

## **But for the Plan (Water in the Basement)**

Ron and Mary (not their real names) bought their dream retirement home from someone they had known for years. The home had been renovated and looked beautiful, so they did not bother to have the home professionally inspected prior to closing. But looks can be deceiving.

Shortly after closing, their partially finished basement flooded. The seller was contacted and returned to have a look. He claimed that the flood was caused by an improperly set sump pump, which he reset for them.

But the basement kept flooding, and a closer inspection revealed obvious evidence that the basement had been leaking badly for years.

Unfortunately, even though it was pretty clear that the seller had known about the water problem all along, there was a good chance that Ron and Mary would not recover any money from him to fix the basement. The seller's lawyer insisted that if the buyers had taken the proper care, they would have seen the obvious signs of water penetration and known that the basement leaked, so it was not his client's responsibility. He may have been right, because Ron and Mary had not carefully inspected the basement themselves before buying the house.

Notwithstanding the possibility of losing the case, after discussing the matter with their CAW Legal Services Plan lawyer and noting that there was Plan coverage for some of his time, Ron and Mary decided to sue the seller for the cost of repairing and waterproofing the basement.

The seller relied on the defence of *caveat emptor* - that is, "let the buyer beware". We argued that because Ron and Mary knew and trusted the seller, *caveat emptor* did not apply and that the seller had a special duty to tell them about the water problems.

It took a year and a half, filled with court filings and expert reports, but ultimately, a few months after the pre-trial hearing, our clients settled the case and recovered over \$20,000.00 - enough to pay for all of the repair work.

But for the Plan, both financially and emotionally, Ron and Mary might still be under water.