

Court File No.: T-460-17

**FEDERAL COURT**

**PROPOSED CLASS PROCEEDING**

BETWEEN:

**LARRY BEATTIE**

Plaintiff

and

**THE ATTORNEY GENERAL OF CANADA**

Defendant

FEDERAL COURT COOR PROCEALE	
MAR 29 2017	
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**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 a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiff's solicitor or, where the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served 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 for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

Date:

MAR 29 2017

Issued by:

HEATHER WINTER

(Registry Officer)

REGISTRY OFFICER

AGENT DU GREFFE

Address of local office:

180 Queen Street West	180, rue Queen Ouest
Suite 200	bureau 200
Toronto, Ontario	Toronto, Ontario
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**TO: The Attorney General of Canada**

The Exchange Tower

130 King Street West, Suite 3400, Box 36

Toronto, Ontario

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## A. CLAIM

### 1. The plaintiff claims:

- (a) an order certifying this action as a class proceeding and appointing the plaintiff as representative plaintiff for the class;
- (b) a declaration that the defendant breached its duty of care and fiduciary duty to the plaintiff and the class and violated the class members' rights and freedoms set out in section 7 of the *Canadian Charter of Rights and Freedoms* in respect of its failures set out herein relating to systemic sexual assault and sexual harassment in the Canadian Armed Forces;
- (c) a declaration that the defendant is liable to the plaintiff and the class for the damages caused by its breach of its duty of care and fiduciary duty and its violation of the class's rights and freedoms set out in section 7 of the *Canadian Charter of Rights and Freedoms* in respect of its failures set out herein relating to systemic sexual assault and sexual harassment in the Canadian Armed Forces;
- (d) damages for the defendant's breach of its duty of care and breach of fiduciary duty and violation of the class's rights and freedoms set out in section 7 of the *Canadian Charter of Rights and Freedoms* in accordance with section 24(1) of the *Canadian Charter of Rights and Freedoms* in the amount of \$100 million, or such other sum as this Honourable Court may find appropriate;
- (e) punitive damages of \$50 million, or such other sum as this Honourable Court may find appropriate;
- (f) systemic orders pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms*;
- (g) on behalf of the Family Law Claimants, damages pursuant to the *Family Law Act*, R.S.O. 1990 c. F-3 and equivalent legislation;
- (h) prejudgment and postjudgment interest pursuant to the *Federal Courts Act*, R.S.C., 1985, c. F-7;
- (i) costs of the action on a substantial indemnity basis or in an amount that provides full indemnity;
- (j) the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334.38 of the *Federal Courts Rules*, SOR/98-106; and
- (k) such further and other relief as to this Honourable Court may seem just and appropriate in all the circumstances.

**B. OVERVIEW**

2. The Canadian Armed Forces creates and maintains a culture that facilitates and condones sexual assault and sexual harassment of its male members.
3. The frequency of sexual assault and harassment against men in the Canadian Armed Forces is caused by the leadership's failure to implement appropriate policies to properly train its members and to identify, report, investigate and properly resolve incidents of sexual assault and sexual harassment.
4. The severity and volume of sexual assault and harassment of men in the military is exacerbated by a culture created and maintained by the Canadian Armed Forces that stigmatizes men who experience sexual assault and harassment, discourages complaints, excuses inappropriate conduct, and protects the reputation of the Canadian Armed Forces at the expense of its members.
5. As a result, sexual assault and sexual harassment against men is extensive in the Canadian Armed Forces. It causes tremendous harm, fear, humiliation and degradation. These conditions and their severe, detrimental impact arose and persisted due to the defendant's breach of its duty of care and fiduciary duty owed to the plaintiff and the members of the class, and constitutes a breach of the class members' rights under section 7 of the *Canadian Charter of Rights and Freedoms*.

**C. THE PLAINTIFF AND THE CLASS**

6. The Plaintiff, Larry Beattie, currently resides in Alfred, Ontario. As more fully described below, Mr. Beattie was subject to persistent and ongoing sexual assault and sexual harassment by members of the Canadian Armed Forces.

7. Mr. Beattie brings this claim on his own behalf and on behalf of the following class:

All male current and former male members of the Canadian Armed Forces who claim to have experienced sexual assault and sexual harassment in the course of their education, training or service with the Canadian Armed Forces (the "**CAF Class Members**").

All other persons who by reason of his or her relationship to a CAF Class Member have standing pursuant to s. 61(1) of the *Family Law Act*, R.S.O. 1990, c. F.3, or equivalent legislation in other provinces and territories as set out in **Schedule "A"** (the "**Family Law Claimants**").

**D. THE DEFENDANT**

8. The defendant, the Attorney General of Canada, is the legal representative of the Canadian Armed Forces which employed the plaintiff.

9. The defendant is vicariously liable for the acts and omissions of its employees, agents, and servants.

10. The Canadian Armed Forces operate pursuant to the *National Defence Act*, R.S.C., 1985, c.-5 and predecessor legislation.

**i. Sexual Harassment and Assault Begins at Training**

11. Sexual harassment and sexual assault begins at basic training when class members first enter the Canadian Armed Forces. Men are taught a hyper-masculine culture that discourages complaints. Sexual harassment and assault is also perpetrated by trainers. Arising from their fear of negative repercussions, male trainees are reluctant to call the behavior of their trainers into question. As a result, male trainees learn to keep their concerns to themselves from the very beginning and learn that sexual assault and harassment will go unpunished.

**ii. Leadership Ignores and Tolerates Sexual Harassment and Assault**

12. The underlying culture in the Canadian Armed Forces that ignores and tolerates sexual assault and harassment is condoned by leadership:

- (a) officers discourage complaints about sexual assault and harassment;
- (b) officers concerned more with protecting the reputation of their unit rather than supporting complainants;
- (c) officers turn a blind eye to the inappropriate conduct occurring around them;
- (d) officers are quick to excuse inappropriate sexual incidents;
- (e) officers bury the issues to protect the reputation of the Canadian Armed Forces at the expense of the class members;
- (f) officers do not act on complaints when a complainant skips one or more levels of the chain of command and the purported right of the complainant to convey his concerns directly to the Commanding Officer or to someone at a higher level is illusory;
- (g) there is a deep mistrust that the chain of command will take such complaints seriously; and
- (h) sexual assault and harassment is routinely ignored and condoned by the chain of command.

13. This creates serious impediments to reporting and to the effective investigation and resolution of complaints and prevents many class members who experience sexual assault and harassment from reporting incidents of inappropriate conduct.

**iii. Culture of the Canadian Armed Forces Stigmatizes Men Who Experience Sexual Assault and Harassment**

14. The Canadian Armed Forces has historically and continues to perpetuate a toxic, hyper-masculine culture among its employees, agents and servants. The Canadian Armed Forces promotes and values a militarized hyper-masculinity, in which men are viewed as fighters and warriors. Men who experience sexual assault or harassment do not fit within these norms. Men are very unlikely to report incidents of sexual assault and harassment, due to the stigma.

**iv. Class Members Face Negative Repercussions for Reporting Incidents**

15. In addition to leadership ignoring and tolerating sexual assault and harassment, the class members are subject to negative repercussions for reporting incidents, including:

- (a) they face inhibited promotion or employment prospects;
- (b) they are removed from the unit, or are not deployed with the unit, which is perceived as punishing the complainant;
- (c) they are denied hoped-for postings;
- (d) they are required to miss training;
- (e) they are stigmatized as weak;
- (f) they are subjected to retaliation by peers and supervisors;
- (g) they are diagnosed as unfit for work; and
- (h) they are labeled trouble-makers and are viewed negatively as the person who charged a teammate.

16. Class members do not report sexual assault due to the concerns set out in paragraph 15 and out of:

- (a) a desire to avoid disturbing group cohesion;
- (b) a desire to avoid negative consequences for the aggressor; and
- (c) the concern about being labelled as someone who would complain about a teammate, which could result in becoming socially ostracized.

17. In contrast, class members who do not make complaints are seen as problem-solvers and as appropriately protecting superiors. As a result, class members feel pressure to accept sexual assault and harassment, or risk social exclusion and other consequences.

18. As a result, of the above, the vast majority of incidents of sexual harassment and sexual assault are not reported.

**v. The Canadian Armed Forces Policies are Inadequate and Ineffective**

19. The policies in place in the Canadian Armed Forces are woefully deficient and as a result cause, contribute to, and perpetuate the culture in the Canadian Armed Forces that ignores and condones systematic sexual assault and harassment.

20. For example, the definitions of prohibited conduct in Canadian Armed Forces policies are deficient. As a result, there is confusion among members of the Canadian Armed Forces about what constitutes "sexual harassment", "sexual misconduct", "adverse personal relationship" and improper "fraternization":

- (a) the definition is also inappropriately limited to incidents that occur in the workplace, but members of the Canadian Armed Forces generally live, work, and socialize together within the organizational structures of the Canadian Armed Forces;
- (b) the definition of "adverse personal relationship" does not specifically address relationships between members in different positions of authority; and
- (c) the definition of "sexual misconduct" is inconsistent with "sexual assault" which is commonly understood and is consistent with the *Criminal Code*.

21. In addition, Canadian Armed Forces policy does not address the concept of consent and the effect of drugs and alcohol or a power imbalance on the existence of consent in a sexual encounter.

22. Finally, the policies do not contain a unified approach to inappropriate sexual conduct containing clear examples of the prohibited conduct.

**vi. The Reporting Procedures Discourage Reporting**

23. The current processes in place in the Canadian Armed Forces to identify, report, investigate and resolve incidents of sexual assault and harassment are inappropriate and flawed and deter reporting.

24. Those who do make a formal complaint must painfully repeat their statements on numerous occasions, are given little or no guidance or information about how the investigation or discipline process works, and receive no emotional support. Re-victimization and frustration are the standard consequence of reporting. As a result, there are an overwhelming number of victims who choose not to report incidents.

25. Before a complaint of sexual harassment or assault is finally resolved, the parties may have to pursue three separate stages of attempted resolution:

- (a) a process of alternate dispute resolution in which the complainant is encouraged to confront the alleged harasser informally;
- (b) an administrative investigation by the Responsible Officer; and
- (c) a formal grievance.

26. This resolution process is flawed and discourages victims from coming forward:

- (a) the process is long and burdensome;
- (b) the process emphasizes the use of self-help techniques and on resolving the complaint at the lowest level acts as a major disincentive for complainants to come forward or pursue a complaint;
- (c) alternate dispute resolution procedures are employed notwithstanding that they are inappropriate in cases of sexual assault and harassment;
- (d) class members are required to take confrontational positions against their harasser which discourage complaints, particularly where the harasser is of higher rank;
- (e) there is a lack of confidentiality within the chain of command and the unit that encourages class members to not report sexual assault and harassment;

- (f) the incentive for those in the chain of command is not to resolve a complaint or to support the complainant, but rather to make the complaint disappear so that it does not tarnish the reputation of the unit or come to the attention of those of a higher rank;
- (g) many class members who bring complaints forward to a supervisor do not have their complaints taken seriously; and
- (h) responses from supervisors ranged from warning the complainant about the negative consequences to their careers if they continued with the complaint, to openly disbelieving the complainant.

27. Inherent in the processes designed to deal with complaints of sexual harassment and assault is the Canadian Armed Forces' "lowest level resolution" policy, which encourages the resolution of complaints at the lowest level of authority. The policy of "lowest level resolution" is a major impediment to the resolution of sexual assault and harassment complaints. The process of attempting to resolve complaints at the lowest level undermines confidentiality. It involves sharing the information with the supervisor, or potentially escalating the complaint through numerous individuals up to the Reporting Officer. Many members of the Canadian Armed Forces will learn about the details of the incident and that the man made a complaint. As a result, this pressure on complainants to settle complaints at the lowest level functions to stifle complaints and intimidate complainants.

28. In addition, procedures in place to investigate sexual assault and harassment are flawed and ineffective. In particular, there is a lack of appropriate skill demonstrated by military police. Many military police are: (a) confused about the relevant policies; (b) insensitive to the problem of sexual assault and harassment; (c) lack training on the basic elements of the offences, including the legal concept of consent; and (d) are unaware of available resources to support complainants. Sexual assaults that do not result in physical injury tend to be ignored and charges in those cases are often not laid.

29. The military police's reporting and investigation process is plagued by additional problems, including:

- (a) leadership's failure to call military police in a timely way when a report of sexual assault is made;
- (b) delays in the investigation process;
- (c) complainants not being offered immediate medical support;
- (d) serious incidents of sexual assault are given inadequate attention and consideration;
- (e) complainants being made to feel, even before providing a statement, at fault for what occurred;
- (f) cases frequently being held in abeyance because of confusion over jurisdiction;
- (g) poor training with respect to investigating incidents of sexual assault;
- (h) a failure to follow up with key witnesses;
- (i) complainants are repeatedly asked to provide statements, requiring complainants to relive the events each time;
- (j) frequent contamination of evidence; and
- (k) a failure to understand the legal concept of consent.

30. As a result, there is a serious lack of trust in the ability of military police to properly handle reports of sexual harassment and assault.

31. In the rare case where complaints of sexual assault or harassment are found to be well-founded, the resulting sanction is a meaningless "slap on the wrist" which serves as an ineffective deterrent. An example of a typical punishment is to require the perpetrator to complete an online training course.

32. As a result of these and other failings, sexual assault and harassment frequently go unreported.

**vii. Canadian Armed Forces Training is Inadequate**

33. The training in place for members of the Canadian Armed Forces with respect to sexual assault and harassment is inadequate. In addition, trainers themselves are frequently complicit in the prohibited conduct. Commanding Officers are also insufficiently trained and are unable to appropriately define, assess, and address sexual assault and harassment. As a result, training fails to inform members about appropriate conduct, lacks credibility, and further demonstrates that Canadian Armed Forces does not take sexual assault and harassment seriously.

**viii. Insufficient Data is Collected and Analyzed**

34. Exacerbating the problem, insufficient data is collected by the Canadian Armed Forces with respect to the occurrence of sexual assault and harassment. As a result, there is no accountability in the chain of command or the military police as to the outcome of any particular incident, and the Canadian Armed Forces lacks relevant information required to prevent future incidents from occurring.

35. These failings contribute to a climate where sexual assault and harassment are tolerated and ignored. The failures identified herein have had a drastic, lasting impact on male victims in the Canadian Armed Forces and constitute a breach of the defendant's duty of care, fiduciary duty, and a violation of the plaintiff and the class members' rights under section 7 of the *Canadian Charter of Rights and Freedoms*.

**E. THE EXPERIENCES OF THE PLAINTIFF**

36. Larry Beattie was, at all material times, a member of the regular forces of the Canadian Armed Forces. He joined the Armed Forces in 1978 as a Fire Control Technician. At the time of his release, he held the rank of Master Seaman in the Royal Canadian Navy.

37. In 1979, Mr. Beattie held the rank of Ordinary Seaman. He was posted to his first ship, the HMCS SKEENA, for a NATO exercise in the Caribbean. While on the ship, Mr. Beattie was sexually assaulted by an Able Seaman while in the shower. The Able Seaman jumped on Mr. Beattie, kissed him and fondled him without his consent. He told Mr. Beattie that if told anyone, he would be thrown overboard with the garbage.

38. The Able Seaman continued to assault Mr. Beattie throughout the three months long trip. He forced Mr. Beattie to have sexual intercourse without his consent on approximately ten occasions.

39. Mr. Beattie was terrified. He was 18 years old at the time, and did not know how to deal with the situation. He had the impression that people on the ship seemed to know about the abuse he was experiencing, but no one spoke out or reported it. He was too afraid to tell anyone.

40. Mr. Beattie was medically released from the Armed Forces in 1998 for reasons unrelated to the assaults: he suffered an injury to his hand, losing 85% of his grip strength.

41. The plaintiff and the class members were subject to sexual assault and sexual harassment during their education, training and service in the Canadian Armed Forces, including, but not limited to:

- (a) sexual assault:
  - (i) sexual intercourse or attempted sexual intercourse without consent;
  - (ii) sexual touching without consent;
  - (iii) stripping the plaintiffs and class members' clothes and exposing their genitals without consent;

- (b) sexual harassment;
  - (i) Canadian Armed Forces members exposing their genitals to the plaintiff or class members;
  - (ii) stalking;
  - (iii) sexual voyeurism;
- (c) abuse of power:
  - (i) sexual assault or sexual harassment by a superior Canadian Armed Forces members;
  - (ii) orders by a superior Canadian Armed Forces members to perform sexual acts;
  - (iii) threats by superior Canadian Armed Forces members of personal, career or reputational harm if sexual assault or sexual harassment were reported;
  - (iv) offers from a superior Canadian Armed Forces members of positive performance evaluations, career advancement or other benefits in exchange for sexual favours; and
  - (v) coercion or use of authority to date or have sex with a superior Canadian Armed Forces members.

## F. NEGLIGENCE

42. At all material times, the defendant's leaders, employees, agents and servants (the **"Canadian Armed Forces Leadership"**) owed a duty of care to the plaintiff and the class members to create and maintain a workplace that was free from sexual assault and harassment.

43. The harm suffered by the plaintiff and the class was a reasonably foreseeable consequence of the acts and omissions of the Canadian Armed Forces Leadership.

44. The defendant was the employer of all class members. At all material times, the actions of the Canadian Armed Forces Leadership had a direct impact on the plaintiff and the class members. The Canadian Armed Forces Leadership was responsible for providing or causing to provide facilities, policies, standards and programs appropriate for the employment of the class

members free of sexual assault and harassment. In such circumstances, the risk of harm of the nature contemplated in this action was reasonably foreseeable.

45. There was a direct and proximate relationship and specific interaction between the plaintiff and the class members and the Canadian Armed Forces Leadership, including but not limited to:

- (a) the daily interaction between class members and the Canadian Armed Forces Leadership; and
- (b) the close and direct supervisory relationship between the plaintiff and the class members and the Canadian Armed Forces Leadership.

46. The Canadian Armed Forces Leadership repeatedly made representations to the plaintiff and the class that it was taking appropriate steps to prevent sexual assault and harassment. Such representations were relied upon by the plaintiff and the class in joining and remaining in the Canadian Armed Forces.

47. The reasonable standard of care required the Canadian Armed Forces Leadership to:

- (a) use reasonable care to ensure the safety and well-being of the plaintiff and the class members;
- (b) provide safe workplace environments free from sexual assault and harassment;
- (c) establish and enforce appropriate policies, codes, guidelines, and management and operations procedures to ensure that the plaintiff and the class members would be free from sexual assault and harassment;
- (d) implement standards of conduct for the Canadian Armed Forces work environment and for Canadian Armed Forces employees, to safeguard the plaintiff and the class members from sexual assault and harassment;
- (e) educate and train Canadian Armed Forces employees to promote universal understanding amongst all Canadian Armed Forces employees that sexual assault and harassment are dangerous and harmful;
- (f) supervise the conduct of Canadian Armed Forces employees properly so as to prevent the plaintiff and the class members from being exposed to sexual assault and harassment;

- (g) investigate and adjudicate complaints of sexual assault and harassment fairly and with due diligence; and
- (h) act in a timely fashion to resolve situations sexual assault and harassment and to work to prevent re-occurrence.

48. The Canadian Armed Forces Leadership breached its duty of care to the plaintiff and the class members, the particulars of which systemic negligence include, but are not limited to:

- (a) failing to establish and enforce adequate policies, codes, guidelines, and management and operations procedures to ensure that the plaintiff and the class members would be free from sexual assault and harassment;
- (b) failing to provide adequate, or any, training and education programs for Canadian Armed Forces employees regarding the dangerous and harmful nature of sexual assault and harassment;
- (c) failing to make sufficient overall efforts to promote the universal understanding amongst all Canadian Armed Forces employees that sexual assault and harassment are dangerous and harmful;
- (d) permitting a workplace environment that normalized and condoned the occurrence of sexual assault and harassment;
- (e) failing to supervise the conduct of Canadian Armed Forces employees, agents and servants properly so as to prevent the plaintiff and the class members from being exposed to sexual assault and harassment;
- (f) failing to implement adequate, or any, standards of conduct for the Canadian Armed Forces work environment and for Canadian Armed Forces employees, agents and servants with regard to sexual assault and harassment;
- (g) intimidating and discouraging class members from reporting sexual assault and harassment;
- (h) failing to investigate complaints of sexual assault and harassment adequately, or at all;
- (i) failing to adjudicate complaints of sexual assault and harassment adequately, or at all;
- (j) failing to act in a timely fashion to put a stop to incidents of sexual assault and harassment;
- (k) systematically punishing, retaliating against, or threatening to retaliate against class members who complain of victims of sexual assault and harassment;
- (l) failing to apply appropriate consequences to perpetrators of sexual assault and harassment;

- (m) failing to protect the plaintiff and the class members from the continuation or re-occurrence of sexual assault and harassment; and
- (n) failing to provide appropriate care and treatment for the plaintiffs and class members after they experienced sexual assault and harassment.

49. The Canadian Armed Forces Leadership knew, or ought to have known, that the above conduct was of a kind reasonably capable of causing the damages alleged to have occurred.

50. The defendant is vicariously liable for the acts and omissions of its employees, agents, and servants, pursuant to sections 3 and 36 of the *Crown Liability and Proceedings Act*.

#### **G. BREACH OF FIDUCIARY DUTY**

51. The Canadian Armed Forces Leadership owed all class members a fiduciary duty that included a duty to care for and protect them and to act in their best interest at all material times, as particularized further below.

52. By virtue of the relationship between the class members and the Canadian Armed Forces Leadership, being one of trust, reliance and dependency, the Canadian Armed Forces Leadership owed a fiduciary obligation to ensure that the class members were treated respectfully, fairly and safely, to act in the best interests of those individuals, and to protect them from the harm alleged herein.

53. The Canadian Armed Forces Leadership was solely responsible for, among other things:

- (a) the standards set out in paragraph 47;
- (b) the protection of the health, safety and well-being of the class members during the class period;
- (c) ensuring the fair and equal treatment among members of the military; and
- (d) decisions, procedures, regulations, operations and actions taken by the defendant and its employees, servants, officers and agents and their predecessors during the class period.

54. The class members had a reasonable expectation that the Canadian Armed Forces Leadership would act in their best interests with respect to their well-being given the assumption of responsibility for the care of the class members, by virtue of:

- (a) the defendant's establishment, operation, financing, supervision and control of the Canadian Armed Forces during the class period;
- (b) the binding nature of service (which can only be terminated with lawful release) and the oaths and declarations required by members of the Canadian Armed Forces upon enrolment;
- (c) the hierarchical and authoritarian command structure of Canadian Armed Forces and the requirement for obedience;
- (d) the tremendous power and authority of the Canadian Armed Forces Leadership over the plaintiff and other class members;
- (e) the unilateral assumption of responsibility for the care of the class members by the Canadian Armed Forces Leadership; and
- (f) the dependence of the class members on the Canadian Armed Forces Leadership.

55. Given the circumstances of the relationship between the Canadian Armed Forces Leadership and the class members, including but not limited to its statutory obligations and its authority and control over the class members, the Canadian Armed Forces Leadership undertook to act in the best interests of the class members and to act in accordance with the duty of loyalty imposed on the Canadian Armed Forces Leadership.

56. Furthermore, the Canadian Armed Forces Leadership's repeated insistence throughout the class period that it had appropriate policies and procedures in place to prevent and address sexual assault and harassment constituted an undertaking of responsibility to act in the best interests of the plaintiff and the class members and to act in accordance with a duty of loyalty in which the class members' interests would be put ahead of the defendant's interests as well as the interests of the Canadian Armed Forces at large, in ensuring that such conduct did not occur.

57. Likewise, in investigating complaints of sexual assault and harassment, the Canadian Armed Forces Leadership was required but failed to the interests of the plaintiff and the class members ahead of the defendant's.

58. The class members were entitled to rely and did rely on the Canadian Armed Forces Leadership to their detriment to fulfill their fiduciary obligations.

59. The discretion exercised by the Canadian Armed Forces Leadership directly affected the degree of sexual assault and harassment in the Canadian Armed Forces as it was wholly within the scope of the that discretion to ensure that appropriate policies and procedures were in place.

60. The plaintiff and the class members are particularly vulnerable and at the mercy of the Canadian Armed Forces. The plaintiff and the class members' vulnerability arises directly from their relationship with the Canadian Armed Forces Leadership. They relied on leadership in the Canadian Armed Forces for their protection in preventing sexual assault and harassment. The Canadian Armed Forces Leadership abused its power over the plaintiff and the class members.

61. The Canadian Armed Forces Leadership breached its fiduciary duties to the plaintiff and the class. The particulars of the breach include the failures set out in paragraph 48 and:

- (a) burying or minimizing reported incidents of sexual assault and harassment to protect the reputation of the military at the expense of complainants;
- (b) putting the interests of the Canadian Armed Forces before the interests of the plaintiff and the class; and
- (c) failing to safeguard the physical and psychological needs of the class members.

62. The Canadian Armed Forces Leadership knew or ought to have known that as a consequence of its actions, the plaintiff and the class members would suffer damages, as discussed below.

## H. BREACH OF THE *CANADIAN CHARTER OF RIGHTS AND FREEDOMS*

63. The conditions particularized above violate the basic and fundamental human rights of the class members and, as such, constitute a violation of their rights and freedoms under section 7 of the *Canadian Charter of Rights and Freedoms*.

64. The defendant breached the plaintiff's and class members' right to life, liberty, and security of the person, and the right not to be deprived thereof except in accordance with the principles of fundamental justice, pursuant to section 7 of the *Canadian Charter of Rights and Freedoms*, by failing to ensure an environment free of sexual assault and harassment, including by:

- (a) failing to establish and enforce adequate policies, codes, guidelines, and management and operations procedures to ensure that the plaintiffs and the class members would be free from sexual assault and harassment;
- (b) failing to provide adequate, or any, training and education programs for Canadian Armed Forces employees regarding the dangerous and harmful nature of sexual assault and harassment;
- (c) failing to make sufficient overall efforts to promote the universal understanding amongst all Canadian Armed Forces employees that sexual assault and harassment are dangerous and harmful;
- (d) permitting a workplace environment that normalized and condoned the occurrence of sexual assault and harassment;
- (e) failing to supervise the conduct of Canadian Armed Forces employees, agents and servants properly so as to prevent the plaintiffs and the class members from being exposed to sexual assault and harassment;
- (f) failing to implement adequate, or any, standards of conduct for the Canadian Armed Forces work environment and for Canadian Armed Forces employees, agents and servants with regard to sexual assault and harassment;
- (g) intimidating and discouraging class members from reporting sexual assault and harassment;
- (h) failing to investigate complaints of sexual assault and harassment adequately, or at all;
- (i) failing to adjudicate complaints of sexual assault and harassment adequately, or at all;

- (j) failing to act in a timely fashion to put a stop to incidents of sexual assault and harassment;
- (k) systematically punishing, retaliating against, or threatening to retaliate against class members who complain of sexual assault and harassment;
- (l) failing to apply appropriate consequences to perpetrators of sexual assault and harassment;
- (m) failing to protect the plaintiffs and the class members from the continuation or re-occurrence of sexual assault and harassment;
- (n) failing to provide appropriate care and treatment for the plaintiffs and class members after they experienced sexual assault and harassment;
- (o) burying or minimizing reported incidents of sexual assault and harassment to protect the reputation of the military at the expense of class members;
- (p) putting the interests of the Canadian Armed Forces before the interests of the plaintiffs and the class; and
- (q) failing to safeguard the physical and psychological needs of the class members.

65. The defendant's actions negatively impact and contribute to the deprivation of the plaintiffs and the class members' security of the person. The defendant's conduct materially increases the plaintiff's and the class members' risk of sexual assault and harassment.

66. The defendant's breach cannot be saved under section 1 of the *Charter*, as it is not a reasonable limit prescribed by law as can be demonstrably justified in a free and democratic society.

## I. CHARTER REMEDIES

67. In the circumstances, the plaintiff and the class are entitled to monetary damages pursuant to section 24(1) of the *Charter* for violation of the class members' rights and freedoms in order to:

- (a) compensate them for their suffering and loss of dignity;
- (b) vindicate their fundamental rights; and
- (c) deter systemic violations of a similar nature by the defendant and others who are similarly situated.

68. There are no countervailing considerations rendering damages in this case inappropriate or unjust.

69. Systemic remedies, including declarations and mandatory orders, against the defendant pursuant to section 24(1) of the *Charter* would be just and appropriate in respect of the breaches, as the breaches are systemic in nature and require mandatory orders to correct.

## J. OTHER DAMAGES

70. The defendant knew, or ought to have known, that as a consequence of its actions described herein, the plaintiff and the class members would suffer suffered damages, including:

- (a) loss of income, including future income;
- (b) loss of pension income and benefits;
- (c) loss of employment benefits;
- (d) loss of future employment opportunities;
- (e) physical, emotional and psychological harm and distress;
- (f) psychological illnesses;
- (g) an impaired ability to obtain and sustain employment, resulting either in lost or reduced income and ongoing loss of income;

- (h) a requirement for medical or psychological treatment and counselling;
- (i) an impaired ability to enjoy and participate in recreational, social and employment activities and to form personal relationships;
- (j) the loss of general enjoyment of life; and
- (k) such further and other damages as the plaintiff and class members may advise prior to trial in this matter.

71. The plaintiff and the class sustained and will continue to sustain income loss, pain and suffering, loss of enjoyment of life and loss of amenities.

72. As a result of the conduct alleged herein, the Family Law Claimants have suffered and will continue to suffer damages, including:

- (a) actual expenses reasonably incurred for the benefit of the CAF Class Members;
- (b) travelling expenses incurred while visiting CAF Class Members during treatment or recovery;
- (c) loss of income or the value of services provided for CAF Class Members, including nursing and housekeeping; and
- (d) compensation for loss of support, guidance, care and companionship that they might reasonably have expected to receive from the CAF Class Members.

#### **K. PUNITIVE DAMAGES**

73. The high-handed and callous conduct of the defendant warrants the condemnation of this Honourable Court. The Canadian Armed Forces Leadership conducted its affairs with wanton and callous disregard for the class members' interests, safety, and well-being. The Canadian Armed Forces Leadership breached, and continue to breach, its duty of care, fiduciary duty and *Charter* duties owed to the plaintiff and the class members.

74. Over a long period of time, the plaintiff and the class members were treated in a manner that could foreseeably result in the damages suffered. The culture to which the plaintiff and the

class members were exposed to grossly violated their rights and severely altered the paths of their lives.

75. The actions of the Canadian Armed Forces Leadership were deliberate. In these circumstances, punitive damages are necessary to act as a deterrent to prevent such conduct in the future.

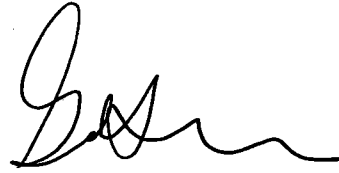
#### L. QUEBEC LAW

76. Where the actions of the Canadian Armed Forces and its employees, agents and servants took place in Québec, they constitute:

- (a) fault giving rise to the extra-contractual liability of the defendant, its employees, servants and agents and the class pursuant to the *Civil Code of Québec*, S.Q. 1991, c. 64, Art. 1457, and the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12 (the "*Québec Charter*"), ss. 1, 4, 10, 10.1 and 16;
- (b) fault giving rise to the extra-contractual liability of the defendant pursuant to the *Crown Liability and Proceedings Act*, s. 3, and the *Interpretation Act*, R.S.C. 1985, c. 1-16, s. 8.1; and
- (c) unlawful and intentional interference with the rights of the plaintiff and the class members under the *Québec Charter*, ss. 1, 4, 10, 10.1 and 16, giving rise to the liability of the defendant to pay punitive damages to the plaintiff and class members, pursuant to the *Québec Charter*, s. 49 and the *Civil Code of Québec*, Art. 1621.

77. The plaintiff proposes that this action be tried at Toronto, Ontario,

**DATED** March 29, 2017.



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**SCHEDULE "A"**  
**PROVINCIAL STATUTES: FAMILY MEMBER CLAIMS**

**ALBERTA**

*Tort-feasors Act*, R.S.A. 2000 c. T-5

**Loss of consortium through injury**

2.1 (1) When a person has, either intentionally or by neglect of some duty existing independently of contract, inflicted physical harm on a married person and thereby deprived the spouse of that married person of the society and comfort of that married person, the person who inflicted the physical harm is liable in an action for damages by the spouse or in respect of the deprivation.

2.1 (2) The right of a spouse to bring the action referred to in subsection (1) is in addition to, and independent of, any right of action that the married person has, or any action that the spouse in the name of the married person has, for injury inflicted on the married person.

**ONTARIO**

*Family Law Act*, R.S.O. 1990, c. F.3

**Right of dependants to sue in tort**

61. (1) If a person is injured or killed by the fault or neglect of another under circumstances where the person is entitled to recover damages, or would have been entitled if not killed, the spouse, as defined in Part III (Support Obligations), children, grandchildren, parents, grandparents, brothers and sisters of the person are entitled to recover their pecuniary loss resulting from the injury or death from the person from whom the person injured or killed is entitled to recover or would have been entitled if not killed, and to maintain an action for the purpose in a court of competent jurisdiction.

**Damages in case of injury**

(2) The damages recoverable in a claim under subsection (1) may include,

- (a) actual expenses reasonably incurred for the benefit of the person injured or killed;
- (b) actual funeral expenses reasonably incurred;
- (c) a reasonable allowance for travel expenses actually incurred in visiting the person during his or her treatment or recovery;
- (d) where, as a result of the injury, the claimant provides nursing, housekeeping or other services for the person, a reasonable allowance for loss of income or the value of the services; and
- (e) an amount to compensate for the loss of guidance, care and companionship that the claimant might reasonably have expected to receive from the person if the injury or death had not occurred.

**QUÉBEC**

*Civil Code of Québec* (S.Q. 1991, c. 64), Articles 454, 1457, 1607, 1609, 1614, 1615, 1616, 2926 and 2930.