

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

BARBARA KRANJCEC, on her own behalf and on behalf of
all retired former employees of the Ontario Government
receiving coverage under the Supplementary Health and
Hospital Insurance, Dental and Life Insurance Plan as of
June 1, 2002

Plaintiffs

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Proceeding under the *Class Proceedings Act*, 1992

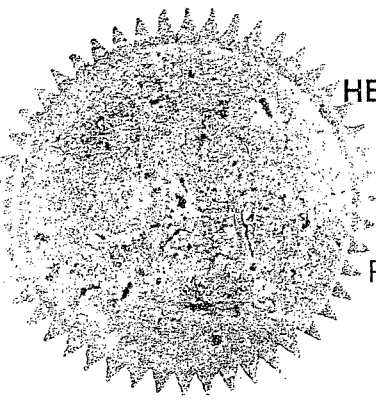
AMENDED
STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the
plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting
for you must prepare a statement of defence in Form 18A prescribed the *Rules of Civil
Procedure*, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer,
service it on the plaintiff, and file it, with proof of service, in this court office, **WITHIN
TWENTY (20) DAYS** after this statement of claim is served on you, if you are served in
Ontario.

IF YOU ARE SERVED in another province or territory of Canada or in the United
States of America, the period for serving and filing your statement of defence is forty (40)



PURSUANT TO
CONFORMÉMENT À
Defendant
AMENDED THIS
MODIFIÉ CE
Feb. 18, 2002
RULE/LA RÈGLE 26.02 (A)
THE ORDER OF
L'ORDONNANCE DU
DATED / FAITE
REGISTRAR
GREFFIER
SUPERIOR COURT OF JUSTICE
COUR SUPÉRIEURE DE JUSTICE

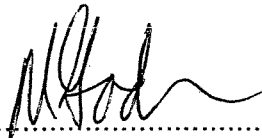
days. If you are served outside Canada and the United States of America, the period is sixty (60) days.


INSTEAD OF SERVING and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten (10) more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$20,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$100.00 for costs and have the costs assessed by the court.

Date: Oct. 31, 2002

Issued by 
Local Registrar

Address of
court office 393 University Avenue
10th Floor
Toronto, Ontario
 MSG 1E6

TO: **HICKS MORLEY HAMILTON STEWART STORIE LLP**
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Solicitors for the Defendant

CLAIM

1. The Plaintiff claims:

- (a) a declaration that each member of the represented Plaintiff class (the "Retirees") is entitled to receive retirement benefits from the Defendant as set out in the Supplementary Health and Hospital Insurance, Dental and Life Insurance Plan in effect immediately prior to June 1, 2002 (the "Plan"), which was provided to Retirees who participated in the Plan on or before June 1, 2002;
- (a.1) a declaration that each Retiree is entitled to receive improvements to the Plan implemented after June 1, 2002;
- (b) a declaration pursuant to s. 24(1) of the *Canadian Charter of Rights and Freedoms*, schedule B to the *Canada Act, 1982* (U.K.) 1982, c.11 (the "Charter") that any reduction of the Retirees' retirement benefits as set out in the Plan is a violation of the Retirees' rights pursuant to s. 15 of the Charter;
- (c) in the alternative, damages for breach of contract and/or breach of fiduciary duty, in an amount to be determined;
- (d) punitive damages in the amount of \$1,000,000;
- (e) costs of this action on a scale of substantial indemnity; and
- (f) such further and other relief as to this Honourable Court may seem just.

I. THE PARTIES

2. The Plaintiff, Barbara Kranjcec, is a 63 year old woman living in Mississauga, Ontario. She was an employee of the Defendant for over 25 years prior to her retirement in August, 1993. At the time of her retirement, Ms. Kranjcec held the position of Supervisor, Medical Claims at the Ontario Health Insurance Program.

3. Ms. Kranjcec brings this action on her own behalf and on behalf of all retired former employees of Her Majesty the Queen in right of Ontario receiving coverage under the Plan as of June 1, 2002 (the "Retirees").

4. The Defendant provides benefits through the Plan to the Retirees.

II. VESTED RETIREE BENEFITS

5. In or about 1974, the Defendant entered into an agreement with its employees to provide retirement health and group insurance benefits for existing and future retirees.

6. The terms of the benefits agreed to were and are set out in "A Guide to your Benefits after Retirement" (the "Guide"), which the Defendant distributed to all employees and retirees.

6.1 The Defendant improved the benefits provided to retirees from time to time and amended the Guide to reflect such improvements. Prior to June 1, 2002, there had never been any reductions to the benefits.

7. The current version of the Guide provides for dental plan benefits, supplementary health and hospital benefits and life insurance. It provides coverage until the retiree's death, or, if the retiree has a spouse or dependent child, until the death of the spouse, the

death of the child, or the date the child is no longer a dependent. Certain benefits are limited by maximum amounts which will be paid to the retiree during his or her lifetime. The Guide does not contain any terms allowing the Defendant to reduce or eliminate a retiree's benefits during his or her retirement.

8. The Retirees state that it was an implicit term of the Plan that their benefits vested upon retirement. Upon achieving retired status, the Retirees were no longer in a position to negotiate with the Defendant regarding benefits, nor to assume new and unpredictable financial burdens. It was implicit and remained uncontradicted by the Guide that once an employee retired, his or her retiree benefits could not be unilaterally reduced or eliminated by the Defendant.

8.1 The Retirees similarly state that all improvements to benefits made post-retirement also vested once they were provided. Again, it was implicit and remained uncontradicted that such benefits could not be unilaterally reduced or eliminated.

III. REDUCTION OF BENEFITS

9. By Memorandum from Management Board Secretariat (the "Memorandum"), the Defendant advised the Retirees that their benefits pursuant to the Plan would be reduced effective June 1, 2002. The Memorandum justifies the reduction on the basis of an Order in Council (162/91) which provides benefit entitlements to eligible civil servant retirees (the "OIC"). The Memorandum alleges that, according to the OIC, benefits for retirees must be the same as benefits negotiated between the Defendant and the Ontario Public Service Employees Union.

10. Particulars of the benefit reductions include:

Dental Care

- a) institution of a \$100 annual deductible for all dental services;
- b) elimination of fluoride treatment, except for children under 12 years;
- c) dental recall examinations extended from 6 months to 9 months, except for children under 12 years;
- d) reduction of claims coverage to the previous year's Ontario Dental Association fee guide, effective January 1, 2004;

Prescription Drugs

- e) reimbursement for only lowest priced generic equivalent drugs, requiring the retiree to pay any difference between the generic and brand name drug;
- f) elimination of coverage for drugs that can be obtained without a prescription (commonly referred to as "over the counter" items);
- g) introduction of a per prescription deductible of \$3.00, effective January 1, 2003, with the deductible to increase to \$5.00 per prescription on January 1, 2004; and

Supplementary Health and Hospital

- h) elimination of out-of-country coverage.

IV. IMPACT OF BENEFIT REDUCTIONS ON RETIREES

11. The Defendant's breach has seriously impacted the Retirees.

12. The Plaintiff, Barbara Kranjcec, for instance, suffers from various disabilities, including ataxia, which causes her a speech impediment and difficulty with her balance, for which she uses a wheelchair. Ms. Kranjcec was first diagnosed with ataxia prior to her retirement, and by the date of her retirement, she used a walker. Ms. Kranjcec also suffers from hypothyroidism, asthma and eczema, all of which conditions she suffered from prior to her retirement.

13. As a result of the benefit reductions, Ms. Kranjcec has been unable to afford to attend for her most recent dental cleaning. Ms. Kranjcec must now also pay for Tylenol, to treat her pain, and Imodium, to treat diarrhea, both of which medications were also previously covered by the Plan.

14. In addition, Ms. Kranjcec takes the following prescription medication:

- (i) Synthroid, a drug to treat her thyroid condition;
- (ii) a cream for her skin, also related to treating her thyroid condition;
- (iii) Betamathasone valerate, a cream to treat her eczema; and
- (iv) Ventolin, a medication to treat her asthma.

As of January 2003, Ms. Kranjcec will be required to pay an additional \$3.00 each time she fills one of these prescriptions, and as of January 2004, she will be required to pay an additional \$5.00 per prescription.

V. BREACH OF BINDING PROMISE

15. The Retirees plead that the retiree benefits as set out in the Plan became a fundamental term of their employment and retirement, having been communicated to them through the Guide and accepted by them during the course of their active employment. The benefits constituted deferred compensation for their employment service.

15.1 Any improvements to benefits provided during the Retirees' retirement also constituted a promise on which the Retirees relied and which is binding on the Defendant.

16. The Defendant's reduction of the Retiree's benefits was contrary to the implied term that the benefits vested on retirement, or after retirement in the case of improvements, and could not be reduced or eliminated thereafter. The reduction thus constituted a serious breach of the Defendant's binding promises to the Retirees.

VI. BREACH OF FIDUCIARY DUTY

17. In the alternative, the Retirees plead that the Defendant breached its fiduciary duty owed to them.

18. The Defendant was in a position of trust and confidence in relation to employees who had worked for it for many years. The Retirees understood that certain benefits had been promised to them and reasonably expected that the Defendant would act in their best interests with respect to those benefits.

19. Moreover, the Retirees, no longer active employees in a position to negotiate benefits with the Defendant, were in a position of peculiar vulnerability in relation to the Defendant's control over their benefits. They were also particularly vulnerable as a result

of their advanced age and susceptibility to health problems, and their limited capacity to assume increased financial burdens as a result of their retired status.

20. The Retirees state that the Defendant accordingly owed them a fiduciary duty with respect to their benefits. The Retirees relied on their reasonable expectation that the Defendant would act in their best interests and the Defendant's unilateral action to reduce such benefits was contrary to their best interests.

VII. ORDER IN COUNCIL

21. The Retirees specifically deny that, as alleged in the Memorandum, the benefit reductions are justified by the OIC.

22. Neither the existence of, nor the terms of the OIC were ever provided or communicated to the Retirees during their employment or retirement. The Retirees accordingly did not agree to such terms and such terms did not form part of the Retirees' employment or retirement agreements. The first time Ms. Kranjcec heard of the OIC was when she received and reviewed the Memorandum. For these reasons the OIC is null and void.

23. In any event, the Retirees deny that the terms of the OIC authorize the Defendant to reduce or eliminate retiree benefits after retirement. Moreover, any ambiguity in the OIC terms should not be interpreted to deprive the Retirees of their vested benefits. Any such interpretation would sanction a harsh and extraordinary use of governmental authority to strip the Retirees' employment/retirement rights.

24. Further and in the alternative, the Retirees state that the OIC should not be interpreted to allow the government to strip their rights without compensation. The OIC should be interpreted at the very least to compensate them for the breach of their

employment/retirement rights. Any failure to compensate the Retirees would also sanction harsh and extraordinary action by the government.

25. Finally, and in the further alternative, the Retirees state that the OIC is null and void in that it was not passed pursuant to an enabling statute.

VIII. DISCRIMINATION AGAINST RETIREES

26. The Retirees state that the Defendant's reduction of their benefits infringed their rights pursuant to s. 15 of the *Charter*. The reduction constituted a denial of benefits which disproportionately impacted the Retirees as a result of their age.

27. In particular, the Defendant's reduction in benefits simply applied to the Retirees the reductions negotiated for active employees between the Defendant and the Ontario Public Service Employees' Union. However, unlike active employees affected by the reduction in benefits, the Retirees were not in a position to negotiate their benefits, to obtain employment elsewhere with more favourable benefits, or to benefit from negotiated wage increases.

28. Moreover, because of their advanced age, the Retirees suffer from health problems to a greater degree than do active employees. As a result, they have been more significantly impacted by the reduction in their health benefits than have the active employees. In addition, due to their retired status, the Retirees are more vulnerable to any increased financial burdens than are active employees.

29. The Retirees plead that, in all of the circumstances as set out above, the reduction of their benefits has demeaned their dignity.

IX. DAMAGES

30. As a result of the Defendant's unilateral breach of contract and breach of fiduciary duty, and/or breach of the Retirees' s. 15 Charter rights, the Retirees have been and will be compelled to pay an increased amount toward deductibles and other disbursements, and have been and will be unable to claim reimbursement for benefits covered by the Plan. In some cases, the Retirees have failed to use medical services because of their inability to sustain the associated costs. Barbara Kranjcec has already foregone dental care; she has been forced to make payment for Imodium, Tylenol, and other medication which previously could be obtained without a prescription. The Retirees as a class claim damages for similar losses resulting from the reduction of benefits, in an amount to be determined.

31. The Retirees also claim punitive damages in the amount of ONE MILLION DOLLARS as a result of the arbitrary, callous and high-handed actions of the Defendant in unilaterally altering their retirement benefits, contrary to their legal rights, and at a time when the Retirees were most vulnerable to health problems and could least afford to assume increased financial burdens.

32. The Retirees propose that the within action be tried in the City of Toronto.

Date of issue: *Oct. 31, 2002*

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Solicitors for the Plaintiffs

BARBARA KRANJCEC

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Plaintiff

Defendant

Q2-CU-238484 CP

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceedings Commenced at TORONTO

AMENDED STATEMENT OF CLAIM

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