

F I L E D	FEDERAL COURT COUR FÉDÉRALE	D É P O S É
	Court File No.: Jul 29, 2020 Michael Kowalchuk Fredericton, NB	
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FEDERAL COURT
PROPOSED CLASS PROCEEDING

Between:

FÉLIX LOUIS HENRI ROGER DUNN

Plaintiff,

- and -

ATTORNEY GENERAL OF CANADA

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 40 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 Court 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.

Dated at Moncton, New Brunswick, this 29 day of July, 2020.

Original signed by
Michael Kowalchuk
Registry Officer

Issued by: _____

Address: Courts Administration Service
Fredericton Local Office
82 Westmorland Street, Suite 100
Fredericton, New Brunswick, E3B 3L3

TO: **ATTORNEY GENERAL OF CANADA**
c/o Deputy Attorney General of Canada
Atlantic Regional Office
Department of Justice Canada
Suite 1400, Duke Tower
5251 Duke Street
Halifax, Nova Scotia B3J 1P3

CLAIM

1. The Plaintiff, Félix Louis Henri Roger Dunn, resides in the Community of Bedford, in the Halifax Regional Municipality and Province of Nova Scotia, and was at all material times employed as an Air Force Officer with The Canadian Forces.
2. The Defendant, the Canadian Armed Forces, represented by the Attorney General of Canada, is Canada's military, bound to serve Her Majesty the Queen, and is generally known as the Canadian Forces (hereinafter referred to as "the Canadian Forces").
3. The Defendant, the Canadian Forces, specifically the Royal Canadian Air Force, was at all material times the employer of the Plaintiff.
4. Pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c. C-50, the Defendant, the Attorney General of Canada, represents the Crown, the Canadian Forces and those Crown Servants who are responsible for the systemic negligence within the Canadian Forces.
5. The Plaintiff enrolled in the Canadian Forces Air Force Reserve in 2006, and transferred to the Regular Forces in 2009. The Plaintiff has worked for the Defendant full time as a Air Force Officer for more than 10 years between 2009 and 2020 and was stationed on the HMCS Vancouver (hereinafter referred to as "the Vancouver"), a Halifax-class frigate from June 2016 to December 2016.
6. While serving on the Vancouver, the Plaintiff began experiencing chills and fever, along with cough, burning and tightness in his chest, and fatigue. He was treated with antibiotics by the physician's assistant on board, but never fully recovered.
7. In performance of his duties during his service on the Vancouver in 2016, the Plaintiff discovered what he believed to be black mould growing from the fittings in the pipes of the ship.
8. Upon return, the Plaintiff was diagnosed with exercised induced asthma, sleep apnea, and chronic rhinitis. Since first developing these symptoms on the Vancouver, the Plaintiff has never fully recovered, and continues to experience violent swings in temperature and chest pain when breathing. As a result the Plaintiff's overall quality of life has been compromised, and his ability to

perform any physically demanding activities has been severely limited as they worsen his symptoms, leading to a dramatic decrease in his fitness.

9. As a result of this diagnosis, the Plaintiff was put on permanent medical restriction. He was reassigned to different work away from the ship.
10. On March 2, 2020, the Plaintiff received a decision from the Director of Military Careers Administration, stating that he was being released from the Canadian Forces for medical reasons. He was granted a period of retention to continue working in his administrative position until March 2, 2023 at which point he will be released from the Canadian Forces.

NEGLIGENCE

11. The Plaintiff states that the Defendant was aware of the dangerous levels of Toxic mould on a number its military ships since July 30th, 2018, when a report was published pursuant to an Indoor Air Quality Assessment aboard the HMCS Calgary by the Deployable Health Hazard Assessment Team.
12. The Plaintiff was informed by his treating doctor in January 2019 that the air quality on the Vancouver was assessed as extremely poor based on its occupational health reports.
13. The Plaintiff states that the Defendant acted in bad faith, in that it knew and concealed the issue of mould growth and the compromised air quality it caused aboard Canadian Forces ships and failed to take appropriate action in order to ensure the health and wellness of the service men and women under its employ.
14. In the alternative, the Plaintiff states that the Defendant ought to have known about the issue of mould growth and the compromised air quality it caused aboard Canadian Forces ships and failed to take appropriate action in order to ensure the health and wellness of the service men and women under its employ.
15. The Plaintiff also states that the Defendant was fully aware of the significant negative health effects that result from exposure to such mould, particularly repeated exposure over a long period of time.
16. The Plaintiff states that the Defendant owed duty of care to maintain all of its property so that it is safe, and failed to take reasonable measures to ensure its safety so that preventable and foreseeable harm did not occur.

17. The Defendant is liable for the systemic negligence committed by those individual Crown servants who have, individual or collectively, failed to adequately create, follow and/or apply policies and procedures to address mould growth on Canadian military ships

FIDUCIARY DUTY

18. The Plaintiff states that the Defendant owed a fiduciary duty to the Plaintiff, and to all servicemen and servicewomen, to provide a work environment safe from preventable, needless, and foreseeable risks of harm.
19. The Plaintiff states that the Defendant was aware of the extent of the black mould on the Canadian Forces ships and nevertheless continued to employ the Plaintiff and other officers on the ships despite knowing the health risk. As such, the Defendant was in breach of its fiduciary duty.
20. In the alternative, the Plaintiff states that the Defendant ought to have been aware of the extent of the black mould on the Canadian Forces ships and nevertheless continued to employ the Plaintiff and other officers on the ships despite knowing the health risk. As such, the Defendant was in breach of its fiduciary duty.

CHARTER VIOLATIONS

21. The Plaintiff states that the Defendant's actions and/or omissions to act, and their failure to address the black mould and related poor air quality aboard its naval ships, including the Vancouver, placed the Plaintiff at risk of serious and life threatening illness, and therefore violated his right to Security of the Person as guaranteed under section 7 of the *Canadian Charter of Rights and Freedoms*, and to his "right to life, liberty, security of the person and enjoyment of property, and the right not to be deprived thereof except by due process of law," as guaranteed by section 1(a) of the *Canadian Bill of Rights*, S.C. 1960, c. 44.

SPECIAL DAMAGES

22. As a result of the Defendants actions and/or omissions, the Plaintiff has suffered significant financial losses, including the loss of his Aircrew and Sea

duty allowances after being placed on temporary, and subsequently permanent medical restrictions.

23. Furthermore, before being exposed to the toxic mould, the Plaintiff was on course a long and promising career as an officer in the Royal Canadian Navy. Instead of realizing this career progression, the Plaintiff has had his military career unjustly cut short. As such, the Plaintiff makes a claim for special damages representing his significant loss of income resulting from the Defendant's negligence, bad faith, and violation of *Charter* rights.

GENERAL DAMAGES

24. As a result of the exposure to black mould aboard the Vancouver, the Plaintiff has sustained significant personal injuries, including, but not limited to:
 - A. Asthma;
 - B. sleep apnea;
 - C. chronic rhinitis;
 - D. constant shortness of breath;
 - E. difficulty breathing; and
 - F. pain in the chest and throat.

for which the Plaintiff makes a claim for general damages for pain and suffering, and reduced quality of life.

25. As a result of the Plaintiff's career in the armed forces being unjustly cut short, the Plaintiff has lost his sense of identity, and is suffering from related psychological damage including, but not limited to stress, anxiety, and depression, for which he makes a claim for general damages.

PUNITIVE DAMAGES

26. The Plaintiff states that the Defendant acted with a callous lack of care or consideration of its members when it ignored and failed to respond to the substantial black mould problem upon Canadian military ships.

27. The Plaintiff states that the Defendants have engaged in high-handed, willful, fraudulent and callous misconduct that represents a marked departure from ordinary standards of decent behaviour.
28. The Plaintiff states that any other penalties the Defendant may be subjected to are likely to be inadequate to achieve the objectives of retribution, deterrence, and denunciation for which punitive damages are designed.

RELIEF SOUGHT

29. The Plaintiff, therefore, claims as follows:
 - a) An order certifying this action as a class proceeding and appointing the Plaintiff as a representative plaintiff of the Proposed Class, which shall be defined as follows:

All members or former members of the Canadian forces who have served on Canadian Forces ships during the time period from January 1, 2000 to the date of certification of this action, or such other date as the Court determines appropriate (“Class Period”) and were exposed to mould, toxins, and other airborne contaminants throughout the course of their service.
 - b) A declaration that the Plaintiffs Charter rights have been infringed, and such remedy as this Honourable Court considers appropriate and just in the circumstances, pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*;
 - c) General damages in an amount to be determined by this Honourable Court;
 - d) Special damages to be specified prior to this matter being set down for trial;
 - e) Punitive damages in an amount to be determined by this Honourable Court;
 - f) Costs of this action on a solicitor-client basis;
 - g) Pre-judgment interest pursuant to provisions of the *Judicature Act*, RSNB 1973, c J-2; and

h) Such further and other relief as to this Honourable Court may deem just.

DATED at Moncton, New Brunswick,
this 29th day of July,
2020.

FAIT à Moncton, New Brunswick,
le _____, 2020.



BRIAN F.P. MURPHY, Q.C.

Solicitor for the Plaintiff, Félix Louis
Henri Roger Dunn

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