

FEDERAL COURT

PROPOSED CLASS ACTION

BETWEEN:

NEIL DODSWORTH

PLAINTIFF

-and-

HER MAJESTY THE QUEEN

DEFENDANT



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 a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the *Federal Courts Rules*, serve it on the Plaintiff's solicitor or, where the Plaintiff does not have a solicitor, serve it on the Plaintiff, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this Statement of Claim is served on you, if you are served within Canada.

If you are served 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 for serving and filing your Statement of Defence is sixty days.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court

and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone: 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date: 08 SEPTEMBER 2014

Issued by: _____
[Registry Officer] ORIGINAL SIGNED BY
ORIGINAL SIGNÉ PAR
M.E. CAVERLY
REGISTRY OFFICER
AGENT DU GREFFE

Address of local office: 1801 Hollis Street,
17th Floor, Suite 1720
Halifax, NS B3J 1S7

To: The Attorney General of Canada
Attention: Mr. William R. Pentney, Deputy Attorney General of Canada

CLAIM

1. The Plaintiff claims on his own behalf and on behalf of the proposed Class Members (as defined below):
 - a. An Order pursuant to Rules 334.16(1) and 334.17 of the *Federal Courts Rules* (the "Rules") certifying this action as a class proceeding and providing any ancillary directions;
 - b. An Order pursuant to Rules 334.12(3), 334.16(1)(e) and 334.17(b) appointing the Plaintiff as the Representative Plaintiff for the Class;
 - c. A declaration that the Defendant committed the tort of negligent misrepresentation;
 - d. Damages for negligent misrepresentation, including damages for:
 - i. The loss in the value of Mr. Dodsworth's and the Class Members' homes due to a sale resulting from a move necessitated by a Canadian Forces posting;
 - ii. The consequential losses resulting from the home equity loss;
 - iii. Mental distress; and
 - iv. Out of pocket expenses.
 - e. General damages;
 - f. Aggravated damages;
 - g. Punitive damages;
 - h. An Order pursuant to Rule 334.28(1) and (2) for the aggregate assessment of monetary relief and its distribution to the Plaintiffs and the Class Members;
 - i. Pre-judgment and post-judgment interest pursuant to sections 36 and 37 of the *Federal Courts Act*, R.S.C. 1985, c. F-7;
 - j. Costs, if appropriate; and
 - k. Such further and other relief as this Honourable Court deems just.

PARTIES

2. The Plaintiff, Neil Dodsworth, is an individual who currently resides in Oromocto, New Brunswick. He is a serving member of the Canadian Armed Forces ("CF"). He has been a member of CF for approximately 33 years.
3. Mr. Dodsworth brings this action on his own behalf and on behalf of the members of the proposed Class, which is defined as follows:

All current or former members of the Canadian Armed Forces, who sold their homes for a loss following a posting, but were not provided 100% reimbursement of the difference between the original purchase price and the sale price ("Class").

4. The Defendant, Her Majesty the Queen, is named as a representative of the Government of Canada, the CF, the Department of National Defence ("DND") and the Treasury Board.

POSTINGS IN THE CANADIAN ARMED FORCES

5. CF members are frequently posted to locations throughout Canada and around the world. These postings are akin to forced relocations and can have significant consequences, including financial consequences, on CF members and their families.
6. CF members normally can choose whether to accept an international posting, but almost all in-Canada moves are mandatory. Military families move three times as frequently as civilian families. Furthermore, CF members have limited influence over where, when and for how long they are posted.
7. In the early 1990s, the CF began to encourage CF members to live in civilian communities. Currently, approximately 85% of the CF population lives in private market accommodations. The remaining members reside in military housing.
8. The CF encourages private market accommodations, as articulated in Departmental Administrative Order and Directive 5024-0: "DND and the CF are committed to: [...]"

establishing policies, plans and programs which encourage CF members to obtain living accommodation in the private sector marketplace.”

9. The Accommodation Policy Review conducted in 2010 states that “relocation benefits will continue to be provided that encourage CF personnel to purchase and sell a home in the marketplace and build equity for the future.”
10. Many CF members are anxious about the protection of the equity in their home as they cannot control when and where they are posted. When posted, there is often a short time period for current CF members to buy a home in their new location and sell their current home.
11. The CF have acknowledged that frequent forced relocations can be a difficult part of military service and can have financial consequences. Departmental Administrative Order and Directive 5024-0 includes the following:

The DND and the CF recognize the unique circumstances of military life and the pressures it creates for CF members and their families. Regular Force members are expected to readily change their place of residence to meet the demands of the CF. Reserve Force members may also be moved at government expense to meet operational requirements.

12. The CF makes a number of representations to its members, prospective members and their families to assure them that they will not bear the expense of these postings.

DEFENDANT’S REPRESENTATIONS

13. On its website and in its recruitment materials, the CF makes the following representation:

A reality of military life is relocating your family to a different city or country when you are posted. Most Forces members will have to move at some point during their career. Moving provides you with new opportunities for training and furthering your skills, which leads to career advancement and promotions.

Although moving can be a challenge for your family, it gives them the opportunity to travel and meet new people. To make the process as easy as possible, moving expenses are paid for by the Forces.

14. In Canadian Forces General Order ("CANFORGEN") 130/09, the CF makes the following representation:

In short, the Policy was designed to ensure that you do not go out of pocket for expenses that are the responsibility of the CF.

15. As stated below, the Defendant also represented that CF members would be reimbursed 100% of the difference between the original purchase price and the sale price in a community where the housing market dropped more than 20%.

HOME EQUITY ASSISTANCE

16. The Home Equity Assistance Program is intended to provide financial assistance to CF members and their families when selling their principal residence.
17. Under the HEA Program, CF members who sell their home at a loss are entitled to reimbursement up to 80 percent of the difference between the original purchase price and the sale price, up to a maximum of \$15,000. A loss in excess of \$15,000 (and up to 100 percent) may be reimbursed in places designated as "depressed markets" areas as defined by the Treasury Board Secretariat.
18. The sole criterion for a "depressed market" is that real estate values in the "community" dropped by 20 percent or more during the concerned timeframe. The Defendant has provided no explanation or basis to support its imposition of the 20 percent threshold.
19. The \$15,000 maximum payment for non-depressed markets has remained the same since the program's inception in 1998, despite rising real estate values in Canada. When the HEA was introduced in 1998, \$15,000 constituted approximately 10% of the average value of the Canadian home. It is now only 4.6%.

HOME EQUITY ASSISTANCE – BLANKET DENIAL IN 2010

20. CF members are required to submit voluminous and complex documentation to support their claim for full compensation.

21. From July 2008 through to January 2013, 118 applications were submitted for losses greater than \$15,000.
22. In 2010 (and perhaps other periods), there was a blanket denial of HEA applications. The Treasury Board Secretariat refused to even accept or consider CF members' HEA applications in 2010 for 100% compensation. This was based on its blanket declaration that "there were no such locations in Canada designated with depressed market status for the year 2010."
23. In the history of the HEA, the Treasury Board Secretariat has approved only two claims for full compensation, both in 2011. Neither of these approvals referenced the requirement that the community suffer a loss of 20%.
24. On May 23, 2014, in the case of *Brauer v. Her Majesty the Queen*, the Federal Court ruled that the Treasury Board Secretariat's interpretation of "community" to be the Edmonton Metropolitan Area rather than the municipality of Bon Accord in that case was unreasonable. The Defendant has not reassessed any other CF member's HEA applications as a result of this Court ruling.

MR. DODSWORTH'S LOSS

25. In 2007, Mr. Dodsworth was posted at CFB Gagetown in New Brunswick. Mr. Dodsworth, his wife and their then six year old son lived in a modest raised ranch bungalow home in Oromocto, New Brunswick.
26. In July 2007, he was posted to a new unit at CFB Edmonton in Alberta. As a result, Mr. Dodsworth and his family had to move.
27. In accordance with CF procedure, Mr. and Ms. Dodsworth sold their home and then went on a house-hunting trip to the City of Edmonton and its surrounding communities. However, they were unable to find a home within their price range because of the then-inflated real estate market. They put their name on the CFB Edmonton Private Military Quarter (PMQ) waiting list, but were told that there was a 6 month to one year waiting list.

28. Through a friend, Mr. and Mrs. Dodsworth eventually found a home in Morinville, Alberta. Morinville is a town located approximately 35 kilometers northwest of the City of Edmonton. Morinville has its own town council and mayor.
29. In May, 2007 Mr. and Mrs. Dodsworth purchased the residence for \$249,900. They moved into the purchased home in July of the same year. The home was a 3-bedroom rowhouse condominium in rough condition. Among other repairs, Mr. and Mrs. Dodsworth had to replace the furnace due to age; remove and replace the downstairs carpet due to hygiene; and to remediate both bathrooms due to mould. This home was purchased by way of a friend who showed them pictures.
30. After only one year at CFB Edmonton, Mr. Dodsworth was posted by the CF to CFB Kingston in August 2008.
31. Mr. and Mrs. Dodsworth promptly listed their home, but due to a severe decline in the real estate market, they were unable to sell their property. As they were unable to afford to leave their Morinville home unsold while also paying rent in Kingston, Mr. Dodsworth took his posting under an imposed restriction for one year. This provided some offsetting financial benefits, but meant that Mr. Dodsworth lived alone in Kingston while Mrs. Dodsworth continued to live in Morinville.
32. In August 2009, Mr. and Mrs. Dodsworth were finally able to sell their Morinville home, but at a substantial loss. The selling price was \$177,500, which was \$72,400 or 29% less than their purchase price just two years before.
33. The Defendant would not consider Mr. Dodsworth's application for full reimbursement of the price differential under the HEA Program until the sale of his house closed. When Mr. Dodsworth promptly applied upon the sale of his house, he was quickly informed that he did not qualify for full reimbursement.
34. Due to the collapse of the Morinville real estate market, Mr. and Mrs. Dodsworth lost all of the equity in their home and more. The sale price was less than the mortgage held by the bank. Mr. Dodsworth thus had to take an emergency bank loan in the amount of \$21,463.66 to cover the remaining amount of the mortgage.

35. In order to cover his losses, Mr. Dodsworth sought a pay increase by volunteering to go on a 7-month tour overseas in Kabul, Afghanistan. Mr. Dodsworth was under imposed restriction (IR) and was required to live in Kingston while his family stayed in Mornville to continue to try and sell their house. As a result, Mr. Dodsworth was separated from his family for almost two years.
36. In accordance with the provisions of HEA, Mr. Dodsworth twice formally submitted his application for compensation to the Directorate of Compensation & Benefits Administration to be submitted to the Treasury Board. Mr. Dodsworth included his real estate agent's opinion and related documentation showing that the Morinville real estate market had fallen 25-30% since Mr. and Ms. Dodsworth purchased the home.
37. On August 14, 2009, the Treasury Board rejected Mr. Dodsworth's application for home equity assistance. Despite the evidence and opinion submitted by Mr. Dodsworth, the Treasury Board informed Mr. Dodsworth that there were no depressed markets in Canada. Mr. Dodsworth grieved the Treasury Board's decision to the CF Chief of Defence Staff ("CDS"), but he was informed that the CDS had no authority to interfere with the decision.

NEGLIGENT MISREPRESENTATION

38. At all material times, the Defendant owed a duty of care to Mr. Dodsworth and all members of the Class.
39. The Defendant made representations to Mr. Dodsworth and all members of the Class that were untrue, inaccurate and misleading. In particular, the Defendant made the following representations:
 - a. "To make the process as easy as possible, moving expenses are paid for by the Forces";
 - b. "In short, the Policy was designed to ensure that you do not go out of pocket for expenses that are the responsibility of the CF"; and

- c. Under the HEA Program, CF members will be compensated for 100% of their home equity loss if they sell in a depressed market (together, the "Representations").

40. The Defendant did not meet the standard of care when making the Representations.
41. Mr. Dodsworth and all members of the Class relied upon the Representations and, as a result of such reliance, suffered loss.

RELIEF SOUGHT

42. The Defendant's negligent misrepresentations have caused Mr. Dodsworth and the other Class Members to suffer the following damages for which the Defendant is liable:
 - a. The loss in the value of Mr. Dodsworth's and the Class Members' homes due to a sale resulting from a move necessitated by a Canadian Forces posting;
 - b. The consequential losses resulting from the home equity loss;
 - c. Mental distress; and
 - d. Out of pocket expenses.
43. The Defendant's conduct, as particularized above, was high-handed, outrageous, reckless, entirely without care, deliberate, willful and in complete disregard of the rights of Mr. Dodsworth and other Class Members, and as such, renders the Defendant liable to pay aggravated and punitive damages.

GENERAL

44. The Plaintiff proposes that this trial take place in Halifax, Nova Scotia.

DATED at Halifax, in the Province of Nova Scotia, this 8th day of September 2014.



Daniel Wallace
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~~WHEREBY CERTIFY~~ that the above document is a true copy of the
Original issued out of / filed in the Court on the 08
day of SEPTEMBER 20 14
Dated this 08 day of SEPTEMBER 20 14
M. Eliza