order will issue in accordance with these reasons.

[32] I would encourage the parties to agree on costs. If they are unable to agree, written submissions (not exceeding 3 pages, double spaced, exclusive of bill of costs) may be made to me within 21 days.


 Conway J.

Date: March 21, 2013