

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

BETWEEN:

**DENNIS F. CAPONI**

Plaintiff  
(Respondent)

– and –

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

Defendants  
(Appellant)

Proceeding under the *Class Proceedings Act, 1992*

**NOTICE OF MOTION FOR LEAVE TO APPEAL  
TO THE DIVISIONAL COURT**

**THE DEFENDANT**, The Canada Life Assurance Company (“Canada Life”), will make a motion to a Judge, on Monday, May 13, 2013 at 10:00 a.m. or as soon after that time as the motion can be heard, at 130 Queen Street West, Toronto, Ontario.

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

**THE MOTION IS FOR:**

1. An order granting leave to Canada Life to appeal to the Divisional Court from an order of the Honourable Madam Justice Conway dated March 21, 2013 (the “Order”) dismissing Canada Life’s motion seeking answers to certain questions which were refused during the course of the representative plaintiff’s examination for discovery;
2. The costs of this motion; and

3. Such further and other relief as counsel may request and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

1. Arising out of the examination for discovery of the plaintiff, Canada Life sought an Order requiring the plaintiff to provide certain financial information to Canada Life and to make inquiries of a subset of other class members to produce similar information. These requests were refused by the plaintiff during the course of his discovery.

2. The information requested from both the plaintiff and the other class members goes directly to the quantification of class member damages, which is one of the issues that may be dealt with at the common issues trial.

3. There is good reason to doubt the correctness of the Order dismissing Canada Life's motion, and in particular:

- i) there is good reason to doubt the correctness of the motion judge's conclusion that the information requested went beyond what Cullity J. identified as issues to be dealt with at the common issues trial;
- ii) there is good reason to doubt the correctness of the motion judge's conclusion that there is no prejudice to Canada Life in refusing to order production of the requested information on the basis that it would be open to Canada Life to seek production of the information during the course of the common issues trial;
- iii) there is good reason to doubt the correctness of the motion judge's conclusion that the information requests directed at the representative plaintiff constituted an attempt to examine 32 of the approximately 260 absent class members and that such information could be obtained, if at all, only pursuant to section 15(2) of the *Class Proceedings Act, 1992*; and
- iv) there is good reason to doubt the correctness of the motion judge's conclusion that Canada Life's request was over-broad, speculative, and of modest probative value.

4. The proposed appeal raises matters of general importance to class action practice in Ontario, including:

- i) the obligation of a class representative to solicit information from class members when such information is relevant to the issues that may be addressed at the common issues trial; and
- ii) when, if ever, information may be sought from class members without direct discovery of such members (with leave) pursuant to section 15(2) of the *Class Proceedings Act, 1992*.

5. Section 19(1)(b) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43;

6. Rule 62.02 of the *Rules of Civil Procedure*;

7. Sections 12 and 15 of the *Class Proceedings Act, 1992*; and

8. Such further and other grounds as counsel may advise and this Court may allow.

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

1. The Order and Reasons for Decision of Justice Conway dated March 21, 2013;

2. The motion materials before Justice Conway; and

3. Such further and other material as counsel may advise and this Honourable Court may permit.

March 28, 2013

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**DENNIS F. CAPONI**

and

**THE CANADA LIFE ASSURANCE  
COMPANY et al.**

Plaintiff

Defendants

Divisional Court File No. \_\_\_\_\_

Court File No: 07-CV-339254CP

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

Proceeding commenced at Toronto

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