

Court File No. CV-21-00002102-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

James Davis

Plaintiff

– and –

Desjardins Financial Services Firm Inc., Desjardins Global Asset Management, The Personal Insurance Company, Desjardins Financial Security, Desjardins Securities Inc., Caisse Centrale Desjardins, Fédération des caisses Desjardins du Québec, Collabria Financial Services Inc., Desjardins Shared Services Group Inc., Desjardins Technology Group Inc., Desjardins Financial Security Life Assurance Company, and Desjardins Investment Product Operations Inc., and Assistel Inc.

Defendants

Proceedings commenced under the *Class Proceedings Act, 1992*

AMENDED 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 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:
7755 Hurontario Street
Brampton ON L6W 4T1

To: Desjardins
11 King St. West
Toronto ONN M5H 4C7

CLAIM

Relief Claimed

1. The Proposed Representative Plaintiff claims the following on his own behalf, and on behalf of members of the Class:

- a) ~~— The sum of \$80,000,000 as general damages covering the damages to the class;~~
- b) an order certifying this action as a class proceeding and appointing James Davis as Representative Plaintiff of the Class;
- c) ~~— a declaration that the members of the Class are owed damages for unauthorized deductions from their wages and/or wages withheld relating to vacation entitlement throughout their employment;~~
- d) that damages be paid to each class member equal to the amount of wages that have been improperly deducted or withheld by the Defendants relating to vacation throughout their employment;
- e) ~~— in the alternative, a declaration that the defendant was unjustly enriched by the deduction or planned deduction of vacation pay to the Class, and must make restitution;~~
- f) ~~— a declaration that the Defendants' method/policy of using the 'negative vacation bank' violates the *Employment Standards Act, 2000* and declaring it void;~~

- g) ~~an order, pursuant to s. 24 of the *Class Proceedings Act*, 1992, SO 1992, c 6 (“**Class Proceedings Act**”) directing an aggregate assessment of damages;~~
- h) ~~Punitive damages in the amount of \$4,000,000.00;~~
- i) an order directing the Defendants to preserve and disclose to the Plaintiff all records (in any form) relating to the negative vacation bank deductions of the class members;
- j) ~~An order granting injunctive relief prohibiting further wage deductions on final pay stubs of present and future employees of the Defendants;~~
- k) ~~An order preventing the Defendants from requesting repayment of negative vacation bank from former employees;~~
- l) ~~pre judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;~~
- m) ~~post judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended;~~
- n) ~~any goods and services tax or harmonized sales tax which may be payable on any amounts pursuant to Bill C-62, the *Excise Tax Act*, R.S.C. 1985, as amended or any other legislation enacted by the Government of Canada or Ontario;~~
- o) ~~the costs of this action on a substantial indemnity basis; and;~~
- p) such further and other relief as counsel may advise and this Honourable Court permits.

Background

2. The Defendant, Desjardins Financial Services Firm Inc. (“DFSF”) is a financial services entity that ensures compliance of standards practices by Desjardins savings representatives and financial planners and investigates complaints made against them.
3. The Defendant, Desjardins Global Asset Management (“DGAM”) is an asset management firm that provides investment services and custom portfolios to clients.
4. The Defendant, The Personal Insurance Company (“TPIC”) is a home and auto group insurer and is a wholly owned subsidiary of Desjardins General Insurance Group Inc.
5. The Defendant, Desjardins Financial Security, is the life and health insurance arm of Desjardins Group, the leading financial institution in Quebec and the largest cooperative financial group in Canada.
6. The Defendant, Desjardins Securities Inc., offers a complete range of securities brokerage products and services through its investment advisors and its Disnat Online Brokerage division.
7. The Defendant, Caisse Centrale Desjardins, acts as treasurer for Desjardins Group and as its financial agent on Canadian and international markets.
8. The Defendant, Fédération des caisses Desjardins du Québec, is the cooperative entity that provides orientation, framework, coordination, treasury, and development activities for Desjardins Group. It also serves as a financial agent on the Canadian and international markets and offers its member caisses various technical, financial and administrative services.

9. The Defendant, Collabria Financial Services Inc., is Canada's largest issuer of credit union credit cards.
10. The Defendant, Desjardins Shared Services Group Inc., provides a range of administrative support services to various entities within the Desjardins Group
11. The Defendant, Desjardins Technology Group Inc., is a financial cooperative within the Desjardins Group that specifically serves the technology ecosystem.
12. The Defendant, Desjardins Financial Security Life Assurance Company, is the life and health insurance arm of Desjardins Group.
13. The Defendant, Desjardins Investment Product Operations Inc., is a former subsidiary of Desjardins Group and was acquired by DSF in or about 2016.
14. The Defendant, Assistel Inc., provides a range of assistance services, including travel, roadside, legal, and health assistance.
15. ~~All three Defendants are subsidiary companies of The Desjardins Group,~~ Desjardins Financial Services Firm Inc., Desjardins Global Asset Management, The Personal Insurance Company, Desjardins Financial Security, Desjardins Securities Inc., Caisse Centrale Desjardins, Fédération des caisses Desjardins du Québec, Collabria Financial Services Inc., Desjardins Shared Services Group Inc., Desjardins Technology Group Inc., Desjardins Financial Security Life Assurance Company, and Desjardins Investment Product Operations Inc., and Assistel Inc. will be collectively referred to as the "Defendants" or "Desjardins".
16. James Davis is an individual residing in the Province of Ontario. Mr. Davis worked for TPIC from January 4, 2016 until July 2019. He was hired as a Special Investigator.

17. The Defendants, since on or about 2011, have engaged in a practice called “negative vacation banks”, where employees are provided an advance on their vacation time during the first year of their employment (the “Policy”). This amount accrues throughout employment, and then upon leaving the company, the balance of the vacation bank is deducted from the employee’s final wages without authorization, sometimes resulting in the employee owing money to the Defendants.

The Class

18. This action is brought on behalf of a class of persons, defined as:

~~All employees of THE PERSONAL INSURANCE COMPANY, DESJARDINS FINANCIAL SERVICES FIRM INC. and DESJARDINS GLOBAL ASSET MANAGEMENT within Canada, since the year 2011 to the date of the certification of this action who have been or are currently subject to the Defendants’ negative vacation bank policy.~~

All employees outside of Quebec who were employed by Desjardins Financial Services Firm Inc., Desjardins Global Asset Management, The Personal Insurance Company, Desjardins Financial Security, Desjardins Securities Inc., Caisse Centrale Desjardins, Fédération des caisses Desjardins du Québec, Collabria Financial Services Inc., Desjardins Shared Services Group Inc., Desjardins Technology Group Inc., Desjardins Financial Security Life Assurance Company, and Desjardins Investment Product Operations Inc., and Assistel Inc. (collectively “Desjardins”) between May 1, 2011 and August 13, 2017, were subject to the Policy and who were terminated or left Desjardins prior to the date of the Settlement Agreement, other than those who executed a termination agreement releasing their claims for vacation pay on or before July 31, 2024.

Mr. Davis's Employment with TPIC

19. Mr. Davis began his employment with TPIC on January 4, 2016 in the position of Special Investigator. In his offer letter dated December 1, 2015, he was informed that he was entitled to 6.67 vacation days between January 1, 2016 and April 30, 2016, which were pro-rated as the vacation year at TPIC ran from May 1st until April 30th. He was also informed in his offer letter that he was entitled to 0.5 “floater days” per month. The offer letter does not include any reference to negative vacation bank or negative vacation bank recovery.
20. Mr. Davis resigned from TPIC on July 5th, 2019 and his final pay stub was issued on July 18, 2019. On this pay stub, it indicated that he owed \$5,691.17 in his “Recovery of Vacation Bank” for 130.2 hours of vacation. Despite the complete lack of clarity from TPIC on a breakdown or explanation of this amount or how it had been accrued, Mr. Davis had the above amount deducted from his pay without his authorization or consent.
21. At no time during his tenure was Mr. Davis made aware that he had been advanced 130 hours of vacation time or had accrued a negative vacation balance.
22. Upon receiving his final pay record Mr. Davis immediately inquired why he was deducted an amount for vacation advanced and asked documents or records supporting the deduction. He also asked immediately for a reimbursement. TPIC never provided the requested records, nor did it reimburse Mr. Davis.

Systemic Deductions from Wages in Contravention of the Employment Standards Act

23. Deductions without consent are not allowed by relevant Employment Standards Legislation.
24. Specifically in Ontario, section 33 of the *Employment Standards Act, 2000* (“ESA”) states that employers must provide vacation time in the amount of at least 2 weeks after each vacation entitlement year if the employee’s tenure is less than 5 years, and 3 weeks if the employee’s tenure is greater than 5 years.
25. Sections 35.2 of the ESA states that all employers are to pay employee’s accrued vacation pay equal to at least 4% of wages earned or vacation pay equal to at least 6% of wages earned if their period of employment is 5 years or more.
26. The Defendants provide a greater benefit than what is required under the ESA and allow employees to take vacation time during their first year, which is then banked in a “negative vacation bank”. This “negative vacation bank” can be “paid off” by employees either by working overtime or is deducted from an employee’s wages at the end of their employment.
27. This practice is used systemically by the Defendants across Canada, excluding Quebec.
28. To the extent that other provincial laws apply to the other employees of the Defendants who were subjected to the negative vacation banks the Plaintiff pleads the applicable employment standards relating to those workers.

Systemic Lack of Written Authorization

29. Section 13 of the ESA states that employers can only withhold wages, make a deduction from wages or cause the employee to return their wages if the employer receives the

employee's written authorization. If no authorization is provided, any deduction from wages is in contravention of the ESA.

30. The Defendants' employees have unauthorized amounts deducted systematically from their wages or are even expected to pay back some of their wages at the end of their employment. This is done without authorization and without proper explanation or transparency to the employees.

31. The existence of a written policy or policy manual does not constitute a written authorization to deduct from wages.

32. Similar provisions apply under the employment standards statutes of other provinces, as listed in Schedule A.

Systemic Intentional Overpayment

33. The Plaintiff pleads that the payments made by the Defendants for vacation taken were not an overpayment or an advance on wages, but rather the Defendants intentionally providing a payment which the employee was entitled to under the contract. There was no error or oversight that the employer was correcting through the negative vacation bank policy. This was a standardized intentional practice.

34. The Defendants intentionally pay vacation to their employees in the first year of employment. As a result, this was not an overpayment or error which would entitle the Defendants to make unauthorized deductions from employees' wages.

Disgorgement of profits

35. The Defendants are in a fiduciary position to their employees. The Class Members relied on the Defendants to pay them according to employment standards and to not contravene the law.
36. The Defendants have not lived up to that fiduciary position by placing their own interest in profit over that of their employees.
37. Thus, any profits made through this breach of fiduciary duty ought to be disgorged.
38. The Defendants benefited by making unauthorized deductions from the wages of the Class Members and thus gained profits which the Defendants re-invested or otherwise benefit from. The Defendants ought to disgorge to the Class Members the profits obtained from breaching the ESA.

Unjust Enrichment

39. The Defendants have been unjustly enriched by making unauthorized deductions from employees' wages. The Defendants have received a benefit, and the Class Members have suffered a corresponding deprivation for which there was no juristic reason.

Aggregate Damages

40. Mr. Davis also pleads that the trial judge ought to make an award of aggregate damages in this case since the records kept by the Defendants of the wages deducted from their employees should allow for the damages of each Class Member to be calculated without the need for resort to individual assessments or mini trials.

Punitive Damages

41. ~~The conduct of the Defendants is such as to justify an award of punitive, exemplary and aggravated damages. Mr. Davis pleads that the Defendants' conduct has been a breach of the duty of good faith and a separate actionable wrong.~~
42. ~~The Defendants have knowingly breached the standards as set out by the ESA on a continuing basis.~~
43. ~~Desjardins has received a decision by the Ministry of Labour in 2020, in an individual case, that the negative vacation bank deductions by the Defendants are contrary to the ESA in Ontario. However, the Defendants continued to maintain their practice. This justifies an award of punitive, exemplary and aggravated damages in order to discourage other defendants from choosing to not change their policies when they receive unfavourable Ministry of Labour rulings. Otherwise, defendants are encouraged to ignore rulings they do not like and not accept that they are applicable to their larger policies.~~
44. ~~Employers ought to be properly discouraged from making unauthorized deductions from employees' wages and merely paying back the unauthorized deductions would not satisfy the requirement for denunciation of the breach of the ESA.~~
45. ~~The Defendants breached their obligations to Mr. Davis and the Class Members because of their desire to maximize profits. The Defendants have shown a callous disregard and complete lack of care for the Class Members and their rights, and ought to be punished and deterred from future misconduct. The Defendants were, or ought to have been aware of the probable consequences of their conduct and the damage such conduct would cause to Mr. Davis and the Class Members.~~

46. ~~The principle of deterrence is needed in order to discourage other companies from making unauthorized wage deductions from their employees as the Defendants have in this case.~~
47. ~~Mr. Davis pleads that an award of punitive damages equal to the amount awarded for breach of the ESA is appropriate, for a ‘doubling’ of damages in order to create a deterrent effect in the future.~~

~~Injunctive Relief~~

48. ~~In order to protect the interests of current and future employees, it is appropriate in the circumstances for the Court to grant an injunction to prevent the Defendants from continuing to make unauthorized deductions from the wages of its current and future employees.~~
49. ~~An injunction is required because for most workers the policy applies to mean that they will, in the future, have this negative vacation bank taken off of their future salary. An injunction and ruling that the policy is invalid is the most efficient way to provide that those workers in the future will not be charged for the invalid negative vacation bank.~~
50. ~~It is in the public interest for the rights of employees to be protected and for employees to be compensated fairly and in compliance with the law.~~

LOCATION

51. Mr. Davis proposes this action be tried at the City of Brampton, in the Province of Ontario.

Date of Issue:

MONKHOUSE LAW

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Lawyers for the Plaintiff, James Davis

Schedule A: Provincial Employment Standards Statutes Relied on by the Class

Province	Statutory Provisions
Alberta	<i>Employment Standards Code</i> , RSA 2000, c E-9, s. 12(1) and regulations thereto.
British Columbia	<i>Employment Standards Act</i> , RSBC 1996, c 113, s. 21(1) and regulations thereto.
Manitoba	<i>The Employment Standards Code</i> , CCSM c E110, s. 19 (1) and regulations thereto.
New Brunswick	<i>Employment Standards Act</i> , SNB 1982, c E-7.2, s. 35 and regulations thereto.
Newfoundland and Labrador	<i>Labour Standards Act</i> , RSNL 1990, c L-2, s. 36 (3) and regulations thereto.
Nova Scotia	<i>Labour Standards Code</i> , RSNS 1989, c 246, s. 79A and regulations thereto.
Ontario	<i>Employment Standards Act</i> , 2000, S.O. 2000, c. 41, s. 13(1) and regulations thereto.
Prince Edward Island	<i>Employment Standards Act</i> , RSPEI 1988, c E-6.2, s. 5.5 and regulations thereto.
Saskatchewan	<i>Saskatchewan Employment Act</i> , SS 2013, c S. 2-36(1), and regulations thereto.

JAMES DAVIS and DESJARDINS FINANCIAL
SERVICES FIRM INC., ET AL

Court File No. CV-21-00656203-00CP

Plaintiff

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at BRAMPTON

AMENDED STATEMENT OF CLAM

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