

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

JOHN GOODWIN, JAMES McMAHON and JAMES SPRAY

Applicants

– and –

THE ELEMENTARY TEACHERS' FEDERATION OF ONTARIO, THE ONTARIO
SECONDARY SCHOOL TEACHERS' FEDERATION DISTRICT 17, THE
EXECUTIVE OF LOCAL 1310 OF THE CANADIAN UNION OF PUBLIC
EMPLOYEES, THE ONTARIO PUBLIC SERVICE EMPLOYEES UNION, and THE
SIMCOE COUNTY DISTRICT SCHOOL BOARD

Respondents

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

**NOTICE OF MOTION
(RETURNABLE AUGUST 8, 2011)**

**THE RESPONDENT, ONTARIO PUBLIC SERVICE
EMPLOYEES' UNION ("OPSEU")**, will make a motion to the Court on August 8,
2011, at 10:00 a.m., or as soon after that time as the motion can be heard, at 393
University Avenue, Toronto, Ontario, M5G 1T6.

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

THE MOTION IS FOR:

1. **AN ORDER** substantially in the form attached to the Motion Record,

- (a) authorizing OPSEU to distribute the surplus of the Insurance Trust (as hereinafter defined) according to the distribution formula as set out in the Affidavit of Anne Stevenson-Schramm.
2. **AN ORDER** that the Notice Program, as set out in the Affidavit of Amanda Darrach (and as hereinafter defined), shall be deemed to have given necessary and appropriate notice to any and all current and former members of the Insurance Trust as required by section 19(d) of the 2006 Amendment to the Trust Agreement;
3. **AN ORDER** that by taking the steps set out in the Affidavit of Kim Macpherson OPSEU shall be deemed to have taken reasonable steps to notify any and all current and former members of the proposed distribution of the surplus of the Insurance Trust and identify unknown members of OPSEU prior to wind up and distribution;
4. **AN ORDER** that by taking the steps set out in the Affidavit of David Weir, OPSEU shall be deemed to have taken reasonable steps to provide notice to current and former OPSEU members; to administer and distribute the claims; and to have performed their due diligence in respect of any and all tax compliance issues.
5. Such further relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

A. Background

1. In 1969, a trust was established (the “Insurance Trust”), and trustees were appointed, to facilitate making group insurance benefits available, by means of insurance policies issued by third parties, to teachers in Simcoe County;
2. The parties to the Insurance Trust agreed to wind up the Insurance Trust and distribute its assets to the Respondents, pursuant to the 2006 amendments to the Joint Trust Agreement (the “2006 Amendments”);
3. All necessary steps were taken to facilitate the wind up of the Insurance Trust, including resolving all outstanding known liabilities, arranging for alternate insurance coverage to replace the coverage under the Insurance Trust and initiating an Application with this Court for advice and direction to wind up the Insurance Trust and distribute the assets to the Respondents in accordance with the agreement in the 2006 Amendments;
4. Pursuant to the 2006 Amendments, the Applicants were required to provide necessary and appropriate notice of the plan of wind up to all Covered Employees and to satisfy or otherwise deal with liabilities that were known and have crystallized;
5. The Insurance Trust goes back over 30 years and the Applicants did not have a complete list of names and current addresses for all of the Covered Employees;
6. Both the Applicants and the Respondents engaged in a comprehensive notice program in order to ensure that members, former members and creditors of the

Insurance Trust have received notice of the wind up and proposed distribution of the Insurance Trust.

B. Notice Program Prior to this Court's Approval of the Surplus Distribution

7. The Notice Program involved the following elements:
 - (a) notice was published in local and national newspapers on two successive Saturdays (in English and French);
 - (b) a letter explaining the proposed distribution was sent to employees and former employees of the Simcoe County District School Board who were at any time covered by group insurance provided by the Insurance Trust (the "Covered Employees") and for whom the Trustees have addresses, by first-class mail to the last known address of each Covered Employee;
 - (c) the notice and the letter (referred to in clause (a) and (b) above, respectively) was published on OPSEU's websites;
 - (d) a dedicated toll-free hotline and website, which contained further information concerning the proposed distribution and copies of the court documents filed in the Application, were established; and
 - (e) a separate notice directed at notifying possible creditors of the Insurance Trust of the proposed wind up and distribution was published for each

Saturday for two consecutive weeks commencing in local and national newspapers.

8. On January 27, 2010 this Honourable Court approved the distribution of a \$22 million portion (the “First Distribution”) of the Insurance Trust Assets.

C. Attempts to Notify Current and Former OPSEU Members of the Pending Surplus Distribution

9. Prior to the distribution of any assets from the Insurance Trust this Honourable Court ordered that the OPSEU take a number of steps in order to notify its current and former members who had entitlements under the Insurance Trust of the pending distribution of the Insurance Trust surplus.

10. In order to comply with this Honourable Court’s directions, OPSEU has taken the following steps:

- (a) On January 29, 2010 OPSEU announced on its website that the Application for partial distribution of the Insurance Trust surplus had been approved;
- (b) On January 29, 2010 OPSEU Local 330 (“Local 330”) emailed the announcement to all current and former members of Local 330 (“current and former members”) for whom it had an email address on file;
- (c) On January 29, 2010 OPSEU created a dedicated email address to field inquiries from current and former members (simcoewindup@opseu.org);

- (d) On April 27, 2010, NPT RicePoint was retained to manage the administrative aspects of the Notice Program, the details of which can be found in the Affidavit of David Weir, sworn the 5th day of July 2011;
- (e) On February 22, 2011 Local 330 emailed all current and former members for whom it had an email address on file to inform them of an information meeting scheduled for June 8, 2011;
- (f) On February 25, 2011 OPSEU and Local 330 both posted updates on their respective websites announcing the information meeting scheduled for June 8, 2011;
- (g) On June 8, 2011 OPSEU held an information meeting for current and former members. As part of the meeting, OPSEU distributed a “backgrounder” and a “Frequently Asked Questions” information sheet;
- (h) At the June 8, 2011 information meeting OPSEU and Local 330 asked all attendees to contact any other former members they knew who might be eligible. A contact sheet was also distributed.
- (i) Following the June 8, 2011 information meeting, a 1-800 number was set up in for current and former members to call with inquiries or to provide their contact information; and
- (j) On June 9, 2011 the above noted “backgrounder” and “Frequently Asked Questions” information sheet were posted on both the OPSEU website as well as the Local 330 website. These documents were also circulated via

email to all current and former members for whom Local 330 had an email address on file.

11. Rule 14.05 (3) (a), (d) and (g) of the *Rules of Civil Procedure*; and
12. Such further and other grounds as counsel may advise and this Honourable Court may consider.

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

- (a) the affidavit of Anne Stevenson Schramm, sworn July 6, 2011;
- (b) the affidavit of Amanda Darrach, sworn July 20, 2011;
- (c) the affidavit of Kim Macpherson, sworn July 19, 2011,
- (d) the affidavit of David Weir, sworn July 5, 2011, and
- (e) such further and other documentary evidence as counsel may advise and this Honourable Court may consider.

July 19, 2011

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