

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

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

**STATEMENT OF DEFENCE AND COUNTERCLAIM
OF THE CANADA LIFE ASSURANCE COMPANY**

1. The Defendant The Canada Life Assurance Company (“Canada Life”) admits the allegations contained in paragraphs 3, 5, 10, 14, 21, 23, 34 and 35 of the Statement of Claim.
2. Canada Life denies the allegations in paragraphs 2, 4, 6, 7, 8, 9, 11, 12, 13, 15, 16, 17, 18, 19, 20, 22, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57 and 58 of the Statement of Claim, and further denies that the class members or any of them are entitled to the relief claimed in paragraph 1 of the statement claim or to any relief whatsoever.

BACKGROUND

3. Canada Life sponsors the Canada Life Canadian Employees Pension Plan (the “Registered Plan”), which is a registered pension plan under the *Income Tax Act* (Canada) and

the *Pension Benefits Act* (Ontario). The Registered Plan is a defined benefit pension plan. As a result of the restrictions imposed by the *Income Tax Act* (Canada), pension benefits from the Registered Plan are limited, or capped, for certain plan members.

4. Subsequent to 1983, Canada Life began to provide supplemental retirement benefits for eligible employees whose Registered Plan benefits were capped by the *Income Tax Act* (Canada) restrictions. Together with the pension paid from the Registered Plan, these supplemental retirement benefits were designed to provide a target pension benefit not restricted by the limits imposed by the *Income Tax Act* (Canada) on registered pension plans.

5. In terms of providing supplemental retirement benefits to eligible employees, Canada Life reserved the right to: (i) terminate the accrual of supplemental retirement benefits of eligible employees; (ii) at any time in Canada Life's sole discretion, value and satisfy any accrued obligation owing to an eligible employee in respect of supplemental retirement benefits by the payment of a lump sum amount to that employee; and (iii) amend, in its sole discretion, the terms upon which Canada Life provided supplemental retirement benefits to eligible employees.

6. The provision of supplemental retirement benefits by Canada Life to eligible employees was subject to a number of conditions which, if breached, resulted in the eligible employee forfeiting all rights to receive supplemental retirement benefits.

THE SUPPLEMENTAL PLAN

7. Effective January 1, 2001, Canada Life established the Canada Life Canadian Supplemental Retirement Plan (the "Supplemental Plan") to formalize the provision of supplemental retirement benefits to eligible employees. The creation of the Supplemental Plan was beneficial to these employees in that the supplemental retirement benefits provided under the Supplemental Plan were funded by way of a trust. Prior to 2001, any supplemental retirement benefits were paid by Canada Life. In addition, the Supplemental Plan provided for earlier vesting of supplemental retirement benefits as compared to Canada Life's pre-2001 supplemental retirement benefits arrangements.

8. Under the terms of the Supplemental Plan, Canada Life reserved the sole right to “amend, revoke, segregate, merge or terminate” the Supplemental Plan at any time or times, whether or not the Registered Plan was terminated. The Supplemental Plan went on to provide that in the event of such termination, the eligible employee would be entitled to receive a lump sum amount determined in accordance with the provisions of the Supplemental Plan in lieu of any other benefit payable under the Supplemental Plan.

9. Contrary to the allegations in the Statement of Claim, the provisions in the Supplemental Plan text which authorize Canada Life to terminate the Supplemental Plan are consistent with the terms upon which Canada Life provided supplemental retirement benefits to eligible employees prior to 2001 except for improvements such as those referred to in paragraph 7 above.

10. In any event, any change to Canada Life’s supplemental retirement benefits arrangements by virtue of the establishment of the Supplemental Plan was consistent with Canada Life’s right to unilaterally amend those arrangements.

11. Furthermore, at the time the Supplemental Plan was put in place, it was done on notice, with consideration and with the consent (implicit if not explicit) of the affected eligible employees.

12. There are approximately 55 members of the class (out of a total of some 257 class members) who were hired by Canada Life after January 1, 2001 and thus who were never part of Canada Life’s pre-2001 pre-retirement benefits arrangements or affected by any changes resulting from the adoption of the Supplemental Plan.

DECLARATION OF PARTIAL WIND-UP

13. On January 31, 2005, the Executive Committee of the Canada Life Board of Directors (the “Executive Committee”) met and passed resolutions, *inter alia*: (i) clarifying that Canada Life’s right to terminate the Supplemental Plan included the right to terminate the Supplemental Plan in whole or in part; and (ii) that effective January 31, 2005, the Supplemental Plan be terminated in part with respect to all individuals who were deferred vested members of

the Supplemental Plan and that the Supplemental Plan benefits of such individuals be distributed in accordance with the provisions of the Supplemental Plan (hereinafter, the "Partial Wind-Up"). Retired members of the Supplemental Plan were also included in the Partial Wind-Up subject to a request by the Executive Committee that management give further consideration as to whether retirees should be included in the Partial Wind-Up. Subsequent to this resolution, the Executive Committee resolved that effective January 31, 2005 that retired members of the Supplemental Plan be excluded from the Partial Wind-Up and the Supplemental Plan benefits of such individuals shall continue to be paid in accordance with the provisions of the Supplemental Plan.

14. Subsequent to January 31, 2005, the amount paid to each member of the Supplemental Plan affected by the Partial Wind-Up was calculated in accordance with the terms of the Supplemental Plan and applicable actuarial standards and principles and proper and timely notice of the Partial Wind-Up and the amount payable was provided to each such member.

15. In accordance with the terms of the Supplemental Plan and applicable actuarial standards and principles, the Plaintiff and all class members received the requisite lump sum amounts to which they were entitled under the terms of the Supplemental Plan.

16. Canada Life specifically denies that the calculation of the lump sum amounts paid to class members, including the Plaintiff, on the Partial Wind-Up was done incorrectly or that Canada Life failed to apply correct formulas and assumptions, utilized inappropriate interest rates or failed to take into account the tax consequences in connection with the payment of the lump sum amounts to affected members.

17. Canada Life further denies that the Plaintiff or any class member has suffered any loss arising from the Partial Wind-Up and puts the Plaintiff and all class members to the strict proof thereof. In the alternative, to the extent that the Plaintiff is successful in establishing an entitlement to damages as a result of the Partial Wind-Up, Canada Life pleads that the amount sought on behalf of the Plaintiff and all other class members is excessive and completely disproportionate to the loss, if any, suffered. Canada Life further pleads that there is no basis in this case for the Court to award punitive damages.

18. Accordingly, Canada Life asks that this action be dismissed with costs payable to the defendants.

COUNTERCLAIM

19. The Defendant Canada Life seeks:

- (i) a declaration that in the event that the Plaintiff is successful in establishing that Canada Life had no right to declare a Partial Wind-Up of the Supplemental Plan and to the extent that the Court orders that the Supplemental Plan trust be reconstituted to remedy any breach of trust that may have resulted from of the Partial Wind-Up, that Canada Life has the right to seek recovery from the Plaintiff and any other class member of all amounts distributed pursuant to the Partial Wind-Up with interest.

20. Canada Life relies on paragraphs 1 to 17 above.

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ONTARIO

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto
Proceeding under the *Class Proceedings Act, 1992*

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COUNTERCLAIM OF
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