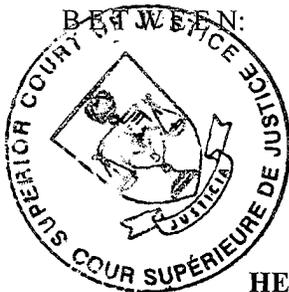


**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE P. PERELL

)
)
)

WEDNESDAY, THE 18th 30th
DAY OF JUNE, 2010



MICHEL R. MAYOTTE

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the plaintiff for an order certifying this action as a class proceeding was heard on June 18, 2010 at Osgoode Hall, 130 Queen Street West, Toronto, Ontario and the decision reserved to this day.

ON READING the notice of motion, the affidavit of Michel R. Mayotte sworn November 20, 2009; the affidavit of Judith Taggart sworn March 5, 2010; the reply affidavit of Michel R. Mayotte sworn March 31, 2010; the transcript of the cross-examination of Michel R. Mayotte conducted on April 22, 2010; the transcript of the cross-examination of Judith Taggart conducted on April 22, 2010; the second supplementary motion record of the plaintiff; the

statement of claim; filed, and, on hearing the submissions of counsel for the plaintiff and the defendant,

1. **THIS COURT ORDERS** that this action be and is hereby certified as a class proceeding.

2. **THIS COURT ORDERS** that the class be and is hereby defined as:

All corporations, partnerships, chambers of commerce, boards of trade and individuals carrying on business in Ontario, at any time from August 28, 2003 to the date of the Notice to the Class to be sent pursuant to Order of this Court, as an agent of Ontario for, among other services, the issuance and processing of driver's licences and vehicle registrations (the "Class").

3. **THIS COURT ORDERS** that Michel R. Mayotte be and is hereby appointed as the representative plaintiff on behalf of the Class.

4. **THIS COURT ORDERS** that the following common issues ("Common Issues") be and are hereby certified for the purposes of this proceeding:

- a. Does the contractual relationship between Ontario and the private issuers include a duty on Ontario to ensure that Issuer compensation is, and remains fair, rational, objectively determined, and proportional to the effort required to do each transactions?
- b. Does Ontario have one or more of the following contractual obligations to the private issuers in respect of compensations:
 - i. To adequately increase the standard commission rate table,
 - ii. To update the time series analysis on which compensation was and continues to be based,
 - iii. To take into consideration all steps required to perform the required transactions, and
 - iv. To sufficiently increase the annual stipend?
- c. If so, has Ontario breached and is it continuing to breach any such contractual obligations?
- d. Was Ontario under a duty to increase compensation to the private issuers following the conclusion of the report of the Ministry of Transportation dated August 28, 2003?

- e. Has Ontario satisfied its duties by the increases in compensation which it has put into effect since August 28, 2003?
 - f. If Ontario has not breached its contractual duties to the private issuers in respect of compensation, has Ontario been unjustly enriched by having under-compensated the private issuers?
 - g. Without prejudice to any individual limitation period defences which Ontario may have, if Ontario has breached its contractual duties, or has been unjustly enriched, what is the appropriate formula or the appropriate factors to be included in the formula to measure past damages or compensation, including pre-judgment and post-judgment interest thereon?
5. **THIS COURT ORDERS** that the Plan of Proceeding attached hereto as Schedule "A" be and is hereby approved.
 6. **THIS COURT ORDERS** that Ontario provide Class counsel with the last known address and facsimile number of each Class Member by no later than July 30, 2010.
 7. **THIS COURT ORDERS** that a Notice to the Class in the form attached hereto as Schedule "B" be delivered to Class Members by the following means:
 - a. Publication of the notice on the website of Sotos LLP;
 - b. Mailing to all Class Members; and
 - c. Email to all Class Members who have provided direct email contact information to Class Counsel or for whom such information has been provided.
 8. **THIS COURT ORDERS** that a Class Member may opt out of the class proceeding by delivering to Sotos LLP either the Opt-Out Coupon attached to the Notice to the Class, or some other legible, written, signed request to opt-out containing substantially the same information as the Opt-Out Coupon, on or before the expiry of the 60th day after the date on which the Notice to the Class is sent by mail or email, or receipt is otherwise acknowledged.

9. **THIS COURT ORDERS** that Class Members may not opt-out of the class proceeding after the expiry of the 60th day after the Notices are sent by mail, email, courier or receipt is otherwise acknowledged.
10. **THIS COURT ORDERS** that if the parties cannot agree on costs, the plaintiff shall deliver cost submissions, in writing, by July 20, 2010. The defendant shall deliver cost submissions, in writing, by August 9, 2010.


PERELL, J. ✓ GA

G. Argyropoulos, Registrar
Superior Court of Justice

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.

JUL 28 2010



AS DOCUMENT NO.:
À TITRE DE DOCUMENT NO.:
PER / PAR:

SCHEDULE A

Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MICHEL R. MAYOTTE

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**PLAN OF PROCEEDING
PURSUANT TO S. 5(1)(e)(ii) OF THE *CLASS PROCEEDINGS ACT, 1992***

Introduction

1. This action is brought on behalf of the agents of the Province of Ontario ("Ontario") for the issuance and processing of driver's licences and vehicle registrations.
 2. The class members' claim damages against Ontario for breaching its agreements with the class members by knowingly under-compensating the class members for services rendered from on or about August 28, 2003.
- A. Identification of Class Members**
3. The class is defined as:

All corporations, partnerships, chambers of commerce, boards of trade and individuals carrying on business in Ontario, at any time from August 28, 2003 to the date of the Notice to the Class to be sent pursuant to Order of this Court, as an agent of Ontario for, among other services, the issuance and processing of driver's licences and vehicle registrations.
 4. There are no class identification issues in this action. All class members can self-identify and are known to Ontario.
 5. The plaintiff will request that Ontario provide contact information for all class members within 30 days of the certification Order.

B. Particulars of the notice

6. The Notice will be sent to all class members by regular mail within 10 days of finalization of the certification Order.

7. The cost of such notification will be borne by the plaintiff class at first instance.

8. So long as the list of class members provided by Ontario is complete and accurate, the plaintiff does not consider it necessary to cause the Notice to be published in a national newspaper or other medium. However, if such list is found to be materially incomplete or inaccurate, the plaintiff will request that Ontario pay the cost of publishing the Notice in such media as is considered necessary in order to come to the attention of the omitted class members.

9. Class Counsel, Sotos LLP, will establish a link within their website for this class action. Copies of the Notice to Class, court decisions and other information related to the class proceeding will be available on the website. Email contacts are also available on the website.

C. Timetable

10. The plaintiff proposes the following schedule:

Pleadings

- (a) If Ontario elects not to deliver a statement of defence before certification, it will be served within 20 days of the certification decision being released.
- (b) Reply, if any, will be delivered within ten days thereafter.

Productions

- (c) The timing of productions is addressed separately below. It is anticipated that all productions will be delivered within four months of the close of pleadings.

Discovery/Expert Reports

- (d) Examinations for discovery will commence within four months of the close of pleadings and be completed within one month of commencement.
- (e) The parties will complete any motions arising from discovery within two months of the completion of discoveries.
- (f) The parties will exchange expert reports, if any, four months after the completion of discoveries.

Mediation/Pre-trial Conferences

- (g) The parties will obtain a trial date following the completion of motions arising from discovery.
- (h) Mediation will take place within one month of the exchange of expert reports.
- (i) A pre-trial conference will be held forty-five days before trial.
- (j) A second pre-trial conference will be held 15 days before trial to confirm time estimates, and to address any remaining pre-trial motions and/or evidentiary issues.
- (k) Before the second pre-trial conference, the parties will have agreed upon and filed:
 - (i) One Joint Book of Documents for use at trial in hard copy and electronic format;
 - (ii) Joint Compendium of significant documents and discovery readings, for use at trial in hard copy and electronic format;
 - (iii) Witness Lists, stating the order in which witnesses are anticipated to be called and the anticipated length of evidence;
 - (iv) Joint Brief of Authorities for use at trial in hard copy and electronic format;
 - (v) The identification of any anticipated pre-trial motions and/or evidentiary issues to be dealt with during the trial, and a statement as to whether a *voir dire* will be required;
 - (vi) pre-trial memoranda, including a statement confirming the completion of all items required at the case conference; and
 - (vii) the delivery of Requests to Admit, and *Evidence Act* notices, if any, with respect to documents not agreed upon.

Common Issues Trial and Following

- (l) If the common issues are resolved by judgment in favour of the plaintiff class, the Court will settle the form and content of the notice of resolution of the common issues within 10 days of the release of the Reasons for Judgment. The notice will be delivered to all class members within 10 days thereafter.
- (m) Individual hearings, if any, will be conducted according to the timelines to be set down by the common issues judge.

D. Productions

11. The plaintiff will seek to require Ontario to produce documents in tranches, on a rolling basis with production to be completed within four months of the close of proceedings.

12. Documents will be exchanged electronically, in formats agreeable to counsel, together with all necessary passwords to open password-protected files.

13. It is anticipated that the discoveries and trial of this proceeding will be conducted based largely or exclusively on electronic documents. Plaintiff's counsel will manage the productions with document management software and will provide documents to Ontario in formats compatible with Ontario's document management programs. Documents received in hard copy only will be scanned and stored electronically. Productions will be indexed electronically and summarized as necessary.

E. Method of communication with the class

14. Class counsel are in regular communication with the representative plaintiff regarding all aspects of this action.

15. The representative plaintiff has and will continue to communicate certain information on a regular ongoing basis to the class members by means of periodic email communications and other communications.

16. Due to confidentiality issues arising from the continuing relationship of the parties, information communicated to the class members will be of a limited and non-strategic nature.

17. Limited and non-strategic information will also be communicated to the class members by regular updates to the Sotos LLP website and the OMVLIA website.

F. Possibility of settlement

18. The parties will conduct settlement negotiations from time to time, as circumstances dictate.

19. The timetable includes mandatory mediation following the exchange of expert reports.

G. Individual issues remaining if the common issues are decided in favour of the class

20. The common issues proposed by the plaintiff include the common issue of aggregate damages. If such issues are found in favour of the plaintiff, there will be few if any individual issues remaining to be determined, subject to possible issues arising from limitation period defences.

H. Method for valuation of damages

21. It is anticipated that damages will be determined based on the difference between what the class members should have been paid for their services and what they were paid. This method of valuation will be based on a formula which will be the same for all class members subject to possible issues arising from limitation period defences.

I. Distribution of the damage award

22. This action is solely concerned with the issue of under-compensation of the class members. If damages are assessed in the aggregate, subject to the Court's direction, damages will likely be apportioned to each class member on a prorated basis based on each class member's total revenue during the class period.

J. What will happen to any surplus funds?

23. Because all class members are identifiable, it is not anticipated that there will be surplus funds.

24. Any amounts owing to corporate class members which have become dissolved will escheat to the Crown in accordance with s. 244 of the *Business Corporations Act*, R.S.O. 1990, c. B-16 or similar federal legislation, with notice to the last known directors who may seek to revive the corporation.

25. If surplus funds do nevertheless remain, the plaintiffs will ask for a *cy-près* distribution to relevant charitable organizations proposed by class members and approved by the court.

K. How the individual issues will be dealt with?

26. If the common issues are resolved in favour of the Class, including the determination of the appropriate formula or the appropriate factors to be included in the formula to measure past damages or compensation by the defendant to the Class members, the plaintiff does not anticipate any need for a further hearing with respect to the distribution of the amounts recovered.

27. If the damages are not assessed on an aggregate basis, the plaintiff will request directions from the court, pursuant to s. 25(2) of the CPA relating to the procedures to be followed in conducting hearings, inquiries and determinations under s. 25.

28. While it is premature to determine how such individual issues will be addressed, the plaintiffs will propose that such hearing(s) proceed based on affidavit evidence showing the revenue of each class member during the relevant period as well as any other evidence, including statistical or expert evidence, as the court may direct.

29. Class counsel will act for class members in individual hearings following the common issues trial on a contingent fee basis subject to terms which will be approved by the Court.

Notice will likely be given to Class Members concerning the participation in any individual hearings, if necessary, and any costs implications of participating in those hearings.

L. Funding

30. The plaintiff's legal fees are to be paid on a contingency basis, as provided for in the *Class Proceedings Act 1992*, and are subject to the Court's approval. Funding of all disbursements necessary to properly prosecute this action will be paid by voluntary contributions from the Class members. An application may be made to the Class Proceedings Fund.

DATE: July 21, 2010

SOTOS LLP
Barristers and Solicitors
180 Dundas Street West
Suite 1250
Toronto, Ontario M5G 1Z8

Allan D.J. Dick (LSUC # 24026W)
David Sterns (LSUC# 36274J)
Vukica Djuric (LSUC # 57395I)

Tel: (416) 977-0007
Fax: (416) 977-0717

Lawyers for the plaintiff

SCHEDULE B

Court File No.: CV-09-389686-CP00

ONTARIO SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHEL R. MAYOTTE

Plaintiff

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO

Defendant

Proceeding under the *Class Proceedings Act, 1992*

Notice published under the *Class Proceedings Act, 1992*

TO ALL ONTARIO MOTOR VEHICLE LICENCE ISSUERS

If you carried on business as an agent of Ontario, whether personally, through a corporate entity, partnership, chamber of commerce or board of trade, for, among other services, the issuance and processing of driver's licences and vehicle registrations at any time from August 28, 2003 to the present day, this Notice will be important for you.

A legal claim against the Province of Ontario has been certified as a class proceeding (the "Class Proceeding") by the Ontario Superior Court of Justice. The Class Proceeding will deal with claims alleged against Ontario which, if proven, could entitle you to various relief including a monetary payment.

This Notice is published by Order of the Ontario Superior Court of Justice dated June 30, 2010 (the "Certification Order") and deals with:

1. Nature of the Class Proceeding and Common Issues;
2. Inclusion in/Opting Out of the Class Proceeding;
3. Possible Financial Consequences of the Class Proceeding; and
4. Ancillary Matters.

1. Nature of the Class Proceeding and Common Issues

On October 23, 2009, Michel R. Mayotte (the "Representative Plaintiff"), a former licence issuer from Penetanguishene, Ontario, commenced an action against Ontario by issuing a Statement of Claim ("Claim") on behalf of the following class:

All corporations, partnerships, chambers of commerce, boards of trade and individuals carrying on business in Ontario, at any time from August 28, 2003 to the date of the Notice to the Class to be sent pursuant to Order of this Court, as an agent of Ontario for, among other services, the issuance and processing of driver's licences and vehicle registrations (the "Class").

The Representative Plaintiff claims damages for breach of contract and, in the alternative, compensation and restitution for unjust enrichment. Ontario denies these allegations and is defending the proceeding.

This action has been certified as a class proceeding by the Court and will proceed to trial on the following common issues:

- a. Does the contractual relationship between Ontario and the private issuers include a duty on Ontario to ensure that Issuer compensation is, and remains fair, rational, objectively determined, and proportional to the effort required to do each transactions?
- b. Does Ontario have one or more of the following contractual obligations to the private issuers in respect of compensations:
 - i. To adequately increase the standard commission rate table,
 - ii. To update the time series analysis on which compensation was and continues to be based,
 - iii. To take into consideration all steps required to perform the required transactions, and
 - iv. To sufficiently increase the annual stipend?
- c. If so, has Ontario breached and is it continuing to breach any such contractual obligations?
- d. Was Ontario under a duty to increase compensation to the private issuers following the conclusion of the report of the Ministry of Transportation dated August 28, 2003?
- e. Has Ontario satisfied its duties by the increases in compensation which it has put into effect since August 28, 2003?
- f. If Ontario has not breached its contractual duties to the private issuers in respect of compensation, has Ontario been unjustly enriched by having under-compensated the private issuers?
- g. Without prejudice to any individual limitation period defences which Ontario may have, if Ontario has breached its contractual duties, or has been unjustly enriched, what is the appropriate formula or the appropriate factors to be included in the formula to measure past damages or compensation, including pre-judgment and post-judgment interest thereon?

2. Inclusion In / Opting Out of the Class

a. Automatic inclusion in the Class

If you are a member of the class as described above, then you are automatically included in the Class. No steps are required to "join" the Class.

b. How to be excluded from the Class

If you do not wish to be included in the Class, you must fill out the attached coupon and send it to Sotos LLP, the lawyers for the Class, using the enclosed self-addressed stamped envelope, or alternatively, send Sotos LLP some other legible, written, signed request to opt-out containing substantially the same information as the Opt-Out Coupon. The deadline for opting out is _____ 2010, which is 60 days after the date on this notice. If your written request to opt out is not received by that date, you will remain a member of the Class

c. Consequences of opting out

If you opt out of the Class, you will not be affected by any decision the Court makes on the common issues. If you choose to opt-out, you will not be entitled to any award that might be granted by the Court or any possible settlement reached with Ontario.

3. Possible Financial Consequences of the Class Proceeding

In determining the common issues in the Certification Order, the Court may decide whether Ontario should pay any monies to the Class Members, and if so, how much the affected Class Members should receive.

Class Members may be required to participate in some stages of the lawsuit, particularly in the distribution of monies, if any are awarded. The determination of how any recovery should be distributed to each individual Class Member will be made either by the Court or by a process to be supervised and sanctioned by the Court.

If the Class Proceeding is not successful, Class Members will not be responsible for any legal costs or face any other financial obligations arising from the proceedings.

Whether or not the Class Proceeding is successful, all Class Members who do not opt out will be bound by the judgment. This means, for example, that after the Class Proceeding has concluded a Class Member cannot start its own individual claim against Ontario based on the same or similar allegations

4. Ancillary Matters

The Representative Plaintiff has retained the law firm of Sotos LLP (www.sotosllp.com) to represent the Class in the Class Proceeding. The law firm will be paid legal fees only if the Class Proceeding is successful. The Representative Plaintiff has agreed that the law firm's fees will be 25% of the amount recovered plus disbursements, in addition to any costs Ontario is required to pay. The retainer agreement and any fees charged by class counsel must be approved by the Court.

For further information about the class action lawsuit you may contact:

Sotos LLP, Barristers and Solicitors, Suite 1250, 180 Dundas St. West, Toronto, Ontario M5G 1Z8, attn.:

David Sterns (dsterns@sotosllp.com);
Allan D.J. Dick (adjdick@sotosllp.com); and/or
Vukica Djuric (vdjuric@sotosllp.com).

Tel: (416) 977-0007 Fax: (416) 977-0717

The statement of claim and other court papers in this action, including the Order of the Ontario Superior Court of Justice dated June 30, 2010 are available for inspection at the Ontario Superior Court of Justice, 393 University Avenue, 10th Floor, Toronto, Ontario M5G 2J6 and on Sotos LLP's website at www.sotosllp.com/class-actions/licence-issuers/.

PLEASE DO NOT CALL the Ontario Superior Court of Justice or the Registrar of the Court. They will not be able to answer your questions about the lawsuit.

Date: _____

OPT OUT COUPON

TO: SOTOS LLP
Barristers and Solicitors
180 Dundas Street West, Suite 1250
Toronto, Ontario M5G 1Z8

Attention: David Sterns
Facsimile: (416) 977-0717

I wish to opt out of the Licence Issuers class action lawsuit.

Signature

Name of individual, company, partnership, Board of Trade or Chamber of Commerce (please print):

Address:

Postal code:

Telephone:

Note: To opt out, this coupon must be completed and received at the above address before
_____, 2010

MICHEL R. MAYOTTE

Plaintiff

and

**HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO**

Defendant

Court File No.: CV-09-389686-CP00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

ORDER

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Lawyers for the plaintiff