

Court File No. CV-11-425347

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**CONNIE DRAPER and IRENE MCCALLUM**

**Plaintiffs**

- and -

**SUZUKI CANADA INC.**

**Defendant**

**SIMPLIFIED PROCEDURE MOTION FORM**

**JURISDICTION**       Judge  
                           Master  
                           Registrar

**THIS FORM IS FILED BY**

- moving party
- plaintiff
- responding party
- defendant      SUZUKI CANADA INC.
- Other - specify kind of party and name

**MOTION MADE**

- on consent of all parties       on notice to all parties and unopposed
- without notice                       on notice to all parties and expected to be opposed

Notice of this motion was served on (date): May 30, 2011  
by means of: Fax

**METHOD OF HEARING REQUESTED**

- by attendance
- in writing only, no attendance

- by fax
- by telephone conference under rule 1.08
- by video conference under rule 1.08

Date, time and place for conference call, telephone call or appearances

August 8, 2011	10:00 a.m.	Toronto
<i>(date)</i>	<i>(time)</i>	<i>(place)</i>

**ORDER SOUGHT BY THIS PARTY** *(Responding party is presumed to request dismissal of motion and costs)*

- Extension of time – until *(give specific date)*: \_\_\_\_\_
- serve claim
- file or deliver statement of defence
- Other relief – be specific  
An order requiring the claims of the plaintiffs to be asserted in separate proceedings.  
The costs of this motion.  
Such further and other relief as this Honourable Court may deem just.

**MATERIAL RELIED ON BY THIS PARTY**

- this form
- pleadings
- affidavits – specify
- The affidavit of Cynthia Romano
- Other – specify  
Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

**GROUND IN SUPPORT OF/IN OPPOSITION TO MOTION (INCLUDING RULE AND STATUTORY PROVISIONS RELIED ON)**

Rules 5.02(1), 5.03(1), 5.05

**CERTIFICATION BY LAWYER**

I certify that the above information is correct, to the best of my knowledge.

Signature of lawyer  
May 30, 2011

*Anne-Marie Naccarato*  
 \_\_\_\_\_  
 Anne-Marie Naccarato

**THIS PARTY'S LAWYER**

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Lawyers for the Defendant

**OTHER LAWYER(S)**

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416.447.7529

Court File No: CV-11-425347  
Action Name: Connie Draper et al. and Suzuki Canada Inc.

**DISPOSITION**

- order to go as asked
- order refused
- adjourned to
- order to go as follows:

*See endorsement on back page of notice record.*

Hearing method: oral Hearing duration 90 min. *approx.*  
 Heard in:  courtroom  office

- Successful party MUST prepare formal order for signature
- No copy of disposition to be sent to parties
- Other directions – specify

August 15, 2011 Date Name Master Barbara McAfee Signature B. McAfee  
 Judge/Master/Registrar

CONNIE DRAPER et al.  
Plaintiffs

M.

and SUZUKI CANADA INC.  
Defendant

Aug. 8/11 Court File No. CV-11-425347

① August 15, 2011 (heard August 8, 2011)

A. Nacarrato for the moving party, the defendant  
y. Payne for the responding party, the plaintiff's

This is a motion brought by the defendant, Suzuki Canada Inc. for an order requiring the claim of the plaintiffs, Connie Draper and Irene McCallum to be asserted in separate proceedings. The defendant relies on Rules 5.02(1) and 5.05 of the Rules of Civil Procedure.

As a preliminary issue, the defendant sought to "walkie" a further affidavit. I wanted an opportunity to review the further evidence advanced of the commencement of arguit. I invited moving counsel to request an adjournment to allow her to properly file the material. Moving counsel indicated that she preferred to proceed with the affidavit without the further affidavit. Rather than request an adjournment, to request an adjournment. For the reasons that follow, the motion is dismissed.

ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT  
TORONTO

MOTION RECORD  
OF THE MOVING PARTY

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Lawyers for the Defendant



The defendant argues that none of the provisions of Rule 5.02(1)(a), (b) or (c) are present in the circumstances of this action: the plaintiffs argue that all of the provisions of Rule 5.02(1)(a), (b) and (c) are present in the circumstances of this action. I agree with the plaintiffs.

The plaintiffs both worked for the same employer, the defendant.

Both plaintiffs worked out of the same office. Both plaintiffs worked at the head office of the defendant, although they did work in different departments within the same office.

Neither plaintiff had a written contract of employment.

Both plaintiffs were long term employees of the defendant. Ms. McCallum began her employment with the defendant in or about April 1981 as a secretary. Ms. McCallum had been working with the defendant for approximately 30 years at the time of her termination. Ms. Draper began her employment with the defendant in or about April 1983 working in data entry. Ms. Draper had been working with the defendant for approximately 28 years at the time of termination.

Although the defendant argues that the decisions to terminate each plaintiff were made independently based on the specific and separate needs of the departments in which they worked, both plaintiffs were terminated on the same day. Both plaintiffs were given the same reason for termination.

Both plaintiffs were past the habitual age of retirement (65 years of age) at the time of termination. Ms. Draper was 66 years of age. Ms. McCallum was 69 years of age.

Both plaintiffs allege age discrimination in the selection process for their termination. Both plaintiffs allege breach of the provisions of

③ the Ontario Human Rights Code.

The claims of each plaintiff are identical save for the fact that Ms. McCallum claims \$50,000.00 more for general damages and \$50,000.00 more with respect to her claim pursuant to the Employment Standards Act and Canada Labour Code.

The plaintiffs will be calling the same witnesses and will rely on each other's evidence at trial.

Both plaintiffs are represented by the same lawyer.

I am not satisfied that any individual issues of fact and law arising from each plaintiff's claim predominate over any common issues of fact and law.

There is no evidence of prejudice to the defendant.

In *Buhlman v. Peoples Minishis Inc.*, [2009] O.T. No. 2198 (SCO), a motion to sever the claims of 24 plaintiffs who were testified on the same day was dismissed. The court stated that claims capable of establishing that they have numerous facts and questions of law in common will militate against severance. In addition, the court noted that there was a good possibility that the plaintiffs would rely on the evidence of other plaintiffs at trial and that if the claims were severed, there would be an increase in costs and in the length of trial.

In *Agnew v. Sault Ste. Marie Board of Education*, [1976] O.T. No. 1425 (SCO) the court stated that "the court and litigants are under a duty to avoid multiplicity of proceedings with a view to one judicial determination arising out of one set of circumstances," particularly when they are represented by one counsel.

If the cases are severed, there is a risk of ... courts reaching different determinations

④ with respect to relief arising out of the same circumstances.

The defendant relies on *Bagasco v. Union Energy Limited Partnership*, [2009] O.T. No. 673 (SCT). In that case the court found that the claims did not arise from the same transaction or occurrence. The facts are distinguishable. The water heaters were manufactured by different manufacturers with different life spans ranging from 2 to 21 years. In addition, 27 out of 35 of the claims were within the jurisdiction of small claims court and could be conducted in small claims court.

The defendant relies in part on *3414493 Canada Inc. v. 505896 Ontario Ltd.*, [2007] O.T. No. 3988 (SCT) at para 98 in support of its position that the provisions of R. 5.02(1)(a) have not been satisfied. In my view, the occurrence or series of occurrences is the termination of 2 employees by the same employer on the same day for the same reason. However, if I am wrong and the ~~claims~~ <sup>claims</sup> ~~do not arise out of the same transaction or occurrence or series of transactions or occurrences.~~ <sup>the plaintiff's claim</sup> ~~do not arise out of the same transaction or occurrence or series of transactions or occurrences.~~ <sup>all of the provisions of R. 5.02(1)(a), (b) and (c).</sup> ~~do not arise out of the same transaction or occurrence or series of transactions or occurrences.~~ <sup>do not arise out of the same transaction or occurrence or series of transactions or occurrences.</sup>

Although the defendant submits that the order should be granted and if after discovery it appears that the action should be rejoined, the plaintiff's could bring a motion to rejoin the claims at that time, I am not satisfied that the claims ought to be severed. However, as was stated in *Buhlman v. Peoples Milkeries Inc.*, supra at para 21 citing *Baldwin v. Daubney*, [2004] O.T. No. 3616, "should circumstances change and the claims evolve in such a manner that renders joinder unworkable and/or prejudicial, a further motion to sever or fresh materials may be brought."

At this time the motion is dismissed.



⑤ If the parties are unable to agree on costs of the notes, any party seeking costs shall serve and file brief written submissions on costs of 2 pages or less in length together with a costs affidavit on or before September 6, 2011. Any opposing submissions shall also be 2 pages or less in length and shall be served and filed on or before September 16, 2011. The submissions shall be filed directly with my Registrar, Conrad Diziante, 6th floor and shall be accompanied by an affidavit of source. The material may be filed by fax (fax no. 416-326-5416) but if filing material in this manner, my Registrar shall be contacted by telephone (tel. no. 416-326-3292) after transmission to confirm his receipt of the fax.

B. Meape

Master Barbara McAfee