

FEDERAL COURT

PROPOSED CLASS PROCEEDING

BETWEEN:

SHERRY HEYDER, AMY GRAHAM, and NADINE SCHULTZ-NIELSEN

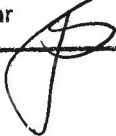
Plaintiffs

and

THE ATTORNEY GENERAL OF CANADA

Defendant

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APR  
Registrar   
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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 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:

DEC 27 2015

Issued by:  
(Registry Officer)

*[Handwritten signature]*

Address of local office:

180 Queen Street West Suite 200 Toronto, Ontario M5V 3L6  
180, rue Queen Ouest bureau 200 Toronto, Ontario M5V 3L6

TO: The Attorney General of Canada  
The Exchange Tower  
130 King Street West, Suite 3400, Box 36  
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*Amended.*

AVR 05 2017

## A. CLAIM

### 1. The plaintiffs claims:

- (a) an order certifying this action as a class proceeding and appointing the plaintiffs as representative plaintiffs for the class;
- (b) a declaration that the defendant breached its duty of care and fiduciary duty to the plaintiffs and the class and violated the class members' rights and freedoms set out in sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* in respect of its failures set out herein relating to systemic sexual assault, sexual harassment and gender-based discrimination in the Canadian Armed Forces;
- (c) a declaration that the defendant is liable to the plaintiffs 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 sections 7 and 15 of the *Canadian Charter of Rights and Freedoms* in respect of its failures set out herein relating to systemic sexual assault, sexual harassment and gender-based discrimination 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 15 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 ~~\$250~~800 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 is poisoned by a discriminatory and sexualized culture that condones and encourages sexual assault, sexual harassment and gender-based discrimination towards women.

3. The discriminatory and sexualized culture 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, sexual harassment and gender-based discrimination. Furthermore, women who report incidents suffer from negative consequences which discourages further reporting.

4. As a result, sexual assault, sexual harassment and gender-based discrimination against women are pervasive in the Canadian Armed Forces causing tremendous harm, fear, humiliation and degradation. Women in the Canadian Armed Forces are denied equality and equal protection and benefit under the law and the conduct violates basic standards, including sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*. 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 members of the class.

**C. THE PLAINTIFFS AND THE CLASS**

5. The plaintiff, Sherry Heyder, enrolled as a reservist in the Canadian Armed Forces in 1988 in Thunder Bay, Ontario. She was an active member until 1994 and was honourably discharged in 1995. During her time as an active member in the Canadian Armed Forces, Ms. Heyder served as a trainee, an administration clerk, a finance clerk, and a recruiting clerk.

6. The plaintiff, Amy Graham, enrolled as a Communications Research Officer in the Canadian Armed Forces in 2004 in St-Jean-sur-Richelieu, Quebec. She was an active member until 2010 when she left the Canadian Armed Forces on the basis of a voluntary release.

7. The plaintiff, Nadine Schultz-Nielsen, enrolled as a member of the regular forces in the Canadian Armed Forces in 2001 in Sydney, Nova Scotia. She was an active member until 2013 when she left the Canadian Armed Forces on the basis of a medical release.

8. As more fully described below, Ms. Heyder, Ms. Graham and Ms Schultz-Neilsen was were subject to persistent and ongoing sexual assault, sexual harassment and gender-based discrimination by male members of the Canadian Armed Forces. Furthermore, her their employment prospects in the Canadian Armed Forces was were limited as a result of gender-based discrimination.

9. The plaintiffs claims on behalf of themselves and on behalf of the following class:

All current and former female members of the Canadian Armed Forces ("CAF Class Members"); and

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**

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

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

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

13. For decades, sexual assault, sexual harassment and gender-based discrimination against women have been pervasive in the Canadian Armed Forces.

**i. Sexual Harassment and Assault and Gender-Based Discrimination Begins at Training**

14. Sexual harassment, sexual assault, and gender-based discrimination against women begins at basic training when women first enter the Canadian Armed Forces. Inappropriate language used by trainers goes unpunished. Sexual relations between trainers and trainees are frequent. The sexualized culture in the Canadian Armed Forces is created by, among other things:

- (a) frequent use of highly degrading expressions that reference women's bodies;
- (b) frequent sexual jokes and innuendos;
- (c) discriminatory comments with respect to the abilities of women; and
- (d) unwelcome sexual touching.

15. The use of language that belittles women is commonplace in the Canadian Armed Forces. Swear words and highly degrading expressions referencing women's bodies are endemic, and sexual assault jokes are tolerated.

16. Arising from their fear of negative repercussions, trainees are reluctant to call the behavior of their trainers into question. As a result, female trainees learn to keep their concerns to themselves from the very beginning and ~~men~~ members of the Canadian Armed Forces learn that sexual assault and harassment and gender-based discrimination will go unpunished.

17. The underlying sexualized culture in the Canadian Armed Forces continues onward from basic training and is both hostile to women and conducive to sexual assault and harassment and gender-based discrimination.

**ii. Leadership Tolerates and Encourages Discrimination and Sexual Harassment and Assault**

18. The underlying sexualized culture in the Canadian Armed Forces that encourages sexual assault and harassment and gender-based discrimination is tolerated and condoned by leadership:

- (a) officers are desensitized to the sexualized culture
- (b) officers discourage complaints about sexual assault and harassment and gender-based discrimination;
- (c) officers are part of a boys' club and concerned more with protecting the reputation of their unit rather than supporting ~~victims~~ complainants;
- (d) officers turn a blind eye to the inappropriate conduct occurring around them;
- (e) officers are quick to excuse inappropriate sexual incidents;
- (f) officers bury the issues to protect the reputation of the Canadian Armed Forces at the expense of female members;
- (g) 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 ~~victim~~ complainant to convey her concerns directly to the Commanding Officer or to someone at a higher level is illusory;
- (h) there is a deep mistrust amongst female members that the chain of command will take such complaints seriously; and
- (i) sexual assault and harassment and gender-based discrimination is routinely ignored or even condoned and encouraged by the chain of command.

19. This creates serious impediments to reporting and to the effective investigation and resolution of complaints and prevents many ~~victims~~ class members from reporting incidents of inappropriate conduct.

### iii. **Culture of Discrimination in the Canadian Armed Forces**

20. The Canadian Armed Forces has historically and continues to discriminate against women with respect to permissible employment roles and advancement and promotion within these roles.

21. Previously, the Canadian Armed Forces enforced policies which restricted certain trades and occupations to men. For example, the combat arms trades accepted only men.

22. In 1989, the Canadian Armed Forces began to permit some women to be employed in combat and other previously male-only roles. Nevertheless, this was discouraged and women who did enter combat and other male-dominated roles continue to struggle, in large part due to persisting systemic gender-based discrimination.

23. Systemic gender-based discrimination in the Canadian Armed Forces has resulted in a high rate of female attrition and has prevented woman from obtaining higher ranks at the same rate as men. Fewer women are employed in combat roles, and fewer women are promoted to higher ranking positions than similarly qualified men.

### iv. **~~Victims~~ Class Members Face Negative Repercussions for Reporting Incidents**

24. In addition to leadership tolerating, condoning, and even encouraging sexual assault and harassment and gender-based discrimination, women are subject to negative repercussions for reporting incidents, including:

- (a) ~~victims~~ they face inhibited promotion or employment prospects;
- (b) ~~victims~~ they are removed from the unit, or are not deployed with the unit, which is perceived as punishing the ~~victim~~ complainant;
- (c) ~~victims~~ they are denied hoped-for postings;



- (d) ~~victims~~ they are required to miss training;
- (e) ~~victims~~ they are stigmatized as weak;
- (f) ~~victims~~ they are subjected to retaliation by peers and supervisors;
- (g) ~~victims~~ they are diagnosed as unfit for work; and
- (h) ~~victims~~ they are labeled trouble-makers and are viewed negatively as the person who charged a teammate.

25. ~~Victims~~ Class members do not report sexual assault due to the concerns set out in paragraph ~~22~~ 24 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.

26. In contrast, ~~victims~~ class members who do not make complaints are seen as problem-solvers and as appropriately protecting superiors. As a result, women feel pressure to accept the sexualized environment, sexual assault and harassment and gender-based discrimination, or risk social exclusion and other consequences.

27. Furthermore, women are less likely to report sexual abuse and sexual harassment because there is a general perception in the Canadian Armed Forces that it is permissible to objectify women's bodies, make unwelcome and hurtful jokes about sexual interactions with female members, and cast aspersions on the capabilities of female members.

28. 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**

29. The policies in place in the Canadian Armed Forces are woefully deficient and as a result cause, contribute to, and perpetuate the underlying sexualized culture in the Canadian Armed Forces and systematic sexual assault and harassment and gender-based discrimination.

30. 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 of "sexual harassment" fails to capture a broad range of inappropriate sexual conduct, including unwelcome sexual conduct that contributes to a hostile organizational culture and sexual comments or jokes that are not necessarily addressed to a particular person but which can create a negative sexualized environment. 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*.

31. 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.

32. 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**

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

34. 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~~ class members who choose not to report incidents.

35. 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.

36. This resolution process is flawed and discourages ~~victims~~ class members 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) ~~victims~~ 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 ~~victims~~ class members to not report sexual assault, harassment and gender-based discrimination;
- (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 ~~victims~~ 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 ~~victim~~ complainant.

37. Inherent in the processes designed to deal with complaints of discrimination, 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, harassment and gender-based discrimination 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 ~~victim~~ member made a complaint. As a result, this pressure on ~~victims~~ class members to settle complaints at the lowest level functions to stifle complaints and intimidate complainants.

38. In addition, procedures in place to investigate sexual assault, harassment and gender-based discrimination 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, harassment and gender-based discrimination; (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 ~~victims~~ complainants.

Sexual assaults that do not result in physical injury tend to be ignored and charges in those cases are often not laid.

39. 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) ~~victims~~ class members not being offered immediate medical support;
- (d) serious incidents of sexual assault are given inadequate attention and consideration;
- (e) ~~victims~~ class members 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) ~~victims~~ class members are repeatedly asked to provide statements, requiring ~~victims~~ them to relive the events each time;
- (j) frequent contamination of evidence; and
- (k) a failure to understand the legal concept of consent.

40. 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.

41. In the rare case where complaints of sexual assault, harassment or gender-based discrimination are found to be well-founded, the resulting sanction is a meaningless "a 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.

42. As a result of these and other failings, sexual assault, harassment and gender-based discrimination frequently go unreported.

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

43. The training in place for members of the Canadian Armed Forces with respect to sexual assault, harassment and gender-based discrimination 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, harassment and gender-based discrimination. As a result, training fails to inform members about appropriate conduct, lacks credibility, and further demonstrates that the Canadian Armed Forces does not take sexual assault, harassment and gender-based discrimination seriously.

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

44. Exacerbating the problem, insufficient data is collected by the Canadian Armed Forces with respect to the occurrence of sexual assault, harassment and gender-based discrimination. 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.

45. These failings contribute to a climate where sexual assault, harassment and gender-based discrimination are condoned and encouraged. As a direct result, women in the Canadian Armed Forces are subject to extremely high levels of sexual assault, harassment and gender-based discrimination. The failures identified herein have had a drastic, lasting impact on women in the Canadian Armed Forces and constitute a breach of the defendant's duty of care, fiduciary duty,

and a violation of the plaintiffs and the class members' rights under sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*.

**E. THE EXPERIENCES OF THE PLAINTIFFS**

**i. Sherry Heyder**

46. Ms. Heyder enrolled in the Canadian Armed Forces reserves in 1988 in Thunder Bay, Ontario. At the time, she was still in high school. Her goal was to join the regular infantry force so that she could serve her country on the battlefield.

47. After enrollment, Ms. Heyder participated in a six week basic training course held at the Thunder Bay Armoury. Following basic training, she was deemed a trained soldier and was permitted to participate in training with the infantry unit on regular parade nights of Tuesday and Thursday and alternate weekends.

48. During this time, Ms. Heyder came into contact with a male Regimental Sergeant Major Rene Ledger, who sexually harassed and discriminated against her because she was a woman. Regimental Sergeant Major Ledger would sneer and smirk at her and would be consistently more demanding of her personal appearance than of other male infanteers in her unit. He would also frequently find ways to belittle how she presented herself and how she did her job.

49. Shortly thereafter, Ms. Heyder was taken out of a training session by Regimental Sergeant Major Chief Warrant Officer Watson. She was told that she was no longer permitted in classrooms or in training but was allowed to continue to participate as an enemy force. For regular parade nights, she was forced to work in the administrative office making photocopies and filing. Ms. Heyder was also taken aside at this time by Regimental Sergeant Major Master Warrant Officer Don Ledge and was advised that she was no longer permitted to pursue a career

in the infantry because she was a woman. Instead, she was required to become an administrative clerk.

50. In 1990, Ms. Heyder's infantry badge was taken by Chief Warrant Officer Watson. This experience was humiliating and heartbreaking for Ms. Heyder. The career path that she desired, the very reason she joined the Canadian Armed Forces, was obliterated.

51. Ms. Heyder continued to attend her reserve duties every Tuesday and Thursday evening and every second weekend as an administration clerk until 1991. In the administrative unit, she worked for commanding officers, adjutants and senior Non-Commissioned Officers. In this role, she was required to type up documents, prepare correspondence, and perform filing and computer tasks, a non-combat role that was deemed appropriate for women.

52. In 1991, Ms. Heyder took a full-time position as a recruiting clerk, testing new recruits, ensuring they had proper paperwork and documents from school, and helping them through the recruiting process. In 1993, Ms. Heyder was cross-trained as a finance clerk and took over the duty of submitting time sheets.

53. In 1994, Ms. Heyder joined the Thunder Bay Police Department in order to be able to perform an active service role rather than a clerk role at the ~~CAF~~ Canadian Armed Forces. She was honourably discharged from the Canadian Armed Forces in 1995.

54. Throughout her employment in the Canadian Armed Forces, Ms. Heyder was subject to demeaning and pejorative sexual harassment by other men in the Canadian Armed Forces including the use of repeated, vulgar, sexualized language and conduct. In addition, while she was in training, Ms. Heyder was also made aware of sexual assault against other women in the Canadian Armed Forces in Wainright, Alberta. These events had a profound effect on Ms.



Heyder. They made her feel uncomfortable and unsafe, were humiliating, and contributed to a sexualized workplace.

**ii. Amy Graham**

55. Amy Graham was, at all material times, a member of the regular forces in the Canadian Armed Forces. Ms. Graham joined the Canadian Armed Forces in 2004 as a Communications Research Officer. At the time of her release, she held the rank of Leading Seaman in the Royal Canadian Navy, one of the three service branches of the Canadian Armed Forces.

56. Ms. Graham completed her basic training in St-Jean-sur-Richelieu, Quebec, in 2004. She then completed the first portion of her trades training in Kingston, Ontario. As a Communications Research Officer, she had to obtain security clearance in order to complete the latter portion of her trades training. While awaiting her security clearance, she was assigned to work in Ottawa, Ontario. While there, in or around May 2005, her Master Corporal told her that if she ever encountered sexual harassment, she should not bring it forward, because to do so would be a "career ruiner". He pointed out a Corporal who had made a complaint as an example of what would happen to Ms. Graham.

57. Once she received her security clearance, Ms. Graham returned to Kingston, Ontario, to complete her trades training.

58. During both portions of her trades training, Ms. Graham was subject to persistent and ongoing sexual harassment, including but not limited to the following incidents:

- (a) In or around February 2005, a Master Corporal pulled her underwear out of a drawer during inspection of her room, dangled them around and made rude comments in the presence of other instructors and Ms. Graham's roommates.

- (b) In or around May 2006, the same Master Corporal made unwanted sexual advances to Ms. Graham at the end of the course, telling her it would not be fraternization because he was no longer her instructor.

59. In subsequent postings, Ms. Graham continued to experience nearly constant sexual harassment by Canadian Armed Forces members, as well as abuse of power by superior Canadian Armed Forces members, including but not limited to the following incidents:

- (a) In Ottawa, Ontario in September 2005, Ms. Graham's Chief Warrant Officer called her repeatedly asking for dates. He invited Ms. Graham to his spa for free massages, to the movies, and to the casino for lunch.
- (b) In or around July 2006, a Sergeant running the midnight shift put pornography on the television that was supposed to be used for 24-hour news.
- (c) While posted in Kingston, Ontario in or around November 2008, Ms. Graham and another female member were constantly singled out as the only women in their trade. On one occasion, when a tire on her vehicle blew, the Warrant Officer insisted that Ms. Graham change the tire with the other female member of the trade. He located the other female member, gathered the other men around, and forced the two women to attempt to change the tire by themselves, while the men watched and made derogatory comments.
- (d) In or around March 2009, Ms. Graham had consensual intercourse with a member of her Chain of Command. She told him afterwards that it was a mistake and she did not want to do it again. After she refused dozens of requests from him to have sex again, he singled her out in the section. He yelled at her, gave her the worst shifts, gave her poor performance reviews, and attempted to bring charges against her.
- (e) Superior officers circulated pictures of naked women to Ms. Graham and other members.
- (f) Ms. Graham endured constant comments about her appearance and her body. She was told she had nice legs and a nice figure during physical training. She was told the combats made her look fat and did not show off her figure. She was told she had "come hither" eyes, and was asked if she was a "lady of the night".
- (g) Ms. Graham endured innumerable sexual comments from Canadian Armed Forces members, including discussions about the sounds women make during sex and discussions about women menstruating.

60. In 2010, after Ms. Graham completed a tour in Afghanistan, she was sent to a hotel in Cyprus for mandatory decompression before returning to Canada. At this hotel, there were approximately 127 male members of the Canadian Armed Forces. Ms. Graham and one other

woman were the only female members of the Canadian Armed Forces present at the hotel at the time.

61. On Ms. Graham's final night in Cyprus, her Master Warrant Officer knocked on her door, and told her that he needed somewhere to sleep because his roommate was being intimate with a member of the Chain of Command. Ms. Graham let him into her room, at which time he attempted to force himself on her. He kissed her and groped at her breasts, and attempted to initiate sexual intercourse without her consent. Ms. Graham was eventually able to fight him off and fight him out of her room.

62. Ms. Graham was shaken and terrified. She reported the incident to her Chain of Command a few hours later, who was a Warrant Officer who had recently been promoted. He approached the assailant the following day about the incident, but did not report it up the Chain of Command.

63. Ms. Graham also reported the incident to a Captain, who in turn reported it to the Regimental Sergeant Major ("RSM") at Ms. Graham's base. The RSM suggested that Ms. Graham pursue the matter with the Military Police, but he told Ms. Graham that reporting the incident would affect her ability to be released from the military. This dissuaded Ms. Graham from making a formal report, along with an incident that occurred immediately following the conversation with the RSM: immediately after suggesting that she come forward about her assault, the RSM catcalled another female member who was walking by, commenting on how her "ass" looked in her pants. This reinforced to Ms. Graham the futility of trying to come forward about sexual misconduct in the Canadian Armed Forces.

64. Ms. Graham was released from the Canadian Armed Forces in August 2010 on a voluntary release. It was later determined that her release should have been on medical grounds.

65. In or around April 2014, Ms. Graham was diagnosed with severe post-traumatic stress disorder and chronic major depression. Beginning in February 2016, she entered intense therapy for the post-traumatic stress disorder resulting from the sexual assault.

66. In or around January 2015, Ms. Graham finally felt able to come forward and make a formal report to the Military Police about the sexual assault she experienced in 2010. She was interviewed by the National Investigation Service ("NIS"), and the assailant was eventually charged with sexual assault and misconduct in November 2016. He accepted a plea on an administrative charge, and only received a penalty of a reduction in rank and a fine of \$2,500. He remains a member of the Canadian Armed Forces.

**iii. Nadine Schultz-Nielsen**

67. At all material times, Ms. Schultz-Nielsen was a member of the regular forces in the Canadian Armed Forces. She joined the Canadian Armed Forces in 2001 as a Medic, later transferring to the trade of Sonar Operator. At the time of her release, she held the rank of a Leading Seaman in the Royal Canadian Navy.

68. Throughout her training and service with the Canadian Armed Forces, Ms. Schultz-Nielsen was subject to nearly daily sexual harassment, including but not limited to the following:

- (a) she was told she must be sleeping with someone to be successful, because she was not smart enough to do so on her own;
- (b) she received comments about her breast size and the clothes she should wear because of her breasts (for example, she was told by her supervisor to wear tight clothing while she ran, and she was told not to wear tight clothing in Dubai because her breasts would offend the locals);
- (c) Canadian Armed Forces members would leer at her, particularly during physical training;
- (d) her supervisor would insist that she look at women in lingerie on the computer to help him pick lingerie out for his fiancée;

- (e) while on a ship, male crew members would hide in her mess and watch her change; and
- (f) when she was responsible for waking other members, they would expose their genitals to her.

69. Ms. Schultz-Nielsen was also subject to multiple incidents of sexual assault by Canadian Armed Forces members.

70. In 2002, after her final exam for her Sonar Operator training, she went into her instructor's office to use the telephone. While she was on the phone, the Standards Instructor grabbed her by the hips and rubbed his crotch against her behind, before turning around and leaving the office without saying anything. Ms. Schultz-Nielsen did not report this incident after discussing it with a few trusted course mates, because there were no witnesses, she was about to leave for Halifax, she did not expect that reporting the incident would be taken seriously and it may have impacted her career.

71. In 2002, Ms. Schultz-Nielsen was posted to her first ship, the HMCS Iroquois. On her first day aboard the ship, another member of the crew grabbed her by the crotch. She was embarrassed and in complete shock. This incident was witnessed by many other members, who just laughed. They did not report it or act as though it was out of the ordinary.

72. On another occasion during Operation Apollo, Ms. Schultz-Nielsen was standing in the mess by the bar with a Petty Officer 2nd Class. Without warning, he stuck his hand inside her pants without her consent. This incident was witnessed by 15-20 other Canadian Armed Forces members, but no one said anything or reported it. Ms. Schultz-Nielsen was afraid to report the incident because she anticipated that she would have been blamed and punished for this incident, instead of the assailant.

73. On so many occasions, Ms. Schultz-Nielsen could not even count, Canadian Armed Forces members would touch her without her consent, including unnecessarily rubbing her shoulders, or rubbing up against her body while passing her on a ship.

74. On the occasions that Ms. Schultz-Nielsen attempted to report incidents, no action was taken, and she was subject to retaliation for coming forward, including but not limited to the following incidents:

- (a) When she attempted to complain to an officer in her Chain of Command about her supervisor telling her to wear tight clothing while she ran, she was told she had to confront him and tell him to stop, despite the fact that he had control over her career. No further action was taken.
- (b) A Master Seaman followed her around, poking her with a metal coat hanger, asking her if she needed an abortion. When she reported this incident to her and the Master Seaman's direct supervisor, he was told to stop but he did not, and the harassment increased. She was called a rat, and too sensitive, and other members were told not to speak to her because she was a rat.

75. In 2010, Ms. Schultz-Nielsen had developed a severe fear of ships and men on ships due to the assaults and harassment she experienced, and she was experiencing symptoms of post-traumatic stress disorder. She therefore initiated the process of obtaining a medical release. She informed her Chain of Command and career manager of the impending medical release, and also of the fact that she was pregnant. Her manager set out to make her life hell for the remainder of her time in the Canadian Armed Forces, including but not limited to the following:

- (a) Her career manager posted her to Halifax during her third trimester, although she had a high-risk pregnancy and could not travel to Halifax, and her husband could not come with her.
- (b) Her supervisor made derogatory statements about her pregnancy, telling her that she would not receive exceptional treatment, despite being pregnant.
- (c) Her supervisor told her she could only use the bathroom once in the morning.
- (d) One month after the birth of her daughter, she was forced to travel to Halifax at her own expense to "clear in", which was against policy related to maternity leave. When she complained about this issue, the complaint was rejected and she was accused of lying.

(e) She tried to switch to a different trade, but she was prevented from doing so.

76. The plaintiffs and the class members were subject to sexual assault, sexual harassment, and gender-based discrimination 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) inappropriate, sexual comments or jokes;
  - (ii) comments about appearance;
  - (iii) leering or catcalling;
  - (iv) unwanted requests for dates or sex;
  - (v) Canadian Armed Forces members exposing their genitals to the plaintiffs or class members;
  - (vi) use of demeaning and derogatory terms, such as "bitch", "cunt", "slut";
  - (vii) stalking;
  - (viii) 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;

- (v) coercion or use of authority to date or have sex with a superior Canadian Armed Forces members.

## F. NEGLIGENCE

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

78. The harm suffered by the plaintiffs and the class was a reasonably foreseeable consequence of the acts and omissions of the Canadian Armed Forces Leadership ~~defendant, its employees, agents, and servants.~~

79. The defendant was the employer of all class members. At all material times, the actions of the Canadian Armed Forces Leadership ~~defendant and its employees, agents, and servants~~ had a direct impact on the plaintiffs and the class members. The Canadian Armed Forces Leadership ~~defendant and its employees, agents, and servants~~ were responsible for providing or causing to provide facilities, policies, standards and programs appropriate for the employment of the class members free of sexual assault, harassment and gender-based discrimination. In such circumstances, the risk of harm of the nature contemplated in this action was reasonably foreseeable.

80. There was a direct and proximate relationship and specific interaction between the plaintiffs and the class members and the Canadian Armed Forces Leadership ~~defendant and its employees, agents, and servants~~, including but not limited to:

- (a) the daily interaction between class members and the Canadian Armed Forces Leadership ~~defendant and its employees, agents, and servants~~; and



- (b) the close and direct supervisory relationship between the plaintiffs and the class members and the Canadian Armed Forces Leadership ~~defendant and its employees, agents, and servants.~~

81. Canadian Armed Forces Leadership ~~The defendant and its employees, agents and servants~~ repeatedly made representations to the plaintiffs and the class that it was taking appropriate steps to prevent sexual assault and harassment and gender-based discrimination, ~~including a purported "zero tolerance" policy.~~ Such representations were relied upon by the plaintiffs and the class in joining and remaining in the Canadian Armed Forces.

82. The reasonable standard of care required the Canadian Armed Forces Leadership ~~defendant and its employees, agents, and servants~~ to:

- (a) use reasonable care to ensure the safety and well-being of the plaintiffs and the class members;
- (b) provide safe workplace environments free from sexual assault, harassment and gender-based discrimination;
- (c) provide equal employment training and advancement opportunities to the plaintiffs and the class members, regardless of their gender;
- (d) establish and enforce appropriate policies, codes, guidelines, and management and operations procedures to ensure that the plaintiffs and the class members would be free from sexual assault, harassment and gender-based discrimination;
- (e) implement standards of conduct for the Canadian Armed Forces work environment and for Canadian Armed Forces employees, to safeguard the plaintiffs and the class members from sexual assault, harassment and gender-based discrimination;
- (f) educate and train Canadian Armed Forces employees to promote universal understanding amongst all Canadian Armed Forces employees that sexual assault, harassment and gender-based discrimination are dangerous and harmful;
- (g) supervise the conduct of Canadian Armed Forces employees properly so as to prevent the plaintiffs and the class members from being exposed to sexual assault, harassment and gender-based discrimination;
- (h) investigate and adjudicate complaints of sexual assault, harassment and gender-based discrimination fairly and with due diligence; and
- (i) act in a timely fashion to resolve situations sexual assault, harassment and gender-based discrimination and to work to prevent re-occurrence.

83. The Canadian Armed Forces Leadership ~~defendant, and its employees, agents, and servants~~ breached its duty of care to the plaintiffs 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 plaintiffs and the class members would be free from sexual assault, harassment and gender-based discrimination;
- (b) permitting practices which denied employment training and advancement opportunities to the plaintiffs and the class members, on the basis of their gender;
- (c) failing to provide adequate, or any, training and education programs for Canadian Armed Forces employees regarding the dangerous and harmful nature of sexual assault, harassment and gender-based discrimination;
- (d) failing to make sufficient overall efforts to promote the universal understanding amongst all Canadian Armed Forces employees that sexual assault, harassment and gender-based discrimination are dangerous and harmful;
- (e) permitting a workplace environment that normalized and condoned the occurrence of sexual assault, harassment and gender-based discrimination;
- (f) 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, harassment and gender-based discrimination;
- (g) 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, harassment and gender-based discrimination;
- (h) intimidating and discouraging class members from reporting sexual assault, harassment and gender-based discrimination;
- (i) failing to investigate complaints of sexual assault, harassment and gender-based discrimination adequately, or at all;
- (j) failing to adjudicate complaints of sexual assault, harassment and gender-based discrimination adequately, or at all;
- (k) failing to act in a timely fashion to put a stop to incidents ~~of gender-based~~ sexual assault, harassment and gender-based discrimination;
- (l) systematically punishing, retaliating against, or threatening to retaliate against ~~victims~~ class members who complain of sexual assault, harassment and gender-based discrimination;

- (m) failing to apply appropriate consequences to perpetrators of sexual assault, harassment and gender-based discrimination; ~~and~~
- (n) failing to protect the plaintiffs and the class members from the continuation or re-occurrence of sexual assault, harassment and gender-based discrimination; and
- (o) failing to provide appropriate care and treatment for the plaintiffs and class members after they experienced sexual assault, harassment and gender-based discrimination.

84. The Canadian Armed Forces Leadership ~~defendant and its employees, agents, and servants~~ knew, or ought to have known, that the above conduct was of a kind reasonably capable of causing the damages alleged to have occurred.

85. The defendant is vicariously liable for the acts and omissions ~~its employees, agents, and servants~~ of the Canadian Armed Forces Leadership pursuant to sections 3 and 36 of the *Crown Liability and Proceedings Act*.

#### G. BREACH OF FIDUCIARY DUTY

86. The Canadian Armed Forces Leadership ~~defendant~~ 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.

87. By virtue of the relationship between the class members and the Canadian Armed Forces Leadership ~~defendant~~, being one of trust, reliance and dependency, the Canadian Armed Forces Leadership ~~defendant~~ 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.

88. The Canadian Armed Forces Leadership ~~defendant~~ was solely responsible for, among other things:

- (a) the standards set out in paragraph ~~58-82~~;
- (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.

89. The class members had a reasonable expectation that the Canadian Armed Forces Leadership ~~defendant~~ 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 ~~defendant~~ Canadian Armed Forces Leadership ~~and its employees~~ over the plaintiffs and other class members;
- (e) the unilateral assumption of responsibility for the care of the class members by the ~~defendant~~ Canadian Armed Forces Leadership; and
- (f) the dependence of the class members on the ~~defendant~~ Canadian Armed Forces Leadership.

90. Given the circumstances of the relationship between the Canadian Armed Forces Leadership ~~defendant~~ and the class members, including but not limited to its their statutory obligations and authority and control over the class members, the Canadian Armed Forces Leadership ~~defendant~~ 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 ~~defendant~~.

91. Furthermore, the Canadian Armed Forces Leadership ~~defendant's~~ repeated insistence throughout the class period that it ~~undertook a "zero tolerance" policy towards~~ had appropriate policies and procedures to prevent and address sexual assault, harassment and discrimination against women constituted an undertaking of responsibility to act in the best interests of the plaintiffs 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.

92. Likewise, in investigating complaints of sexual assault, harassment and gender-based discrimination, the Canadian Armed Forces Leadership ~~defendant~~ was required but failed to put the plaintiffs and the class members' interests ahead of the defendant's interests ~~of the plaintiff and the class members~~.

93. The class members were entitled to rely and did rely on the Canadian Armed Forces Leadership ~~defendant~~ to their detriment to fulfill their fiduciary obligations. As a result of their gender, the class members were particularly vulnerable to and at the mercy of, the ~~defendant's~~ discretion and power exercised by the Canadian Armed Forces Leadership.

94. The ~~defendant's~~ unilateral exercise of power and discretion by the Canadian Armed Forces Leadership impacted the class members' legal interests, including but not limited to career advancement, pre-existing legal entitlements to wages, pension benefits and other benefits arising from their employment, and the class members' fundamental human and personal interests. The ~~defendant's~~ discretion exercised by the Canadian Armed Forces Leadership also directly affected the degree of sexual assault, harassment and gender-based discrimination in the Canadian Armed Services as it was wholly within the scope of ~~the defendant's~~ that discretion to ensure that appropriate policies and procedures were in place.

95. The plaintiffs and the class members are particularly vulnerable and at the mercy of the Canadian Armed Forces. The plaintiffs and the class members' vulnerability arises directly from their relationship with the Canadian Armed Forces Leadership defendant. They served in a male-dominated culture and relied on leadership in the Canadian Armed Forces for their protection in preventing sexual assault, harassment and discrimination. All levels of leadership condoned and encouraged the sexualized and discriminatory culture which permeated the Canadian Armed Forces and failed to take appropriate steps to stop it. The Canadian Armed Forces Leadership defendant abused its power over the plaintiffs and the class members.

96. The Canadian Armed Forces Leadership defendant breached its fiduciary duties to the plaintiffs and the class. The particulars of the breach include the failures set out in paragraph 59 83 and:

- (a) burying or minimizing reported incidents of sexual assault, harassment and gender-based discrimination to protect the reputation of the military at the expense of ~~victims~~ class members;
- (b) putting the interests of the Canadian Armed Forces before the interests of the plaintiffs and the class;
- (c) improperly discriminating against the class members as a result of their gender; and
- (d) failing to safeguard the physical and psychological needs of the class members.

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

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

98. 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 sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*.

### i. Section 15 of the *Canadian Charter of Rights and Freedoms*

99. The Canadian Armed Forces condones, endorses, and perpetuates a sexualized environment that encourages sexual assault, harassment and gender-based discrimination that denies equal protection to women based on their sex.

100. In 1989, the Canadian Armed Forces began to permit some women to be employed in combat and other previously male-only roles. Nevertheless, this was discouraged and women who did enter combat and other male-dominated roles continue to struggle, in large part due to persisting systemic gender-based discrimination.

101. Systemic gender-based discrimination in the Canadian Armed Forces has resulted in a high rate of female attrition and has prevented women from obtaining higher ranks at the same rate as men. Fewer women are employed in combat roles, and fewer women are promoted to higher ranking positions than similarly qualified men.

102. The Canadian Armed Forces drew a formal distinction between members of the military based on sex, a personal characteristic of each class member. "Sex" is a ground of discrimination that is expressly prohibited by section 15(1) of the *Charter of Rights and Freedoms*.

103. The Canadian Armed Forces' failure to have in place or to implement appropriate policies and procedures concerning sexual harassment and assault and its officially sanctioned and *de*

*facto* discrimination against women denied equal protection to women in the Canadian Armed Forces.

104. Women have suffered historical disadvantage, stereotyping, marginalization and stigmatization within Canadian society and in particular within the Canadian Armed Forces. They are particularly vulnerable to sexual harassment, assault, and discrimination.

105. The differential treatment perpetuated by the defendant discriminated against the class members includes both imposing burdens and withholding benefits based on the class members' personal characteristics. Men receive benefits that women are denied. It also had the effect of perpetuating and promoting the view that women by virtue of their sex, were less capable and worthy of recognition and valued as human beings and as members of Canadian society. The differential treatment results in a culture which tolerates and condones serious incidents of sexual violence against women in the Canadian Armed Forces and punishes ~~victims~~ women when they report those incidents.

106. The Canadian Armed Forces violated the essential dignity and freedom of the class members through the direct imposition of disadvantage, stereotyping and social prejudice.

107. The failure to have in place or to implement appropriate policies and procedures concerning sexual harassment, assault and its officially sanctioned and *de facto* gender-based discrimination was arbitrary and was imposed without institutional justification. It had dire and demeaning consequences for those affected. It was exercised in bad faith and constituted an abuse of power.



108. The impact of the endemic sexual assault, harassment and gender-based discrimination in the Canadian Armed Forces constitutes systemic discrimination against women. The inexorable, cumulative effect on women in the Canadian Armed Forces is tremendously harmful.

109. There is no justifiable reason for the discrimination against women alleged herein.

ii. **Section 7 of the *Canadian Charter of Rights and Freedoms***

110. The defendant breached the plaintiffs' 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, harassment and gender-based discrimination;
- (b) permitting practices which denied employment training and advancement opportunities to the plaintiffs and the class members, on the basis of their gender;
- (c) failing to provide adequate, or any, training and education programs for Canadian Armed Forces employees regarding the dangerous and harmful nature of sexual assault, harassment and gender-based discrimination;
- (d) failing to make sufficient overall efforts to promote the universal understanding amongst all Canadian Armed Forces employees that sexual assault, harassment and gender-based discrimination are dangerous and harmful;
- (e) permitting a workplace environment that normalized and condoned the occurrence of sexual assault, harassment and gender-based discrimination;
- (f) 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, harassment and gender-based discrimination;
- (g) 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, harassment and gender-based discrimination;

- (h) intimidating and discouraging class members from reporting sexual assault, harassment and gender-based discrimination;
- (i) failing to investigate complaints of sexual assault, harassment and gender-based discrimination adequately, or at all;
- (j) failing to adjudicate complaints of sexual assault, harassment and gender-based discrimination adequately, or at all;
- (k) failing to act in a timely fashion to put a stop to incidents of sexual assault, harassment and gender-based discrimination;
- (l) systematically punishing, retaliating against, or threatening to retaliate against class members who complain of sexual assault, harassment and gender-based discrimination;
- (m) failing to apply appropriate consequences to perpetrators of sexual assault, harassment and gender-based discrimination;
- (n) failing to protect the plaintiffs and the class members from the continuation or re-occurrence of sexual assault, harassment and gender-based discrimination;
- (o) failing to provide appropriate care and treatment for the plaintiffs and class members after they experienced sexual assault, harassment and gender-based discrimination;
- (p) burying or minimizing reported incidents of sexual assault, harassment and gender-based discrimination to protect the reputation of the military at the expense of class members;
- (q) putting the interests of the Canadian Armed Forces before the interests of the plaintiffs and the class;
- (r) improperly discriminating against the class members as a result of their gender; and
- (s) failing to safeguard the physical and psychological needs of the class members.

111. 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 plaintiffs' and the class members' risk of sexual assault and harassment.

112. 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 DAMAGES REMEDIES**

113. In the circumstances, the plaintiffs 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.

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

115. 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**

116. The sexualized culture, pervasive gender-based discrimination and frequent, condoned and encouraged sexual harassment and assault in the Canadian Armed Forces created a toxic environment affected every female member.

117. The defendant knew, or ought to have known, that as a consequence of its actions described herein, the plaintiffs 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 plaintiffs and class members may advise prior to trial in this matter.

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

119. 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.

## J. PUNITIVE DAMAGES

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

121. Over a long period of time, the plaintiffs and the class members were treated in a manner that could foreseeably result in the damages suffered. The sexualized culture to which the plaintiffs and the class members were exposed to grossly, violated their rights and severely altered the paths of their lives.

122. The defendant's 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.

## K. QUEBEC LAW


123. 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 plaintiffs 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 plaintiffs and class

members, pursuant to the *Québec Charter*, s. 49 and the *Civil Code of Québec*, Art. 1621.

124. The plaintiffs proposes that this action be tried at Toronto, Ontario,

DATED at Toronto, this ~~7<sup>th</sup> day of December, 2016~~ April 5, 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.