



Court File No

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 16-Dec-2019  
Délivré par voie électronique :  
Toronto

**LINDA CRAWLEY AND JUDY BRADACS**

Plaintiffs

- and -

**AVON CANADA INC. AND NEW AVON LLC**

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, C.6

**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. 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 plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, 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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$15,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and \$400.00 for costs and have the costs assessed by the court.

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: December , 2019

Issued by \_\_\_\_\_  
Local registrar

Address of court office [393 University Avenue, 10th Floor, Toronto, ON M5G 1E6](#)

**TO:** New Avon LLC  
1 Liberty Plaza, 165 Broadway New York, NY  
10006, United States

**AND TO:** Avon Canada Inc.  
5500 Rte Transcanadienne  
Pointe Claire, QC  
H9R 1B6

## CLAIM

1. The plaintiffs claim:
  - (a) an order certifying this action as a class proceeding and appointing the plaintiffs as the representatives of the class;
  - (b) a declaration that each member of the class is entitled, to receive from the defendants, post-retirement benefits as defined below, without reduction and/or elimination, and a mandatory order directing that the defendants provide the class members with the post-retirement benefits without reduction or elimination;
  - (c) damages of \$80,000,000.00 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;
  - (d) punitive damages in the amount of \$5,000,000.00
  - (e) pre-judgment and post-judgment interest;
  - (f) the costs of this action on a substantial indemnity basis;
  - (g) the costs of administering the plan of distribution of the recovery in this action;  
and
  - (h) such further and other relief as may be required and as this honourable court deems to be just.

## **THE PARTIES**

### **(a) Linda Crawley**

2. Linda Crawley (“Crawley”) lives in Quebec and was a loyal employee of Avon Canada Inc. (“Avon Canada”). Crawley retired from Avon Canada in 2015 in her fortieth year of service and dedicated virtually her entire working life to Avon Canada.

3. Crawley started working in Avon Canada’s shipping department as a Typist/clerical worker in 1975, it was her first job out of college and she was 17 years old. In Approximately 1976 or 1977 she worked as a Stenographer/Secretary in the Service Section of the Representative Service Department. In 1977, she left Avon Canada for several months, but was then rehired into the Representative Service Department in the Autumn of 1977. In the mid-1980s She became an Executive Administrative Assistant to the Director in the Branch Operations/Customer Service Division and was also performing investigations for the Legal Department of Avon Canada concurrently since the mid-1990s. Crawley formally became the Executive Administrative Assistant to the Director of the Avon Legal Department in approximately 2011. Crawley worked in the Legal Department until she retired in 2015.

4. Upon retirement, Crawley 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.

**(b) Judy Bradacs**

5. Judy Bradacs (“Bradacs”) retired in 1999, she was a loyal employee for 23 years.

6. Bradacs resides in Ontario and spent the majority of her career working in Ontario for Avon Canada, starting with Geni from 1975-1979, which was eventually bought by Avon. Bradacs worked as an Avon District Manager in Ontario from approximately 1980-1985. From 1985-1990 she worked as a Division Manager in Ontario. In Approximately 1990, she was transferred to Avon Canada’s Montreal office to assume the role of Manager of Sales Support Head Office. Bradacs officially retired in 1999.

7. Bradacs contributed her best years of employment to Avon Canada, on the explicit representation from Avon Canada that it would take care of loyal employees once they retired. Upon retirement, she 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 to her as deferred compensation for her loyal employment. As a retiree, the post-retirement benefits are a valuable component of her retirement plan and retirement security.

**(c) Avon**

8. The Avon brand was founded in 1914, eventually becoming Avon Products Inc., a multinational and multibillion dollar company with subsidiaries across the globe. For decades, the Avon brand, Avon Products Inc. and Avon Canada were a dominant force in cosmetic sales in North America and globally, Avon built itself into a multibillion dollar company due to the loyal and dedicated service of its employees.

9. The Avon brand began to experience a decline in 2012. In 2013, Avon Products Inc. closed its branch in France. In 2018, Avon Products Inc. closed branches in Australia and New Zealand. Despite a decline, Avon remains one of the most well-known beauty products brands in North America.

10. Avon Canada Inc. is a federal corporation with its registered office in Pointe-Claire, Quebec. Avon Canada Inc. was a direct subsidiary of Avon Products Inc.

11. On March 1, 2016, Avon Products Inc. separated its North American business into a privately held company, New Avon LLC (New Avon), which was majority owned and operated by Cerberus Capital Management, L.P. ("Cerberus"). Avon Products Inc. Maintained a 19.9% share in New Avon LLC. In August 2019, LG Household & Health Care, Ltd. purchased the interests which Avon Products Inc. and Cerberus held in respect of New Avon.

12. Pursuant to agreements between Avon Products Inc. and Cerberus, Avon Products Inc. transferred assets and liabilities to New Avon, including (i) assets primarily related to the North American operations (including approximately \$100 million of cash), (ii) assumed pension and post-retirement liabilities of the North American business, (iii) the employees of the North American business. In exchange, Avon Products Inc. received a 19.9% ownership interest of New Avon.

13. Avon Products Inc. transferred approximately \$60.4 million of post-retirement liabilities to New Avon, namely, retiree medical and supplemental pension liabilities in respect of employees and former employees in the North American operations.

14. Avon Canada was, at all material times, the employer of every member of group (a) of the proposed plaintiff class described below. Avon Canada and Avon Products Inc. were independently, or jointly, responsible for the administration of the post-retirement benefits on behalf of all members of the class. Some or all of Avon Canada's and Avon Products Inc. legal obligations in respect of the post-retirement benefits owed to the class were transferred to New Avon. At the time the liabilities were transferred to New Avon, it was represented the liabilities had actual value.

15. Avon Canada Inc. and New Avon (collectively "Avon") are jointly and severally liable to pay the class the post-retirement benefits, or any damages which may arise from cessation of the post-retirement benefits. The defendants have agreements of indemnification and contribution as between them in regards to the cessation of post-retirement benefits. The specific terms of the agreements are only known to the defendants.

#### **POST-RETIREMENT BENEFITS**

16. The post-retirement benefits consist of a death benefit payable to the class member's designated beneficiary and extended medical benefits subject only to a \$20,000 lifetime maximum.

## **THE CLASS**

17. The plaintiffs bring this action on their own behalf and on behalf of the following class of persons:

“(a) all retirees of Avon Canada Inc. who were alive as of December 16, 2017;

and

(b) all surviving spouses and dependent children of the persons described in

(a)” (the "class" or "class members").

## **CONTRACTUAL ENTITLEMENT TO POST-RETIREMENT BENEFITS**

18. Avon Canada entered into contracts of employment with each of the class members described in group (a) above.

19. Avon Canada 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 medical, paramedical and prosthetic expenses; death benefit (collectively, the “post-retirement benefits”).

20. Avon Canada 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.

21. The post-retirement benefits, which Avon Canada agreed to pay or otherwise provide to class members, are described in standard format benefits policies, benefits statements, benefits summaries, benefits booklets, letters, notices, and other written documents provided to or made available to class members by Avon Canada or by agents or employees of Avon Canada. Such written documents purported to be, and were in fact, binding on the class members.

22. Further, Avon Canada and its agents made written promises by way of standard-form letters to class members described in group (a), on or after their retirement, with respect to the basic group life insurance benefits, confirming and committing to the continued provision of a certain amount of such benefits to class members for the remainder of their lives.

23. The post-retirement benefits vested irrevocably as work and labour was being performed by class members in group (a), and Avon could not lawfully reduce or eliminate such benefits or such pro-rata portion of benefits after they were earned. In the alternative, the post-retirement benefits vested after 15 years or on the retirement of the class members described in (a), and Avon could not lawfully thereafter reduce or eliminate such benefits thereafter.

24. All improvements to post-retirement benefits made after retirement also vested as they were provided and Avon could not lawfully thereafter reduce or eliminate such benefits.

### **REDUCTION OR ELIMINATION OF POST-RETIREMENT BENEFITS**

25. In April 2019, Avon Canada announced the post-retirement benefits would be eliminated entirely, effective January 1, 2020. Avon Canada advised that the termination was in accordance with the directions of New Avon.

26. Avon gave no prior notice of the intended termination.

### **BREACH OF CONTRACT**

27. Avon is in the process of eliminating the post-retirement benefits and has confirmed it will proceed with its stated intention to cease providing all benefits effective January 1, 2020.

28. In retroactively and unilaterally purporting to modify the consideration previously earned by class members in group (a), and now due and accruing, Avon has breached and is continuing to breach its contracts with the class members.

29. Furthermore, it was a term of the contracts that Avon would act in good faith, which term Avon breached by reducing or eliminating the post-retirement benefits, having regard exclusively to its own interests, and contrary to the interests of class members.

### **UNJUST ENRICHMENT – *QUANTUM MERUIT***

30. In the alternative, if Avon is not contractually obliged to provide the post-retirement benefits as set out above, the class members are entitled to recover the value of such benefits on a *quantum meruit* basis.

31. The defendants received the value of the class members' work and labour on the basis of its written representations described in paragraph 21 and 22 above, that class members would receive the post-retirement benefits.

32. The work performed by the class members in group (a) gave rise to benefits enjoyed by Avon for which the class members suffered corresponding deprivations.

33. Class members are therefore entitled to recover the value of the unreduced post-retirement benefits, by reason of Avon's acquiescence in the receipt of work and labour on the basis that the post-retirement benefits would be paid.

#### **BREACH OF FIDUCIARY DUTY**

34. In the further alternative, Avon 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.

35. Avon 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.

36. As retirees, the class members were not in a position to negotiate with Avon and were in a position of peculiar vulnerability in relation to its control over their post-retirement benefits.

37. Avon breached its fiduciary duty by reducing or eliminating the post-retirement benefits, having regard exclusively to its own interests, and having no regard to the interests of the class members.

### **NEGLIGENT MISREPRESENTATION**

38. In the further alternative, Avon knew, or reasonably ought to have known, that class members would rely on representations made by Avon and others on its behalf concerning post-retirement benefits. Avon owed class members a duty of care based on the special relationship between Avon and the class members, which existed by virtue of Avon's status as the employer, benefits sponsor, and/or benefits administrator.

39. Avon and others acting on its behalf made written promises by way of standard-form letters to class members described in group (a) with respect to the death benefit and medical benefits, confirming such benefits would be provided subject only to a "lifetime maximum".

40. If Avon had the right to modify or terminate the post-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 or life insurance.

## **EFFECT OF THE DEFENDANTS' ACTIONS**

41. As a result of Avon's breaches of contract and tortious and unlawful conduct as set out above, the class members have and will continue to sustain damages, including but not limited to losses equal to the value of the lost post-retirement benefits, as measured by the total savings achieved by Avon in effecting the reductions and eliminations to the post-retirement benefits.

42. Avon's actions have had a serious impact on the class members. Many of the class members live on modest 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.

43. As a result of Avon's unilateral and unlawful conduct, the class members have been and will be compelled to forego the post-retirement benefits to which they are entitled, or to pay increased amounts of their fixed incomes, where possible, to attempt to replace the reduced or eliminated post-retirement benefits.

44. In particular, class members have been and will be compelled to pay additional costs for the post-retirement benefits to which they are entitled, in the form of premiums, fees, co-payments, and increased deductibles, or will be forced to forego the benefits and their attendant value.

45. 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.

## **A CLASS PROCEEDING IS APPROPRIATE**

46. The class members, as individuals, cannot match the resources of Avon. The individual claims of each class member would not be economical to pursue individually. The class members would be denied access to justice in the absence of a class proceeding.

47. It is unlikely that an individual could or would seek prospective relief to deter future misconduct by Avon with respect to post-retirement benefits. Moreover, Avon is sufficiently large and well-resourced that an individual lawsuit would be unlikely to have any significant impact on its behaviour. This class proceeding will either produce a voluntary change in the behaviour of Avon or result in a court order which will compel a change in its behaviour. The alternative to this class proceeding is a multiplicity of proceedings where similar factual and legal issues would be raised. This would be inefficient and could result in inconsistent findings and would be a waste of judicial resources.

48. The Plaintiffs propose that this action be tried at Toronto.

Decemeber 16, 2019

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Lawyers for the **Plaintiffs**

**LINDA CRAWLEY, et al.**  
Plaintiffs

-and-

**AVON CANADA INC. , et al.**  
Defendants

Court File No.: [»](#)

***ONTARIO***

**SUPERIOR COURT OF JUSTICE**

Proceeding commenced at [Toronto](#)

**STATEMENT OF CLAIM**

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