

Tab A

Court File No. 02-CV-236588 CP

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

SUE McSHEFFREY

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

Court File No. 06-CV-324475PD3

ONTARIO SUPERIOR COURT OF JUSTICE

AND BETWEEN:

DIANNE LECLAIR

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

Proceeding Under the Class Proceedings Act, 1992

NOTICE OF MOTION

The Plaintiffs, Sue McSheffrey and Dianne Leclair, will make a motion to the Court on November 28, 2012 at 10:00 a.m. or as soon after that time as the motion can be heard, at Courtroom 5, Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

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

THE MOTION IS FOR:

1. An Order defining the McSheffrey Class as:
 - (a) All former employees of municipal and other home care service providers who were transferred to CCACs between 1996 and 1998, and thereby continued their employment without interruption who were:
 - (i) members of the Ontario Public Service Employees' Union or the Association of Allied Health Professionals at the time of such change to their employment;
 - (ii) members of the Civic Institute of Professional Personnel ("CIPP") at the time of such change to their employment and who subsequently became members of OPSEU in respect of such employment as a result of the decision of the Ontario Labour Relations Board dated August 30, 2007 in Board File 3159-06-PS; or
 - (iii) members of the Canadian Union of Public Employees ("CUPE") at the time of such change to their employment and who subsequently became members of OPSEU in respect of such employment as a result of the decisions of the Ontario Labour Relations Board dated May 12, 2007 in Board File 3017-06-PS and dated November 7, 2007 in Board Files 3160-06-PS, 1056-07-PS and 1332-07-PS.
2. An Order defining the Leclair Class as:
 - (a) All former employees of municipal and other home care service providers who were transferred to CCACs between 1996 and 1998, and thereby continued their employment without interruption and who were members of the Ontario Nurses' Association at the time of such change in their employment, or who subsequently became members of the Ontario Nurses' Association, other than former members of the Ontario Public Service Employees' Union to the extent those members fall within the class definition in the case of *McSheffrey v. Her Majesty the Queen in Right of Ontario*.
3. An Order that the Minutes of Settlement entered into by the parties to the two (2) Actions, and executed in December 2011 (the "Settlement Agreement"), are approved pursuant to section 29 of the *Class Proceedings Act, 1992*, SO 1992, c 6 ("*Class Proceedings Act, 1992*") and shall be implemented in accordance with its terms;

4. A declaration that the Settlement Agreement is incorporated by reference and forms part of the Order and is binding upon the representative Plaintiffs, upon all Class Members except those who have properly opted out of the Actions, and upon the Defendant;
5. An Order that the Actions are dismissed against the Defendant without costs;
6. An Order declaring that this Settlement is reasonable, fair and in the best interest of the Settlement Classes;
7. An Order that any McSheffrey Class Member or Leclair Class Member who has not excluded himself or herself (opted out) from the Class by submitting an Opt Out Form to Ursel Phillips Fellows Hopkinson LLP or Cavalluzzo Hayes Shilton McIntyre & Cornish LLP be bound by the Settlement and judgment of approval;
8. An Order appointing NPT RicePoint Class Action Services as the Administrator of the Settlement;
9. An Order approving the form and process of the Notice advising Class Members of the Court's approval of this Settlement;
10. An Order that the Claims Process and distribution of settlement monies shall take place as described in the Affidavits of Sue McSheffrey and Andrea Wobick;
11. Such further and other Order as this Honourable Court may deem just and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

1. The pleadings herein disclose a cause of action against the Defendant;
2. The McSheffrey Action was commenced in 2002, under the *Class Proceedings Act, 1992*;
3. The Leclair Action was commenced 2007, under the *Class Proceedings Act, 1992*;
4. By Order dated May 9, 2005, Justice Cullity certified the McSheffrey Class but struck out all but certain claims against the Defendant;
5. By Order dated August 29, 2005, Justice Cullity found that the McSheffrey Class was entitled to legal costs on a partial indemnity basis in the amount of \$45,000 and disbursements;
6. By Order dated March 23, 2007, Justice Cullity certified the Leclair Class;
7. Following the certification of the McSheffrey Class and the Leclair Class, the parties exchanged extensive documentary production, and engaged in several days of discoveries;
8. Following the certification of both the McSheffrey Class and the Leclair Class, the parties appointed the Honourable George Adams to mediate the Actions;
9. Prior to the mediation before George Adams, expert actuarial evidence was obtained;

10. The parties have entered into a Settlement Agreement in respect of the claims against the Defendant;
11. As part of the Settlement Agreement the parties agreed to amend the class definitions of the McSheffrey Class and the Leclair Class;
12. The monetary elements of the Settlement include:
 - (a) a lump sum of \$6.5 million, to be distributed equally amongst all Class Members, with no reversion to the Crown;
 - (b) an amount of \$575,000 for Class Counsel Fees payable to Green & Chercover/Ursel Phillips Fellows Hopkinson LLP, solicitors for the McSheffrey Class;
 - (c) an amount of \$175,000 for Class Counsel Fees payable to Cavalluzzo Hayes Shilton McIntyre & Cornish LLP, solicitors for the Leclair Class; and
 - (d) an amount of \$250,000 for Administration Expenses, with reversion of any unused monies to HMQ.
13. The proposed amended class definitions use objective criteria to determine membership in the class and are rationally linked to the proposed common issues;
14. The proposed Settlement of these Actions is fair, reasonable and is in the best interests of the Classes;
15. The proposed Notice Plan is an effective means of notifying the Class Members;

16. The proposed Claims Process is an effective method of distributing funds to all Class Members;
17. The *Class Proceedings Act, 1992*;
18. The *Rules of Civil Procedure*, RRO 1990, Reg 194 as amended; and
19. Such further and other grounds as counsel may advise.

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

1. The Affidavit of Sue McSheffrey, sworn November 13, 2012;
2. The Affidavit of Dianne Leclair, sworn November 15, 2012;
3. The Affidavit of Tian-teck Go regarding the McSheffrey Class, sworn November 15, 2012;
4. The Affidavit of Tian-teck Go regarding the Leclair Class, sworn November 15, 2012;
5. The Affidavit of Andrea Wobick, sworn November 20, 2012;
6. The Facta of the Plaintiffs, filed;
7. The pleadings and proceedings herein; and
8. Such further and other documentary evidence as counsel may advise and this Honourable Court may consider.

November 20, 2012

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McSHEFFREY
Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO
Defendant

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at TORONTO

NOTICE OF MOTION

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