

**Class Action by Long Term Disability Claimants against
Health Sciences Association of British Columbia
Watt v. Health Sciences Association of British Columbia
(the “Action”)**

Introduction

The Action is brought on behalf of approximately 220 disabled members of the Health Sciences Association of British Columbia (“HSA”). It is brought against HSA and against the trustees of three trusts established to facilitate the provision of certain benefits to HSA members, primarily long term disability benefits.

The primary allegation in the Action is that HSA and the trustees breached various obligations to the disabled HSA members by, among other things, unilaterally reducing or eliminating various benefits to disabled HSA members.

Background

Prior to 1986, HSA members received long term disability benefits from their employer, under the applicable collective agreement. At the instance of HSA, that changed after 1986, when HSA took over responsibility for the long term disability plan.

In March 1989, HSA created its own plan to provide, among other things, long term disability benefits to its members. Broadly speaking, HSA received contributions from its members and directed those contributions into trusts which the plaintiffs assert were established to facilitate the payment of certain benefits to qualifying HSA members. The plaintiffs assert that HSA was to pay long term disability under two plans, the first running from March 1, 1989 to February 23, 1999 and the second from March 1, 1999 to August 3, 2006. After August 2006, the employer assumed responsibility for providing long term disability benefits to HSA members disabled after that date.

In or about the fall of 2010, HSA concluded that the benefit plans were underfunded. Rather than HSA taking steps to increase funding, the benefits payable to disabled HSA members were reduced or eliminated. Among other things, effective July 2012, the long term disability benefits paid to disabled HSA members were reduced by approximately 34%.

The Class Plaintiffs

There are two plaintiffs representing the class, Nina Watt and James Hensman.

Nina Watt is an X-Ray Technologist who became a member of HSA in 1994. She suffers from a number of serious medical conditions. Ms. Watt went on disability in 2004 as a result of various related disabilities.

James Hensman is a respiratory therapist, who became a member of HSA in about 1990. In 1996, Mr. Hensman went on long term disability due to a number of medical conditions.

As members of HSA, both Ms. Watt and Mr. Hensman participated in the long term disability plan operated by HSA. During their years of work as HSA members, Ms. Watt and Mr. Hensman paid a percentage of their earnings into the HSA long term disability plan and were told that, in the event they became disabled, they would be entitled to receive certain benefits under the long term disability plan.

Neither Ms. Watt nor Mr. Hensman have been able to return to work and they both rely on long term disability benefits as their primary source of income. They each experienced the approximately 34% reduction in benefits which was put into place effective July 2012.

In the Action, the plaintiffs are asserting that HSA was contractually responsible for paying benefits to disabled members and that HSA was not entitled to unilaterally reduce the benefits payable once a member had become disabled. Among other things, the plaintiffs also claim against both HSA and the trustees for breach of fiduciary duty.

Progress in the Action

The Action was commenced on May 31, 2013, pursuant to the provisions of the *Class Proceedings Act*, RSBC 1996, c. 50.

The first hurdle in a class proceeding is to obtain a certification order. Among other things, such an order confirms that the cause of action is of sufficient merit to proceed and that the issues raised are common to the proposed class. The consequence of such an order, if obtained, is that the plaintiffs will be pursuing the class action on behalf of all individuals falling within the class.

The application for certification in the Action was filed on December 16, 2013 and was vigorously opposed by the defendants. After the filing of affidavits, cross examination, delivery of written arguments and a four day court hearing in December 2014, Justice Punnett, of the B.C. Supreme Court, issued [Reasons for Judgment](#) on July 24, 2015, certifying the Action as a class action. In the Reasons, Justice Punnett endorsed a "Litigation Plan", which comprises a general set of deadlines and guidelines for proceeding with the Action.

The [Certification Order](#) certifying the case as a class action was entered with the court on August 28, 2015. The Certification Order includes, as part of the Order, the Litigation Plan.

The class as certified by the Certification Order is as follows:

- (a) HSA members who started receiving long term disability benefits between March 1, 1989 and February 28, 1999 and who were still receiving such benefits as of June 1, 2012 (the “**LTD Agreement #1 Subclass**”); and
- (b) HSA members who started receiving long term disability benefits between March 1, 1999 and August 3, 2006 and who were still receiving such benefits as of June 1, 2012 (the “**LTD Agreement #2 Subclass**”).

The next step in the Action is for the plaintiffs to issue a Notice of Certification, which is the formal notice given to class members with respect to the class action.

To date, the parties have not agreed on the form of the Notice of Certification and HSA has indicated that it intends to seek to have issuance of the Notice delayed, pending resolution of their appeal (discussed below).

The plaintiffs are scheduling a further hearing before Justice Punnett, to resolve issues relating to the issuance of the Notice of Certification.

Subject to the terms of any stay, the Notice of Certification will also be posted on the Church & Company website.

Appeal from Certification Order

HSA and the trustees have each commenced an appeal to the B.C. Court of Appeal from the Certification Order, on August 18, 2015 and August 20, 2015 respectively.

HSA has indicated that it intends to seek a stay of proceedings with respect to the Action, pending resolution of the appeal. That application has not yet been heard. If the stay of proceedings is granted, that will likely delay issuance of the Notice of Certification and prosecution of the Action.

These bulletins will be posted to the Church and Company website throughout the course of the litigation, as required.