

FEDERAL COURT
PROPOSED CLASS PROCEEDING

BETWEEN:

SHARLENE HUDSON AND BRINDA WILSON-DEMUTH

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

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

AMENDED 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 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)

Issued by: _____
(Registry Officer)

Address of local office
Pacific Centre
PO Box 10065
701 West Georgia Street
Vancouver, BC V7Y 1B67

TO: Her Majesty the Queen
Department of Justice Canada
900 – 840 Howe Street
Vancouver, BC V6Z 2S9

Relief Sought

1. The plaintiffs, Sharlene Hudson and Brinda Wilson-Demuth, claim on their own behalf and on behalf of a proposed class of female current and former employees of the Correctional Service of Canada (“Class” or “Class Members”, to be further defined in the plaintiffs’ application for certification):

- a. an order certifying this action as a class proceeding and appointing Sharlene Hudson and Brinda Wilson-Demuth as representative plaintiffs under the *Federal Courts Rules*, SOR/98-106;
- b. a declaration that the defendant was systemically negligent in failing to have in place management and operations procedures that would reasonably have prevented gender based harassment, discrimination, assault, retaliation, and reprisals in the Correctional Service of Canada workplace;
- c. a declaration that the defendant was systemically negligent in failing to have in place effective, adequate, and reasonable internal dispute resolution processes and mechanisms within the Correctional Service of Canada to address complaints of gender based harassment, discrimination, assault, retaliation, and reprisals in the workplace;
- d. a declaration that the defendant breached Class Members’ section 7 and 15 rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11;
- e. with respect to Class Members in Quebec, a declaration that the defendant breached the *Charter of Human Rights and Freedoms*, CQLR c C-12;
- f. general damages plus damages equal to the costs of administering the plan of distribution;
- g. 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;
- h. exemplary and punitive damages;

- i. 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 (UK)*, 1982, c 11, s 24(1);
- j. punitive damages pursuant to the *Charter of Human Rights and Freedoms*, CQLR c C-12 and the *Civil Code of Quebec*, CQLR c C-1991;
- k. recovery of health care costs incurred by provincial and territorial health insurers on behalf of the plaintiffs and Class Members pursuant to the *Health Care Costs Recovery Act*, SBC 2008, c 27 and comparable legislation in the other provinces and territories;
- l. damages pursuant to the *Family Law Act*, RSO 1990 c F-3 (the “*FLA*”) and comparable legislation in other provinces and territories;
- m. pre-judgment and post-judgment interest;
- n. costs; and
- o. such further and other relief as this Honourable Court may deem just.

Nature of this Action

2. This action concerns gender based harassment, ~~and~~ discrimination and assault within the Correctional Service of Canada (“CSC”), an agency within the Public Safety Portfolio of the government of Canada that operates pursuant to the *Corrections and Conditional Release Act*, SC 1992, c 20 and its predecessor legislation.

3. The impugned conduct was directed at female employees in the CSC workplace and included persistent, widespread, and pervasive gender based harassment, discrimination, sexual assault, sexual violence, threats of sexual violence, retaliatory abuse and physical assault in the course of conduct constituting harassment.

4. The sexualized harassment, ~~and~~ discrimination, assault and violence complained of was systemic. It was perpetrated by CSC employees and management and occurred over several decades in CSC workplaces throughout Canada, including at CSC’s correctional institutions,

administrative offices, parole offices, community correctional centres and at National and Regional Headquarters. The toxic, misogynistic culture at CSC is a product of its para-militaristic, hierarchical structure.

5. The impugned 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.

6. In the alternative and in any event, there were systemic issues with the internal dispute resolution processes and mechanisms within CSC. There was no effective, adequate, or reasonable legislative remedy or internal mechanism within CSC through which Class Members could report incidents of sexual violence, threats of sexual violence, sexual assaults, sexual harassment, gender based discrimination, physical assaults and reprisals. Neither was there an effective, adequate, or reasonable legislative remedy or internal mechanism within CSC to address Class Members' complaints of or grievances related to the impugned conduct.

7. The internal recourses were ineffective because they were dependent on the "chain of command", comprised of individuals who abused their power and who were either responsible for the offending behaviour or who acted to protect other perpetrators, thus perpetuating the toxic misogynistic culture of CSC and thus normalizing and condoning sexual violence, threats of sexual violence, sexual assaults, sexual harassment, gender based discrimination, physical assaults and reprisals. Any grievances that were filed were improperly and inadequately investigated by CSC and were routinely, consistently and unreasonably held to be unfounded.

8. CSC's internal processes were also not equipped to provide redress or compensation for negatively impacted career paths or for harm endured by family members of the Class who were impacted by the impugned conduct.

9. The ongoing, widespread, and pervasive sexualized harassment, discrimination, assault, violence and reprisals and ~~discrimination~~ caused the plaintiffs and other Class Members harm, including post-traumatic stress disorder ("PTSD") and major depression, and had the effect of limiting their careers, resulting in loss of income.

10. The plaintiffs allege that the defendant was negligent in failing to ensure that they and other

Class Members could work in an environment free of gender based harassment, and discrimination, assault, and violence, and allege that the defendant was negligent in how it ran its internal dispute resolution processes. The plaintiffs further allege that the conduct of the defendant breached the plaintiffs' and other Class Members' right to security of the person and right to be free from discrimination on the basis of sex, pursuant to sections 7 and 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 and was in breach of Quebec's *Charter of Human Rights and Freedoms*, CQLR c C-12.

The Parties and the Class

11. The plaintiff Sharlene Hudson ("Sharlene") was an employee of CSC. She currently resides in Stilesville, New Brunswick.

12. The plaintiff Brinda Wilson-Demuth ("Brinda") worked as an employee of CSC, including at its National Headquarters. She currently resides in Ottawa, Ontario.

13. The plaintiffs bring this action on their own behalf and on behalf of all female current and former employees of CSC. They also bring the action on behalf of a derivative class of all individuals who are entitled to assert a claim pursuant to the *Family Law Act*, RSO 1990 c F 3 and comparable legislation in other provinces and territories (the "Family Class").

14. The defendant, Her Majesty the Queen (the "Crown"), is liable for the acts, omissions, negligence and malfeasance of CSC's employees and management who were at all material times Crown servants, pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c C-50.

15. CSC is responsible for administering court-imposed sentences of two years or more for adult offenders, including the care and custody of inmates, the provision of programs that contribute to the rehabilitation of offenders and the preparation of inmates for release. CSC is also responsible for supervising offenders on parole and on other forms of conditional release within the community.

Sharlene Hudson

16. The gender based harassment and discrimination that Sharlene endured within CSC dates back to her initial core training, during which she and her female colleagues were frequently objectified and subjected to threats of sexual and physical violence by their male peers and training officers.

17. From 1987 to 1994, Sharlene was posted at CSC's Atlantic Institution in Renous, New Brunswick. Sharlene was perpetually degraded and objectified while stationed at this facility. She was frequently subjected to comments from her male colleagues about her "breasts", "ass" and "cunt". And her supervisor would routinely ask her questions about her love life.

18. While working at the Atlantic Institution, Sharlene was routinely propositioned for sex by her male colleagues and was regularly threatened with sexual violence by her male colleagues and her supervisor.

19. At the Atlantic Institution, Sharlene and her female colleagues were often placed in violent and dangerous situations without any back-up, weapons or other gear that would be available to their male colleagues under the same circumstances. Even when they explicitly requested appropriate gear, weapons and back-up, the male officer-in-charge would refuse their requests. Sharlene feared for her life but continued to follow orders.

20. From 1994 to 1998 and from 2002 through 2012, Sharlene was posted at the Dorchester Penitentiary in Renous, New Brunswick. Throughout this posting, Sharlene was repeatedly degraded, objectified and subjected to sexual comments and propositions by her male colleagues and her manager. At times, Sharlene's male colleagues would expose their penises to her, and her manager once rubbed his erect penis against her.

21. From 1998-2001, Sharlene was posted at CSC's Bowden Institution in Innisfail, Alberta, where she was again subjected to constant sexual advances, propositions and comments by her male colleagues and supervisor.

22. The sexual and physical assaults and sexualized harassment and discrimination inflicted on Sharlene by her male colleagues, supervisors and managers in the CSC workplace included but

were not limited to: (1) masturbating in her presence; (2) exposing their penises; (3) rubbing erect penises against her body; (4) prying her legs open and intimating sex; (5) placing hands up her shirt to touch her breasts; (6) slamming her against concrete and other walls with significant force; (7) referring to her using derogatory terms such as “split ass”; (8) shoving underwear over her head and face; (9) being denied opportunities for advancement because of her gender; (10) being treated differently and with less favour than her male colleagues; and (11) subjecting her to sexual remarks and comments, including relentless attempts to engage in sexual activities with her.

23. Sharlene reported to a supervisor that she was being subjected to persistent and extreme sexualized harassment, discrimination and abuse in the CSC workplace. After that discussion, she found a dead mouse in her work mailbox, suggesting that she was a “rat”. Given this retaliatory response, Sharlene did not report any other incidents of harassment or abuse to CSC management or otherwise.

24. As a consequence of the incidents of assault and the gender based harassment and discrimination and reprisals to which she was subjected while working at CSC, Sharlene has suffered from suicidal ideation, severe depression, anxiety, hyper-vigilance, isolation, irritability, migraines, fatigue, loss of sexual desire, insomnia and nightmares. She has lived in fear and rage. In July 2012, Sharlene was diagnosed with Post Traumatic Stress Disorder and went on medical leave. She retired from CSC in January of 2017.

25. In 2018, Sharlene met with CSC’s Acting Deputy Commissioner in Moncton, New Brunswick. During this meeting, Sharlene detailed her experiences of gender based harassment and discrimination in the CSC workplace. The Deputy Commissioner’s words and actions made it clear that he was not interested in hearing about the prevalence of sexualized harassment within CSC or the effect that the harassment had on her psychological and physical health.

26. Sharlene could not reasonably bring an action in respect of her injury, damage or loss because of her PTSD and her severe depression and anxiety caused by the ongoing gender based harassment and discrimination that she was subjected to in the CSC workplace. It was not until the spring of 2019 that her psychological state had improved such that she was able to contemplate the stress of litigation and later commence this action.

Brinda Wilson-Demuth

27. Throughout her career with CSC, which began in 1992 and ended in 2018, Brinda was subjected to persistent gender based harassment and discrimination by employees and management of CSC.

28. Brinda initially worked with CSC as a psychologist, first in Prince Albert, Saskatchewan and later in Kitchener, Ontario. She later worked as an Assistant Warden in both Prince Albert and Bath, Ontario, and then became a Warden at Grand Valley Institution in Kitchener. In 2007, Brinda began working in Ottawa as the Director General Women Offender Sector. She remained in this position until 2012. Brinda and other Class Members holding management positions within CSC were not unionized.

29. While working as Director General, Brinda's male colleagues would often say that she was chosen for the Director General posting "because she was a woman". Brinda was routinely excluded from key meetings organized and attended by her male counterparts and colleagues; in her role as Director General she should properly have attended these meetings. Brinda was also denied access to information that was available to her male colleagues – information to which she should have properly been given access as Director General.

30. In 2016, Brinda began working as the Director, Departmental Security, and in 2017 Brinda became the Director General, Security Branch. While in this role, Brinda continued to endure sexualized harassment and discrimination and continued to receive differential treatment from her male colleagues.

31. Throughout 2017, Brinda was subjected to sexual remarks by her male colleagues who would regularly comment that she "looked good". Her male colleagues would often stare at her breasts and repeatedly asked her out on dates.

32. Brinda's complaints about the harassment were routinely dismissed by senior officials within CSC, some of whom were themselves perpetrators of the sexualized harassment. The Assistant Commissioner of CSC showed, through his words and his conduct, disdain for having a woman as Director General. He commented that women "think they should get a free ride at corrections" and would regularly accuse her of prioritizing her family over her career. He made no

such comments to her male colleagues. And Brinda was advised by the Commissioner of CSC that, as a woman at CSC, she was “expected to put up with a fair amount of abuse”.

33. In March of 2018, Brinda left CSC and began working as Associate Director General, Transport Canada, Marine Safety & Security.

34. As a consequence of the gender based harassment and discrimination that she endured while working at CSC, Brinda has suffered from depression and anxiety.

Not a Matter Affecting Terms and Conditions of Employment

35. The conduct complained of did not amount to ordinary workplace disputes. The impugned conduct was systemic, pervasive, persistent, and widespread – and was deeply rooted in CSC’s toxic para-militaristic culture of misogyny.

36. The Crown knew that the impugned conduct was pervasive and widespread throughout CSC. The Crown knew about the failings and inadequacies of CSC’s internal reporting mechanisms and grievance processes. Yet the Crown allowed the impugned conduct to continue and, in doing so, it condoned and encouraged the conduct. The Crown allowed the perpetrators to continue to assault and harass without consequence. Through its conduct, the Crown taught female CSC employees that they were expected to, *inter alia*, tolerate their male superiors and colleagues raping them, touching them, rubbing their erect penises against them, exposing themselves, and describing in detail their violent sexual fantasies. Through its conduct, the Crown taught female CSC employees to stay silent in the face of terror or they would be punished and face reprisals.

37. The systemic sexual violence, assault, harassment, discrimination and reprisals to which the plaintiffs and other Class Members were subjected cannot reasonably be characterized as matters affecting Class Members’ terms and conditions of employment or as accidents arising out of and in the course of Class Members’ employment. Sexual violence is not a workplace dispute. Rape is not a workplace dispute. Systemic sexual assault and misconduct are not workplace disputes. Systemic sexual harassment and discrimination are not workplace disputes.

Systemic Negligence

38. At all material times, the Crown, by virtue of its control over and operation of CSC, owed a duty of care to the plaintiffs and other Class Members to ensure that they could work in an environment free of gender based harassment, ~~and discrimination,~~ sexual assault, sexual violence and reprisals. Specifically, the Crown had a duty to:

- a. have in place management and operations procedures that would reasonably prevent gender based harassment and discrimination, including sexual assault ~~abuse~~ or other misconduct of a sexual nature and sexual violence, in the CSC workplace;
- b. take reasonable measures in the operation or management of CSC to protect the plaintiffs and other Class Members from gender based harassment and discrimination, including sexual assault ~~abuse~~ or other misconduct of a sexual nature and sexual violence, by employees and management of CSC;
- c. adequately, properly and effectively supervise the CSC work environment and employees and management of CSC;
- 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 employees and management of CSC to ensure that these individuals did not injure or endanger the well-being of the plaintiffs and other Class Members;
- f. have in place effective, adequate, and reasonable internal dispute resolution processes and mechanisms within CSC ~~provide a complaint procedure~~ through which complaints of gender based harassment and discrimination, including sexual assault ~~abuse~~ or other misconduct of a sexual nature and sexual violence, 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 - the perpetrators of gender based harassment, discrimination, sexual assault, sexual violence, and related reprisals;
- h. properly vet and screen employees and management of CSC;
- i. provide the plaintiffs and other Class Members with equal access to files, meetings, tasks and opportunities as compared to their male colleagues; and
- j. educate and train employees and management of CSC to promote a universal understanding that gender based harassment and discrimination in the workplace is harmful and will not be tolerated.

39. The Crown negligently breached the duty of care it 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 gender based harassment and discrimination, including sexual assault abuse or other misconduct of a sexual nature and sexual violence, in the CSC workplace;
- b. failing to take reasonable measures in the operation or management of CSC to protect the plaintiffs and other Class Members from gender based harassment and discrimination, including sexual assault abuse or other misconduct of a sexual nature and sexual violence, by employees and management of CSC;
- c. failing to adequately, properly or effectively supervise the CSC work environment and employees and management of CSC;
- 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 employees and management of CSC to ensure that they did not injure or endanger the well-being of the plaintiffs and other Class Members;

- f. failing to have in place effective, adequate, and reasonable internal dispute resolution processes and mechanisms within CSC provide a complaint procedure through which complaints of gender based harassment and discrimination, including sexual assault abuse or other misconduct of a sexual nature, 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 properly vet or screen employees and management of CSC;
- h. failing to provide the plaintiffs and other Class Members with equal access to files, meetings, tasks or opportunities as compared to their male colleagues;
- i. failing to educate and train employees and management of CSC to promote a universal understanding that gender based harassment and discrimination in the workplace is harmful and will not be tolerated;
- j. failing to punish, suspend, or terminate - as appropriate - the perpetrators of gender based harassment, discrimination, sexual assault, sexual violence, and related reprisals;
- k. creating an environment which encouraged or fostered silence and obedience when gender based harassment and discrimination, including sexual assault abuse or other misconduct of a sexual nature and sexual violence, arose; and
- l. failing to investigate or report sexual assault abuse or other misconduct of a sexual nature and sexual violence to law enforcement agencies after such abuse or misconduct was reported or, alternatively, after it was known or should have been known by the Crown.

40. As a result of the Crown's negligent conduct, the plaintiffs and other Class Members suffered mental and physical injury, particularized below.

41. The Crown 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.

Vicarious Liability

42. At all material times, individuals who were CSC managers and employees (the “Negligent Individuals”) owed a duty of care to the plaintiffs and other Class Members to ensure that they could work in an environment free of gender based harassment, and discrimination, sexual assault, sexual violence, and reprisals.

43. Specifically, the Negligent Individuals had a duty to:

a. have in place management and operations procedures that would reasonably prevent gender based harassment and discrimination, including sexual assault abuse or other misconduct of a sexual nature and sexual violence, in the CSC workplace;

b. take reasonable measures in the operation or management of CSC to protect the plaintiffs and other Class Members from gender based harassment and discrimination, including sexual assault abuse or other misconduct of a sexual nature and sexual violence, in the CSC workplace;

c. adequately, properly and effectively supervise the CSC work environment;

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 employees and management of CSC to ensure the protection and well-being of the plaintiffs and other Class Members;

f. have in place effective, adequate, and reasonable internal dispute resolution processes and mechanisms within CSC provide a complaint procedure through which complaints of gender based harassment and discrimination, including sexual assault abuse or other misconduct of a sexual nature and sexual violence, would be recognized, reported and pursued with due diligence and in a timely manner;

g. punish, suspend, or terminate - as appropriate - the perpetrators of gender based harassment, discrimination, sexual assault, sexual violence, and related reprisals;

- h. properly vet and screen employees and management of CSC;
- i. provide the plaintiffs and other Class Members with equal access to files, meetings, tasks and opportunities as compared to their male colleagues; and
- j. educate and train employees and management of CSC to promote a universal understanding that gender based harassment and discrimination in the workplace and related retaliation is harmful and will not be tolerated.

44. The Negligent Individuals 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 gender based harassment and discrimination, including sexual assault abuse or other misconduct of a sexual nature and sexual violence, in the CSC workplace;
- b. failing to take reasonable measures in the operation or management of CSC to protect the plaintiffs and other Class Members from gender based harassment and discrimination, including sexual assault abuse or other misconduct of a sexual nature and sexual violence, in the CSC workplace;
- c. failing to adequately, properly or effectively supervise employees and management of CSC;
- 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 employees and management of CSC to ensure the protection and well-being of the plaintiffs and other Class Members;
- f. failing to have in place effective, adequate, and reasonable internal dispute resolution processes and mechanisms within CSC ~~provide a complaint procedure~~ through which complaints of gender based harassment and discrimination, including sexual assault

abuse or other misconduct of a sexual nature and sexual violence, would be recognized, reported and pursued with due diligence and in a timely manner;

g. failing to punish, suspend, or terminate - as appropriate - the perpetrators of gender based harassment, discrimination, sexual assault, sexual violence, and related reprisals;

h. failing to properly vet or screen employees and management of CSC;

i. failing to provide the plaintiffs and other Class Members with equal access to files, meetings, tasks or opportunities as compared to their male colleagues;

j. failing to educate and train employees and management of CSC to promote a universal understanding that gender based harassment and discrimination in the workplace and related retaliation is harmful and will not be tolerated;

k. creating an environment which encouraged or fostered silence and obedience when gender based harassment and discrimination, including sexual assault abuse or other misconduct of a sexual nature and sexual violence, arose; and

l. failing to investigate or report sexual assault abuse or other misconduct of a sexual nature and sexual violence to law enforcement agencies after such abuse or misconduct was reported or, alternatively, after it was known by the Negligent Individuals.

45. The conduct the Negligent Individuals directed toward the plaintiffs and other Class Members was repetitive and extreme and 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.

46. The Negligent Individuals knew or ought to have known that their conduct was of a kind reasonably capable of harming a normal person. In particular, the Negligent Individuals knew or ought to have known that their conduct would cause psychological, emotional and physical harm to the plaintiffs and other Class Members.

47. The Crown is vicariously liable for the acts and omissions of the Negligent Individuals, who were at all material times the Crown's servants.

48. The Crown knew about the presence and prevalence of gender based harassment and discrimination within CSC and failed to take corrective action.

Breach of the Canadian Charter of Rights and Freedoms

Section 15

49. Section 15 of the *Canadian Charter of Rights and Freedoms* provides that “every individual is equal before and under the law and has the right to the equal protection and benefit of the law without discrimination” based on sex.

50. As particularized in paragraph 59 ~~54~~ below and as set out in the whole of this claim, the plaintiffs’ and other Class Members’ section 15 *Charter* rights have been breached.

51. The plaintiffs and other Class Members have been discriminated against, as compared to their male colleagues, because of their gender.

52. Because of their sex, the plaintiffs and other Class Members were denied benefits that their male colleagues were granted, namely the ability to work in a healthy environment without being subjected to sexualized harassment, ~~and discrimination,~~ assault, violence, and reprisals.

53. The gender based harassment, assault ~~abuse~~, sexual misconduct, sexual violence and related retaliation to which the plaintiffs and other Class Members were subjected created a distinction based on sex and created a substantive inequality between Class Members and their male colleagues.

54. This distinction created a disadvantage to the plaintiffs and other Class Members by perpetuating prejudice and stereotypes, particularly given the power imbalance between Class Members and their perpetrators, and the broader social and political context in which CSC operates. The actions by government actors at CSC also had the effect of perpetuating false stereotyping; the impugned actions perpetrated deeply rooted stereotypes that there are certain “male jobs” that women cannot do well.

Section 7

55. Section 7 of the *Charter* provides that “everyone has the 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”.

56. Security of the person encompasses freedom from the threat of physical and psychological suffering.

57. The Crown has deprived the plaintiffs and other Class Members of their right to security of the person by subjecting them to the very real risk of sexualized harassment, discrimination, violence and assault in the CSC workplace. Despite having knowledge of the prevalence of sexualized harassment, discrimination, violence and assault in the CSC workplace and the likelihood of Class Members being subjected to this conduct and related retaliation and reprisals, the Crown deliberately or negligently failed to take steps to protect the security of the plaintiffs and other Class Members.

58. The conduct of the Crown and the exercise of discretion in the management and operation of the CSC workplace was negligent and discriminatory, as particularized in paragraph ~~59~~ 54 below and as set out in the whole of this claim, and was thereby contrary to the principles of fundamental justice.

Specific Breaches of Sections 15 and 7

59. The Crown breached the plaintiffs’ and Class Members’ section 7 and 15 *Charter* rights by, among other things:

- a. failing to have in place management and operations procedures that would reasonably prevent gender based harassment and discrimination, including sexual assault ~~abuse~~ or other misconduct of a sexual nature and sexual violence, in the CSC workplace;
- b. failing to take reasonable measures in the operation or management of CSC to protect the plaintiffs and other Class Members from gender based harassment and discrimination, including sexual assault ~~abuse~~ or other misconduct of a sexual nature and sexual violence, in the CSC workplace;
- c. failing to properly supervise employees and management of CSC so as to prevent and minimize the risk of the plaintiffs and other Class Members being subjected to gender

based harassment and discrimination, including sexual assault or other misconduct of a sexual nature and sexual violence;

d. failing to have or, alternatively, failing to enforce adequate policies, procedures, codes of conduct and guidelines to minimize the risk of the plaintiffs and other Class Members being subjected to gender based harassment, and discrimination, sexual assault and sexual violence;

e. failing to have in place effective, adequate, and reasonable internal dispute resolution processes and mechanisms within CSC to properly investigate allegations of gender based harassment and discrimination in the workplace in a thorough, timely and impartial manner, or at all;

f. failing to provide adequate, or any, training and educational programs to employees and management of CSC regarding the dangerous and harmful effects of gender based harassment and discrimination;

g. failing to make sufficient efforts to promote the universal understanding among employees and management of CSC that gender based harassment and discrimination are harmful and will not be tolerated;

h. permitting a workplace environment and culture that normalized the occurrence of gender based harassment, and discrimination, sexual assault and sexual violence;

i. failing to act in a timely fashion to stop incidents of gender based harassment and discrimination;

j. failing to ensure that perpetrators of gender based harassment, and discrimination, sexual assault and sexual violence were appropriately disciplined; and

k. failing to protect the plaintiffs and other Class Members from the continuation or re-occurrence of gender based harassment, and discrimination, sexual assault and sexual violence and failing to protect them from retaliation and reprisals after reporting such behaviour.

60. The Crown's infringements of the section 15 and 7 *Charter* rights of the plaintiffs and other Class Members are not "prescribed by law" and section 1 of the *Charter* has no application in the circumstances. Alternatively, the Crown's infringements of sections 15 and 7 of the *Charter* are not reasonable limits prescribed by law that can be demonstrably justified in a free and democratic society.

Damages

61. Damages should be awarded pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* as they are just and appropriate to 1) provide compensation that might not otherwise be awarded to the plaintiffs and other Class Members, 2) vindicate the plaintiffs and other Class Members and society at large for the harm caused by CSC's violation of sections 7 and 15 of the *Charter*, and 3) deter future *Charter* breaches.

Québec Class Members

62. Where the acts and omissions of the Crown and the Negligent Individuals took place in Québec, they constituted fault giving rise to extra-contractual liability pursuant to the *Civil Code of Québec*, CQLR, c CCQ-1991, the *Crown Liability and Proceedings Act*, RSC 1985, c C-50 and the *Interpretation Act*, RSC 1985, c I-21 and any predecessor legislation. The conduct of the Crown and the Negligent Individuals also constituted unlawful and intentional interference with the rights of Québec Class Members within the meaning of the *Charter of Human Rights and Freedoms*, CQLR c C-12 and any predecessor legislation.

63. The Crown and the Negligent Individuals are liable to pay damages, including punitive damages, to Québec Class Members pursuant to the *Charter of Human Rights and Freedoms* and the *Civil Code of Québec*, CQLR, c CCQ-1991 and any predecessor legislation.

Injury and Damage

64. As a result of the fault and negligence of the Crown and the Negligent Individuals, the plaintiffs and other Class Members have sustained serious injuries and consequences, including:

- a. PTSD;
- b. attempted suicide;

- c. depression;
- d. anxiety;
- e. suicidal ideation;
- f. physical injury;
- g. diminished self-worth;
- h. diminished ability to concentrate;
- i. repeated and ongoing nightmares;
- j. difficulty coping with emotional stress;
- k. feelings of guilt, responsibility and self-blame;
- l. insomnia;
- m. irritable bowel syndrome;
- n. failed relationships;
- o. substance abuse;
- p. loss of consortium; and
- q. loss of enjoyment of life.

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

66. As a further result of the negligence of the Crown and the Negligent Individuals, the plaintiffs and other Class Members have sustained special damages and loss and expenses for medical and psychological treatment. The plaintiffs and other Class Members continue to undergo medical and psychological care and treatment and continue to incur loss and expense.

67. As a result of the negligence of the Crown and the Negligent Individuals, the Family Class ~~has families of Class Members~~ have 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 counselling and recovery; and

c. loss of income and the value of services provided by family members to Class Members where such services, including nursing and housekeeping, have been provided.

68. The Family Class seeks ~~These family members seek~~ compensation for the costs set out in paragraph ~~67~~ 59 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

69. As set out in detail in this claim, the actions of the Crown and the Negligent Individuals were reprehensible and showed a callous disregard for the rights of the plaintiffs and other Class Members.

70. The conduct of the Crown and the Negligent Individuals was deliberate, lasted for many years and represented a marked departure from ordinary standards of decent behaviour.

71. Compensatory damages are insufficient in this case. A punitive damage award is necessary to express society's condemnation of the conduct engaged in by the Crown and the Negligent Individuals, and to achieve the goals of both specific and general deterrence.

72. The conduct of the Crown and the Negligent Individuals merits punishment and warrants a claim for punitive damages.

Provincial Health Insurers

73. As a consequence of the conduct of the Crown and the Negligent Individuals, as set out above, provincial and territorial health insurers have incurred various expenses with respect to the medical treatment of the plaintiffs and other Class Members. Accordingly, provincial and territorial health insurers have suffered, and will continue to suffer, damages 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.

Legislation

74. The plaintiffs and other Class Members plead and rely upon, *inter alia*:

- a. *Alberta Health Care Insurance Act*, RSA 2000, c A-20
- b. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11
- c. *Charter of Human Rights and Freedoms*, CQLR c C-12
- d. *Civil Code of Quebec*, CQLR c CCQ-1991
- e. *Corrections and Conditional Release Act*, SC 1992, c 20
- f. *Crown Liability and Proceedings Act*, RSC 1985, c C-50
- g. *Excise Tax Act*, RSC 1985, c E-15
- h. *Family Law Act*, RSO 1990, c F-3
- i. *Fatal Accidents Act*, RSA 2000, c F-8
- j. *Fatal Accidents Act*, RSNL 1990, c F-6
- k. *Fatal Accidents Act*, RSNWT 1988, c F-3
- l. *Fatal Accidents Act*, RSPEI 1988, c F-5
- m. *Fatal Accidents Act*, RSS 1978, c F-11
- n. *Fatal Accidents Act*, RSY 2002, c 86
- o. *Fatal Accidents Act*, RSNWT 1988, c F-3
- p. *Fatal Accidents Act*, SNB 2012, c 104
- q. *Fatal Injuries Act*, RSNS 1989, c 163
- r. *Federal Courts Rules*, SOR/98-106
- s. *Health Care Cost Recovery Act*, SBC 2008, c 27
- t. *Health Insurance Act*, RSO 1990, c H.6
- u. *Health Services and Insurance Act*, RSNS 1989, c 197
- v. *Health Services Insurance Act*, CCSM, c H35
- w. *Hospitals Act*, RSA 2000, c H-12
- x. *Hospital and Diagnostic Services Insurance Act*, RSPEI 1988, c H-8
- y. *Hospital Insurance Agreement Act*, RSNL 1990, c H-7
- z. *Hospital Insurance and Health and Social Services Administration Act*, RSNWT 1988, c T-3
- aa. *Hospital Insurance and Health and Social Services Administration Act*, RSNWT 1988, c T-3
- bb. *Hospital Insurance Services Act*, RSY 2002, c 112
- cc. *Hospital Services Act*, RSNB 1973, c H-9
- dd. *Royal Canadian Mounted Police Act*, RSC 1985, c R-10
- ee. *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281
- ff. *Survival of Actions Act*, RSA 2000, c-27
- gg. *The Fatal Accidents Act*, CCSM c F50
- hh. *The Health Administration Act*, RSS 1978, c H-0.0001
- ii. *The Trustee Act*, CCSM c T160
- jj. *Trustee Act*, RSNL 1990, c T-10
- kk. *Trustee Act*, RSNWT 1988, c T-8

- ll. *Trustee Act*, RSNWT (Nu) 1988, c T-8
- mm. *Trustee Act*, RSO 1990, c T.23
- nn. All other comparable and relevant acts and regulations in Canada

Place of Trial

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

Date: ~~September 16, 2019~~ March 15, 2021



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