



ONTARIO  
SUPERIOR COURT OF JUSTICE

Electronically issued : 18-Mar-2019  
Délivré par voie électronique : 18-Mar-2019  
Toronto

**WILL MORRIS**

Plaintiff

– and –

**SOLAR BROKERS CANADA CORP.,  
JEAN CLAUDE AWWAD & JOSEPH BARKER**

Defendants

**Proceedings commenced under the *Class Proceedings Act, 1992***

**STATEMENT OF CLAIM**

TO THE DEFENDANTS

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 \$10,000 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 plaintiff's claim and \$400 for the 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:

Issued by: \_\_\_\_\_  
Local Registrar

Address of Court Office:  
393 University Avenue  
Toronto, ON M5G 1E6

TO: **SOLAR BROKERS CANADA**  
191 Niagara St  
Toronto, ON  
M5V 1C9

AND

TO: **JEAN-CLAUDE AWWAD**  
3085 Nawbrook Road  
Mississauga, ON  
L4X 2W3

AND

TO: **JOSEPH BAKER**  
3085 Nawbrook Road  
Mississauga, ON  
L4X 2W3

## CLAIM

### RELIEF CLAIMED

1. The Proposed Representative Plaintiff claims the following on his behalf, and on behalf of members of the Class:
  - a) an order certifying this action as a class proceeding and appointing Will Morris as Representative Plaintiff of the Class;
  - b) a declaration that the members of the Class were employees during their work with Solar Brokers Canada Corp. (“SBC”) and thus are entitled to the employment standards under the Employment Standards Act, 2000 S.O. 2000, c. 41 (“ESA”), or under the applicable provincial employment standards act;
  - c) a declaration that the Defendants are jointly liable for the unpaid wages of the Class Members;
  - d) a declaration that SBC violated the terms of the ESA or of the applicable provincial employment standards act by:
    - i. failing to ensure that Class Members were properly classified as employees;
    - ii. failing to advise class members of their entitlement to compensation equal to or above the minimum wage as provided by the ESA (the “**Minimum Wage**”);
    - iii. failing to compensate Class Members at a rate equal to or above the Minimum Wage;
    - iv. failing to advise Class members of their entitlement to overtime pay for hours worked in excess of 44 hours per week in accordance with the ESA or of the applicable provincial employment standards act (the “**Overtime Threshold**”);
    - v. requiring and/or permitting the Class Members to work overtime hours and failing to compensate the Class Members for hours worked in excess of the Overtime Threshold (“**Overtime Pay**”);
    - vi. failing to ensure that the Class Members' hours of work were monitored and accurately recorded;

- vii. failing to advise Class Members of their entitlement to vacation pay at a rate of 4 percent of wages in accordance with the ESA ("**Vacation Pay**");
  - viii. failing to compensate Class Members for Vacation Pay;
  - ix. failing to advise Class Members of their entitlement to public holiday pay and premium pay in accordance with the ESA (the "**Public Holiday and Premium Pay**");
  - x. failing to compensate Class Members for Public Holiday and Premium Pay;
  - xi. failing to monitor and record or otherwise track the Class Members hours of work; and,
  - xii. failing to compensate the Class Members for all hours worked.
- e) damages for compensation below Minimum Wage;
  - f) damages for unpaid Overtime;
  - g) damages for unpaid Vacation Pay;
  - h) damages for unpaid Public Holiday and Premium Pay;
  - i) a declaration that the Defendants are liable for any consequential damages resulting from the determination that the Class Members are/were employees of the Defendants and not independent contractors;
  - j) a declaration that the Defendants are liable for any adverse tax liability sustained by the Class Members resulting from a determination that the Class Members are/were employees of the Defendants and not independent contractors;
  - k) a declaration that the Defendants are liable, and must reimburse the Class Members, for any Canada Pension Plan ("**CPP**") or Employment Insurance Act ("**EI**") contributions which may have been paid or are owed resulting from a determination that the Class Members are/were employees of SBC and not independent contractors;
  - l) an order, pursuant to s. 24 of the Class Proceedings Act, 1992, S.O. 1992, c. 6 ("**Class Proceedings Act**") directing an aggregate assessment of damages;
  - m) an order directing the Defendants to preserve and disclose to the Plaintiff all records (in any form) relating to the identification of Class Members and the hours of work performed by the Class Members;

- n) prejudgment interest in accordance with section 128 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;
- o) postjudgment interest in accordance with section 129 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;
- p) the costs of this action on a substantial indemnity basis, together with applicable HST, or other applicable taxes, thereon;
- q) the costs of administering the plan of distribution of the recovery in this action; and,
- r) such further and other relief as this Honourable Court may deem just.

### **THE PARTIES**

- 2. The Plaintiff, Will Morris (“**Will**”) was a resident of Ontario during all applicable times. He worked as a sales representative for SBC from on or around October 2015 to on or around June 2016 and from on or around June 2017 to on or around November 15, 2018.
- 3. The Defendant, SBC, is a lawfully incorporated company, founded in 2012 and based in Toronto, Ontario. SBC is a brokerage firm that specializes in the sale of solar panels and solar energy services to homeowners.
- 4. SBC hires sales representatives generally in Alberta and Ontario.
- 5. Jean Claude Awwad and Joseph Barker are and were at all material times the directors, and operating minds of SBC and are liable for unpaid wages under sections 80 and 81 of the ESA, section 119 of the Canada *Business Corporations Act* (the “**CBCA**”), or section 113 of the Ontario *Business Corporations Act* (the “**OBCA**”).
- 6. The activities of SBC are governed by the provincial employment standards legislation of the Province where each employee works.

### **THE CLASS**

- 7. The Plaintiff brings this action pursuant to the *Class Proceedings Act* on his own behalf and on behalf of the following class of persons (together, the “**Class**” or “**Class Members**”):  
All non-managerial sales representatives who, since 2016, worked or continue to work for Solar Brokers Canada and who were classified as Independent Contractors.

## **EMPLOYMENT RELATIONSHIP**

8. The duties performed by the Class Members and the supervision and control imposed on the Class Members by SBC creates an employment relationship with SBC. Particulars of such an employment relationship include, but are not limited to:
- a) Class Members have to follow schedules that were determined by SBC.
  - b) Class Members are told when and where to perform their work duties;
  - c) Class Members are not able to subcontract, assign, or contract out their essential job duties to other workers;
  - d) Class Members are required to attend training and other meetings for which they receive no compensation as a requirement of keeping their jobs;
  - e) Class Members are required to work exclusively for SBC;
  - f) Class Members are required to obey directions from their superiors within the SBC hierarchy and are penalized if they fail to do so;
  - g) Class Members are required to follow the SBC policies, guidelines, and instructions when performing their duties and use SBC telephone and email scripts when communicating with homeowners;
  - h) Class Members involved in direct sales were required to wear badges that identified them as SBC representatives;
  - i) Class Members who were working over the phones were required to identify that they worked for SBC or Lowe's Solar depending on the source of the call;
  - j) Class Members were required to use SBC's tools including but not limited to:
    - i. Computer terminals for the Class Members who were involved in direct sales;
    - ii. Cubicles at the SBC headquarters, specialized sales software (such as Salesforce and High-Rise), specialized document signing software (such as DocuSign) and specialized telephone software (such as RingCentral) for the Class Members working over the telephones;
  - k) Class Members were assigned corporate email accounts to send and receive email correspondence in their role;
  - l) Class Members were required to book unpaid days for vacation or sick days in advance;

- m) Class Members were invited to attend scheduled staff events (e. g.: sales celebrations, trainings);
9. The Defendants had no overtime or public holiday policy in place to monitor, record or compensate overtime or public holiday pay hours.

### **RESPONSIBILITIES OF CLASS MEMBERS AND TREATMENT BY SBC**

10. SBC is a business that brokers the sale of solar panels and related services to homeowners. All its operations are geared towards persuading homeowners to conclude contracts for the installation of solar panels. The entirety of the business is ran using sales representatives hired under contracts titled “Independent Contractor Agreements” for the provision of “marketing, promotions, selling and advertising” services.
11. SBC’s operations are organized in the following manner. SBC gets the contact information of homeowners potentially interested in installing solar panels on their roofs (the “leads”). Then, its workers, referred to in the SBC hierarchy as Appointment Bookers, call the leads with the purpose to persuade them to schedule a telephone appointment with a different SBC representative, referred to in the SBC hierarchy as Closer.
12. The Closers are introduced to the leads as “Solar Experts”. The Closers are tasked to persuade the lead to sign a contract for the installation of solar panels by SBC or its affiliate, Green Lion Eco Group.
13. Both Appointment Bookers and Closers perform their duties from SBC’s headquarters in Toronto and work exclusively over the telephone.
14. On or around August 14, 2017, SBC concluded a strategic partnership with Lowe’s Canada to create Lowe’s Solar, an exclusive partnership to provide solar energy installation services to homeowners throughout Canada.
15. Following its partnership with Lowe’s, SBC hired sales representatives generally in Alberta and Ontario who were assigned specific Lowe’s stores and were tasked to obtain leads. These sales representatives are referred to in the SBC hierarchy as Lead Generators.
16. The Lead Generators are only allowed to solicit leads in their assigned Lowe’s locations, SBC assigns them a specific schedule and they had to follow scripts approved by SBC when communicating with leads. They would input the contact information of the leads in the SBC sales management software. That information would be subsequently assigned to

- Appointment Bookers either by management or in an automated way through a round-Robin system.
17. Sales representatives were required to work on statutory holidays to meet targets assigned by SBC.
  18. Appointment Bookers would be threatened that they would not be assigned leads obtained by Lead Generators if they were late or missed targets. SBC would act on its threats if an Appointment Booker was frequently late or missed targets and, by consequence, the Appointment Booker would either have to randomly call phone numbers through autodial or go through old leads saved in the SBC system.
  19. Likewise, Closers would not be assigned appointments by Appointment Bookers if they were either repeatedly late or missed targets.
  20. The remuneration of SBC's sales representatives is in constant flux and the criteria would constantly change. Sales representatives were paid at various points in time either a fixed amount per lead or per closed deal or a commission representing a percentage of the value of a closed deal.

#### **THE REPRESENTATIVE PLAINTIFF'S EMPLOYMENT WITH SBC**

21. Will worked for SBC as an Appointment Booker and was then promoted to the role of Closer in 2016. In 2017, he rejoined SBC as an Appointment Booker and worked in that role until he was terminated.
22. Will signed an independent contractor agreement in 2015 when he first started working for SBC. When he rejoined, in 2017, he did not sign a new agreement.
23. Will's duties and responsibilities as an Appointment Booker included:
  - a. Working from SBC's headquarters from 1 pm. to 9 p.m. a minimum of five days per week;
  - b. To call leads provided by SBC and persuade them to have an appointment with a Closer;
  - c. To attend trainings and meetings as directed by SBC; and
  - d. To work exclusively for SBC.
24. Will was expected to generally follow the telephone and email script provided by SBC while communicating with leads. All his calls were recorded and some would be reviewed by SBC's management.



25. When attending trade shows, Will was required to wear badges identifying him as a SBC representative.
26. Will reported to SBC's Inside Sales Manager until on or about July 2017. Afterwards, he reported to SBC's Appointment Bookers Coaches.
27. The Lead Generators were also reporting to SBC assigned supervisors.
28. SBC required or permitted Will to work between approximately 50 to 70 hours per week.
29. Will relied in good faith on the Defendants and was unaware while working for SBC or afterwards that he was an employee and entitled to Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday Pay and Premium Pay. At the time, Will relied on the Defendants to properly classify him regarding his status as an employee and his resulting entitlements. Will was misled by the Defendants that he was not an employee of SBC.
30. Will did not become aware that he was eligible as an employee for Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday Pay and Premium Pay because the Defendants had continually misrepresented his actual eligibility and entitlement to such pay.
31. Will's relationship with SBC is consistent with the relationship of all Class Members with SBC.
32. At all material times, Will and the Class Members were explicitly directed as to how, where and when they could perform their duties for SBC.
33. At all times, Will and the other Class Members were explicitly and incorrectly informed they were not employees of SBC.
34. The Defendants required Will and the other Class Members to work hours in excess of the Overtime Threshold without Overtime Pay. If they did not meet certain targets for the week, they would be required to come in to the SBC headquarters and work on Sundays.
35. The Defendants failed to compensate Will and the other Class Members for Vacation Pay.
36. The Defendants failed to compensate Will and the other Class Members for Public Holiday and Premium Pay.

#### **ESA AND CLASS MEMBERS' CONTRACTS OF EMPLOYMENT**

37. The employment standards under the ESA or the applicable provincial employment standards acts, depending on the Province where the Class Member works, are implied minimum terms of the contracts of employment of the Class Members.

38. At all material times, the Class Members were not and are not exempt from the ESA or the applicable provincial employment standards act.
39. As a result, the contracts of employment of the Class Members impliedly provide that Class Members shall be compensated:
- a. At a rate equal to, or greater than, the Minimum Wage; [L]  
[SEP]
  - b. With Overtime Pay for hours worked in excess of the Overtime Threshold; [L]  
[SEP]
  - c. With Vacation Pay on all amounts paid, and unpaid; and, [L]  
[SEP]
  - d. With Public Holiday and Premium Pay.
40. As vulnerable employees under the direct control and supervision of the Defendants, the Class Members relied on the Defendants to advise them properly regarding their employee status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay, Public Holiday and Premium Pay and to fulfill their contractual and statutory employment responsibilities to keep track of and pay the Class Members at or above the Minimum Wage, Overtime Pay, Vacation Pay and Public Holiday and Premium Pay. SBC is/was in a position of power and direct control over the Class Members and the Class members were and are in a vulnerable position vis-à-vis the Defendants.

#### **SYSTEMIC OVERTIME REQUIRED OF WORKERS**

41. SBC systemically encouraged the sales representatives to work long hours.
42. Sales representatives, classified as contractors and put on 100% commission structures, were encouraged and even required to work long hours, often far above the 44 hour limit for overtime in Ontario.
43. Sales representatives were not compensated with any premium if they worked extra hours. The compensation structure was the same no matter how many, or few hours they worked.
44. SBC systemically forced, or willfully allowed and encouraged, employees to work extra overtime hours in order to earn 100% commissions.
45. The workers in question are not exempt from overtime and thus ought to be paid compensation equal to the overtime hours worked.

#### **SYSTEMIC CLASSIFICATION AS “INDEPENDENT CONTRACTORS”**

46. SBC systemically classified the Class Members as “independent contractors” and had them sign “Independent Contractor Agreements”.

47. SBC further required and permitted the Class Members to regularly work hours without receiving the Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday and Premium Pay, under the misrepresentation from SBC that Class Members were independent contractors.
48. The Defendants were aware that the Class Members relied on Defendants to advise them properly of their employment status and eligibility for Minimum Wage, Overtime Pay, Vacation Pay or Public Holiday or Premium Pay, and to fulfill their statutory employment responsibilities to keep track of and pay the Class Members for their hours worked.
49. The Defendants exerted pervasive pressure on the Class Members to work hours in excess of the Overtime Threshold. Particulars of such pressure include the fact that SBC managers and directors would insist upon meeting sales targets set by SBC, regardless of the number of hours of work required in a day or week in order to meet those deadlines.

**SYSTEMIC BREACH OF THE *ESA* OR APPLICABLE PROVINCIAL EMPLOYMENT STANDARDS ACT**

50. The Defendants have systemically breached the provisions of the *ESA* with respect to all Class Members by:
  - a. failing to ensure that all Class Members were properly classified as employees;
  - b. failing to ensure that the Class Members hours of work were monitored and accurately recorded;
  - c. requiring and/or permitting the Class Members to work hours for which it failed to compensate at an equal rate to, or above, the Minimum Wage;
  - d. requiring and/or permitting the Class Members to work hours in excess of the Overtime Threshold but failing to ensure that the Class Members were compensated for Overtime Pay;
  - e. failing to compensate Class Members for Vacation Pay; and
  - f. failing to compensate Class Members for Public Holiday and Premium Pay.
51. SBC's misclassification of the Class Members as purported independent contractors and the denial of their entitlements under the *ESA* or applicable employment standards act is unlawful.
52. To the extent that any contracts purport to designate the Class Members as independent contractors, such contracts or provisions are void and unenforceable.

53. The Class Members are entitled to unpaid wages.
54. SBC's Directors are personally liable to the Class Members for unpaid wages pursuant to sections 80 and 81 of the ESA, section 113 of the OBCA or section 119 of the *CBCA*.
55. Such breaches have been and are ongoing and continuous in respect of the Class Members since at least approximately 2016.

#### **AGGREGATE DAMAGES**

56. Will also pleads that the trial judge ought to make an award of aggregate damages in this case since the records kept by Solar Brokers of the time worked by sales representatives should allow for the damages of each Class Member to be calculated without the need for resort to individual assessments or mini-trials.

#### **V – LOCATION**

57. Will proposes this action be tried at the City of Toronto, in the Province of Ontario.

Date of Issue

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**WILL MORRIS**

and

**SOLAR BROKERS CANADA CORP., et al**

PLAINTIFF

DEFENDANTS

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**Proceedings commenced under the Class  
Proceedings Act, 1992**

**STATEMENT OF CLAIM**

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