

SUPREME COURT OF NOVA SCOTIA

BETWEEN:

GLYNIS ROGERS

Court Administration

MAR 30 2017

Halifax, N.S.

PLAINTIFF

- AND -

THE ATTORNEY GENERAL OF CANADA, representing Her Majesty the Queen in right of Canada

DEFENDANT

Proceeding under the Class Proceedings Act, S.N.S. 2007, c. 28

Statement of Claim – Amended March 30, 2017

I. OVERVIEW

1. This action concerns the gender—~~and sexual orientation~~-based discrimination, bullying, harassment and sexual assault of female Members of the Canadian Armed Forces (the “CAF”).
2. The Plaintiff alleges that she and other female members of the CAF have been subjected to systemic gender—~~and sexual orientation~~-based discrimination, bullying, harassment and sexual assault by male members of the CAF. The Plaintiff alleges that the Attorney General of Canada (for purposes of this Statement of Claim, the “Crown”) is vicariously liable for the tortious sexual misconduct of the male members of the CAF, pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 (the “*Crown Liability Act*”).
3. The Plaintiff further alleges that the Crown has breached the rights of the Plaintiff and Primary Class Members (defined below) to be free from discrimination on the basis of sex, as guaranteed by s. 15 of 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 (the “Charter”).

II. THE PARTIES

i) *The Defendant*

4. The CAF is constituted by section 14 of the *National Defence Act*, R.S.C., 1985, c N-5 (the “Act”), which states:

The Canadian Forces are the armed forces of Her Majesty raised by Canada and consist of one Service called the Canadian Armed Forces.

5. The CAF consists of sea, land, and air elements referred to respectively as the Royal Canadian Navy, Canadian Army, and the Royal Canadian Air Force. The majority of members of the CAF fall into one of three components: (i) members of the “regular force”, defined under sections 2 and 15(1) of the Act as consisting of officers and non-commissioned members who are enrolled for continuing, full-time military service; (ii) members of the “reserve force”, defined under sections 2 and 15(3) of the Act as consisting of officers and non-commissioned members who are enrolled for other than continuing, full-time military service when not on active service; and (iii) members of the “special force”, comprised of members of the regular and reserve forces, as well as officers and non-commissioned members not of the regular force or the reserve force.
6. For the purposes of this Statement of Claim, “Members” shall be defined as all members of the CAF, including all officers, officer cadets, non-commissioned members and members of all elements referred to in section 17(1) of the Act, including cadet organizations.
7. A Member of the CAF is a Crown servant, as set out in s. 36 of the *Crown Liability Act*, which states:

36. For the purposes of determining liability in any proceedings by or against the Crown, a person who was at any time a member of the Canadian Forces or of the Royal Canadian Mounted Police shall be deemed to have been at that time a servant of the Crown.

ii) The Class

8. The Plaintiff brings this action on her own behalf and on behalf of all persons in Canada who identify as female and who are, or were at any time since the enactment of the Crown Liability Act, S.C. 1952-53, c. 30, Members of the CAF and who identify as female (the “Primary Class”).

8.9. The Plaintiff also seeks certification of a subclass consisting of the spouses (including common-law spouses and same-sex spouses), children, grandchildren, parents, grandparents and siblings of Primary Class Members (the “Family Class”).

iii) The Plaintiff

9.10. The Plaintiff, Glynis Rogers, was at all material times a Member of the regular forces of the CAF. Ms. Rogers joined the CAF on June 20, 2006, at age 18, immediately upon her graduation from Yarmouth Consolidated Memorial High School in Yarmouth, Nova Scotia.

10.11. Ms. Rogers enrolled as Officer and attended basic training at CFB Saint-Jean in Saint-Jean-sur-Richelieu, Quebec. After thirteen weeks of basic training, Ms. Rogers moved to Kingston, Ontario where she attended the Royal Military College of Canada (“RMC”). At RMC she completed a Bachelor of Science Degree with a double major in physics and math. During summer breaks from the academic year, Ms. Rogers would attend on-the-job training. She spent the majority of those summer breaks at CFB Greenwood in Greenwood, Nova Scotia.

11.12. Ms. Rogers graduated from RMC in 2011.

12.13. Following graduation until the mid-summer of 2012, Ms. Rogers was stationed at CFB Borden in Borden, Ontario. There she was enrolled in the Aerospace Engineer Officer Basic Course. Ms. Rogers’ rank was Second-Lieutenant.

13.14. During the time Ms. Rogers served as a Member of the CAF, particularly during training, she was subjected to persistent and systemic gender and sexual orientation-based discrimination, bullying and harassment by male Members. The atmosphere was

misogynistic and encouraging of degradation of, and hostility towards, women. Non-exhaustive examples of this discrimination and harassment are described below.

~~14~~.15. It was common for Ms. Rogers to receive or overhear offensive comments from male Members, including her superiors, that demeaned and belittled women. Ms. Rogers was personally called a “slut” by male Members on numerous occasions, and witnessed the same in relation to other Class Members.

~~15~~.16. Ms. Rogers constantly heard male Members calling Class Members, including herself, other derogatory and offensive terms. Class Members were labelled as “crazy”, and considered emotionally unstable for military positions. As well, should a Class Member use a stern tone or brief communicative style, she was labelled by male Members as a “bitch”.

~~16~~.17. On one occasion at CFB Greenwood, Nova Scotia, Ms. Rogers was slapped on her behind by a superior during adventure training in Cape Breton.

~~17~~.18. During her time at RMC, both in class and more commonly at the RMC dining hall, Ms. Rogers experienced a general culture of objectification of women. On various occasions, Ms. Rogers overheard male Members conversing and debating about which female Members were attractive, ugly, and whether the male Members would have sex with them or not. On one occasion, while retrieving her student ID from male peers upon returning to RMC after summer phase training, “hottie” was written on the envelope in pen.

~~18~~.19. On Fridays at RMC, upon paying a donation, Members were permitted to wear civilian attire. Ms. Rogers personally experienced and witnessed objectification by male Members, who would make comments and whistle at Class Members about such attire at the dining hall. In one instance, a male Member remarked to Ms. Rogers “oh, you’re actually hot in civies”.

~~19~~.20. At all material times, Ms. Rogers also experienced differential treatment of Class Members, in the sense of them being weaker and inferior to male Members.

~~20.~~21. In the CAF, Class Members must meet different physical fitness requirements than men. As a result, Ms. Rogers and other Class Members were treated as though they were inferior at their jobs on account of their gender. Opportunities for advancement were more limited to Class Members, and Ms. Rogers felt that as a female she needed to prove herself more, work harder and be in better physical shape than a male in the same trade to gain respect.

~~21.~~22. Class Members were also treated as intellectually inferior. In Ms. Rogers' third year at RMC, after publicly receiving a badge recognizing academic achievement, belittling comments were made at the dining hall by male Members such as "how did she get that?" or in bewilderment of her intellectual capacity, such as "she's actually smart?"

~~22.~~23. In drill practice, when Class Members would call out commands, Ms. Rogers experienced and witnessed that male Members would make fun of Class Members' voices.

~~23.~~24. Ms. Rogers was also witness to offensive and degrading comments towards Class Members who became pregnant and took parental leave. She recalls overhearing men at CFB Greenwood criticize Class Members who were pregnant as doing so on purpose "to take advantage of the paid parental leave."

~~24.~~25. Male Members also do not take harassment prevention programs seriously. One initiative called "Operation Honour", intended to address sexual harassment, is widely known throughout the military as "Hop On Her". Such sexualized jokes are a part of the culture and everyday experience of Ms. Rogers and other Class Members. The generally accepted attitude Ms. Rogers experienced is that women should know what they are getting into by joining the CAF, and can either put up with it or get out.

~~25.~~26. One particularly distressing incident occurred in February of 2012. Ms. Rogers was visited by a male Member in her room at CFB Borden. While Ms. Rogers and the male Member were watching a film together, he began caressing her vaginal area. Ms. Rogers asked him to stop and moved away from him. The male Member moved on top of her, put his knees on either side of her torso, removed her underpants and inserted his finger

and then penis into her anus. Ms. Rogers described she repeatedly told him to stop and tried to get free, but that the male Member persisted.

26.27. Despite the incident causing immediate emotional and psychological distress, Ms. Rogers was reluctant to disclose the incident to peers or her superiors. Ms. Rogers knew she would continually encounter the male Member in the course they were both enrolled in, at meal times, and in social settings. Based on Ms. Rogers' observations of the common and persistent harassment, discrimination and bullying of female Members by male Members, Ms. Rogers feared that reporting the incident may cause retaliation from the male Member and other male Members who found out. She also felt she would be judged for the incident and labelled a troublemaker.

27.28. Ms. Rogers was also reluctant to report the incident because she did not trust that the chain of command would take her report seriously. She knew of other female Members who had been sexually assaulted and had not reported the incidents due to similar concerns about retaliation, being labelled as a troublemaker, and receiving an inadequate and unreasonable response.

28.29. Ms. Rogers experienced heightened stress and anxiety as a result of being traumatized by the incident. She became depressed, anxious and unable to focus on her work. Her general level of functioning deteriorated. She could not sleep properly and started skipping meals to avoid being in the same vicinity as the male Member. Her weight plummeted by thirty pounds. In spite of her difficulties, Ms. Rogers feared reporting her psychological condition because she risked being medically released and jeopardizing her career.

29.30. Eventually, however, Ms. Rogers' emotional distress escalated to a point where she was encouraged by a fellow female Member to advise her chain of command about the incident. A Court Martial took place in the fall of 2012. The male Member was initially found guilty and sentenced to six months imprisonment and demotion to the rank of Second Lieutenant. The male Member appealed and was acquitted.

30.31. The Court Martial process caused Ms. Rogers significant distress. Ms. Rogers was

diagnosed with occupationally-related post-traumatic stress disorder and major depressive disorder. She was placed on “Temporary Medical Category”, as she was deemed not fit for deployment. As a result of her status change, she could not continue the Aerospace Engineer Officer Basic Course.

~~31.~~32. In the summer of 2012, approximately four months after the incident, Ms. Rogers was posted back to Kingston, Ontario. She re-enrolled in academic courses at the RMC. Ms. Rogers was continually re-assessed and continued to be deemed not fit for deployment.

~~32.~~33. Constant exposure to harassment and a discriminatory and degrading culture towards Class Members within the CAF greatly impacted Ms. Rogers’ mental and physical health and feelings of self-worth. She was eventually placed on “Permanent Medical Category”. On August 29, 2016, Ms. Rogers was permanently released from the CAF.

III. CAUSES OF ACTION

i) Systemic Negligence

~~33.~~34. The Plaintiff and the Class have been subjected to gender ~~and sexual orientation~~-based discrimination, bullying, harassment and sexual assault by male Members of the CAF.

~~34.~~35. The male Members of the CAF owe a duty of care to the Plaintiff and Class to allow them to work in an environment free of sexual misconduct, including gender ~~and sexual orientation~~-based discrimination, bullying and harassment and sexual assault.

~~35.~~36. The male Members of the CAF breached their duty of care to the Plaintiff and the Class by, *inter alia*:

- (a) frequently making degrading remarks that reference women’s bodies;
- (b) frequently making sexual jokes and innuendos aimed at women;
- (c) frequently making discriminatory comments about the abilities of women;
- (d) abusing their positions of authority by coercing subordinate Class Members to engage in inappropriate sexual relationships;
- (e) engaging in intentional, non-consensual touching of a sexual nature;

- (f) promoting a sexualized atmosphere;
- (g) ignoring, excusing and condoning sexual misconduct;
- (h) choosing to not adhere to applicable policies, procedures and processes with respect to gender—~~and sexual orientation~~—based based discrimination, bullying, harassment and sexual assault, including without limitation, the Queen’s Regulations and Orders and Defence Administrative Orders and Directions (in particular, but not limited to, Harassment Prevention and Resolution Defence Administrative Order and Directive 5012-0 and the Harassment Prevention and Resolution Guidelines);
- (i) deterring Class Members from reporting sexual misconduct of male Members;
- (j) deliberately preventing complaints of sexual misconduct from reaching the attention of senior-level officials; and
- (k) punishing victims of sexual misconduct, including by obstructing their career advancement and casting aspersions on their abilities to perform their roles in the CAF.

~~36.~~37. Senior-level male Members, including in particular non-commissioned officers and those with oversight responsibilities, breached their duties of care to the Plaintiff and the Class by, *inter alia*:

- (a) choosing not to reasonably supervise male Members or take reasonable measures to prevent sexual misconduct;
- (b) providing inadequate training on prohibited sexual conduct, thus perpetuating the view that sexual misconduct would be tolerated within the CAF;
- (c) providing inadequate programs and services to victims of sexual misconduct;
- (d) imposing a culture that discourages victims from reporting sexual misconduct;
- (e) providing Class Members with an inadequate reporting mechanism that is not independent of the CAF;
- (f) imposing meaningless sanctions after complaints of sexual misconduct have been substantiated;
- (g) providing inadequate internal victim support services;

- (h) choosing not to apply, or inconsistently applying, policies on inappropriate sexual conduct, including sexual assault and sexual harassment;
- (i) inadequately investigating complaints of sexual misconduct; and
- (j) not promoting, or not adequately promoting, meaningful initiatives to prevent sexual misconduct.

~~37.~~38. The male Members knew or ought to have known that their actions and omissions were of a kind reasonably capable of causing damages to a person of normal fortitude and that the Plaintiff and Class Members would suffer damages as a result.

~~38.~~39. The Plaintiff pleads and relies upon the *Crown Liability Act*, which confirms that the Crown is liable for the damages caused by a tort committed by a servant of the Crown (section 3(b)). Section 36 of the *Crown Liability Act* further confirms that a member of the Canadian Forces is a servant of the Crown.

ii) Breach of the Canadian Charter of Rights and Freedoms

~~39.~~40. The Crown has breached the Plaintiff's and Class Members' right to be free from discrimination on the basis of sex, pursuant to s. 15 of the Charter by, *inter alia*:

- (a) inadequately and improperly supervising the conduct of male Members;
- (b) providing no, or no adequate, training and education programs for male Members with respect to harassment, bullying, discrimination and sexual assault;
- (c) inadequately or incompletely investigating allegations of gender-based discrimination, bullying, harassment and sexual assault by male Members;
- (d) choosing not to appropriately sanction male Members for gender-based discrimination, bullying, harassment and sexual assault;
- (e) choosing to have no, or no adequate, legislation, policies, procedures, processes, codes of conduct or guidelines to protect the safety, physical and mental health, and welfare of the Plaintiff and Class Members, and to reduce the likelihood that they would be subjected to gender-based discrimination, bullying, harassment and sexual assault; and
- (f) choosing to inadequately and inconsistently implement any legislation, policies, procedures, processes, codes of conduct or guidelines that did exist for the above-described purposes.

iii) Quebec Law

40.41. Where the actions of the Members took place in Québec, they constitute:

- (a) fault giving rise to the extracontractual civil liability of the male Members towards the Plaintiff and Class Members, pursuant to the *Civil Code of Québec*, S.Q. 1991, c. 64 (the “*Civil Code*”), Art. 1457, the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12 (the “*Québec Charter*”), ss. 1, 4, 10, 10.1 and 16, and the *Crown Liability Act*, s. 3(a)(i); and
- (b) unlawful and intentional interference with the rights of the Plaintiff and Class Members, from which arises liability of the Crown to pay punitive damages to the Plaintiff and Class Members, pursuant to the *Québec Charter*, s. 49 and the *Civil Code*, Art. 1621.

41.42. Where the actions of the Members took place in Québec, Class Members have been unable to act, within the meaning of the *Civil Code*, Art. 2904.

IV. DAMAGES

42.43. As a result of the systemic negligence of male Members of the CAF, for which the Crown is vicariously liable, and the breach of the Plaintiff’s and Class Members’ Charter-protected right to be free from discrimination on the basis of sex, the Plaintiff and Class Members have suffered and continue to suffer damages, which include but are not limited to the following:

- (a) physical, psychological and emotional harm and/or distress;
- (b) depression;
- (c) anxiety;
- (d) post-traumatic stress disorder;
- (e) nervous shock;
- (f) mental anguish;
- (g) interference with normal sleeping patterns;
- (h) impaired ability to concentrate;
- (i) suicidal ideation;

- (j) loss of consortium; and
- (k) loss of enjoyment of life.

~~43.44.~~ Further, as a result of the injuries suffered by the Plaintiff and Class Members, the Plaintiff and Class Members have sustained certain special damages, losses and expenses for medical treatment, rehabilitation, psychological counselling and other care.

V. AGGRAVATED, PUNITIVE AND EXEMPLARY DAMAGES

~~44.45.~~ The Plaintiff states that the conduct of the male Members was willful, arrogant, callous, and highhanded and constituted a gross violation of the rights of the Plaintiffs and Class. The Plaintiff respectfully submits that this is an appropriate case for punitive, aggravated and/or exemplary damages, to demonstrate that such willfully negligent, tortious conduct will not be ignored.

VI. RELIEF SOUGHT

~~45.46.~~ The Plaintiff repeats the foregoing paragraphs and seeks as relief the following:

- (a) an Order certifying this proceeding as a class proceeding and appointing the Plaintiff as the representative plaintiff under the *Class Proceedings Act*;
- (b) general damages, including aggravated damages for personal injuries; ~~and~~
- (c) special damages;
- (d) damages pursuant to section 24(1) of the Charter;
- (e) aggravated, punitive and exemplary damages;
- (f) recovery of health care costs incurred by the Nova Scotia Department of Health pursuant to the *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197, and comparable legislation in the other provinces and territories;
- (g) interest pursuant to the *Judicature Act*;
- (h) costs; and

(i) such further and other relief as this Honourable Court deems just.

PLACE OF TRIAL: Halifax, Nova Scotia

DATED at Halifax, Nova Scotia this 21st day of November, 2016.

AMENDED at Halifax, Nova Scotia this 30th day of March, 2017.



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