



No. L021149  
Vancouver Registry

**In The Supreme Court Of British Columbia**

**Between:**

Peter Gregg

**Plaintiff**

**And:**

Freightliner Ltd., doing business as Western Star  
Trucks, Trust Company A, The Canada Trust  
Company and CIBC Mellon Trust Company

**Defendants**

**Brought Pursuant to the *Class Proceedings Act***

**NOTICE OF MOTION**

TO: THE DEFENDANTS

AND TO: THEIR SOLICITORS

TAKE NOTICE that an application will be made by the Plaintiff to the presiding judge in Chambers at the courthouse at 800 Smithe Street, in the City of Vancouver, in the Province of British Columbia, on September 17, 2002 at 9:45 a.m., or so soon thereafter as counsel may be heard for an order pursuant to the *Class Proceedings Act*, S.B.C. 1995, c.21:

1. certifying this action as a class proceedings;
2. defining the following two classes:

- a. all persons employed by the Defendant Freightliner Canada in British Columbia under a contract of indefinite duration who have received, or who will receive, notice of termination of their employment at any time on or after September 26, 2001 until final closure of the Kelowna truck plant. This class does not include employees who have executed a binding full and final release in favour of the Defendant Freightliner Canada, or who are proven dismissed for just cause, or who are unionized employees in a bargaining unit (“Class A”); and
  - b. all persons who are members or former members of the pension plan for non-bargaining unit employees of Freightliner Canada, Western Star Trucks division, their respective surviving spouses, former spouses, designated beneficiaries, personal representatives, and all other persons who are beneficiaries of the said pension plan (“Class B”).
3. appointing Peter Gregg as the representative of all Class A and Class B members;
  4. certifying the following issues as common issues:

**Class A:**

- a. Was the employment of each of the class members subject to a contract of employment of indefinite duration, terminable only upon notice and/or pay in lieu of notice, if dismissed without cause?
- b. Did the letter dated December 3, 2001 from the Defendant Freightliner to each of the class members provide “working notice” that was sufficiently clear and unequivocal as to constitute working notice for the purposes of determining notice in the termination of the contracts of employment?
- c. Did Freightliner provide notice of termination to the class members?
- d. Are the members of the class entitled to damages equal to salary, bonuses and /or overtime they would have earned during the notice period?
- e. Are the members of the class entitled to damages for loss of benefits during the notice period equal to the costs of benefit replacement or their out-of-pocket losses suffered as a consequence of being without insurance coverage during the notice period?
- f. Are the class members entitled to compensation for the loss of all other benefits including FlexPlan benefits and the Daimler Chrysler New Vehicle Purchase/Lease Plan?

- g. Are the members of the class who participate in Freightliner's defined benefit pension plan (the "Pension Plan") entitled to compensation for the difference in value between their accounts at termination and at the end of the notice period?
- h. Are the members of the class entitled to compensation for loss of vacation pay?
- i. Are class members who will be taking early retirement eligible for post retirement health and welfare benefits?
- j. Is there a term in the contract of employment that overtime would be paid for overtime worked by class members?
- k. Did the Defendant Freightliner stop paying overtime to all class members, and if so is that a breach of the contract?
- l. Did the Defendant Freightliner roll back wages for class members by 5%, and if so is that a breach of the employment contract?
- m. Was there a term of the employment contract that a bonus would be paid dependent upon the performance of the employee and the performance of the company, and if so was any such bonus paid, and if not, is that a breach of the employment contract?


**Class B:**

- a. Is the Defendant Freightliner required to wind up the Pension Plan?
- b. Is there a surplus of funds in the Pension Plan, and if so what is the amount?
- c. In the event of winding up the pension fund, who is entitled to the surplus?
- d. Did Freightliner, or its predecessor companies, improperly use funds from the Pension Plan to administer the plan? If so, are the Defendants Freightliner, The Canada Trust Company ("Canada Trust") and CIBC Mellon Trust Company ("CIBC Mellon") liable for this improper use?
- e. Did Freightliner, or its predecessor companies, improperly remove monies, at various times, from the Pension Plan, or any of its predecessor plans? If so, are the Defendants Freightliner, The Canada Trust and CIBC Mellon liable for this improper conduct?
- f. Did Freightliner, or its predecessor companies, improperly take contribution holidays with respect to the Pension Plan, or any of its predecessor plans? If so, are the Defendants Freightliner, The Canada Trust and CIBC Mellon liable for this improper conduct?

- g. Did Freightliner, or its predecessor companies, fail to implement the Standards of Investment, Policy and Procedures, properly monitor it and revise it in contemplation of the wind up of the Pension Plan? If so, are the Defendants Freightliner, The Canada Trust and CIBC Mellon liable for this improper conduct?
  - h. Are the class members entitled to an accounting and a repayment of funds for the wrongful conduct described in paragraphs d. to g. above, together with interest at the rates that would have been earned if the funds had been part of the Pension Plan?
- 5. approving the form and notice to be given to the members of Class A and Class B to notify them of the certification of the class proceedings; and
  - 6. such further and Orders as this Honourable court may deem just.

AND TAKE NOTICE that in support of the application will be read the Affidavits of Peter Gregg sworn July 22, 2002 and Dagmar Dlab sworn July 23, 2002 such further and other materials as counsel may advise.

DATED: July 23/02

  
Solicitor for the Plaintiff

THIS MATTER IS OF A CONTENTIOUS NATURE AND WILL TAKE APPROXIMATELY 4 days. The subject matter is not within the jurisdiction of a master as it is brought pursuant to the *Class Proceedings Act*.

This Notice of Motion is filed and delivered by Murray Tevlin of the firm of TevlinGleadle, solicitor for Plaintiff, whose place of business and address for delivery is 111 Smithe Street, Vancouver, B.C., V6B 4Z8, Telephone (604) 648-2966; Fax (604) 648-2967.