

**SUPERIOR COURT OF JUSTICE**



) TUESDAY, THE 6TH  
)  
) DAY OF MARCH, 2001

**KEITH R. ORMROD, MAURICE G. MONTEITH, KEN R. HUNT and VELMA E. WHITEHEAD, on their own behalf and on behalf of all retired former employees of The Hydro-Electric Commission of the City of Etobicoke receiving coverage under the Etobicoke Hydro Retiree Health and Dental Plans as of June 13, 1996**

**Applicants**

**-and-**

**THE HYDRO-ELECTRIC COMMISSION  
OF THE CITY OF ETOBICOKE**

**Respondent**

**PROCEEDING UNDER the *Class Proceedings Act*, 1992,  
S.O. 1992, c.6**

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

**ORDER**

**THIS MOTION** made by the Plaintiffs for an order certifying this action as a class proceeding was heard on February 22, 2001 at 361 University Avenue, Toronto.

ON READING the Notice of Application, the Affidavits of Keith R. Ormrod, sworn October 22, 1997, the Affidavit of Velma Whitehead, sworn October 30, 1997, the Affidavit of Kenneth R. Hunt, sworn October 30, 1997, the Affidavit of Maurice Monteith, sworn October 30, 1997, the Affidavits of Rob Jessup-Ramsay sworn June 20, 2000, and the Affidavit of Doreen Thompson sworn June 16, 2000, the transcripts from the cross-examinations on said Affidavits, and upon hearing the submissions of counsel for the parties,

1. **THIS COURT ORDERS** that this application be certified as a class proceeding pursuant to the *Class Proceedings Act, 1992*, S.O. 1992, c. 6.
2. **THIS COURT ORDERS** that the within proceeding shall proceed as an action and that the Statement of Claim be issued as the originating process by the Registrar bearing Court File No. 97-CV-123455.
3. **THIS COURT ORDERS** that a Statement of Defence (and Third Party claim, if any) is to be delivered by July 16, 2001, and a Reply, if any, is to be delivered by July 27, 2001.
4. **THIS COURT ORDERS** that the Plaintiff class shall be comprised of all retired former employees of the Hydro-Electric Commission of the City of Etobicoke receiving coverage

under the Etobicoke Hydro Retiree Health and Dental Plans as of June 13, 1996.

5. **THIS COURT ORDERS** that the representatives of the Plaintiff class shall be Keith R. Ormrod, Maurice G. Monteith, Ken R. Hunt and Velma E. Whitehead.
  
6. **THIS COURT ORDERS** that the claim to be asserted by Keith R. Ormrod, Maurice G. Monteith, Ken R. Hunt and Velma E. Whitehead on behalf of the Plaintiff class shall be for a declaration of entitlement and damages arising from the alleged breach of contract with respect to the failure of the Respondent to continue to pay 50% of the premiums on behalf of the Plaintiff class under the Etobicoke Hydro Retiree Health and Dental Plans.
  
7. **THIS COURT ORDERS** that the relief sought by the Plaintiff class shall be:
  - a. a declaration that the Respondent is required to pay 50% of the premiums for each member of the Plaintiff class in order to maintain coverage under the Etobicoke Hydro Retiree Health and Dental Plan;
  - b. a declaration that the Respondent cannot amend, alter or terminate the level of benefits coverage provided under the Etobicoke Hydro Retiree Health and Dental Plan immediately prior to June 13, 1996;

- c. an Order that the Respondent be required to provide the Plaintiff class with coverage which covers the additional costs incurred or that will be incurred by the Plaintiff class as a result of Ontario government cutbacks, which include deductibles for prescription drug coverage and maximum allowable dispensing fees per prescription;
- d. an Order that the Respondent refund to the Plaintiff class any premiums or deductibles paid by them over and above 50% of the total premium payable;
- e. costs on a solicitor and client basis; and
- f. pre-judgment and post-judgment interest in accordance with the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended.

8. **THIS COURT ORDERS** that as the Plaintiffs have formed their case to rest entirely on written representations made by Etobicoke Hydro regarding the premium-sharing arrangement, that the common issues for the Plaintiff class shall be:

- i) for those persons who retired before September 1, 1998, did the premium-sharing arrangement instituted solely by the written statements in evidence on this motion constitute a binding promise as against the Defendant;
- ii) for those persons who retired after September 1, 1988, did the premium-sharing arrangement constitute a term of their employment which vested upon retirement;
- iii) if persons in either category above were covered by a collective agreement at the

date of their retirement, do they have standing to bring a civil action against the Defendant; and

- iv) for those persons who retired after the distribution of the retirement handbook in 1989 or after November 17, 1992, the date the benefits plan election form was distributed to employees, did the language of the handbook or the election form reserve the Defendant's right to terminate benefits under the Plan, and if so, did it also apply to the premium-sharing arrangement.

9. **THIS COURT ORDERS** that members of the Plaintiff class may opt out of the Plaintiff class by delivering written notice to the solicitors for the representative Plaintiffs to be received on or before <sup>September ✓</sup> ~~May~~ 30, 2001.
10. **THIS COURT ORDERS** that the Defendant shall forthwith, and in any event no later than July 16, 2001, deliver to the solicitors for the representative Plaintiffs a computer disk containing the names and addresses of all of the members of the Plaintiff class.
11. **THIS COURT ORDERS** that the representative Plaintiffs shall send a notice in the form attached as Schedule "A" to this Order by regular first-class mail to all members of the Plaintiff class no later than July 31, 2001.
12. **THIS COURT ORDERS** the costs of giving notice to the members of the Plaintiff class


shall be costs to the Plaintiffs in the cause.

13. **THIS COURT ORDERS** that the costs of this certification motion be payable to the Plaintiffs forthwith, fixed in the amount of \$25,000.00.



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AS DOCTEUR/PROF.  
A TITRE DE DOLL/MENT/ED.  
PER/PAH



Schedule "A"

**D R A F T**

**NOTICE OF CERTIFICATION AS A CLASS PROCEEDING**

**March 6, 2001**

**TO: All retired former employees of the Hydro-Electric Commission of the City of Etobicoke receiving coverage under the Etobicoke Hydro Retiree Health and Dental Plans as of June 13, 1996.**

On May 6, 1997, Keith R. Ormrod, Maurice G. Monteith, Ken R. Hunt and Velma E. Whitehead commenced an Application against the Hydro-Electric Commission of the City of Etobicoke in the Ontario Court (General Division), which is now the Superior Court of Justice. The Application was commenced on behalf of all retired former employees of the Hydro-Electric Commission of the City of Etobicoke receiving coverage under the Etobicoke Hydro Retiree Health and Dental plans as of June 13, 1996. The records of the Hydro-Electric Commission of the City of Etobicoke show that you are one of the members of this class.

The claim being made is for a declaration of entitlement and damages arising from the alleged breach of contract and/or breach of promise with respect to the failure of the Etobicoke Hydro to continue to pay 50% of the premiums on behalf of the Plaintiff class under the Etobicoke Hydro Retiree Health and Dental Plans.

On March 6, 2001, the action was certified as a class proceeding. The matter is proceeding as an action.

Legal Representation

Paul Trudelle of the law firm of Koskie Minsky represents the Applicants in these proceedings. The representative Plaintiffs propose to work as a committee to collectively instruct Koskie Minsky with respect to these proceedings.

Legal Costs

A Retainer Agreement will be entered into with Koskie Minsky with respect to legal fees. It is expected that Koskie Minsky will be retained on a contingency fee basis, whereby the solicitors will only be paid their fees in the event of a successful result to the litigation, or a Court approved settlement. The fee will be based on a multiplier of two times their regular hourly rate. This Retainer Agreement would be subject to the Court's approval.

Judgment Binding on All Members of the Class

Any judgment ultimately obtained in these proceedings, whether favourable or not, will bind all members of the class, if such members do not opt out of the proceedings.

Opting Out

You are entitled to opt out of the proceedings by delivering a written request by regular mail to our solicitors Koskie Minsky **on or before May 30, 2001** at the address set out below. If you do not opt out prior to this date, you will be deemed a member of the class, and therefore bound by any judgment made in these proceedings.

Cost to You

In terms of the financial consequences to you, if the application is successful, the damages to which you would otherwise be entitled may be reduced by the legal fees payable pursuant to the Retainer Agreement described above. No member of the class will be responsible for the legal costs of Etobicoke Hydro if the application is unsuccessful. In the event that costs are awarded against the Plaintiffs, the Representative Plaintiffs are solely responsible for Etobicoke Hydro's legal costs.

However, in the event that the Action is successful with respect to the common issues, you may be liable for costs with respect to the determination of your individual claim, if so ordered by the Court.

Right to Participate

If you who do not wish to be part of the class, you are entitled to participate in the proceeding. Such participation is subject to the Court's approval. You may wish to obtain independent legal advice with respect to this matter.

If you have any questions or concerns contact Paul Trudelle at Koskie Minsky at the following address:

KOSKIE MINSKY  
Barristers and Solicitors  
20 Queen Street West, Box 52  
Suite 900  
Toronto, ON M5H 3R3

Telephone: 416-595-2117  
Facsimile: 416-204-2889  
Email: ptrudelle@koskieminsky.com



ORMROD, ET AL - and -

THE HYDRO-ELECTRIC COMMISSION OF THE CITY OF ETOBICOKE

Court File No. 97-CV-123455

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ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceedings commenced in Toronto

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**ORDER**

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**KOSKIE MINSKY**  
Barristers and Solicitors  
900 - 20 Queen Street West  
Toronto, Ontario  
M5H 3R3

**Paul Trudelle**  
ph. 416-595-2117  
fax 416-204-2889

Solicitors for the Plaintiffs