

2013 06G 0131 CCP

IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR

GENERAL DIVISION

BETWEEN:

DEBORAH THORNE

FIRST PLAINTIFF

AND:

ALAN LUYT

SECOND PLAINTIFF

AND:

COLLEGE OF THE NORTH ATLANTIC

DEFENDANT

Brought under the *Class Actions Act*
Before the Honourable Justices Garrett Handrigan,
Robert Stack, Gillian Butler, Katherine O'Brien and
Peter O'Flaherty
Case Management Judges

CERTIFICATION ORDER

THIS MATTER having come before the Court at Grand Bank, Newfoundland and Labrador, on May 27, 2014;

AND UPON HEARING the Application of the First Plaintiff for an order certifying this proceeding as a Class Action;

AND UPON HEARING James D. Hughes, K.C. and Philip C.W. Whalen of counsel for the Plaintiffs;

AND UPON HEARING J. David Eaton, K.C., of counsel for the Defendant;

AND UPON READING the materials filed;

AND UPON a decision being filed on August 19, 2014;

IT IS HEREBY ORDERED that pursuant to Sections 5 and 9 of the Class Actions Act, SNL 2001 C-18.1 (the "**Act**"), the Application for Certification is granted as follows:

1. **THAT** this proceeding be certified as a Class Proceeding and the file number be amended from 2013 06G 0131CP to 2013 06G 0131CCP pursuant to Rule 7A.02.

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2. **THAT** the Class be defined as follows:

Instructors and instructional support staff who were employed by the College of the North Atlantic in Qatar between September 1, 2008 and November 22, 2011.

3. **THAT** the Class be divided into a Resident subclass and a Non-resident subclass. The Resident subclass consists of all Class members who filed an income tax return for the year 2014 as resident of Newfoundland and Labrador. The Non-resident subclass consists of Class members who did not file an income tax return for the year 2014 as a resident of Newfoundland and Labrador.
4. **THAT** Deborah Thorne is appointed as the Representative Plaintiff for the Resident subclass.
5. **THAT** in accordance with the decision of Justice Handrigan filed March 20, 2015, Allan Luyt of West Vancouver, in the Province of British Columbia, is appointed the Representative Plaintiff for the Non-resident subclass. (Members of the Class or Subclass are collectively referred to as “**the Class**” or “**Class members**”.)
6. **THAT** the Class members’ claim is that between September 1, 2008 and November 22, 2011 (the “**Class period**”), the Defendant owed them, by virtue of their employment contracts, a Cost of Living Allowance (“**COLA**”). Class members claim they did not receive the COLA during the Class period, which they were entitled to by virtue of their contracts.
7. **THAT** the nature of the Class members’ claim is breach of contract and damages arising from the Defendant’s failure to pay all the COLA monies, in whole or in part, which they claim they were entitled to be paid and the Class seeks payment of the amount withheld plus interest.
8. **THAT** the common issue to be determined in this Class Proceeding is as follows:

Were members of the Class entitled by their contracts of employment to receive the full amount of the COLA for the period of September 1, 2008 and November 22, 2011?

9. **THAT** should the common issue be answered in the affirmative, Class members shall be given notice pursuant Section 20 of the Act, which will outline any steps class members will be required to take to establish their individual claim to relief sought. The relief sought by Class members will be for damages in the amount of COLA payable in accordance with their employment contracts plus interest.

10. **THAT** the Notice of Certification to the Class (“**the Notice**”) attached to this Order as Schedule “A” is approved pursuant to Section 19 of the **Act** and the Plaintiff shall give notice to the Class as of the date of this Order, in the following manner:

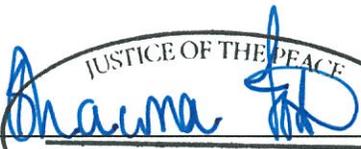
- a. By posting the Notice upon the Plaintiff’s counsel’s website as of the date of

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this Order;

- b. By sending the Notice by regular mail and/or email to the College of the North Atlantic as of the date of this Order, at the following address:
- i. College of the North Atlantic
432 Massachusetts Drive
PO Box 5400
Stephenville, NL
A2N 2Z6
- Attention: General Counsel
- c. By sending the Notice by regular mail and/or email to all Class members whose name and last known mailing address have been provided by the Defendant or have been gathered in the Plaintiffs' informal list, as of the date of this Order.
11. **THAT** Class members who filed their income tax returns as Newfoundland and Labrador residents for the year 2014 are automatically included in the Resident Subclass but may opt out of this action by submitting an Opt Out Notice in the form attached to this Order as Schedule "B", within 120 days of the date of the Notice, in the manner set out in the Notice attached to this Order as Schedule "A".
12. **THAT** Class members who did not file an income tax return for 2014 as a resident of Newfoundland and Labrador are part of the Non-resident Subclass and not automatically included in this action. To participate, Non-resident Subclass members may opt into this action by submitting an Opt-in Notice in the form attached to this Order as Schedule "C" within 120 days of the date of the Notice, in the manner set out in the Notice attached to this Order as Schedule "A".
13. **THAT** within 30 days following the 120 day Opt-in/Opt Out period, counsel for the Class shall provide confirmation to the Court and the Defendant the number of all Resident subclass members who provided Opt Out forms and the number of all Non-resident subclass members who provided Opt In forms.

DATED at _____, in the Province of Newfoundland and Labrador,
this 20th day of September, 20 23.



JUSTICE OF THE PEACE
PROVINCE OF NEWFOUNDLAND AND LABRADOR

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Schedule "A"

NOTICE OF CERTIFICATION TO THE CLASS
COLLEGE OF THE NORTH ATLANTIC – QATAR COST OF LIVING ALLOWANCE
CLASS ACTION

2013 06G 0131CCP
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
GENERAL DIVISION

BETWEEN:

DEBORAH THORNE

FIRST PLAINTIFF

AND:

ALAN LUYT

SECOND PLAINTIFF

AND:

COLLEGE OF THE NORTH ATLANTIC

DEFENDANT

NOTICE

Dated this 20th day of September, 2023

To all current and former contract instructors and instructional support employees of
College of the North Atlantic who provided services in Qatar

WHAT IS THE CASE ABOUT?

On September 16, 2013, Deborah Thorne ("Representative Plaintiff" or "Ms. Thorne") commenced a proposed class action against the College of the North Atlantic ("CNA" or "Defendant"). In the action, Ms. Thorne alleges that from 2008 to 2013, she was a contract Instructor at the CNA's Qatar campus. Ms. Thorne alleges that her contract with CNA entitled her to receive a Cost of Living Allowance ("COLA") which was implemented effective September 1, 2008. Ms. Thorne alleges that between September 1, 2008 and November 22, 2011, she did not receive the COLA, in whole or in part, and that there are many other contract employees who also did not receive their COLA entitlement either.

Ms. Thorne alleges that the Defendant's failure to pay the full amount of COLA between September 1, 2008 and November 22, 2011 was a breach of contract. As a result, Ms. Thorne commenced this action against the Defendant for the payment of the COLA (and interest) amounts that she alleges are owed by the Defendant, for the period between September 1, 2008 and November 22, 2011.

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The Supreme Court of Newfoundland and Labrador ruled that this action may proceed as a Class action on behalf of those people who fall within the Class (as defined below) and that Deborah Thorne will be the Representative Plaintiff for the Resident subclass and Alan Luyt will be the Representative Plaintiff for the Non-resident subclass.

REPRESENTATIVE PLAINTIFFS

Resident Subclass

Ms. Deborah Thorne
Portugal Cove-St. Philips
Box 21420, MacDonald Dr.
St. John's NL A1A 3M2

Non-Resident Subclass

Mr. Alan Luyt
324 Moyne Drive
West Vancouver BC V7S 1J5

The distinction between the Resident and Non-resident subclasses is explained below.

HOW IS THE CLASS DEFINED?

The Class is defined as:

Instructors and instructional support staff who were employed by the College of the North Atlantic in Qatar between September 1, 2008 and November 22, 2011.

If you were employed by CNA and provided services as an instructor or instructional support staff at the College of the North Atlantic - Qatar during this time period (the "Class period") you are included in the class subject to the residency requirement.

The Class is divided into a Resident Subclass and a Non-Resident Subclass. Class members who filed an income tax return as a resident of Newfoundland and Labrador for the year 2014 are considered members of the Resident Subclass and Class members who did not file an income tax return as a Newfoundland and Labrador resident for the year 2014 are considered members of the Non-Resident Subclass. For clarity, Class members who filed an income tax return as a resident of another Province in Canada, as a resident of another country, or who filed no income tax return at all are considered members of the Non-Resident Subclass.

HOW WILL THE CLASS ACTION PROCEED?

The Class action will have two stages, the first requires resolution of the common issue between all Class Members and the Defendant (the "Common Issue Trial"). The common issue has been defined as follows:

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Were members of the class entitled by their contracts of employment to receive the full amount of COLA for the period of September 1, 2008 and November 22, 2011?

If the Common Issue Trial is resolved in favour of the Class, Notice of the determination will be given to the Class triggering the second stage whereby Class members shall be required to take further steps pursuant to section 20 of the **Class Actions Act**. Each individual member's entitlement must then be determined by a method to be established. Such steps will be determined after the Common Issue Trial. Should any disputes arise about amounts owed, such will be resolved by the Court at a later date.

HOW DO I PARTICIPATE IN THE CLASS ACTION?

- A. **Resident Class Members:** If you are a Class member and fall within the Resident subclass, **you are automatically included** in the Class and will be bound by the Court's judgment on the common issue, whether favorable or not, unless you chose to opt out in the manner set out below.

To opt out, you must complete the **Opt Out Form** and return it to Hughes & Brannan no later than **120 days from the date of this Notice**. The form is available on the Hughes & Brannan class action website www.cnaqclassaction.com or by contacting Hughes & Brannan. Instructions on how to complete and return the form are found on the form.

- B. **Non-Resident Subclass Members:** If you are a Class member and fall within the Non-resident sub-Class and **want to participate in this action**, then **you must opt in** by completing the **Opt In Form**, and returning it to Hughes & Brannan no later than **120 days from the date of this Notice**. This form is available on the Hughes & Brannan class action website www.cnaqclassaction.com Or by contacting Hughes & Brannan. Instructions on how to complete and return the form are found on the form.

- C. **Any person wishing to Opt out or Opt In to the Class action** can obtain an Opt-Out Form or an Opt-In Form from Hughes & Brannan by contacting Hughes & Brannan by one of the following means:

Hughes & Brannan
357 Memorial Drive,
Clareville, NL, A5A 1R8
Attn: Class Action Case Manager
Telephone 709-466-2267
Facsimile 709-466-3107
cnaq.classaction@gmail.com
Website: www.cnaqclassaction.com

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Please make all correspondence to the Attention of the Class Action Case Manager.

PLEASE NOTE: Resident class members who Opt Out AND Non-residents who do not Opt In cannot recover any money in this action.

WHO ARE THE LAWYERS AND HOW DO I FIND OUT MORE?

The Lawyers for the Class are Hughes & Brannan, particularly James D. Hughes, K.C, and Philip C. W. Whalen. Class members who wish to know the state of the Class action or to review background information on the case should monitor Hughes & Brannan's Class action website www.cnaqclassaction.com.

The Representative Plaintiffs will instruct the Lawyers for the Class during the common issue(s) stage. The Lawyers must act in the interest of all Class members. Until the Common Issue Trial has been decided in favour of the Class, it is not anticipated that individual participation will be required. However, if any Class members wishes to participate on their own behalf in the Class action, they must apply to the Supreme Court of Newfoundland and Labrador and specify the rationale for having to do so as contemplated by section 16 of the **Class Actions Act**.

DO I NEED TO PAY ANYTHING?

Class members do not need to pay any legal fees in order to have the court determine the common issue of the Class. There is a fee arrangement between Counsel and the Representative Plaintiffs which will cover all aspects of the proceedings including the common issue trial.

If the Class is successful at the common issue stage, the fees payable to the Lawyers for the Class will be paid out of any settlement or judgment once the individual entitlements are determined and will be deducted from any amount that you are determined to be entitled to receive.

Any fee paid to Lawyers for the Class is subject to approval of the court. The Representative Plaintiffs have entered into a fee agreement with the Lawyers for the Class. This Agreement provides that Lawyers will not receive payment for their work unless and until the Class action is successful or costs are recovered from the Defendant. If and when this occurs, the Lawyers will apply to court for approval of the fee that is consistent with the terms of this Agreement, or some lesser amount. The court will decide what amount is fair.

If you have any questions regarding this Notice, please see Hughes & Brannan's website at www.cnaqclassaction.com or contact Hughes & Brannan at 709-466-2267 or by email at cnaq.classaction@gmail.com, Attention: Class Action Case Manager.

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**OPT-OUT NOTICE
CNA-Q COST OF LIVING ALLOWANCE
CLASS ACTION**

If you reside within the Province of Newfoundland and Labrador, you may opt out of this Class action by completing this Opt-Out Notice and forwarding it to Hughes & Brannan by one of the following means on or before the _____ day of _____, 20_____:

Mail: Hughes & Brannan
357 Memorial Drive
Clareville NL A5A 1R8
Attention: Class Action Manager

Tel: 709-466-2267 (designated telephone line)

Fax : 709-466-3107

Email: hughes.brannan@nfld.net
Cnaq.classaction@gmail.com

I **DO NOT** wish to be included in the Class action claim or settlement against the College of the North Atlantic in relation to the Cost of Living Allowance entitlement. I want to **OPT-OUT** (be excluded) from this Class action.

My information is as follows:

Name: _____

Address: _____

City/Town: _____

Province: _____

Postal Code: _____

Telephone: _____

Email: _____

Dates during which I was employed as an Instructor/Instructor Support at the College of the North Atlantic - Qatar: _____

Date

Signature

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**OPT-IN NOTICE
CNA-Q COST OF LIVING ALLOWANCE
CLASS ACTION**

If you reside elsewhere in Canada other than the Province of Newfoundland and Labrador, but not outside Canada, you may opt in to the Class action by completing this Opt-In Notice and forwarding it to Hughes & Brannan by one of the following means on or before the _____ day of _____, 20____. Further, if you did not file an income tax return for 2014 as a resident of Newfoundland and Labrador, you are considered part of the Non-resident subclass and are not automatically included and must opt in by the method described above.

Mail: Hughes & Brannan
357 Memorial Drive
Clareville NL A5A 1R8
Attention: Class Action Manager

Tel: 709-466-2267 (designated telephone line)

Fax : 709-466-3107

Email: hughes.brannan@nfld.net
Cnaq.classaction@gmail.com

I **DO** wish to be included in the Class action claim or settlement against the College of the North Atlantic in relation to the Cost of Living Allowance entitlement. I want to **OPT-IN** (be included) in this Class action.

My information is as follows:

Name: _____

Address: _____

City/Town: _____

Province: _____

Postal Code: _____

Telephone: _____

Email: _____

Dates during which I was employed as an Instructor/Instructor Support at the College of the North Atlantic - Qatar: _____

Date

Signature

