

Ontario
SUPERIOR COURT OF JUSTICE

THE HONOURABLE MADAM

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FRIDAY, THE 11th

JUSTICE LAX

DAY OF JULY, 2008

BETWEEN:

NATIONAL TRUST COMPANY

Applicant

- and -

**ROBERT M. SMALLHORN, STUART J. GALBRAITH,
JOHN D. JAMIESON and EDWARD C. O'BRIEN**

Respondents

PROCEEDING UNDER the *Class Proceedings Act, 1992*

**APPLICATION UNDER Rules 14.05(3)(a), (d) and (g) of the
*Rules of Civil Procedure***

ORDER

THIS MOTION, made by the Applicant for approval of the settlement of this Application and for related relief, was heard this day in the presence of counsel for the Applicant, and counsel for the Respondents, no-one opposing this motion.

ON READING the Notice of Motion, the Affidavit of Karim Dhanani, sworn December 6, 2007, and the exhibits thereto, the Affidavit of Robert M. Smallhorn, sworn December 5, 2007, and the exhibits thereto, the Affidavit of Stuart J. Galbraith, sworn December 5, 2007, the Affidavit of John D. Jamieson, sworn December 5, 2007, the Affidavit of Edward C. O'Brien, sworn December 5, 2007, and on hearing the submissions and consent of counsel for the Applicant and the Respondents,

AND ON BEING ADVISED that Catherine Westhaver and Erminia Policciardi delivered opt-out notices but subsequently sought to rescind their election to opt out of these class

proceedings, and that the Applicant and Respondents agree that Catherine Westhaver and Erminia Policciardi should be included in the Class,

AND ON READING the Notice of Motion dated July 11, 2008 and on hearing the supplementary oral submissions and consent of counsel for the Applicant and the Respondents,

1. **THIS COURT ORDERS** that this motion is properly returnable today, that time for service of the Notice of Motion and Motion Record herein is hereby abridged, and that further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS** that all capitalized terms not otherwise defined in this Order shall have the meanings ascribed thereto in the surplus sharing agreement made as of June 21, 2007, between National Trust Company, The National Trust Pension Surplus Member Group Committee, and various members and former members of the Plan (as amended, the "Surplus Sharing Agreement"), attached hereto as Schedule "A".

3. **THIS COURT ORDERS** that, on consent of the Applicant and the Respondents, the settlement of this Application on the terms set forth in the Surplus Sharing Agreement be and is hereby approved pursuant to section 29(3) of the *Class Proceedings Act, 1992*.

4. **THIS COURT ORDERS AND DECLARES** that:

(a) the Scotiabank Pension Plan for Former Employees of National Trust Company (Reg. No. 0315952), as amended (the "Plan") provides for payment of surplus to the Applicant, within the meaning of section 79(3)(b) of the *Pension Benefits Act, RSO 1990, c. P.8*;

(b) the Applicant is entitled to receive a payment of surplus from the Plan in the manner and on the terms set out in the Surplus Sharing Agreement and this Order; and

- (c) the Applicant is entitled to transfer assets from the Plan to the Scotiabank Pension Plan (Reg. No. 0222646) (the “Scotiabank Replacement Plan”) on account of active and certain disabled Plan members who will be transferred to the Scotiabank Replacement Plan, effective prior to Plan termination (the “Wind-Up Date”), in the manner and on the terms set out in the Surplus Sharing Agreement, and the Plan provides for such transfer.

5. **THIS COURT ORDERS** that, subject to paragraphs 7, 11 and 12 hereof, the Surplus Sharing Agreement is valid and binding on the parties to this proceeding and the Class and that, following applicable regulatory approval and subject to compliance with applicable legislation as set out in paragraph 9 of this Order, the transfer and distribution of Surplus shall proceed pursuant to the terms of the Surplus Sharing Agreement.

6. **THIS COURT ORDERS** that the opt-out notices delivered by Catherine Westhaver and Erminia Policciardi are, and are deemed to have always been, of no force or effect, and that Catherine Westhaver and Erminia Policciardi, as proper members of the Class, are entitled to share in the Surplus in the manner and on the terms provided for in the Surplus Sharing Agreement.

7. **THIS COURT ORDERS** that an amendment to the Plan in the form attached hereto as Schedule “B”, which provides for the distribution of surplus pursuant to the Surplus Sharing Agreement, after applicable regulatory filings, shall be considered valid and binding, and the Applicant is hereby authorized to make such amendment as contemplated by the Surplus Sharing Agreement.

8. **THIS COURT ORDERS** that the Surplus Sharing Agreement may be amended from time to time:

- (a) to correct any clerical or computational error;

- (b) as may be required to conform with conditions imposed or amendments required by any court, or by any regulatory body having jurisdiction over the Plan; or
- (c) as agreed in writing by the parties, pursuant to the Surplus Sharing Agreement, provided that any such amendment is of no force or effect unless and until a copy thereof is filed with the Court, accompanied by certificates of solicitors for each of the Applicant and the Respondents stating that the amendment has been made by written agreement pursuant to the Surplus Sharing Agreement;

and any such amendments shall have effect (including, if necessary, effect *nunc pro tunc*) as of the date provided in the amendment, provided that such amendments do not materially affect the rights or privileges of the Applicant or the members of the Class.

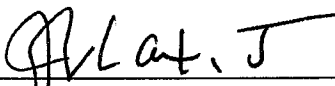
9. **THIS COURT ORDERS** that the Applicant, forthwith upon receipt of applicable regulatory approval of the proposed distribution of assets and compliance with applicable legislation, shall cause to be issued transfer instructions to the custodian of the Plan fund, or any successor thereof (the "Custodian"), to transfer assets from the Plan fund pursuant to the Surplus Sharing Agreement and the Custodian shall transfer and/or distribute the assets as so instructed in accordance with the terms of the Surplus Sharing Agreement.

10. **THIS COURT ORDERS** that, upon all amounts contemplated by the Surplus Sharing Agreement having been transferred and/or paid in accordance with the Surplus Sharing Agreement and this Order, and a Certificate having been filed as contemplated by paragraph 11 of this Order, the Applicant, the Respondents, The Bank of Nova Scotia, the Custodian, the members of The National Trust Pension Surplus Member Group Committee, and their respective affiliates and successors, employees, officers, directors, agents and advisors shall be released and discharged from any and all liability in respect of any act or omission with respect to the refund, transfer and

distribution of the Surplus, or the negotiation and carrying out of the Proposal, pursuant to the Surplus Sharing Agreement.

11. **THIS COURT ORDERS** that the releases and discharges provided for in paragraph 10 of this Order shall not take effect unless and until the Applicant and the Respondents file a Certificate with the Court certifying that all amounts contemplated by the Surplus Sharing Agreement have been paid in accordance with the Surplus Sharing Agreement, and upon the filing of said certificate the releases and discharges shall thereupon be fully and finally effective without further action or Order.

12. **THIS COURT ORDERS** that should the parties fail to obtain the applicable regulatory approval as set out in paragraph 9 of this Order, this Order shall be null and void and without prejudice to the rights of the parties to proceed with this Application and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.



Madam Justice Lax

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

JUL 21 2008

AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:



NATIONAL TRUST COMPANY
Applicant

and ROBERT M. SMALLHORN, et al.
Respondents

Court File No: 07-CV-335151CP

Ontario

SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto

ORDER

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