

APPENDIX "A"

Court File No. CV-13-477703

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DARLENE ALEXANDER

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

**MINUTES OF SETTLEMENT**

WHEREAS, in Ontario, home care programs, which provided direct medical, therapeutic, personal and other services to individuals in their homes, and placement coordinator services (the "Services") were operated by Ontario's municipal governments and private entities prior to 1997;

AND WHEREAS some employees providing the Services were employed by municipalities and participated in the Ontario Municipal Employees Retirement System ("OMERS");

AND WHEREAS some employees providing the Services were employed by private entities and participated in the Victorian Order of Nurses ("VON") pension plan;

AND WHEREAS the Government of Ontario's Ministry of Health and Long Term Care ("MOH") created community care access centres ("CCACs" or "CCAC", as the case may be) to deliver the Services commencing in 1997;

AND WHEREAS certain information was provided to CCACs with respect to the enrolment of these divested employees in the Hospitals of Ontario Pension Plan, now the Healthcare of Ontario Pension Plan ("HOOPP");

AND WHEREAS these divested employees, on commencing employment with one of forty-three (43) CCACs in 1997, were enrolled in HOOPP;

AND WHEREAS Darlene Alexander ("Alexander") was employed as a receptionist at a municipal employer providing the Services prior to 1997, and was a member of OMERS as a result of her employment;

AND WHEREAS Alexander became employed by the Perth County CCAC in 1997, which then became the South West CCAC in 2007;

AND WHEREAS Alexander has been a member of the Canadian Union of Public Employees ("CUPE") throughout her employment with the predecessor municipal employer and with the Perth County CCAC and the South West CCAC;

AND WHEREAS Alexander was enrolled in HOOPP by the CCAC upon commencing employment with the Perth County CCAC;

AND WHEREAS Alexander shall, upon retirement, receive pensions from both HOOPP and OMERS;

AND WHEREAS Alexander brought an action in 2013 against the Defendant, Her Majesty the Queen in Right of Ontario ("HMQ") on behalf of herself and a class described as follows (the "Action"):

- (a) employees and former employees of municipalities or service providers associated with municipalities (hereinafter referred to as "municipal providers") whose employment was transferred from the municipal providers to newly-established Community Care Access Centres ("CCACs") and who were members of CUPE at the time of the transfer and who did not subsequently become members of the Ontario Nurses Association ("ONA") or the Ontario Public Service Employees Union ("OPSEU") and for greater certainty, those who became enrolled in the Healthcare of Ontario Pension Plan, formerly known as the Hospitals of Ontario Pension Plan, ("HOOP") and were previously enrolled in the Ontario Municipal Employees Retirement System ("Former Plan"); and
- (b) employees of the municipal providers whose employment was transferred from the municipal providers to CCACs who subsequently became members of CUPE and who were not members of CUPE, ONA, or OPSEU at the time of the transfer.

(collectively referred to as the "Class Members" or the "Class").

AND WHEREAS the Action was certified as a class proceeding by Order of the Honourable Justice Conway dated November 25, 2014;

NOW THEREFORE, for good and valuable consideration the sufficiency of which is hereby admitted by Alexander and HMQ, each of whom has agreed to implement and adhere to the terms of these Minutes of Settlement, Alexander and HMQ have agreed to fully and finally resolve the action, subject to the approval of the Court, as outlined below.

Definitions

1. For the purposes of these Minutes of Settlement, including the Recitals set out above and any Appendices attached hereto;
  - (a) "Administration Expenses" means all fees, disbursements, expenses, costs, taxes, and any other amounts incurred or payable by Class Counsel, the Administrator, or otherwise for the implementation and operation of these Minutes of Settlement, including the costs of distributing any notices required by these Minutes or the Court, and the costs of distributing the Settlement Amount to Class Members, and the fees of the Referee, but excluding Class Counsel Fees;
  - (b) "Administrator" means RicePoint Administration Inc.;
  - (c) "Alexander" means Darlene Alexander, the representative plaintiff;
  - (d) "Approval Order" means an Order of the Court approving these Minutes of Settlement;
  - (e) "CUPE" means the Canadian Union of Public Employees;
  - (f) "Claims Form" means the document prepared by the Administrator containing, *inter alia*, the information set out in Schedule B;
  - (g) "Class Counsel" means Goldblatt Partners LLP ("GP");
  - (h) "Class Counsel Fees" means the fees, disbursements, costs, HST and other applicable taxes or charges of Class Counsel, but does not include Administration Expenses;
  - (i) "Class Members" means members of the following Class:
    - (a) employees and former employees of municipalities or service providers associated with municipalities (hereinafter referred to as "municipal providers") whose employment was transferred from the municipal providers to newly-established Community Care Access Centres ("CCACs") and who were members of CUPE at the time of the transfer and who did not subsequently become members of the Ontario Nurses Association ("ONA") or the Ontario Public Service Employees Union ("OPSEU") and for greater certainty, whose pensions were transferred from the Ontario Municipal Employees Retirement System to the Healthcare of Ontario Pension Plan; and
    - (b) employees of the municipal providers whose employment was transferred from the municipal providers to CCACs who subsequently became members of CUPE and who were not members of CUPE, ONA, or OPSEU at the time of the transfer.
  - (j) "Court" means the Ontario Superior Court of Justice;

- (k) "HMQ" means Her Majesty the Queen in Right of Ontario;
- (l) "Prescribed Amount" means the amount of \$2,500.00 multiplied by 301, the estimated number of Class Members, or \$752,500.00;
- (m) "Referee" means a person designated by the Defendant and Class Counsel to hear appeals in writing under the settlement process who shall charge no more than \$1,500.00 for fees, disbursements and HST per appeal;
- (n) "Settlement Amount" means the amount of \$2,500.00 for each Valid Class Member, submitting Valid Claims to the Administrator;
- (o) "Valid Claims" means the aggregate of all Valid Class Members who have completed a Valid Claims Form;
- (p) "Valid Claims Form" means a Claim Form completed by a Class Member who is entitled to receive the Settlement Amount;
- (q) "Valid Class Member" means a Class Member who has completed a Claims Form and is entitled to receive the Settlement Amount.

#### The Terms of Settlement

2. Within forty-five (45) days of the execution of these Minutes of Settlement by both parties, HMQ shall provide the Prescribed Amount to Class Counsel (to be held in escrow by Class Counsel until Class Counsel obtains the Approval Order), to be then paid to and held by the Administrator in an interest-bearing account and to be distributed by the Administrator as follows upon approval by the Court:
  - a) First, in the amount of \$2,500.00 to each Valid Class Member;
  - b) After the distribution of funds to all Valid Class Members in (2)(a), and if the total of all Valid Claims amount to less than the Prescribed Amount, any remaining funds from the Prescribed Amount by the specified date will be distributed as follows:
    - i. reversion of the first \$75,000.00 or any part thereof, to HMQ;
    - ii. and then, reversion of the next \$75,000.00 or any part thereof, of the Prescribed Amount to Class Counsel as compensation for legal fees and disbursements, to a maximum of \$75,000.00;
    - iii. and then, reversion of the balance of the Prescribed Amount, if any, to HMQ;
    - iv. in any event of (2)(b)(i),(ii) or (iii), reversion of any interest that might have accrued on the Prescribed Amount shall be to HMQ.

3. In the event the total number of Valid Class Members exceeds 301, within 45 days after being advised of the number of Valid Claims that exceeds 301, HMQ will pay to the Administrator the amount of \$2,500.00 for each such additional Class Member.

Administration and Implementation of the Settlement

4. The parties jointly agree that RicePoint Administration Inc. shall act as the Administrator for the administration of the Settlement Amount and the Prescribed Amount. HMQ shall pay the Administration Expenses, including the reasonable fees of the Administrator [currently estimated to be \$17,375.00 in fixed costs and \$15.00/claim up to an estimated 301 claims approximately \$4,515.00] plus disbursements and taxes. It is acknowledged that the Administrator may need to translate any settlement materials into French for the Class Members which could increase the fees;
5. The Administrator's duties include the following:
- a) retaining the Prescribed Amount in an interest bearing escrow account;
  - b) ensuring that the Prescribed Amount is retained and invested in a manner that minimizes transactional costs and enables the Settlement Amount to be available to be distributed to each Valid Class Member;
  - c) providing information regarding the claims process to Class Members within the timelines outlined in Schedule "A", including providing a Claims Form (Schedule "D");
  - d) translating materials into French and communicating with Class Members in French, if necessary;
  - e) receiving and processing Claims from Class Members as outlined in Schedule "A";
  - f) distributing the Settlement Amount within the timelines described in Schedule "A";
  - g) reporting to the parties if and when it becomes aware that there are more than 301 Valid Class Members such that a further payment will be necessary from HMQ;
  - h) calculating the payment to HMQ, if any, and the payment to Class Counsel, if any of funds, as provided for in paragraph 2(b) above;
  - i) calculating the payment to HMQ of interest, as set out in paragraph 2(b)(iv), above; and
  - j) reporting to the parties and the Court on the progress of processing claims and distributing settlement monies in writing on a monthly basis.
6. The Administrator shall be responsible for remitting to the appropriate body or authority any taxes and payments for transactional costs with respect to the settlement monies prior to their distribution.

Conditions for Distribution of the Settlement Amount

7. The following conditions must occur prior to distribution of the Settlement Amount:
- a) Alexander will bring a motion for the Approval Order approving these Minutes such motion to be brought in accordance with the *Class Proceedings Act, 1992* and the *Rules of Civil Procedure*;
  - b) notice of the hearing for approval of the Minutes of Settlement and the Approval Order will be provided to Class Members in the form set out in Schedule "A", subject to the approval of the Court;
  - c) the Approval Order will be obtained by Alexander upon such terms as the Court may approve and make; and
  - d) Class Members will make a Valid Claim and provide proof of membership in the class as outlined in Schedule "A" hereto.

Settlement of Minutes of Settlement and Ancillary Matters

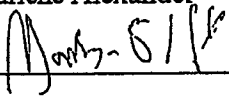
8. The parties shall bring such motion or motions as are necessary before the Court for the approval of these Minutes of Settlement.
9. The parties agree to request that the Court include in the Order a term as follows:
 

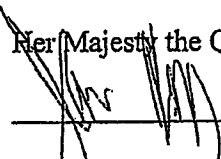
"THIS COURT ORDERS that, without in any way affecting the finality of this Order or the Settlement, this Court reserves exclusive and ongoing jurisdiction over the Action, the Plaintiff and Defendant, the Claims, and the Class Members for the purposes of implementing and enforcing the Settlement and the Order".
10. Upon Court approval of these minutes, and subject to paragraph 9 above, the Action shall be dismissed against HMQ with prejudice and without costs.
11. Nothing herein shall be construed as an admission of liability of the parties, and shall not be used against the parties in this or in any other proceeding. In particular, these Minutes of Settlement are without prejudice to any limitation period defences that may be available to the Defendant in respect of claims which are otherwise not resolved by these Minutes.
12. The Minutes of Settlement approved by the Court shall bind all Class Members who have not previously opted out.
13. Subject to Court approval, the terms of this settlement represent full and final settlement of all issues referred to in the Action. A final judgment or Order of the Court, including the Approval Order, shall be binding on the parties to these Minutes of Settlement.
14. Notwithstanding paragraph 13, any dispute arising under these Minutes of Settlement, including but not limited to the interpretation, application, administration or

implementation of the Minutes of Settlement, shall be determined by way of motion or application to the Case Management Judge, or such other Judge of the Court as the Case Management Judge may designate.

- 15. These Minutes of Settlement, together with the Recitals and attached Schedule, constitute the entire agreement between the parties, and supersede all prior understandings, representations, negotiations, discussions, and agreements, whether oral or written, which may have occurred previously.
- 16. These Minutes of Settlement shall enure to the benefit of and be binding on each of the parties and their respective successors, representatives, estates, administrators and assigns.
- 17. These Minutes of Settlement shall be interpreted in accordance with the laws of the Province of Ontario.
- 18. These Minutes of Settlement may be signed in counterparts and each of such counterparts shall constitute an original document and such counterparts, taken together, shall constitute one and the same instrument.

IN WITNESS THEREOF the Parties have executed this agreement directly or by their counsel.

Darlene Alexander  
  
 \_\_\_\_\_  
 Date

Her Majesty the Queen in Right of Ontario  
  
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 Date

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Darlene Alexander

Her Majesty the Queen in Right of Ontario

Darlene Alexander

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Date March 8, 2016

Date