SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

DAVID MILTON and DONNA REES

Plaintiffs

- and -

ONTARIO POWER GENERATION INC.

Defendant

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. 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 by the *Rules of Civil Procedure*, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service in this court office, WITHIN TWENTY 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 days. If you are served outside Canada and the United States of America, the period is sixty 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 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.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date April 13, 2026 Issued by ______________________

Local Registrar

Address of court office: Superior Court of Justice
330 University Avenue
Toronto, ON, M5G 1R7

TO: **ONTARIO POWER GENERATION INC.**
1908 Colonel Sam Dr.
Oshawa, ON L1H 8P7

CLAIM

1. The Plaintiffs, David Milton and Donna Rees, claim against the Defendant, Ontario Power Generation Inc. ("**OPG**" or the "**Defendant**") as follows):

(a) an order certifying this proceeding as a class proceeding and appointing the Plaintiffs as representative plaintiffs for the Class (defined below), pursuant to sections 5 and 8 of the *Class Proceedings Act, 1992*, SO 1992, c 6 ("***CPA***");

(b) a declaration that each member of the Class is entitled to receive from the Defendant post-retirement benefits, as set out below, consistent with the benefits provided to the Current Management Group (as defined below), and specific performance by way of a mandatory order directing that the Defendant provide the class members with these post-retirement benefits;

(c) in the alternative to specific performance, damages for the loss of post-retirement benefits, as set out below;

(d) a declaration that the Defendant is liable for any consequential damages and any tax liability sustained by the Class Members resulting from an award of damages in lieu of post-retirement benefits;

(e) damages for breach of contract, or in the alternative, for breach of fiduciary duty, negligent misrepresentation, and / or unjust enrichment in an amount to be determined at trial or on a reference or references;

(f) punitive, aggravated, and exemplary damages in the amount of $1,000,000, or such other amount as this Honourable Court deems just;

(g) an order directing an aggregate assessment of damages pursuant to section 24 of the *CPA*;

(h) pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c C43;

(i) costs of this action on a substantial indemnity basis, plus all applicable taxes;

(j) the costs of administering the plan of distribution of the recovery in this action and notice pursuant to section 26(9) of the *CPA*; and

(k) such further and other relief as this Honourable Court deems just.

A. <u>The Parties</u>

David Milton

2. The Plaintiff, David Milton ("Mr. Milton"), is an individual residing in Ajax, Ontario. He commenced employment with Ontario Hydro (the predecessor of OPG) in March 1982. Mr. Milton commenced his employment as a Nuclear Operator represented by the Power Workers' Union ("PWU") and was promoted to a non-union management position as Human Resources Consultant in or around 1998. He was promoted to progressively more senior positions for the remainder of his tenure in the Management Group (defined below). From September 2012 to May 2015 Mr. Milton was the Director of Labour Relations with OPG and from May 2015 to June 2019 he was

the Vice-President of Health, Safety, Employee and Labour Relations at OPG. Mr. Milton retired from this position in June 2019.

3. Upon retirement, Mr. Milton was provided post-retirement benefits in accordance with the repeated representations made to him and the Class throughout his career. The post-retirement benefits were provided as deferred compensation for loyal employment. As a retiree, the post-retirement benefits are a valuable component of his retirement plan and retirement security.

Donna Rees

4. The Plaintiff, Donna Rees ("Ms. Rees"), commenced employment with Ontario Hydro in or around the summer of 1988 in a PWU represented role. She held a temporary position as Junior Clerk Typist between 1990 and 1991. In 1991 she was promoted to a full-time permanent Management & Professional Trainee position, represented by the Society of United Professionals (then called the Society of Ontario Hydro Professional Engineers and Associates) (the "Society"). She remained in progressively more senior Society-represented positions until 2002, when she was promoted to work as a Senior Advisor, Work Force Planning, a non-union managerial position and member of the Management Group. As a member of the Management Group she obtained progressively more senior positions until her retirement in 2020, at which time she held the position of Vice President, Shared Services.

5. Ms. Rees contributed nearly the entirety of her working life to OPG. Upon retirement, Ms. Rees was provided post-retirement benefits in accordance with the repeated representations made to her and the Class throughout their careers. The post-retirement benefits were provided as deferred compensation for loyal employment. As a retiree, the post-retirement benefits are a valuable component of her retirement plan and retirement security.

OPG

6. OPG is a corporation that is based in and wholly owned by the Province of Ontario ("the Province"). Its principal business is the generation and sale of electricity. In operating the majority of electricity-generating assets of the former Ontario Hydro, OPG generates approximately 50 percent of the electricity produced in Ontario.

7. OPG was incorporated on April 1, 1999, as one of five successor companies to the predecessor Ontario Hydro after its dissolution pursuant to the *Energy Competition Act, 1998.* OPG currently operates the following generating stations:

(a) 2 nuclear stations (Pickering and Darlington);

(b) 1 gas/oil station (Lennox);

(c) 1 biomass station (Atikokan);

(d) 66 hydroelectric stations;

(e) 1 solar farm (Nanticoke); and

(f) 4 combined-cycle natural gas-fired plants.

8. OPG also owns two additional nuclear generating stations in Ontario, which are leased to Bruce Power.

9. OPG, or its predecessor Ontario Hydro, was at all material times the employer of every member of the proposed plaintiff class described below.

10. Employees at OPG are divided broadly into three employee groups:

(a) Employees represented by the PWU;

(b) Employees represented by the Society; and

(c) Non-union managerial and confidential employees (the “Management Group”);

B. <u>Post-Retirement Benefits</u>

11. The post-retirement benefits for Management Group employees consist of extended health and dental benefits, which include coverage for semi-private or private hospital rooms, prescription drug expenses, extended health benefits, and dental benefits subjection to certain restrictions and limitations. Pensioners, beneficiaries and their qualified dependants are entitled to post-retirement benefits provided they meet the qualifications set out in OPG’s brochures, including the brochure titled “Health and Dental Benefits Heritage (For Management Group Employees, Pensioners and Dependents as of June 30, 2001)” and the brochure titled “Management Group (Millenium) Health and Dental Benefits”. Pursuant to the terms of these brochures, between July 1, 2001 and October 31, 2021, pensioners who meet the following criteria, or substantially similar criteria contained in amendments to the brochures (“Qualified Pensioners”) qualify for post-retirement benefits, on the following language or substantially similar language contained in the brochures:

> “PENSIONERS, BENEFICIARIES AND THEIR QUALIFIED DEPENDANTS
>
> Employees who go from employee to pensioner WITHOUT a break in service and WITHOUT commuting any portion of their pension entitlement, and who had health and dental coverage while employed, continue to receive benefits during their retirement
>
> Vested/deferred pensioners are eligible to receive benefits provided they received them as employees, AND had a minimum of 25 years of continuous service with Ontario Hydro and/or Ontario Power Generation prior to terminating employment
>
> NOTE:

• Qualified pensioners are entitled to the current health and dental benefits provided to the employee group they belonged to at the time of retirement

• Qualified beneficiaries and dependants who are in receipt of a survivor's pension, are entitled to the current health and dental benefits provided to the employee group the pension plan member belonged to prior to death or retirement

12. Spouses of Qualified Pensioners who meet the following criteria ("Qualified Spouses") qualify for post-retirement benefits:

QUALIFIED DEPENDANTS

Qualified Spouse

• The person legally married to the employee/pensioner

• The person who is publicly represented by the employee/pensioner as their spouse

• Same sex partner

NOTE:

• At any one time, only one person is considered a qualified spouse of an employee or pensioner. In the event that an employee/pensioner takes up residence with an individual and publicly represents that individual as their spouse, the spousal status of any other individual is automatically terminated. An individual who fails or ceases to meet the criteria specified as qualified spouse is immediately rendered ineligible as a qualified spouse.

• Divorced spouses cannot be covered under the OPG Health and Dental Plan

13. Children of Qualified Pensioners, or their spouses, who meet the following criteria ("Qualified Dependents") are eligible for post-retirement benefits:

• Any child of the employee/pensioner or their spouse and legally adopted children who are:

• Unmarried AND

• Unemployed AND

• Attending school full time up to and including 23 years of age

NOTE:

• *Benefits coverage ceases as of the child's 24th birthday or if any of the other above criteria are not satisfied*

14. Between July 1, 2001 and October 31, 2021, although the language changed in minor ways, the brochures all contained language confirming and representing that Qualified Pensioners, Qualified Spouses, and Qualified Dependants were entitled to receive the same benefits as the current benefits available to active employees.

15. On or around November 1, 2021, OPG amended the above-noted brochures to include the following language:

> OPG reserves the right in our sole discretion, to modify, suspend or terminate any of the benefits offered under any of the provisions for Management Group plan members (Millennium, Heritage, or Active Management provisions), change any cost to you of any plan (including reducing or eliminating any employer-paid portion of the benefit cost), and/or terminate the OPG Health & Dental Plan, with or without replacement, at any time, including after your retirement.

Such a representation was never made to the Class prior to November 1, 2021 during or after their employment with OPG.

C. The Class

16. The Plaintiffs bring this action pursuant to the *CPA* on their own behalf and on behalf of the following class of persons (together, the "Class" or "Class Members"):

(a) Any and all Qualified Pensioners who retired from Management Group employment with OPG between July 1, 2001 and November 1, 2021 or who retired after November 1, 2021 but advised OPG on or before November 1, 2021 of their retirement date; and

(b) all surviving Qualified Spouses and Qualified Dependants of persons described in (a).

D. <u>Contractual Entitlement to Post-Retirement Benefits</u>

17. OPG entered into contracts of employment with each of the Class Members described in group (a) above.

18. OPG agreed that in exchange for, and as deferred compensation for, the labour and services provided by each of the Class Members in group (a), it would pay for or otherwise provide all of the class members in group (a) with post-retirement benefits, including coverage for dental, orthodontic, hearing and vision care; comprehensive medical, long-term and chronic care; semi-private hospital accommodation; prescription drugs; out-of-province and out-of-country medical, paramedical and prosthetic expenses; and a death benefit at the same level provided to current active employees in the Management Group (the "Current Management Group") (collectively, the "post-retirement benefits").

19. OPG agreed to provide post-retirement benefits to the Class Members in group (b) as deferred compensation for the labour and services provided by the individuals in group (a). Furthermore, it was contemplated by the parties to the contract that the Class Members in group (b) would be entitled to, and would be the beneficiaries of the post-retirement benefits.

20. The post-retirement benefits, which OPG agreed to pay or otherwise provide to Class Members, are described in standard format benefits brochures, benefits statements, retirement

guides, letters, notices, and other written documents provided to or made available to Class Members by OPG or by agents or employees of OPG. Such written documents purported to be, and were in fact, binding on the Class Members and OPG. These written documents confirm the contractual obligation that OPG provide post-retirement benefits to the Class Members at the same level provided to the Current Management Group.

21. The post-retirement benefits vested irrevocably on the retirement of the class members described in (a), and OPG was required to maintain benefits at the level required in the contracts (i.e., by reducing or eliminating benefits for current active employees).

E. Failure to Maintain Vested Post-Retirement Benefits

22. Since 2001 OPG has benefitted from its contractual language by passing on to Class Members any reduction of benefits which was applied to the Current Management Group, including but not limited to in 2006 and 2019. In or about 2006 there were limits placed on the benefit related to prescription drugs that were applied to the Current Management Group and then also applied or flowed through to the Class Members, including limitations on dispensing fees and elimination of coverage for non life-sustaining over-the-counter drugs. In or around 2019, OPG again reduced benefits for the Current Management Group and these changes were applied to or flowed through to the Class Members, including limitations on maintenance drugs and the imposition of mandatory lowest price equivalent limitations on reimbursement.

23. In 2025 OPG made improvements to health and dental benefits for the Current Management Group, including the following:

(a) Increasing annual limits for psychological services from $4,000 per year to $5,000 per year;

(b) Increasing lifetime, annual, and other time-defined benefit maximums for a variety of benefits including but not limited to the following:

(i) Increasing coverage of dispensing fees for prescription drug benefits by $7;

(ii) Increasing coverage of vision care by $300 every 2 calendar years;

(iii) Moving from a combined paramedical annual maximum benefit of $2,000 to increased limits of $4,900 per year for chiropractic and physiotherapy, $900 for chiropractor, $2,500 psychotherapy, combined annual limit of $1,500 for other paramedical services.

(iv) Increasing the lifetime maximum for dental orthodontics from $4,000 to $5,000; and

(v) Improving coverage for diabetic supplies, fertility drugs, copper intrauterine devices, and liquid meals for cancer patients.

24. Unlike the case with the earlier reductions, OPG did not pass on these improvements to the Class Members.

F. Breach of Contract

25. In failing to provide benefits to the Class Members at the same level provided to the Current Management Group, OPG has breached and has continued to breach its contracts with the Class Members.

26. Additionally, it was an implied term of the contracts between OPG and the Class Members that OPG would act in good faith. By passing on benefits reductions but failing to pass on the improvements OPG has breached the duty of good faith and fair dealing and OPG has had regard only to its own interests, contrary to the interests of the Class Members.

G. Unjust Enrichment – *Quantum Meruit*

27. In the alternative, if OPG is not contractually obliged to provide the post-retirement benefits the Class Members are entitled to a *quantum meruit* remedy recovering the value of these benefits.

28. OPG has been unjustly enriched as a result of receiving the benefit of (1) the Class Members' labour on the basis of OPG's representations about providing the post-retirement benefits, (2) passing on to Class Members certain reductions in health and dental benefits for what was at that time the Current Management Group and later by (3) failing to pass on improvements in health and dental benefits for the Current Management Group.

29. The Class Members have suffered a corresponding deprivation, in the form of their lack of access to the improvements in health and dental benefits for Current Management Group.

30. There is no juristic reason for OPG's unjust enrichment and the Class Members' corresponding deprivation. Accordingly, OPG is liable to the Class Members for the value of the improvements to the health and dental benefits for the Current Management Group which OPG has failed to pass on to the Class Members.

H. Breach of Fiduciary Duty

31. In the further alternative, OPG owed fiduciary duties to the Class Members by virtue of being the employer, benefits sponsor and/or benefits administrator, or a combination thereof, and thus being in a position of power, trust and confidence in relation to the Class Members.

32. OPG was in a position to and did exercise its power and discretion unilaterally in a manner that could and did affect the legal and financial interests of the Class Members, as set out above.

33. As retirees, the Class Members are not in a position to negotiate with OPG and are in a position of peculiar vulnerability in relation to OPG's control over their post-retirement benefits.

34. OPG breached its fiduciary duty by failing to maintain benefits for Class Members at the same level as the Current Management Group, having regard exclusively to its own interests, and having no regard to the interests of the Class Members.

I. Negligent Misrepresentation

35. In the further alternative, OPG knew, or reasonably ought to have known, that Class Members would rely on representations made by OPG and others on its behalf concerning post-retirement benefits. OPG owe Class Members a duty of care based on the special relationship between OPG and the Class Members, which exists by virtue of OPG's status as the employer, benefits sponsor, and/or benefits administrator.

36. OPG, in the documents provided to Class Members described in group (a), represented to Class Members that benefits would be provided to the Class Members at the same level as the Current Management Group.

37. If OPG has the right to reduce benefits and is not required to pass on improvements for the Current Management Group retirement benefits, then the written representations to Class Members in group (a) were untrue, inaccurate and/or misleading, and were made negligently. Class Members in group (a) reasonably relied on such representations to their detriment, including by not purchasing or maintaining alternate medical insurance.

J. Impact of OPG Conduct

38. As a result of OPG's breaches of contract in addition to the tortious and unlawful conduct as set out above, the Class Members have and will continue to sustain damages.

39. OPG's actions have had a serious impact on the Class Members. The cost of health and dental services has increased since their retirement and the benefits provided by OPG prior to the retirement of the Class Members are insufficient to meet their needs. Many of the Class Members live on fixed incomes, and they are particularly vulnerable as a result of their advanced age, susceptibility to health problems, and limited capacity to assume increased financial burdens or to seek additional employment income.

40. Class Members failed to purchase alternate or additional benefits when such were available, or were available at a lower cost. Class Members have suffered damages accordingly.

K. Consequential and Punitive Damages

41. The Class Members claim any consequential damages, including any tax liability sustained by the Class Members should any damages awarded in this matter be determined to be taxable, as post-retirement benefits are a non-taxable benefit.

42. OPG's tortious conduct and failure to uphold its contractual obligations constituted a high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, and motivated by economic considerations. OPG was in a position of power over vulnerable retirees and owed them a duty of good faith, which it flagrantly breached to benefit itself at the Class Members' expense. Such conduct warrants an award of aggravated, exemplary, and punitive damages.

L. A Class Proceeding is Appropriate

43. The individual claims of each class member are not economical to pursue individually. The Class Members would be denied access to justice in the absence of a class proceeding.

44. The Plaintiffs also plead and rely on the following statutes and regulations:

(a) *Class Proceedings Act*, S.O. 1992, c. 6.

45. The Plaintiffs propose that this action be tried in Toronto, Ontario.

April 13, 2026

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ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding Commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

STATEMENT OF CLAIM

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