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Jonathan Macena		
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Court File No.

FEDERAL COURT
PROPOSED CLASS PROCEEDING

Between

KAREN LIGHTBODY AND RAMA NARSING

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

Brought pursuant to the *Federal Courts Rules*, SOR/98-106

STATEMENT OF CLAIM

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. 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 defense in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, 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 defense is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defense is sixty days.

Copies of the *Federal Courts 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 Vancouver (telephone 604-666-3232) 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) October 29, 2021

Issued by: Jonathan Macena
(Registry Office)

Address of local office:
Pacific Centre
P.O. Box 10065
701 West Georgia Street
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TO: Her Majesty The Queen
 Department of Justice Canada
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 Vancouver, British Columbia
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I HEREBY CERTIFY that the above document is a true copy of
the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie confirmée
À l'original déposé au dossier de la Cour fédérale.

Filing Date

Date de dépôt : October 26, 2021

Dated

Fait le : October 29, 2021

Relief Sought

1. The plaintiffs claim on their own behalf and on behalf of Class Members (as described below):
 - a. an order certifying this action as a class proceeding and appointing Karen Lighbody and Rama Narsing as the representative plaintiffs under the *Federal Courts Rules*, SOR/98-106;
 - b. general damages plus damages equal to the costs of administering the plan of distribution;
 - c. special damages in an amount to be determined, including but not limited to past and future loss of income, medical expenses and out-of-pocket expenses;
 - d. punitive damages;
 - e. damages pursuant to the Canadian *Charter of Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11, s. 24(1) (the "*Charter*");
 - f. compensatory and punitive damages pursuant to *the Charter of Human Rights and Freedoms*, C.Q.L.R. c.C-12 and the *Civil Code of Québec*, C.Q.L.R. c. C-1991(the "*Québec Charter*");
 - g. damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F-3 and comparable legislation in other provinces and territories;
 - h. recovery of healthcare costs incurred by provincial and territorial health insurers on behalf of the plaintiffs and Class Members pursuant to the *Crown's Right of Recovery Act*, S.A. 2009, c.C-35 and the *Health Administration Act*, R.S.S. 1978, c. H-0.0001, and comparable legislation in other provinces and territories;
 - i. pre-judgment and post-judgment interest;
 - j. costs; and
 - k. such further and other relief as this Honourable Court may deem just.

Nature of this Action

2. This action concerns systemic racism by the Department of National Defence (“DND”) on the basis of race, ethnic or national origin, colour or religion, directed at racialized persons who work, or worked, for or with the DND.

3. This action is brought on behalf of the civilians who have devoted their careers to helping defend their country, only to be harassed, belittled, and discriminated against because of their race, ethnic or national origin, colour or religion. The plaintiffs, in working for the DND, sought to uphold human rights and eschew interference with justice and human dignity. They were prevented from doing so because the organization they worked for failed to prevent, investigate, address, and protect them from the very same injustice.

4. The Class (to be defined by the Court) is intended to include all racialized individuals who are, or were, employees of the DND, including all public services employees appointed under the *Public Service Employment Act* and all employees of the Staff of Non-Public Funds, Canadian Forces (“Class Members”).

5. The Class also includes all individuals who, by reason of a relationship with a Class Member, are entitled to assert a claim pursuant to the *Family Law Act*, R.S.O. 1990 c. F.3, or equivalent or comparable legislation in other provinces and territories (“Family Members”).

6. The plaintiffs allege that they and fellow racialized Class Members were subjected to racism and racist acts by the DND and non-racialized DND management and staff. The plaintiffs allege that the DND and its management breached the constitutional rights of the plaintiffs and Class Members to serve their country in an environment free of racism.

7. This conduct was not a matter affecting Class Members’ terms and conditions of employment and was not an accident arising out of and in the course of Class Members’ employment.

8. Moreover, there were systemic issues with the internal dispute procedure, processes, and mechanisms at the DND. The defendant failed to provide an effective, adequate, or reasonable remedy or internal mechanism within DND that would allow Class Members to report incidents including racism and racist acts, directed at racialized persons. The defendant also failed to

provide an effective, adequate, or reasonable remedy or internal mechanism within DND to address Class Members' complaints or grievances.

9. The internal grievance structure in the DND provided ineffective relief to Class Members. The structure is based on a 'chain of command.' Those individuals at the top of the 'chain' abused their power by insulating wrong-doers and isolating victims. Those individuals either perpetrated the impugned conduct or protected the perpetrators, thus promoting and normalizing a culture of racism at the DND. All grievances filed under this process were improperly and inadequately handled by the DND and were routinely, consistently, and unreasonably held to be unfounded.

10. The DND's internal processes were also not equipped to provide redress or compensation for those Class Members whose career paths were negatively impacted by the racism they experienced within the DND.

11. As a result of the institutional racism towards racialized Class Members, the plaintiffs and Class Members have suffered serious infringement of their constitutional rights to equality, as well as serious physical and psychological damages, out-of-pocket expenses and loss of income.

The Parties

12. The plaintiff, Karen Lightbody, was at all material times a civilian employee of the DND. Ms. Lightbody is an Indigenous woman; she is Sayisi Dene First Nation on her mother's side, and her father's family is from Northern Ireland. Ms. Lightbody is a first-generation residential school survivor. At material times, she held the rank of CS-01 to CS-02 for the Computer Systems group and Acting PE-04 as the Indigenous Desk Officer on the Employment Equity, Diversity & Inclusion team in Ottawa. Ms. Lightbody has also acted as the National Civilian Co-Chair for the Defence Aboriginal Advisory Group. She resides in the Province of British Columbia.

13. The plaintiff, Rama Narsing, was at all material times an employee of the DND. Ms. Narsing is an Indian woman of Hindu heritage. She immigrated to Canada in April 1981, coming from Zimbabwe. At material times, she held the rank of AS-05 in the Administrative Services group. She resides in the Province of British Columbia.

14. The defendant, Her Majesty the Queen, represents the Crown and the DND in this proceeding pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, s 23 (the

“*Crown Liability Act*”). The Crown’s liability arises from the conduct, malfeasance, and vicarious liability of the DND and individuals who were at all material times Crown employees, agents and servants.

The DND and Racialized Members

15. The DND, and its predecessor organizations, were founded in 1923. The DND is made up of civilians, families, and Non-Public Funds employees. There are over 24,000 civilian employees of the DND. The department is the largest governmental department in Canada in terms of budget and has almost 7,000 buildings in Canada.

16. The DND works with the Canadian Armed Forces (“CAF”) under the umbrella of “National Defence”. The DND is a civilian organization which supports the CAF, including the Navy, the Army, the Air Force, and Special Forces. Under this structure, military members report to DND employees, and *vice versa*. While the two organizations interact, the DND operates as a separate administrative entity from the CAF.

17. The DND is not a part of the military, but it operates – along with the CAF – in a closed military system. The organizations share a code of values and ethics, and the DND maintains compliance with this code. Complaints go through the organizational chain-of-command. The DND investigates breaches of this code, and the Minister of National Defence is briefed on complaints regarding breaches of this code. Further the Minister of National Defence receives letters from the National Defence and Canadian Forces Ombudsman (“Ombudsman”) on individual and systemic racism in both organizations and is called upon to address the topic.

18. Racialized individuals are heavily outnumbered in the DND. In 2017, visible minorities accounted for approximately 8% of the workforce at the DND. In 2020, visible minorities accounted for approximately 10% of the workforce – the highest proportion of visible minorities in the history of the DND. In the same year, the Assistant Deputy Minister (Review Services) acknowledged that visible minorities are underrepresented within the organization.

19. The DND and its predecessor organizations (the Department of Militia and Defence, the Department of Naval Services, and the Air Board) have a long history of racial and ethnic discrimination, harassment and bullying, against racialized minorities inside and outside its ranks.

For example, in July 1940, the Minister of National Defence was questioned about recruitment of black CAF members, to which the Minister responded that black people were “illiterate, flat-footed and barbarian people who cannot be disciplined, who will run at the first sound of a rifle or the first sight of the enemy's bayonet.” The Minister of National Defence (Air) was also questioned about the air force regulations that only people of “pure and European” descent could enlist. He did not consider this to be a discriminatory policy. The DND denied the existence of exclusionary practices.

20. This culture of denial regarding racism continued into the 2000s and to this day. The few times the DND has addressed racism, it has focused on the actions of individuals. The focus on individual wrongdoing does not address systemic issues stemming from the organizational structure of the DND. By solely focusing on individuals, the leaders at the DND have failed to address their role in enabling systemic racism.

21. The focus on individuals is also problematic because the DND shares the same military structure and culture as the CAF. That is, the DND are part of a construct that serves to order military personnel in specific ways, which fosters the creation of social hierarchies within the organization. This culture demands a high level of conformity to the dominant, white culture. Racialized individuals who do not conform to this dominant culture cannot rise through the hierarchy of the organization. Complaints of discriminatory, harassing, or abusive behaviour are ignored because addressing these complaints represents a different value than the organization exudes. In effect, bad actors are insulated and victims are silenced.

22. Moreover, systemic problems are more often identified and addressed in the CAF than in the DND. CAF membership is approximately five times larger than that of the DND. As a result, the DND is often overlooked in many respects. For example, many employees of the DND have not had their job reviewed for over five years, despite a Treasury Board policy requiring five-year job reviews. Job descriptions are also often out-of-date and do not reflect the work involved. This lack of oversight facilitates widespread racially targeted behaviour within the DND.

23. Various government reports and letters have identified a failure to prevent racism within the DND. Employees at the DND do not commonly understand what diversity and inclusion entails, its objectives, outcomes, and indicators of success, such as preventing prohibited grounds

of discrimination based on race. The DND also lacks clear and consistent direction and guidance from senior management to address racism in the workforce.

24. The few investigations into racism at the DND have been limited in scope. They have focused on anti-Indigenous and anti-Black racism, without regard for any other racial or ethnic minorities. For example, despite evidence of white supremacists and neo-Nazi group members employed in National Defence, the department has stated they are not investigating instances of anti-Semitism within the DND.

25. When the Minister of National Defence is informed of systemic racism within the DND, their approach has been to ignore it, or worse, to disrupt the investigation. For example, in 2020 the Minister directed the Ombudsperson to discontinue its investigation into racism at both the DND and the CAF, after only 5 months.

26. The Ombudsperson has repeatedly called for more independence and a recourse mechanism which is not impeded by interference from the DND. Every acting Ombudsperson since 1998 – when the Ombudsman office was established – has concluded that the existing complaint structure is insufficient to address systemic problems. They have highlighted the DND's administrative interference with the Ombudsman office's investigations and instances of personal and institutional reprisal.

27. Despite the perseverance and sacrifice of the plaintiffs and of other Class Members like them to overcome the barriers erected against them by DND management and staff, the DND has actively discriminated against the plaintiffs and Class Members on the basis of their apparent colour, race, religion, ethnic or place of origin, and permitted racism and racist acts directed at Class Members. Through harassment, bullying, and outright rejection based on Class Members' apparent colour, race, ethnic origin, place of origin or religion, the DND has deliberately harmed Class Members.

28. The DND finally acknowledged the existence of systemic racism in the organization in June 2020, via the Deputy Minister of National Defence's Twitter account.

The Plaintiffs' Experience

29. The plaintiff, Karen Lightbody, worked as a civilian employee for the DND from 1985 until 2020. From the beginning of her career and throughout, Ms. Lightbody's experience was marred by instances of racially-based harassment, bullying, and discrimination, from colleagues, subordinates, supervisors and managers, both military and civilian.

30. Ms. Lightbody was originally hired as a Custodian at CFB Calgary in 1985 and was shortly transferred to the Kitchen Help staff. In 1988, she relocated to 4 Wing Cold Lake, Alberta, where she remained for 8 years. During this time, Ms. Lightbody frequently heard racially charged comments from DND employees, including supervisors and managers. For example, Ms. Lightbody remembers comments such as "the Indians never get mouth cancer because they spit all the time", that she was the "lowest man on the totem-pole", and that there were "too many Chiefs, not enough Indians".

31. In 1993, Ms. Lightbody enrolled in the Business Administration – Computer Science program from Lakehead College. While completing her 2-year diploma, Ms. Lightbody began working at the DND's Telecommunication and Information Services at 4 Wing Cold Lake. Ms. Lightbody's supervisor informed her that there was a Computer Science position opening soon, and that she should apply after she completed her studies; the 2-year diploma was a pre-requisite to apply and be hired in the Computer Science group pursuant to DND policies. In 1994, Ms. Lightbody was informed that the DND hired a Caucasian person to fill the role. That employee had only completed a 6-month course on Computer Science – he did not have the pre-requisites to apply for, or be hired in, this position.

32. In 1995, Ms. Lightbody was hired in the Computer Science group as a CS-01 at the 4 Wing. While working as a CS-01, Ms. Lightbody experienced the following:

- The military Captain of her unit stated about his assignment "Not too bad, except for all those fucking Indians!"
- The Officer in Charge (OC) of Ms. Lightbody told her that she would not excel in the DND because she is Aboriginal. When asked to elaborate, the OC said he didn't "feel there was any explanation needed".

- A colleague at the DND told her and her peers that “all those stupid Indians just leave their grocery carts in the parking lot and it causes damage to my vehicle and other vehicles in the parking lot”.
- The Technology Information Services Branch Chief Warrant Officer said that all Indigenous people consume large quantities of alcohol.

33. Ms. Lightbody was hired as the Network Manager of the Aerospace Engineering Test Establishment (“AETE”) at 4 Wing in 2006. While working at AETE, Ms. Lightbody experienced the following:

- A colleague told a co-worker that her daughter was “dating one of those Indians” while making eye contact with Ms. Lightbody and suggested that all Indigenous people live in filth and squalor.
- Ms. Lightbody complained about the name of the AETE annual hockey game called the “Chiefs vs. Indians”. After the name changed, Ms. Lightbody was labelled a ‘problem worker’ and her colleagues isolated her.

34. In 2010, Ms. Lightbody relocated to the office at 19 Wing Comox. While there, she experienced the following:

- Various employees told her that the only reason she obtained her job was because she was Indigenous – she was a ‘token’ employee.
- When driving past a group of homeless people, a colleague told Ms. Lightbody, “why don’t you go back to the reservation?”, gesturing towards the people.
- A colleague told a group of co-workers that Lucky Beer is cheap, and “all Natives drink it because it’s so cheap”.
- When co-workers would eat lunch in the cafeteria, Ms. Lightbody often heard derogatory remarks about ‘Indians’. Eventually, she stopped going to the cafeteria and would eat lunch alone in her office.
- A co-worker who misplaced a loaned phone said that he returned it to “the Native woman in the office.” Ms. Lightbody was the only Indigenous person who worked in the office at that time. Later, this person’s supervisor concluded that he misplaced the phone

and tried to blame it on Ms. Lightbody. The employee did not apologize and was not reprimanded.

35. Ms. Lightbody also volunteered as the National Civilian Co-Chair for the Defence Aboriginal Advisory Group (“DAAG”). Ms. Lightbody endured pushback from the leadership at the DND. On multiple occasions, she was told that purchasing tobacco for smudging ceremonies during the National Aboriginal Day and Aboriginal Awareness Week is a “misuse of funds”. Ms. Lightbody was also told that paying for Indigenous Elders to attend the events was too costly, despite the events requiring less money than similar presentations put on by other groups.

36. Many Indigenous employees also recounted to Ms. Lightbody their personal experiences of racism within the DND, including widespread fear of retaliation for speaking out. One employee mentioned that they thought the name of a recreational area at DND, “Teepee” park, was inappropriate. Ms. Lightbody asked DND leadership to rename it. The area was not renamed; it is still called “Teepee” park.

37. Around 2020, the Assistant Deputy Minister of National Defence (“ADM”) spoke at a virtual event over Zoom to DND employees. The ADM stated that anyone who was experiencing issues regarding racism could speak to him directly. Ms. Lightbody informed her supervisor that she wanted to speak with the ADM and shared some of the examples of racism above. She requested this multiple times. Ms. Lightbody did not hear back from the ADM nor her supervisor.

38. This was extremely disappointing to Ms. Lightbody, and when considering all the racist acts to which she had been subjected and the lack of action she had faced, Ms. Lightbody made the difficult decision to leave the DND. Ms. Lightbody’s last day of work was August 19, 2020. She had expected to receive recognition from her ‘home unit’ - the Computer Science group at 19 Wing Comox - of her 33 years of dedication and service to the organization, even if only to recognize her being awarded the Queen Elizabeth II Diamond Jubilee Medal for her ‘significant contributions and achievements’ in serving her country. Caucasian employees typically received a card, and/or a farewell service from their home units. Ms. Lightbody did not receive either of those.

39. Although Ms. Lightbody worked diligently throughout her career, had obtained more education than her peers, received outstanding performance reviews, was awarded with the Queen Elizabeth II Diamond Jubilee Medal, received multiple Letters of Appreciation from other units at the CAF and the DND, took on more responsibility throughout her time at the DND, and continually sought advancement opportunities, she was never considered for promotion. Meanwhile, non-racialized employees climbed the ranks despite not having the requisite education to do so. Ms. Lightbody never received credit for her hard work from the units she worked for at the DND.

40. The experiences Ms. Lightbody endured while working at the DND caused her to experience extreme stress and fear. Ms. Lightbody has never felt she could express her ‘whole self’ at the DND. She always felt pressure to ‘fit in’ with the dominant culture at the DND. In 2016, Ms. Lightbody went on extended leave arising from stress as she was afraid of her colleagues who exhibited racist behaviour. Ms. Lightbody consulted a psychologist who suggested she remain on long term disability due to her mental health.

41. The plaintiff, Rama Narsing, worked as a civilian employee for the DND from July 2005 until March 2019. Ms. Narsing experienced racially-based taunts and harassment, and was discriminated against on the basis of her race and ethnic heritage.

42. Ms. Narsing was originally hired as the AS-05 Internal Audit Manager at the DND 19-Wing in July 2005. Ms. Narsing had made a lateral transfer from her previous position as an FI-02 Financial Planning and Analysis Manager with Health Canada, Pacific Region.

43. Shortly after her start at the DND, Ms. Narsing was singled out and isolated based on her race. She often overheard colleagues refer to her as “that Paki” or the “brown bitch”. When Ms. Narsing requested assistance with tasks, her requests were denied and she was told to complete her tasks on time. Non-racialized employees, however, were often granted assistance or extra time to complete onerous tasks.

44. The DND has recently made token efforts at addressing racism within the workplace, for example having once-a-year equity events. Ms. Narsing’s managers told her those events were a waste of time and refused to attend the events with comments such as “I don’t like curry”.

45. Ms. Narsing was consistently passed over for promotion and endlessly hampered from 2005 to 2019. Ms. Narsing requested to fill multiple vacant positions, but was denied without reason or was told there was no budget for new hires – even though the 19-Wing employed new hires throughout Ms. Narsing’s time there. She was continuously prevented from advancing in her career despite seeking advancement opportunities. She was professionally stifled, and as a result, felt dejected. Moreover, she feared reprisals for speaking out about this.

46. Having immigrated from Zimbabwe in the 1980s –an apartheid era led by colonial government - Ms. Narsing was particularly fragile in the face of racism. She expected coming to Canada to be a fresh start. Unfortunately, it was a return to her nightmare – the DND was an abhorrent environment. As a result of her time at the DND, Ms. Narsing experiences low self esteem, anxiety, and suicidal ideations. She has taken several leaves of absences and has attended counselling sessions through the Employee Assistance Program.

47. Due to the culture of racism in the DND, the plaintiffs and the Class Members were ostracized, demeaned, and humiliated, and their career advancement prospects limited.

48. This conduct did not amount to ordinary workplace disputes, arising out of and/or in the course of Class Members’ employment. Racism and racists acts are not workplace disputes. This conduct was systemic, pervasive, persistent and widespread.

49. The plaintiffs were unable to bring an action in respect of their injury, damage or loss as a consequence of the symptoms of depression and anxiety that they suffered because of ongoing racism by individual non-racialized Members and management of the DND. The plaintiffs could not reasonably have brought an action prior to this time, when their psychological state has progressed to the point where they finally have the mental fortitude to pursue a claim and when the public scrutiny arising from the “Me, too” and “Black Lives Matter” movements have made it slightly safer to do so.

Systemic Negligence

50. At all material times, the Crown, by virtue of its control over and operation of the DND, and individuals who were DND management and staff, owed a duty of care to the plaintiffs and

other Class Members to ensure that they could work in an environment free of racism. Specifically, the Crown, the DND, and individuals who were DND management and staff had a duty to:

- a. have in place management and operations procedures that would reasonably prevent racism and racist acts in the DND workplace;
- b. take reasonable measures in the operation or management of the DND to protect the plaintiffs and other Class Members from racism and racist acts, by management and staff of the DND;
- c. adequately, properly and effectively supervise the DND work environment and management and staff of the DND;
- d. use reasonable care in assuring the safety, well-being and protection of the plaintiffs and other Class Members;
- e. establish, implement and enforce appropriate policies, procedures, codes of conduct, guidelines and standards of conduct for management and staff of the DND to ensure that these individuals did not injure or endanger the well-being of the plaintiffs and other Class Members;
- f. provide a complaint procedure through which complaints of racism and racist acts would be recognized, reported and pursued with due diligence and in a timely manner without endangering the safety of the plaintiffs and other Class Members and without risking retaliatory consequences against them;
- g. punish, suspend, or terminate – as appropriate – those individuals who breach the policies, procedures, codes of conduct, guidelines and standards of conduct above in a thorough, timely, impartial and effective manner;
- h. allow and review investigations and reports from the Ombudsman addressing systemic racism, racially motivated discrimination, harassment and bullying within the DND;
- i. properly vet and screen management and staff of the DND;

- j. provide the plaintiffs and other Class Members with equal access to files, meetings, tasks and opportunities as compared to their non-racialized colleagues; and,
- k. educate and train management and staff of the DND to promote a universal understanding that racism and racist acts in the workplace are harmful and will not be tolerated.

51. The Crown, the DND, and individuals who were DND management and staff negligently breached the duty of care they owed to the plaintiffs and other Class Members by, among other things:

- a. failing to have in place management and operations procedures that would reasonably prevent racism and racist acts in the DND workplace;
- b. failing to take reasonable measures in the operation or management of the DND to protect the plaintiffs and other Class Members from racism and racist acts by management and staff of the DND;
- c. failing to adequately, properly or effectively supervise the DND work environment and management and staff of the DND;
- d. failing to use reasonable care in assuring the safety, well-being or protection of the plaintiffs and other Class Members;
- e. failing to establish, implement or enforce appropriate policies, procedures, codes of conduct, guidelines or standards of conduct for management and staff of the DND to ensure that they did not injure or endanger the well-being of the plaintiffs and other Class Members;
- f. failing to provide a complaint procedure through which complaints of racism and racist acts would be recognized, reported and pursued with due diligence and in a timely manner without endangering the safety of the plaintiffs and other Class Members and without risking retaliatory consequences against them;

- g. failing to punish, suspend, or terminate – as appropriate – those individuals who breach the policies, procedures, codes of conduct, guidelines and standards of conduct above in a thorough, timely, impartial and effective manner;
- h. failing to adequately investigate complaints of racial discrimination and harassment in a thorough, timely, impartial, and effective manner;
- i. failing to properly vet or screen management and staff of the DND;
- j. failing to provide the plaintiffs and other Class Members with equal access to files, meetings, tasks or opportunities as compared to their non-racialized colleagues;
- k. failing to educate and train management and staff of the DND to promote a universal understanding that racism and racist acts in the workplace are harmful and will not be tolerated;
- l. creating an environment which encouraged or fostered silence and obedience when racism and racist acts occurred;
- m. ignoring and/or impeding investigations and reports from the Ombudsman addressing systemic racism, racially motivated discrimination, harassment and bullying within the DND;
- n. making derogatory comments about the plaintiffs' and Class Members' race, ethnic or national origin, religion and/or colour; and,
- o. perpetuating racial and ethnic stereotypes.

52. As a result of the Crown's, the DND's, and DND management and staffs' negligent conduct, the plaintiffs and other Class Members suffered mental and physical injury, particularized below. The Crown, the DND, and DND management and staff knew, or ought to have known, that the negligent acts described above were of a kind reasonably capable of traumatizing a normal person and that the plaintiffs and other Class Members would suffer damages as a result.

53. Further, the Crown is vicariously liable for the acts and omissions of the individuals who were DND management and staff, who were at all material times the Crown's servants. The Crown

knew about the presence and prevalence of racism and racist acts within the DND and failed to take corrective action.

54. The Crown failed to provide an effective, adequate, and reasonable internal reporting mechanism and grievance process. The Crown allowed the wrong-doers to repeatedly engage in their conduct, and the Crown condoned and encouraged this by failing to condone it or punish the wrong-doers. In turn, this led Class Members to believe that they should expect to be bullied, harassed, assaulted, and discriminated against on the basis of race, ethnic or national origin, colour or religion and face retribution if they speak out against such conduct.

55. The conduct which the individuals who were DND management and staff directed toward the plaintiffs and other Class Members was repetitive and extreme and were intended to harass and harm them. As a result of this conduct, the plaintiffs and other Class Members suffered psychological, emotional and physical injury, particularized below. The individuals who were DND managers and staff knew or ought to have known that their conduct was of a kind reasonably capable of harming a normal person.

Breach of the *Canadian Charter of Rights and Freedoms* and the *Québec Charter*

56. The Crown, the DND, and the DND management and staff breached the plaintiffs' and Class Members' right to be free from discrimination on the basis of race, ethnic or national origin, colour and religion as provided in s. 15 of the *Charter* and s. 10 and s.10.1 of the *Québec Charter* by engaging in the conduct as set out above.

57. These infringements of s. 15 of the *Charter* cannot be justified under s. 1. The infringements were not prescribed by law, did not further any objective which was pressing nor substantial, were not rationally connected to any carefully designed objective, and impaired the rights and freedoms of the plaintiffs and Class Members to a such marked degree that any possible benefits were heavily outweighed by the infringements of rights and freedoms. There is no real, pressing and substantial benefit to society arising from the breaches of s. 15.

58. In addition, the *National Defence Act*, S.C. 1992, c. 20 and its regulations were applied unequally, unfairly and improperly by the DND and its management with respect to the plaintiffs and Class Members on the basis of enumerated grounds under the *Charter*, s. 15 and under the

Québec Charter, s. 10, on a discriminatory basis, namely on the basis of race, ethnic or national origin, colour and religion.

59. Damages should be awarded pursuant to section 24 of the *Charter* and section 49 of the *Québec Charter* as they are just and appropriate (i) to provide compensation that might not otherwise be awarded to the plaintiffs and to the Class Members, (ii) to vindicate the plaintiffs, the Class Members and society at large for the harm caused by the DND's violation of section 15 of the *Charter* and sections 10 and 10.1 of the *Québec Charter* and (iii) to deter future breaches.

Injury and Damage

60. As a result of the wrongdoing of the Crown, the DND, and its management and staff, the plaintiffs and the Class Members have sustained serious injuries and consequences, including:

- a. post-traumatic stress disorder;
- b. physical, psychological and/or emotional harm or distress;
- c. diminished self-worth;
- d. diminished ability to concentrate;
- e. repeated and ongoing nightmares;
- f. depression;
- g. anxiety;
- h. difficulty in coping with emotional stress;
- i. suicidal ideation;
- j. attempted suicide;
- k. feelings of guilt, responsibility, and self-blame;
- l. nervous shock;
- m. mental anguish;
- n. insomnia;
- o. irritable bowel syndrome;
- p. failed relationships;
- q. substance and alcohol abuse;
- r. career limitations or loss of promotional opportunities;
- s. losses due to early retirement;

- t. losses due to any impact on pension amount and/or entitlement;
- u. loss of consortium; and
- v. loss of enjoyment of life.

61. These injuries have caused and continue to cause the plaintiffs and the Class Members pain, suffering, loss of enjoyment of life, permanent disability, loss of physical, mental and emotional health and loss of income, past and prospective.

62. These injuries aggravated or exacerbated other injuries of the plaintiffs and the Class Members such that they are indivisible.

63. As a further result of the breaches of the Crown, the DND, and the DND management and staff, the plaintiffs and the Class Members have sustained special damages and loss and expenses for medical and psychological treatment. The plaintiffs and the Class Members continue to undergo medical and psychological care and treatment and continue to incur loss and expense.

64. As a result of the wrongdoing of the Crown, the DND, and DND management and staff, Family Members have also sustained and will continue to sustain injury, loss and damages, including but not limited to:

- a. actual expenses reasonably incurred for the benefit of Class Members;
- b. travel expenses incurred while visiting Class Members during medical procedures and/or counselling and/or recovery; and,
- c. loss of income and/or the value of services provided by Family Members to Class Members, where such services, including nursing and housekeeping have been provided.

65. Family Members seek compensation for the costs set out above as well as compensation for loss of support, guidance, consortium, care and companionship that they might reasonably have expected to receive from Class Members.

Punitive Damages

66. A punitive damage award in this case is necessary to express society's condemnation of the conduct engaged in by the Crown, the DND, and its management and staff, and to achieve the goals of both specific and general deterrence.

67. The actions described above of the Crown, the DND, and DND management and staff were reckless, arrogant, high-handed, wanton, willful, reprehensible, vindictive, retaliatory, malicious and abusive and showed a callous disregard for the rights of the plaintiffs and the Class Members. The conduct of the Crown, the DND, and DND management and staff was deliberate, lasted for many years and represented a marked departure from ordinary standards of decent behaviour.

68. Compensatory damages are insufficient in this case. The conduct of the Crown, the DND, and its management and staff merits punishment and warrants a claim for punitive damages.

Provincial Health Insurers

69. As a consequence of the conduct of the Crown, the DND, and DND management and staff, as set out above, provincial and territorial health insurers have incurred expenses with respect to the medical treatment of the plaintiffs and the Class Members. Accordingly, provincial and territorial health insurers have suffered, and will continue to suffer, damages including the ongoing medical treatment of the plaintiffs and the Class Members, for which they are entitled to be compensated by virtue of their subrogated and direct rights of action in respect of all past and future insured services.

70. This action is maintained on behalf of the provincial and territorial health insurers. The plaintiffs plead the following provincial and territorial statutes, as amended, in support of a claim for recovery of health care costs incurred by provincial and territorial governments:

- a. *Health Care Cost Recovery Act*, S.B.C. 2008, c. 27;
- b. *Medicare Protection Act*, R.S.B.C. 1996, c. 286;
- c. *Pharmaceutical Services Act*, S.B.C. 2012, c. 22;
- d. *Hospital Act*, R.S.A. 2000, c. H-12;
- e. *Crown's Right of Recovery Act*, S.A. 2009, c. C-35;
- f. *The Health Administration Act*, R.S.S. 1978, c. H-0.0001 (formerly known as the *Department of Health Act*)
- g. *Health Services Insurance Act*, C.S.S.M., c. H35;

- h. *Health Insurance Act*, R.S.O. 1990, c. H.6;
- i. *Home Care and Community Services Act*, 1994, S.O. 1994, c. 26;
- j. *Health Services Act*, R.S.N.B. 1973, c. H-3;
- k. *Medical Services Payment Act*, R.S.N.B. 1973, c. M-7;
- l. *Hospital Services Act*, R.S.N.B. 1973, c. H-9;
- m. *Family Services Act*, S.N.B. 1980, c. F-2.2;
- n. *Hospital and Diagnostic Services Insurance Act*, R.S.P.E.I. 1988, c. H-8;
- o. *Health Services Payment Act*, R.S.P.E.I. 1988, c. H-2;
- p. *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197;
- q. *Hospital Insurance Agreement Act*, R.S.N. 1990, c. H-7;
- r. *Medical Care and Hospital Insurance Act*, S.N.L. 2016, c. M-5.01;
- s. *Hospital Insurance and Health and Social Services Administration Act*, R.S.N.W.T. 1988, c. T-3;
- t. *Hospital Insurance and Health and Social Services Administration Act*, R.S.N.W.T. (Nu) 1988, c. T-3;
- u. *Medical Care Act*, R.S.N.W.T. (Nu) 1988, c. M-8;
- v. *Health Insurance Act*, C.Q.L.R. c. A-29; and
- w. *Hospital Insurance Act*, R.S.Q., c. A-28.

Legislation

71. In addition to the statutes set out above, the plaintiffs plead *inter alia* the following, as amended, on behalf of themselves and the Class Members:

- a. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11;
- b. *Charter of Human Rights and Freedoms*, C.Q.L.R. c. C-12;
- c. *Civil Code of Québec*, C.Q.L.R. c.C-1991;
- d. *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50;
- e. *National Defence Act*, R.S.C. 1985, c N-5;
- f. *Family Compensation Act*, R.S.B.C. 1996, c 126;
- g. *Fatal Accidents Act*, R.S.Y. 2002, c 86;
- h. *Fatal Accidents Act*, R.S.A. 2000, c F-8;
- i. *The Fatal Accidents Act*, R.S.S. 1978, c F-11;
- j. *Fatal Accidents Act*, S.Nu. 20 10, c 14;
- k. *The Fatal Accidents Act*, C.C.S.M. c FS0;
- l. *Family Law Act*, R.S.O. 1990, c F 3;
- m. *Fatal Accidents Act*, R.S.N.L. 1990, c F-6;
- n. *Fatal Accidents Act*, R.S.N.B. 2012, c 104;
- o. *Fatal Injuries Act*, R.S.N.S. 1989, c 163;
- p. *Fatal Accidents Act*, R.S.P.E.I. 1988, c F-5;
- q. *Survival of Actions Act*, R.S.A. 2000, c S-27;
- r. *The Survival of Actions Act*, S.S. 1990, c S-66.1;
- s. *Survival of Actions Act*, R.S.N.S. 1989, c 453;
- t. *Survival of Actions Act*, R.S.N.B. 2011, c 227;
- u. *Survival of Actions Act*, R.S.P.E.I. 1988, c S-11; and

v. *Survival of Actions Act*, R.S.N.L. 1990, c S-32.

Place of Trial

The plaintiffs propose that this action be tried at the City of Vancouver in the Province of British Columbia.

Date: October 26, 2021



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