

Federal Court



Cour fédérale

**Date: 20160923**

**Docket: T-2193-09**

**Citation: 2016 FC 1078**

**Ottawa, Ontario, September 23, 2016**

**PRESENT: The Honourable Mr. Justice Phelan**

**BETWEEN:**

**DAVID PIOT ON HIS OWN BEHALF AND AS  
A REPRESENTATIVE PLAINTIFF**

**Plaintiff**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF  
CANADA**

**Defendant**

**JUDGMENT**

**IT IS ORDERED AND ADJUDGED that:**

1. Judgment is in favour of the Plaintiff;
2. The answers to the Common Questions are:
  - a) Was the Defendant contractually obliged to negotiate with the Members prior to determining the rent, and/or prior to sending the notices to the

1991 Members for January 1, 2010 to December 31, 2014, and if so, is such an obligation enforceable in law?

Answer: In the specific circumstances arising in this case, no.

- b) If the answer to (a) is “yes”, was the Defendant entitled to unilaterally set the rent without negotiations first having reached an impasse?

Answer: Not applicable.

- c) If the answer to (b) is “no”, did the Members waive any right to negotiate by refusing to participate in negotiations or otherwise?

Answer: Yes – any obligation to negotiate or discuss rental increase was waived for the period in issue.

- d) If the answer to (a) is “yes,” and the answer to (b) and (c) is “no”, must negotiations take place prior to this Court determining the rent, or is it within the jurisdiction of the Court to make a rental determination regardless of whether negotiations were legally required between the parties?

Answer: Not applicable.

- e) If the answer to (d) is that negotiations are not necessary, or that the Court has the jurisdiction to determine the rent, what is the appropriate methodology and/or formula for determining the rent for the land for January 1, 2010 through December 31, 2014 under the 1991 Lease?

Answer: The Court has jurisdiction to determine the rent.

- e.1) If the answer to (d) is that the Court is not within its jurisdiction to make a rental determination, what is the appropriate methodology and/or formula for determining the rent for the land for January 1, 2010 through December 31, 2014 under the 1991 Lease?

Answer: Not applicable.

- f) What is the application or provisional application of the appropriate methodology and/or formula to each of the 1991 Members?

Answer: The method adopted by the Plaintiff's appraiser.

3. The Court retains jurisdiction in this matter; and
4. There are no costs.

“Michael L. Phelan”

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Judge