

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
JUSTICE STRATHY

) WEDNESDAY THE 8TH DAY
)
) OF FEBRUARY, 2012

BETWEEN:

CHRISTIAN HELM

Plaintiff

- and -

TORONTO HYDRO-ELECTRIC SYSTEM LIMITED

Defendant



Proceeding under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION, made by the proposed Representative Plaintiff for an order that the within proceeding be certified as a class proceeding for settlement purposes, approving the form, content, and manner of distribution of the Approval Hearing Notice and Opt Out Form, and setting a date for the Approval Hearing, was heard on February 8, 2012, in Toronto, Ontario.

ON READING the materials filed, including the Settlement Agreement reached between the Parties on February 1, 2012, attached hereto as Schedule "A" (the "Settlement Agreement") and on hearing submissions of counsel for the Plaintiff and counsel for the Defendant;

AND ON BEING ADVISED that a) the Plaintiff consents to this order; and b) the Defendant consents to this order:

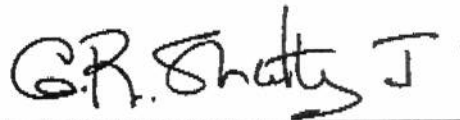
- (1) **THIS COURT ORDERS AND DECLARES** that for the purposes of this Order the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
- (2) **THIS COURT ORDERS** that the within proceeding be certified as a class proceeding, for purposes of settlement only, pursuant to *The Class Proceedings Act, 1992*, SO 1992, c 6, ss. 2 and 5 ("CPA").
- (3) **THIS COURT ORDERS** that the Class be defined as:

All persons that were customers (retail, commercial or otherwise) of the Defendant, Toronto Hydro-Electric System Limited, were billed at some time within the period from July 1, 2000 through to and including December 8, 2010, and who paid interest on an unpaid account billed during that period.
- (4) **THIS COURT ORDERS** that Christian Helm be appointed as Representative Plaintiff for the Class.
- (5) **THIS COURT ORDERS** that the within proceeding be certified on the basis of the following Common Issue:

Did the Defendant breach the *Interest Act* by charging interest on unpaid customer accounts at a monthly rate which equated to more than 5% per annum without disclosing the equivalent annual rate on its bills dated between July 1, 2000 and December 8, 2010, inclusive?
- (6) **THIS COURT ORDERS** that putative Class Members may opt out of the Class in accordance with the terms of the Settlement Agreement.
- (7) **THIS COURT ORDERS** that any putative Class Member who opts out of the Class in accordance with the Settlement Agreement is not bound by the Settlement Agreement and may no longer participate in any continuation or settlement of this action.

- (8) **THIS COURT ORDERS** that any putative Class Member who does not opt out of the Class in accordance with the Settlement Agreement is bound by the Settlement Agreement and may not opt out of this action in the future.
- (9) **THIS COURT ORDERS AND DECLARES** that each Class Member who does not opt out of the Class in accordance with the Settlement Agreement shall consent and shall be deemed to have consented to the dismissal, without costs and with prejudice, of any other action the Class Member has commenced against the Releasees, or any of them, in relation to a Released Claim (an "Other Action").
- (10) **THIS COURT ORDERS AND DECLARES** that each Other Action commenced in Ontario by any Class Member who does not opt out of the Class in accordance with the Settlement Agreement is dismissed against the Releasees, without costs and with prejudice.
- (11) **THIS COURT ORDERS** that the form, content, and manner of distribution of the Approval Hearing Notice, attached hereto as Schedule "B", is hereby approved.
- (12) **THIS COURT ORDERS** that the Defendants shall pay any costs of distributing the Approval Hearing Notice in accordance with the Settlement Agreement.
- (13) **THIS COURT ORDERS** that the form, content, and manner of publication of the Opt Out Form, attached hereto as Schedule "C", is hereby approved.
- (14) **THIS COURT ORDERS** that the Approval Hearing shall be heard on April 30, 2012.

Date:



The Honourable Justice Strathy

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

FEB 10 2012

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



SCHEDULE "A" – SETTLEMENT AGREEMENT

SCHEDULE "B" – APPROVAL HEARING NOTICE

[INSERT TORONTO HYDRO-ELECTRIC SYSTEM LIMITED LOGO]

TORONTO HYDRO-ELECTRIC SYSTEM LIMITED

**NOTICE OF COURT HEARING
TO APPROVE PROPOSED CLASS ACTION SETTLEMENT**

PUBLICATION OF THIS NOTICE HAS BEEN ORDERED BY THE ONTARIO SUPERIOR COURT OF JUSTICE

This notice is to persons who were customers of Toronto Hydro-Electric System Limited and paid interest on an overdue account with a statement date between July 1, 2000 and December 8, 2010, inclusive ("Class Members").

**READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR LEGAL RIGHTS,
WHEREVER YOU LIVE.
YOU MAY BE ENTITLED TO COMPENSATION UNDER A CLASS ACTION SETTLEMENT.**

A class action lawsuit has been commenced in Ontario against Toronto Hydro-Electric System Limited (the "Defendant").

The class action lawsuit relates to the payment of interest on overdue customer accounts. The lawsuit alleges that the Defendant violated the *Interest Act*, R.S.C. 1985, c. I-15, as amended (the "*Interest Act*"), during the period from July 1, 2000 through to and including December 8, 2010 by billing its customers (retail, commercial or otherwise) interest on overdue accounts at a monthly rate without stating the equivalent annual rate on the bill, where the annual rate of interest charged was in excess of 5% per year.

The Parties have entered into a Settlement Agreement to resolve the litigation. The Settlement Agreement is a compromise of disputed claims and is not an admission of liability, wrongdoing, or fault on the part of the Defendant, which denies the allegations against it.

The terms of the Settlement Agreement provide for three forms of relief for the Class:

1. Class Members that, between December 7, 2008 and June 29, 2011 inclusive, either paid to the Defendant or had credited to their accounts for reasons other than this action a cumulative amount equal to or greater than \$30.00 in interest charged at a rate of more than 5% per annum in respect of bills issued on or before December 8, 2010 will be entitled to receive, by mailed cheque to your last known address in the records of the Defendant or by credit to your account if you are an existing customer, partial repayment of such monies. **If you are eligible to receive a cheque, but the cheque is lost, returned or not cashed within six (6) months following the issuance of the cheque, then your monies will be distributed to the charities listed below. You will not be issued a replacement cheque under any circumstance.**

2. Within sixty (60) business days of court approval of the Settlement Agreement, the

Defendant will take all reasonable steps to cancel all outstanding interest owing by Class Members in excess of 5% per year on electricity bills dated on or before December 8, 2010.

3. The Defendant will pay approximately \$600,000.00, less Class Counsel Fees, to the following charities: United Way Centraide Canada, Red Door Family Shelter and Second Harvest.

The Settlement Agreement is conditional on the approval of the Ontario Superior Court of Justice. Class Members may, but are not required to, attend the settlement approval motion ("Approval Motion") that will be held on April 30, 2012 at 10 a.m. in Toronto, Ontario.

In addition to seeking the Court's approval of the Settlement, Siskinds LLP will seek the Court's approval of its legal fees not to exceed 25% of the settlement amount, plus applicable taxes ("Class Counsel Fees") at the Approval Motion. Class Counsel Fees will be deducted from the amounts distributed to Class Members.

If you wish to comment on, or make objection to, the Settlement Agreement or Class Counsel Fees, you must do so in writing. All objections must be submitted to Class Counsel (at the addresses listed below) no later than April 16, 2012. Class Counsel will forward all such submissions to the Court.

If you wish to opt out of this proceeding, you must submit a completed opt out form to counsel for the Defendant, postmarked no later than April 16, 2012, at the following address:

Davis LLP
1 First Canadian Place, Suite 6000
PO Box 367
100 King Street West
Toronto, ON M5X 1E2

Attention: Kelly Friedman

More information about the settlement, including a copy of the Settlement Agreement and an Opt Out Form, is available online at www.classaction.ca. Questions about the proposed settlement should be directed to Class Counsel:

Siskinds LLP
203-47 Colborne Street
Toronto, Ontario M5E 1P8
Canada

Email: hydroclassaction@siskinds.com

If there is a conflict between the provisions of this notice and the Settlement Agreement, the terms of the Settlement Agreement will prevail.

SCHEDULE "C" – OPT OUT FORM

<p align="center"><u>TORONTO HYDRO CLASS ACTION SETTLEMENT</u> <u>OPT OUT FORM</u></p>
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INSTRUCTIONS:

You do not have to take part in the In re: Toronto Hydro-Electric System Limited ("Toronto Hydro") Class Action Settlement Agreement ("Settlement"). This form can be used to exclude yourself from the group of persons included in the proceeding (the "Class") and its Settlement (a process known as "opting out").

If you wish to remain a member of the Class, **DO NOT COMPLETE OR RETURN THIS FORM. IF YOU COMPLETE THIS FORM AND OPT OUT, YOU WILL NOT RECEIVE ANY SETTLEMENT FUNDS, CANCELLATION OF INTEREST EXCEEDING 5% THAT MAY BE OUTSTANDING ON YOUR ACCOUNT, NOR ANY OTHER SETTLEMENT CONSIDERATION.** IF YOU OPT OUT, YOU WILL BE ENTITLED TO COMMENCE OR CONTINUE LEGAL PROCEEDINGS IN YOUR OWN NAME.

Before deciding whether to remain in the Class or to request exclusion, make sure you have read the enclosed Approval Hearing Notice and understand the consequences of your decision. You can obtain more information at www.classaction.ca or by emailing Class Counsel at hydroclassaction@siskinds.com.

If you exclude yourself, you cannot receive any compensation related to the Settlement or object to the Settlement in any way. Any Court orders in this matter will not apply to you. By excluding yourself, you retain any rights to file or proceed with a lawsuit regarding Toronto Hydro that you may have.

To request exclusion, you must complete in full, sign, and return this form via First Class Mail postmarked by April 16, 2012 to counsel for Toronto Hydro at the address below. If you do not return this fully-completed form by this deadline, you will lose your right to exclude yourself from this Class Action and you will be bound by this Settlement and all subsequent proceedings, orders, and judgments entered by the Court. You cannot opt out without properly completing this court-approved form and submitting it on time.

<u>Address</u>	<p>Counsel for the Defendant, Toronto Hydro</p> <p>Kelly Friedman Davis LLP 1 First Canadian Place, Suite 6000 PO Box 367, 100 King Street West Toronto, ON M5X 1E2</p>
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TORONTO HYDRO CLASS ACTION SETTLEMENT **OPT OUT FORM**

Print clearly in black or blue ink. Complete this form only if you wish to be excluded from participating in the Toronto Hydro Class Action.

1. Your Name and Contact Information

Name: _____

Address: _____

City: _____ State/Province: _____ Zip/Postal Code: _____ Country: _____

Are you completing this form on someone else's behalf? ____ Yes ____ No

If Yes, list the name and address of the person for whom you are completing this form:

Are you a lawyer acting for your client? ____ Yes ____ No

Lawyer's Signature: _____

2. Account Information

a. Were you a customer of Toronto Hydro at some point between July 1, 2000 and December 8, 2010, inclusive?
____ Yes ____ No

b. Were you billed by Toronto Hydro at some point between July 1, 2000 and December 8, 2010, inclusive?
____ Yes ____ No

c. Did you pay interest on an unpaid account during the period between July 1, 2000 and December 8, 2010, inclusive?
____ Yes ____ No

d. If the answer to each of the above is YES, please indicate the billing address at which you received your bill for interest, if the address is different from the address in box 1:

e. If the answer to each of the above is YES, please indicate the address of the premise at which you received Toronto Hydro service, if the address is different from the address in box 1 or the billing address provided above:

f. If the answer to each of the above is YES, please indicate the Toronto Hydro account number for which you paid such interest, if you know it: _____

3. Legal Representation

Have you entered into a written or oral agreement to be represented by counsel regarding a potential claim against Toronto Hydro?

____ Yes ____ No

If Yes, please list the lawyer's name and address:

UNLESS YOU PROPERLY COMPLETE AND RETURN THIS OPT OUT FORM, YOU WILL BE BOUND BY ANY JUDGMENT IN THE LITIGATION AND YOU WILL NOT BE PERMITTED TO PURSUE ANY PENDING OR FUTURE LITIGATION ON MATTERS RESOLVED IN THIS SETTLEMENT. THIS IS TRUE:

- 1) EVEN IF YOU HAVE OBJECTED TO THE SETTLEMENT;
- 2) EVEN IF YOU ARE ACTIVELY LITIGATING MATTERS REGARDING THE INTEREST BILLING PRACTICES OF TORONTO HYDRO; AND
- 3) EVEN IF YOU MAILED THIS EXCLUSION REQUEST BUT EITHER SENT IT TO AN INCORRECT ADDRESS OR MISSED THE DEADLINE.

Dated: _____

Submitted by: _____ (Printed)

Signed: _____ (Signature)

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

Proceeding under the *Class Proceedings Act, 1992*

ORDER

SISKINDS LLP

47 Colborne Street

Suite 203

Toronto, Ontario

M5E 1P8

Daniel E. H. Bach (LSUC#: 52087E)

Charles M. Wright (LSUC#: 36599Q)

Ernie E. McLachlan Maxwell (LSUC#: 59681W)

Tel: (416) 362-8334

Fax: (519) 660-2085

Lawyers for the Plaintiff