

Summary of basis upon which Class Counsel recommends the settlement agreement

The Plaintiffs Mark Sunderland and Kevin McFall entered a proposed settlement with the Defendant, RE/MAX Ontario-Atlantic Canada, Inc. o/a RE/MAX Integra (“RE/MAX”). In summary, Class Counsel recommend the settlement for the following reasons:

- The proposed settlement is the result of complex, multi-party negotiations conducted over almost one year, facilitated in part by a mediator, former Supreme Court of Canada Justice Russell Brown, who has significant experience mediating competition class actions.
- The settlement agreement provides for payment of \$7.8 million in compensation from RE/MAX, as well as substantial non-monetary benefits in the form of cooperation in the conduct of the action as against the non-settling defendants.
- RE/MAX has also agreed to numerous significant practice changes that will likely benefit class members who sell residential real estate in the future (as well as new sellers who are not covered by the settlement class). Notably, these practice changes would not be available had the matter proceeded as against RE/MAX through litigation.
- This is an “ice breaker” settlement—the first settlement in a complex, multi-party proceeding against 77 Defendants. The cooperation will assist with the ongoing conduct of the Sunderland and McFall actions as against the non-settling Defendants.
- There are many different risks that the action as against RE/MAX will not be successful. The settlement was reached after the Federal Court granted an Order striking the claim as against RE/MAX and while that Order was under appeal. If the Federal Court of Appeal dismisses the appeal (subject to a successful appeal to the Supreme Court of Canada, for which permission to appeal is granted sparingly), the case against RE/MAX will be over. On top of that, the Defendants argue that:
 - the case theory is novel and that the allegations constitute a novel fact pattern for which there is no or little precedent;
 - the Defendant brokerages’ decisions to join the Defendant associations cannot plausibly be said to be so unambiguously harmful as to fall within the scope of *Competition Act* ss. 45(1);
 - the alleged arrangement only controls who pays the price for buyer brokerage services and when a change to that price may be requested and made, which falls outside the ambit of ss. 45(1);
 - In any event, *Competition Act* ss. 36(1), which creates the right of action for recovery of damages caused by conduct contrary to ss. 45(1), does not apply to parties like RE/MAX that have aided, abetted, or counselled the s. 45(1) offense, but did not actually commit that offence themselves.