

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE  
JUSTICE CULLITY

) Monday, THE 27<sup>th</sup>  
)  
) DAY OF JULY, 2009

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*

**ORDER**

**THIS MOTION** made by the plaintiff for an Order regarding, *inter alia*, notice of certification and opt-out procedure for class members, was heard this day in writing, with submissions being made by counsel for the parties at the Case Conference on May 11, 2009 at 361 University Avenue, Toronto, Ontario, with Reasons certifying the action being previously released on January 13, 2009.

**ON CONSENT OF THE PARTIES,**

1. **THIS COURT ORDERS** that within twenty (20) days of the date of this Order, the Defendant Canada Life Assurance Company shall provide to Koskie Minsky LLP ("Class Counsel"), a list of the Class Members with their last known contact information on file.

2. **THIS COURT ORDERS** that Class Members shall be notified that this proceeding has been certified as a class proceeding in the following manner:

- (a) By Class Counsel mailing the notice substantially in the form attached hereto as Schedule "A" (the "Notice"), to the last known addresses of the Class Members provided by Canada Life Assurance Company, within twenty (20) days of this Order;
- (b) by Class Counsel posting the Notice on Class Counsel's website;
- (c) by forwarding the Notice to any other person who requests it; and
- (d) through a toll-free message set up by Class Counsel.

3. **THIS COURT ORDERS** that a Class Member may opt out of the class proceeding by delivering a signed Opt Out form appended as Schedule "B" to this Order which must be received or post-marked by September 30, 2009 (the "Opt Out Deadline") to Koskie Minsky LLP addressed as follows:

Koskie Minsky LLP  
Suite 900, 20 Queen Street West  
Toronto, Ontario  
M5H 3R3  
**Attention: Canada Life SERP Class Action**

4. **THIS COURT ORDERS** that Class Members may not opt out after the expiry of the Opt Out Deadline set out in paragraph 3 above.

5. **THIS COURT ORDERS** that Class Counsel shall serve on the parties and file with the court, within sixty (60) days of this Order, an affidavit confirming the Notice was

delivered to the Class Members in accordance with paragraph 2 above

6. **THIS COURT ORDERS** that Class Counsel shall serve on the defendants and file with the court, within thirty (30) days after the expiry of the Opt Out Deadline, an affidavit listing all persons who have opted out of the class proceeding, if any.



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

JUL 28 2009

AS DOCUMENT NO.:  
À TITRE DE DOCUMENT NO.:

PER / PAR:



Schedule "A"

Court File No. 07-CV-339254 CP

**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*

**NOTICE OF CERTIFICATION OF A CLASS PROCEEDING**

**TO THE CLASS:** all persons, wherever resident, who are former employees of The Canada Life Assurance Company ("Canada Life"), and who were included in the partial wind-up of the Canada Life Canadian Supplemental Pension Plan as of January 31, 2005, and their estates and beneficiaries (collectively, the "Class" or "Class Members")

**THIS NOTICE IS IMPORTANT TO YOU. IT IS PUBLISHED BY ORDER OF  
THE ONTARIO SUPERIOR COURT OF JUSTICE.**

**Nature of this Action and Certification as a Class Action**

Dennis F. Caponi, (the "Representative Plaintiff") commenced an action against the Canada Life Assurance Company and A.P. Symons, D. Allen Loney and James R. Grant on behalf of the Class. The action arises out of the partial wind-up of the Canada Life Canadian Supplemental Pension Plan (the "Supplemental Plan") as of January 31, 2005.

This action was certified as a class proceeding by the Court and Dennis F. Caponi was appointed as the Representative Plaintiff on behalf of the Class. The law firm of Koskie Minsky LLP was appointed as Class Counsel.

The Representative Plaintiff alleges that the defendants were not permitted to partially wind up the Supplemental Plan, and, in the alternative that a Court finds that they were permitted to wind up the Supplemental Plan, that the defendants failed to properly calculate and pay distributions to the Class Members. The Representative Plaintiff alleges that the defendants breached their duties by failing to provide proper notice to the Class Members of the partial wind-up and by paying the Class Members less than they were entitled. On behalf of the Class, the

Representative Plaintiff is seeking declarations (including that the defendants were not permitted to wind up the Supplemental Plan) and monetary damages so that the Class Members are paid the additional amounts to compensate them for the losses claimed. The defendants' position is that Canada Life did have the right to partially wind-up the Supplemental Plan, that the Representative Plaintiff and other Class Members received the requisite lump sum amounts to which they were entitled under the terms of the Supplemental Plan and that the individual defendants carried out all of their duties as Trustees of the Supplemental Plan. At this stage none of the allegations have been proven, as the Representative Plaintiff will seek to prove them at trial.

The Representative Plaintiff is seeking an Order that additional lump sum amounts be paid to the Class Members, arising out of the partial wind-up. Should the Court find that Canada Life was not permitted to partially wind up the Supplemental Plan, and should the Court also order that the Supplemental Plan be reconstituted, Canada Life will seek an Order that all amounts distributed pursuant to the partial wind-up be returned to the pension Fund, with interest, which would then be paid out to the Class Members in the same manner as if the partial wind-up had never occurred (i.e. monthly income stream at retirement subject to the terms of the Supplemental Plan). In the opinion of Class Counsel, the risk that the Court would order that the Supplemental Plan be reconstituted is remote. Should you have any questions regarding this, you may contact Class Counsel at the contact number listed below.

### **Implications For You**

If the Representative Plaintiff is successful in the action, you may be entitled to compensation. In that case, the Court may award an aggregate amount to the Class as a whole for distribution, or establish a process for individual assessments of Class Member compensation to determine the amount each is entitled to receive.

Whether or not the class action lawsuit is successful, all Class Members who do not opt out of the class action will be bound by the judgement of the Court. This means that after this lawsuit is over, you cannot start your own lawsuit for the same claim.

### **No Direct Cost to You**

The Representative Plaintiff has entered into a contingency fee retainer agreement with Class Counsel which provides that counsel will be paid if the class action is successful or costs are recovered from the defendants. If the action is successful, either through judgment on the common issues or by way of an approved settlement, the legal fees will be set by the Court, and the Court may order that these fees be paid out of the settlement proceeds or by the defendants.

If the class action is not successful, you will NOT be responsible for any legal costs of the class action and will NOT have any other financial obligations because of the class action. Please note that individuals who voluntarily choose to donate funds in support of this action may not receive those funds back.

**Opting Out of the Proceeding**

If you do not wish to be a Class Member, you can “opt out” of the class action. By opting out of the class action, you will NOT receive any compensation if the class action is successful and your situation will remain unchanged unless you pursue an individual claim. If you wanted to pursue your own individual claim (which is your choice), you would have to retain your own counsel, at your own expense, and take full responsibility for the claim. Class Counsel cannot represent you. If you wish to pursue an individual action, it must be commenced within a specified limitation period or it will be legally barred. The certification of this class action suspended the running of the limitation period from the time the class action was filed. The limitation period will resume running against you if you opt out of this class action.

If you wish to opt out of the action, you must sign and return the attached Opt Out form to the following address, indicating that you are opting out of the class action. **To be valid, it must be postmarked or received by September 30, 2009, which is the Opt Out Deadline.**

**Koskie Minsky LLP  
20 Queen Street West, Suite 900  
Toronto, ON M5H 3R3  
E- mail: [canadalifeserp@kmlaw.ca](mailto:canadalifeserp@kmlaw.ca) Fax: 416-204-2897  
Attention: Canada Life SERP Class Action**

Please note that no person may sign an Opt Out form on behalf of a mentally incapable person without permission of the Court and on notice to the Public Trustee, if required.

**Additional Information**

Any questions about the matters in this Notice should not be directed to the Court. Further information may be obtained by contacting Class Counsel by telephone at 1-800-451-3225, by visiting the website at [www.kmlaw.ca](http://www.kmlaw.ca), by email at [canadalifeserp@kmlaw.ca](mailto:canadalifeserp@kmlaw.ca), or by mail at the address provided above.

This Notice has been approved by the Ontario Superior Court of Justice.

Schedule "B"

Court File No. 07-CV-339254 CP

**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*

**OPT OUT FORM**

To: **Canada Life SERP Class Action**  
**c/o Koskie Minsky LLP**  
20 Queen Street West, Suite 900, Box 52  
Toronto, ON M5H 3R3

**NOTE:** This is **NOT** a claim form. Completing this OPT OUT FORM will exclude you from the class action.

**I understand that by opting out of this class action lawsuit, I am confirming that I do NOT wish to participate and will NOT share in any award or receive any compensation if the class action is successful.**

I understand that a lawsuit must be commenced within a specified limitation period or it will be legally barred. The certification of this class action suspended the running of the limitation period from the time the class action was filed. The limitation period will resume running against me if I opt out of this class action. By opting out, I take full responsibility for the resumption of the running of any relevant limitation period and for taking all necessary legal steps to protect any claim I may have.

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Witness  
Print Name:

\_\_\_\_\_  
Signature of Class Member Opting Out  
Print Name:  
Address:  
Telephone:

**Note: To opt out, this form must be properly completed and received or post-marked at the above-address no later than September 30, 2009 (the "Opt Out Deadline")**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

**ORDER**

Koskie Minsky LLP  
20 Queen Street West, Suite 900, Box 52  
Toronto, Ontario  
M5H 3R3

Mark Zigler LSUC# 19757B  
Lesa MacDonald LSUC# 40924C  
Jonathan Prak LSUC# 45773F

Tel: 416.595.2090  
Fax: 416.204.2877

Solicitors for the Plaintiff