Court File No. T-1105-20



**FEDERAL COURT**

**PROPOSED CLASS PROCEEDING**

Between:

**KELLY MCQUADE**, **DAVID COMBDEN**, and **GRAHAM WALSH**

PLAINTIFFS

- AND -

**THE ATTORNEY GENERAL OF CANADA**, representing His Majesty the King in Right of Canada

DEFENDANT

Proceeding Under Part 5.1 of the *Federal Court Rules*, SOR/98-106

**THIRD FRESH AS AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANT

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 defence 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 defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

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

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

Date: _____ Issued by: _____

Address of local office: 1720-1801 Hollis Street
Halifax, NS B3J 3N4

TO: **HIS MAJESTY THE KING**
**C/O THE ATTORNEY GENERAL OF CANADA**
284 Wellington Street
Ottawa, ON. K1A 0H8

## A. DEFINITIONS

1. The capitalized terms used in the Statement of Claim have the meanings and refer to the definitions indicated below:

   a. "**Class**" and "**Class Members**" means all persons who are or have been regular members (as defined in section 1 of the *Royal Canadian Mounted Police Regulations*, 2014, SOR/2014-281) and who, between January 1, 1992 and August 6, 2021, have been diagnosed with, and/or suffer or have suffered from, an Operational Stress Injury. For certainty, the Class excludes civilian and public service members of the Royal Canadian Mounted Police;

   b. "**Crown**" means His Majesty the King in Right of Canada, as represented by the Attorney General of Canada, and includes its contractors, subcontractors, agents, servants, employees, appointees, and departments;

   c. "**Mental Health Services**" means all mental health care services provided by the RCMP to the Class at all material times, including but not limited to the following: services provided through Occupational Health and Safety Services Offices ("OHSS Offices"); the Health Care Entitlements and Benefits Program; Operational Stress Injury ("OSI") Clinics; periodic health assessments; non-professional mental health support including through the Peer-to-Peer program; and training and education efforts, including the Road to Mental Readiness program; and

   d. "**Operational Stress Injury**" or "**OSI**" means any persistent psychological difficulty that results from operational duties with the RCMP and causes impaired functioning, including but not limited to diagnosed medical conditions such as Post-Traumatic Stress Disorder, depression, anxiety, and panic attacks.

## B. THE CLAIM

2. The Plaintiffs, on behalf of the Class Members, claim:

   a. an Order certifying this action as a class proceeding and appointing the Plaintiffs, Kelly McQuade, David Combden, and Graham Walsh, as Representative Plaintiffs for the Class;

   b. a declaration that the Crown has been negligent in implementing the Mental Health Services and is liable to the Class for damages, outlined below;

c. a declaration that the Crown has breached section 15(1) of the *Canadian Charter of Rights and Freedoms* ("*Charter*") in relation to its discriminatory treatment of the Class on the basis of mental disability, that such a breach is not justified under section 1 of the *Charter*, and that the Crown is liable for damages to the Class under s. 24(1) of the *Charter*;

d. damages for the Crown's negligence as follows:

i. general damages, including for pain and suffering and loss of amenities of life;

ii. special damages, the particulars of which will be delivered at a later date;

e. aggregate damages under section 24(1) of the *Charter* for vindication, deterrence and compensation, arising from the Crown's violations of section 15(1) *Charter* rights of the Class;

f. an Order for the assessment of individual damages of Class Members pursuant to Rule 334.26 of the *Federal Courts Rules*;

g. pre-judgment and post-judgment interest, pursuant to the *Federal Courts Act*, R.S.C. 1985, c. F-7;

h. costs of the action;

i. the costs of notice and of administering the plan of distribution of the recovery in this action, plus applicable taxes, pursuant to Rule 334.38 of the *Federal Courts Rules*; and

j. such further and other relief as this Honourable Court deems just.

## C. OVERVIEW

3. The RCMP is responsible for providing a healthy and safe workplace and reducing the incidence of occupational injuries and illnesses by establishing and maintaining effective occupational health and safety programming, including Mental Health Services.

4. The first responder and policing roles of RCMP regular members put them at significant risk of developing Operational Stress Injuries due to innate features of their occupational duties. Class Members work in remote, rural, and urban environments, performing high-risk activities and responding to family violence, life-threatening situations, catastrophic injuries, and other potentially psychological traumatic events. These conditions and situations are not confined to a

battlefield but are present in the communities where Class Members and their families live with little separation between work and home resulting in a state of constant vigilance.

5. Repeated exposure to potentially psychological traumatic events is directly linked to the development of Operational Stress Injuries. The risk of developing an Operational Stress Injury is further exacerbated by shift work, minimal staffing or support, and fatigue, leaving little family time or opportunity to maintain healthy eating and exercise. While Class Members may have willingly assumed the inherent risks of their roles as first responders, they did not willingly assume the additional burden caused by the Crown's failure to provide mental health care that addresses the actual needs of those at risk of experiencing Operational Stress Injuries.

6. The Crown has a responsibility to provide mental health care that addresses the prevention and detection, diagnosis, treatment and accommodation of Operational Stress Injuries. Yet the Crown has failed the Class in its provision of the Mental Health Services.

7. The Crown has negligently implemented the Mental Health Services. The services and programs are in fact more ostensible than actual; Class Members work in an environment that actively suppresses acknowledgment of mental disability, being labelled as a form of "weakness", and this environment is unaccounted for in the implementation of the Mental Health Services. Access of care by Class Members is discouraged, impeding timely diagnosis and treatment. Additionally, there is a lack of adequate training of supervisors to detect Operational Stress Injuries in their employees and to encourage treatment, despite the stated policy of the RCMP. When Class Members overcome the hurdles to actually accessing the Mental Health Services, they experience harmful delays in diagnosis and treatment, further exacerbating the harm caused by Operational Stress Injuries. The RCMP woefully fails to achieve its own stated goals in provision of the Mental Health Services.

8. The structure for RCMP regular members to access treatment for injuries, specifically the requirement that members report the existence of an injury, condition or functional limitation affecting fitness for duty to the chain of command as a gateway to access treatment through RCMP treatment pathways, has an adverse and discriminatory effect on Class Members resulting in substantially different and inferior access to treatment compared to the access to treatment provided to regular members with duty-related physical injuries. On its face, the structure governing access to OHSS Offices and treatment applies "equally" to all members. In its impact, however, it imposes distinct and disproportionate burdens on Class Members, for whom mandatory disclosure through

the chain of command to access treatment both deters disclosure and treatment-seeking and, once disclosure occurs, exposes such members to stigma, heightened scrutiny, and delay in accessing diagnosis and treatment. The RCMP's structure to access treatment operates within a hierarchical, paramilitary workplace in which the nature of a member's injury is routinely inferred, becomes known in practice, or is disclosed under conditions of unequal power and pressure, notwithstanding limits on supervisory entitlement to medical information. Regular members with duty-related physical injuries do not face these systemic barriers, deterrent effects or delays when accessing diagnosis and treatment. The Class experiences a lack of substantive equality, in breach of their s. 15(1) *Charter* rights to be free from discrimination on the basis of mental disability.

9. The structure through which RCMP regular members are required to access treatment fails to account for the actual needs of the Class through the relevant stages of necessary care: including seeking, obtaining and continuing treatment for Operational Stress Injuries. Class Members who do eventually overcome the systemic and structural obstacles to obtaining treatment for their Operational Stress Injuries are faced with delays and obstacles in obtaining adequate and timely diagnoses, and in initiating and continuing adequate treatment. Others delay or avoid seeking treatment altogether due to stigma, fear of reprisal, or anticipated adverse career consequences associated with disclosing an Operational Stress Injury or related functional limitations through the required reporting structure. These same obstacles are not faced by those suffering from duty-related physical injuries. This unequal and inferior treatment fails to account for the pre-existing disadvantages faced by the Class, further damages their mental health, results in economic deprivation, and denies Class Members their equal human worth and dignity. This ultimately results in distinct, prolonged and worsened injuries for Class Members and perpetuates the disadvantages and stereotypes of those with mental disabilities.

10. In particular, Class Members and RCMP regular members with service-related physical injuries are differentially affected by the RCMP's required structure for accessing treatment. This structure intermingles treatment gatekeeping with employment supervision. While it applies on its face to all members, it has a materially different impact on Class Members as compared to regular members with physical injuries, including as follows:

**Mandatory disclosure as a gateway to treatment**

(a) RCMP regular members are required to disclose to their immediate supervisor and the chain of command that they have an injury or condition that may impede their ability to

perform their duties in order to access diagnosis and treatment. In practice, this mandatory disclosure requirement has a differential impact on members with Operational Stress Injuries, for whom disclosure exposes them to stigma, including systemically biased, prejudicial, and adverse workplace responses in contrast to the more accepting and supportive response given to an RCMP member who suffers from a physical injury.

(b) Physical injuries are generally visible, readily understood, and accepted as an occupational hazard within the RCMP. RCMP regular members with service-related physical injuries therefore often do not need to decide whether to disclose the injury to their supervisor and chain of command in order to access care. By contrast, Class Members must make a personal and consequential decision whether to disclose to their supervisor and chain of command that they suffer from a non-visible psychological injury or related functional limitations in order to seek access to treatment, fully aware of the differential response, well-known stigma, negative judgment, and adverse career consequences associated with disclosure of mental disability.

(c) Once a psychological injury or related functional limitations are disclosed to superiors, Class Members are routinely subjected to discriminatory mocking, belittling remarks, and treatment that casts them as weak, unreliable or "not fit for duty". Class Members are systemically treated as a burden on the RCMP, employees to be endured, side-lined and performance-managed as shirkers and problem employees. RCMP regular members with physical injuries do not face comparable responses and are systemically treated as members who are injured but expected to be rehabilitated and supported in returning to duty. This workplace culture discourages disclosure, deters treatment-seeking, and materially impairs access to care for the Class.

(d) RCMP regular members who have suffered both a duty-related physical injury and duty-related Operational Stress Injury, including the Representative Plaintiffs, can readily contrast their treatment by the RCMP once injured, and consistently describe markedly more negative, stigmatizing, and career-limiting consequences following disclosure of an Operational Stress Injury as compared to a physical injury.

**Access to diagnosis and treatment following disclosure**

(e) Following disclosure of an injury or functional limitation through the required reporting structure, access to diagnosis, treatment, and treatment-related accommodation of RCMP

regular members with physical injuries is expeditiously addressed and guided through RCMP treatment access pathways, OHSS Offices. By contrast, Class Members face stigma, delays, lack of guidance, and obstacles in obtaining timely diagnosis and initiating or continuing treatment through the same pathways.

(f) RCMP regular members with physical injuries are routinely referred to private clinics for diagnosis and treatment on an expedited basis. Class Members, by contrast, systemically require many months on waiting-lists and such referrals are not expedited on an emergency or priority basis by OHSS Offices.

(g) RCMP regular members with physical injuries can and do access treatment services during working hours without employment consequences and without attracting pejorative or belittling comments from supervisors and peers. Class Members, by contrast, often must seek treatment services outside of working hours, on their personal time, to avoid employment consequences or pejorative or belittling comments from supervisors and peers, further impairing effective access to care.

**Downstream employment consequences**

(h) Class Members are disproportionately administratively discharged or prevented from returning to meaningful work following an Operational Stress Injury, as compared to regular members with duty-related physical injuries. These outcomes arise as a downstream consequence of delayed, deterred, or inadequate access to treatment caused by the RCMP's mandatory disclosure-based gatekeeping structure and associated discriminatory practices.

(i) Further differential treatment as described in paragraph 98 of this Statement of Claim.

11. Underlying the negligence and discriminatory treatment of Class Members in their receipt of Mental Health Services is a pervasive culture of perpetuation and tolerance of bias against mental disability, of silencing mental disabilities, of use of stigmatizing language surrounding Operational Stress Injuries, and discouragement of treatment. This culture creates serious impediments to the effective prevention, diagnosis and treatment of Operational Stress Injuries within the RCMP. Class Members are forced to suffer in silence; they are actively discouraged from reporting and treating their injuries, ultimately further suffering the exacerbation of their injuries and harming their chances of successful rehabilitation. The Plaintiffs and Class Members are ostracized and

stigmatized as weak and unfit, are subjected to retaliation and discriminatory behaviour by peers and supervisors, and experience alienation, further mental suffering, humiliation, and loss of dignity. Further, they experience discrimination and negative repercussions because of their Operational Stress Injuries, including inhibited promotion, advancement, or transfer prospects, even when declared by medical professionals as fit for return to work.

12. As a result of the Crown's actions and inactions, Class Members have all experienced significant psychological harm, humiliation and loss of dignity, loss of opportunities and earning capacity, and degradation of quality of life.

## D. THE PARTIES

### *(i.) The Plaintiffs*

#### *Kelly McQuade*

13. The Plaintiff, Kelly McQuade, of the City of Saint Albert, in the Province of Alberta, has been a Constable in the RCMP since 2005.

14. Cst. McQuade commenced her RCMP career in Burnaby, British Columbia. Early on, Cst. McQuade learned the importance of maintaining her mental health while serving in the RCMP. She sought treatment on her own from a psychologist in 2010 in response to duty-related stressors, such as regularly witnessed scenes of violence and threats of bodily harm. In 2011, Cst. McQuade was diagnosed with PTSD as a result of on-duty related incidents. She remained an active duty RCMP member after her diagnosis and throughout her psychological treatment, which assisted her in developing coping skills to effectively manage her symptoms.

15. In 2011, Cst. McQuade also sustained nerve damage to her left foot while on duty. After reporting the injury through her chain of command, the RCMP access to treatment and OHSS processes responded promptly and in a coordinated manner. In particular, Cst. McQuade received timely access to diagnostic and treatment services and support, including:

(a) hospital care;

(b) a flight home;

(c) an expedited MRI arranged through a private clinic; and

(d) ongoing coordination and approvals through the OHSS Office for follow-up care and treatment.

16. Over the ensuing months, OHSS remained in regular contact regarding her foot injury and facilitated appointments, approvals and specialist care, such that Cst. McQuade did not have to personally navigate or advocate to access treatment. Her physical injury was accepted and supported within her workplace, treated as legitimate and was accommodated through light duties while she recovered.

17. During this same period, Cst. McQuade was experiencing depressive symptoms related to her foot injury, and she sought counselling from an RCMP-approved psychologist. She kept that treatment quiet, due to the stigma associated with being perceived as weak or unfit. Unlike for her physical injury, there was no comparable follow-up, coordination, or guidance by OHSS in relation to her psychological treatment.

18. In contrast with the prompt and supported access to treatment for her physical injury, the RCMP's systems did not provide Cst. McQuade with timely, coordinated, or supportive access to treatment for her mental-health injury. In the prevailing RCMP culture, psychological treatment was not openly discussed or facilitated through the workplace, and access to psychological care depended largely on self-directed steps and self-advocacy rather than on the same kind of facilitated process that operated for her physical injury.

19. Cst. McQuade continued to serve with "active duty" status despite her Operational Stress Injury. She reported the diagnosis of PTSD in her RCMP periodic health assessments, but this self-report was not acknowledged or addressed by the RCMP and had no impact on her deemed fitness to work during that time. This pattern continued after she was posted to Nunavut in 2017.

20. Cst. McQuade was an experienced, high performing member of the RCMP when she applied for a transfer to Nunavut in 2017.

21. When she arrived in Nunavut in 2017, Cst. McQuade was shocked to learn that RCMP members deployed to isolated regions receive virtually no access to the Mental Health Services. Like her colleagues and supervisors, she knew that this posting would likely entail frequent exposure to violence, but she did not realize that it would also require her to suffer alone, in the absence of appropriate and timely supports, when her occupational duties triggered her PTSD symptoms.

22. Approximately one year into her posting, Cst. McQuade experienced a string of traumatic events in fulfillment of her RCMP duties. Cst. McQuade recognized that she needed mental health support to remain on active duty. She tried to access even baseline Mental Health Services to manage her symptoms and help process the extreme violence she witnessed on a regular basis. In doing so, Cst. McQuade was met with denials and hostility from her supervisors and other senior officers. Rather than requesting adequate Mental Health Services for RCMP members in remote postings like Nunavut, the supervisors Cst. McQuade sought out for support informed her that others had it worse than she did, to "suck it up" and simply get back to work.

23. In the face of constant opposition, Cst. McQuade did not stop asking for Mental Health Services. As she continued to seek appropriate supports, she was met with personal reprisals from senior officers. In one instance, her immediate supervisor passed along the message that she was now "blackballed" and thus any request she made, however reasonable, would now be rejected by the RCMP as a matter of principle. This response to Cst. McQuade's efforts to obtain basic Mental Health Services further exacerbated her untreated Operational Stress Injury.

24. When an incident finally brought an RCMP psychologist to Nunavut in late 2018, Cst. McQuade arranged an informal session, on her own time, after she was initially refused an appointment. She recalls this psychologist expressing alarm at the working conditions in the RCMP and offering virtual support. In the months that followed, Cst. McQuade noticed a severe deterioration of her mental health.

25. Despite her best efforts to remain at work, and due to the progression of her Operational Stress Injury symptoms, in 2019 Cst. McQuade lost her Northern Medical approval. To even receive medically necessary intensive psychological treatment, Cst. McQuade began meeting with RCMP supervisors to seek a transfer close to a treatment facility, preferably back to British Columbia where she had an established medical network and family support. In one candid conversation, Cst. McQuade was informed by her RCMP staffing representative in Nunavut that the delay in securing a transfer was because other divisions did not want to take on "problems"– i.e. Class Members who were Off Duty Sick due to mental health injury.

26. Approximately six months in limbo after losing her Northern Medical on account of her mental health, Cst. McQuade relocated with her family to Edmonton as a last resort to secure Mental Health Services at an OSI Clinic, as there was no access to care in the remote posting. She is currently on long-term medical leave for PTSD and does not know when she will be able to return to work.

27. Cst. McQuade contrasts her experiences of both a physical and an Occupational Stress Injury as follows:

(a) when she sustained a physical injury and reported functional limitations, she received coordinated, timely access to diagnostic testing, treatment, and accommodation through RCMP treatment pathways, together with strong institutional support; by contrast, when she experienced an Operational Stress Injury, access to treatment depended on self-directed steps taken quietly to avoid stigma and adverse workplace consequences, and when RCMP involvement was required to access treatment, such access was initially denied and was not facilitated through comparable RCMP-administered pathways, required extensive self-advocacy and informal workarounds, and was not accompanied by meaningful follow-up or accommodation;

(b) her mental health injury was treated as a "quiet" subject and, once known in her workplace, was minimized, dismissed and stigmatized, in contrast to the routine acceptance, support and accommodation of physical injuries; and

(c) she experienced downstream employment consequences arising from impaired access to timely and supportive treatment for her Occupational Stress Injury, including delays and obstacles in obtaining a medically necessary transfer to a posting where Operational Stress Injury treatment was accessible, such that she remains formally posted to Nunavut while residing in Alberta on Off Duty Sick status.

***David Combden***

28. The Plaintiff, David Combden, of the Town of Antigonish, Province of Nova Scotia, is a Staff Sergeant in the RCMP.

29. S/Sgt. Combden is a 30-year veteran of the RCMP. After three years on the job, S/Sgt. Combden applied for a transfer to the northern "B Division" in Labrador.

30. S/Sgt. Combden served in communities devastated by intergenerational traumas and substance abuse issues, with associated scenes of violent crime on a regular basis. The detachment was short-staffed for the duration of his tenure, leaving officers to cover the shortfall by working for days at a time without a break. Exposure to violence was routine and critical incident debriefings did not exist.

31. S/Sgt. Combden had been serving in Labrador for two years when he was transferred to another posting in Newfoundland. Upon arrival, he began to notice concerning symptoms of mental illness, including the spontaneous onset of anger and emotional lability; he became withdrawn and increasingly estranged from his family.

32. As his career progressed, S/Sgt. Combden's symptoms became increasingly acute, but, as any mention of mental health in the RCMP was met with derision and stigma, he suffered in silence while his health deteriorated. He lived alone, away from his young family in remote, isolated postings (including Watson Lake, YK; Shamattawa, MB; Island Lake, MB; Dease Lake, BC; Oxford House, MB; Norway House, MB), and continued to prioritize his work with the RCMP over his mental health, a sacrifice which went unacknowledged, as mental health remained taboo in the force.

33. In or about 2009 or 2010, while S/Sgt Combden was stationed in Dease Lake, BC, a remote area in northern BC near the Alaska and Yukon borders, he experienced pain in his left shoulder while working, which affected his shooting hand and made some work tasks more difficult. He saw a local physician before raising his injury with the RCMP.

34. When S/Sgt Combden reported his shoulder injury through his chain of command, the RCMP advised that they would look into how they could assist him. He then received prompt access to diagnostic and treatment services, including:

    (a) being flown by the RCMP from Smithers, BC to Vancouver and accommodated overnight in a hotel;

    (b) undergoing an MRI the following day at a private clinic arranged by the RCMP;

    (c) undergoing surgery only a few weeks later at a private clinic arranged by the RCMP; and

    (d) remaining on active duty while treatment was arranged and completed, rather than being ordered off work.

35. In 2013, while working in Northern Manitoba, S/Sgt. Combden read an article written by an RCMP member suffering from PTSD. It was a revelation. Upon reading about someone else experiencing the same symptoms, he realized that he was not "crazy" or "bushed" – the discriminatory nomenclature used within the RCMP – but rather suffered from a recognized mental illness.

36. After realizing that familial supports were crucial to his recovery – and understanding the mental health effects of years spent in isolated postings – S/Sgt. Combden sought a transfer that would allow him to see his children and elderly family in Ontario. The RCMP refused and insisted that he either transfer to Nunavut or remain in Manitoba.

37. S/Sgt. Combden approached his deployment to Nunavut with resolve, but he soon experienced exacerbated PTSD symptoms and was subjected to both extreme violence and a toxic, discriminatory workplace culture. A series of traumatic events in 2016 forced him to seek dedicated Mental Health Services and he was ultimately ruled unfit to work. Although S/Sgt. Combden flew south shortly thereafter with only the belongings he could carry, the RCMP continued to list him as Nunavut "V-Division property." He could not return to the Arctic to work and he could not secure a transfer that would allow him to return to work elsewhere while managing his Operational Stress Injury.

38. The RCMP provided S/Sgt. Combden no direction or support as to where he should reside. He spent the next three years living at his remote cabin in northern Quebec. The RCMP refused to transfer S/Sgt. Combden from the V-Division, contrary to medical advice from his psychiatrist. Realizing that living in isolation was adversely affecting his compromised mental health, S/Sgt. Combden moved to Halifax where he had family support. S/Sgt. Combden alone bore the costs of this move.

39. When S/Sgt. Combden finally secured mental health treatment in 2017 – after decades of living with untreated PTSD symptoms – his psychiatrist advised that continued service in remote communities would cause significant harm and exacerbate his illness. These concerns were communicated to the RCMP, yet no efforts were made to transfer him to an urban centre. During this time off work, S/Sgt Combden was in a mental health crisis that was exacerbated by the intentional and discriminatory actions of RCMP management.

40. S/Sgt. Combden was undeterred by the RCMP's callous behaviour and, after months of intensive therapy and work on his mental health, he was cleared to return to work in late 2018. S/Sgt. Combden contacted the RCMP's Graduated Return to Work program stating his desire to return to the force, but his request was ignored. He then reached out to Human Resources personnel, again expressing a desire to return to work. This time, he was informed his security clearance had lapsed and it would take "months" to regain it.

41. It was not until July 2019 that a gradual return to work plan was offered, and even upon successful completion of this program, S/Sgt. Combden waited several months before he was offered anything resembling full-time work with the RCMP. In July 2020, he was transferred to Antigonish.

42. Comparing his experience with a physical injury to his shoulder to his experience of having an Operational Stress Injury, S/Sgt. Combden states as follows:

    (a) The RCMP handled his physical injury efficiently;

    (b) Raising his physical injury and functional limitations with his chain of command resulted in immediate access to treatment; and

    (c) His physical injury attracted no stigma or negative workplace responses, and no one expressed to him that he was exaggerating or "faking it" with a shoulder injury.

43. By contrast, when S/Sgt. Combden suffered from an Occupational Stress Injury:

    (a) When he sought a transfer to obtain the emotional and familial support he needed to recover, the RCMP refused and insisted that he either transfer to Nunavut or remain in Manitoba;

    (b) As his symptoms worsened, he was ordered off work and told he was "not allowed to work";

    (c) Once off work, he was largely ignored rather than supported in navigating access to diagnosis and timely treatment.

44. After serving the RCMP in nine isolated postings, S/Sgt. Combden continues to live with symptoms of his Operational Stress Injury, exacerbated by years of suffering alone and in silence.

***Graham Walsh***

45. The Plaintiff, Graham Walsh, of Eastern Passage, in the Province of Nova Scotia, is a Constable in the RCMP.

46. Cst. Walsh began his career with the RCMP in 2009, when he was posted to Morden, Manitoba upon graduation from the Cadet Training Program. In 2011, he was posted to Oxford House, a remote community in northern Manitoba accessible only by air travel. Cst. Walsh lived in a

compound and chose not to have his wife or young child accompany him to this posting, as they could not safely reside in the area.

47. During his two years in Oxford House, Cst. Walsh was frequently exposed to scenes of extreme violence and was routinely placed in situations of physical danger. During this time, Cst. Walsh began experiencing symptoms of an Operational Stress Injury, including avoidance of social situations and a preference for constant work, to avoid periods of reflection or processing.

48. Cst. Walsh was transferred to Steinbach, Manitoba in late 2013, where he was joined by his wife and child. He quickly recognized that something was wrong with his mental health; he avoided his family and began to isolate himself from interactions with loved ones. As the RCMP did not perform any psychological evaluations or otherwise recommend Mental Health Services when Cst. Walsh left Oxford House, no one diagnosed the untreated PTSD symptoms emerging with increased intensity. Cst. Walsh threw himself into higher risk areas of policing which included but were not limited to drugs and gangs.

49. The RCMP directly benefited from Cst. Walsh's untreated PTSD and encouraged him to continue overworking himself without reprieve. Constant exposure to danger and violence was viewed as a positive occupational asset. When Cst. Walsh was posted in Iqaluit, Nunavut in 2016, his psychological assessment was essentially waived when the RCMP psychologist performing the testing learned that he had previously served in Oxford House. In comparison, Cst. Walsh was informed that Iqaluit would be a "breeze."

50. While Cst. Walsh was posted to Oxford House, Manitoba, he also sustained a duty-related left shoulder injury. Upon being transferred to Steinbach, Manitoba, Cst. Walsh reported his injury through his chain of command. The RCMP responded promptly by facilitating access to treatment, including granting time off, arranging diagnostic x-rays, and arranging physiotherapy. While posted in Steinbach, Manitoba, Cst. Walsh experienced that his physical injury was accepted as legitimate, treatment was readily available, and he received appropriate medical care with the support of the RCMP.

51. In 2016, Cst. Walsh was reposted to Iqaluit, Nunavut, where he remained until 2018. While posted in Iqaluit, Cst. Walsh sustained a lower back injury during an arrest from falling approximately twenty stairs and landing on his back. Following disclosure of this physical injury, the RCMP again facilitated immediate access to treatment, including hospital care, time off, and aftercare. Cst.

Walsh experienced that this injury was accepted, that pathways to treatment opened promptly, and that he was supported by the RCMP in his recovery from this service-related physical injury.

52. Once deployed to Iqaluit, Cst. Walsh noticed the exacerbation of familiar mental health symptoms. He continued to witness scenes of violence on a regular basis, but no Mental Health Services were offered. Eventually, Cst. Walsh recognized the need for professional help and arranged to see an RCMP psychologist who was scheduled to visit Iqaluit on unrelated business. Cst. Walsh underwent a psychological evaluation and was informed that it was unsafe for him to continue working – particularly in Nunavut. Cst. Walsh booked a follow-up phone appointment, but it was unilaterally cancelled, and no further attempts were made to ensure Cst. Walsh's occupational safety.

53. After being involved in an active shooting incident in 2018, Cst. Walsh participated in a debriefing. He learned that the previous RCMP psychologist responsible for his care had suddenly quit, and that the RCMP did not maintain effective policies to ensure continuity of the Mental Health Services. Cst. Walsh was ultimately forced to hire a private psychologist, and given the remoteness of his posting, sessions could only be conducted via telephone.

54. In the Spring of 2019, Cst. Walsh traveled to an OSI Clinic in Ottawa, where he was promptly diagnosed with PTSD. As there were no effective procedures in place to expedite transfers in response to Operational Stress Injuries, Cst. Walsh flew back to Iqaluit shortly thereafter to continue working while he awaited a new posting and further treatment. During this time, Cst. Walsh overheard senior officers, supervisors and peers openly mocking Class Members with Operational Stress Injuries, indicating that they were insufficiently tough to do their jobs. Upper management referred to such regular members as "playing games" to secure favourable transfers. This discriminatory attitude quickly influenced Cst. Walsh's attitude at treatment sessions, as he became increasingly reticent to speak about his symptoms.

55. Cst. Walsh left Iqaluit in May 2019 for one month of treatment at the OSI Clinic, with an anticipated transfer to the Halifax District essentially reserved for his return. However, after a month of treatment, it was determined that Cst. Walsh remained unfit to return to work, given the severe PTSD symptoms that had developed over the course of his service. After following medical advice and remaining at the OSI Clinic for approximately three more weeks, Cst. Walsh was informed that he had been labeled "sick - unfit for duty" and, as such, his transfer would not be approved. Cst. Walsh was informed that the Halifax Division would not accept a transfer from someone labeled

"sick," and he was forced to return to Iqaluit to await a transfer to receive treatment at an OSI Clinic in Nova Scotia.

56. On July 18, 2019, Cst. Walsh moved to Nova Scotia to receive treatment at an OSI Clinic. He was told by a superior upon leaving that he "better be better" by September. Despite his instructions to await contact from the RCMP to begin treatment at the OSI Clinic, Cst. Walsh's paperwork was not processed due to shortcomings of the OHSS Office, leaving him without treatment and his wife, three children and himself without a home when authorizations for benefits were delayed.

57. Almost two months later, Cst. Walsh began treatment at the OSI Clinic, where he was advised that a transfer to Nova Scotia should be effected immediately to assist and expedite treatment, as his transient living accommodations were negatively affecting his treatment and recovery. An official request was submitted and refused by the RCMP. Cst. Walsh was ultimately forced into occupational leave for his disability and continues to seek treatment for the Operational Stress Injury he sustained in the course of his service with the RCMP. Cst. Walsh, his wife and three young children remain in transient housing without their possessions and personal belongings.

58. Cst. Walsh can readily contrast his experiences with service-related physical injuries with his experiences with his Occupational Stress Injury. For his physical injuries, the RCMP was supportive, he could readily access treatment following disclosure through the chain of command, and the RCMP ensured he received treatment and recovery time. By contrast, when Cst. Walsh suffered from PTSD, raising the existence of an injury or functional limitation with his chain of command did not result in comparable access to treatment. Instead, he was disbelieved, accused of exaggerating or manipulating his condition to obtain favourable transfers, and told by a supervisor, that he "better be better" by September. Cst. Walsh further experienced a markedly different workplace culture in the RCMP's response to his Occupational Stress Injury as compared to physical injuries characterized by dismissal, stigma, and lack of meaningful support.

***(ii.) The Class***

59. The Plaintiffs, Kelly McQuade, David Combden, and Graham Walsh, seek to certify this action as a class proceeding pursuant to Part 5.1 of the *Federal Court Rules*, SOR/98-106, on their own behalf and on behalf of the Class consisting of all persons who are or have been regular members (as defined in section 1 of the Royal Canadian Mounted Police Regulations, 2014, SOR/2014-281) and who, between January 1, 1992 and August 6, 2021, have been diagnosed with, and/or suffer

or have suffered from, an Operational Stress Injury. For certainty, the Class excludes civilian and public service members of the Royal Canadian Mounted Police.

60. As the proposed representative plaintiffs, the Plaintiffs have no adverse interest to those of the proposed Class. The Plaintiffs state that they would fairly and adequately represent the interests of this identifiable Class, that their claims raise common issues, and that a class proceeding is the preferable procedure for the resolution of such common claims.

***(iii.) The Defendant***

61. The Defendant, the Attorney General of Canada, representing His Majesty the King in Right of Canada, is named in these proceedings pursuant to sections 17 and 48 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, and is the legal representative of the RCMP, which employs the Plaintiffs and members of the Class.

62. All references to the Crown are deemed to include its contractors, subcontractors, agents, servants, employees, appointees, and departments. Pursuant to section 36 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, all current and former agents of the RCMP, including, without limitation, the Commissioner, the Chief Administrative Officer, the Chief Financial Officer, the Chief Human Resources Officers, all Commissioned Officers, and the Senior Executive Committee, are deemed to be servants of the Crown throughout the course of their employment.

63. The Crown, through and with its contractors, subcontractors, agents, servants, employees, appointees, and departments, was at all material times hereto responsible for the provision of the Mental Health Services to the Class, including administering the reporting, supervisory, and decision-making structures through which members access diagnosis and treatment for duty-related injuries, and for taking reasonable steps to provide safe working conditions for the Class. The Crown was further responsible for the operation, governance, management, and supervision of equitable working conditions for the Class, including the duty to ensure that Class Members were not subjected to systemic workplace discrimination on the basis of mental disability, in contravention of their section 15(1) *Charter* rights. The Plaintiffs plead the doctrine of *respondeat superior* and state that the Crown is vicariously liable for the misconduct of its employees, representatives, servants, and agents.

## E. Factual Background: The Mental Health Crisis in the Royal Canadian Mounted Police

64. As a federal organization, the Royal Canadian Mounted Police is responsible for establishing and maintaining occupational health and safety standards consistent with the *Canada Labour Code,* R.S.C., 1985, c. L-2. It is expected that all such agencies will provide safe working conditions and take reasonable steps to reduce the incidence of occupational injuries, including psychological injury. The RCMP is also responsible for administering Canada's national police force and upholding federal laws across the country.

65. Class Members face unique occupational risks and challenges by virtue of their status as first responders in every region of Canada and in 26 locations around the world, with postings to rural, remote and urban policing environments. They are transferred in and out of small communities and high-risk postings, with career progression often dependent on stationing locations. They confront crises on a regularized basis throughout their careers involving multiple casualties with catastrophic injuries. Class Members experience life threatening circumstances or critical incidents on the job and are often expected to return to work, without adequate health or debriefing assessments, and perform their duties shortly thereafter.

66. It is expected that Class Members will respond to dangerous and traumatic scenes in the course of their employment, and the RCMP is aware that its members face an increased risk of developing Operational Stress Injuries. Census data indicates that thousands of calls are received each year in relation to violent crime and tragic accidents, a great number of which require RCMP regular members to respond in furtherance of their legislated duties to the public.

### *(i.) RCMP Response to Mental Health and the Generic Federal Employee Assistance Program*

67. For most of its history, the distinct mental health challenges of first responders were ignored by the RCMP. Regular members who experienced duty-related trauma or symptoms of mental illness were told to "man up," "suck it up" and do their jobs. They were provided with access to the generic Federal Employee Assistance Program used across the federal service, which provided the same resources and supports to regular members as those available to all federal employees, such as those with Canada Post or the Bank of Canada, with no accounting for the unique mental health risks posed to Class Members. The organizational silence and lack of intervention regarding mental health and inaccessibility of appropriate mental health care resulted in the denial of symptoms,

increased self-medication and substance abuse and the absence of prevention, detection, early intervention, or adequate treatment.

68. By the early 2000s, the intuitive connection between regular members' employment conditions and mental health issues attracted empirical study, which supported the causal link between exposure to trauma and psychological harm. This increasing body of evidence did not induce cultural change within the RCMP, where discussions about mental health were discouraged, belittled, and the subject of psychological trauma was seen as "taboo." This culture of silence and stigmatization caused significant delays in seeking treatment for Operational Stress Injuries, substance abuse disorders, break down of families, and in some cases, premature death by suicide. Regular members suffering with duty-related mental illnesses faced discriminatory barriers to treatment, as compared with colleagues who suffered visible, physical injuries or physical disabilities. It was expected that Class Members would disregard and repress any Operational Stress Injury symptoms, as the underlying culture was fundamentally ableist and hostile to discussions of mental health.

69. Although the RCMP chose not to preserve records concerning employees' mental health issues, the mental health crisis within the RCMP was revealed in 2009 with the publication of the Military Ombudsman's 2008-2009 report, which found that more than 1,700 members were placed on occupational leave as a result of mental illnesses sustained in the course of their employment. It was further reported that an "inextricable link" existed between Operational Stress Injuries and the working conditions within the RCMP. Although suggestions for reform were advanced, including implementation of mandatory reporting for possible psychological duty-related injuries, RCMP leadership chose not to effect any substantive changes.

70. In the months following the Military Ombudsman's 2009 report, the RCMP announced that a pilot project to treat Operational Stress Injuries, based on a program used in the Canadian Armed Forces, would be implemented to help employees manage symptoms of duty-related mental illness. Shortly thereafter, while the pilot project lingered in operational limbo, an internal magazine sent to all RCMP employees indicated that police officers were six or more times more likely to develop PTSD and three times more likely to die by suicide than the general public they serve. This insight did nothing to hasten the implementation of the OSI pilot project, which was officially cancelled before it began in 2012. By refusing to acknowledge the distinct mental health needs of its members, the RCMP furthered its longstanding culture of silence, discrimination and stigma regarding the prevalence of Operational Stress Injuries amongst members.

71. The cancellation of the OSI pilot project was accompanied by the RCMP's announcement to the effect that existing policies and programs were sufficient to meet its employees' mental health needs, despite evidence to the contrary. While RCMP employees had access to peer-based mental health programs, which encouraged the use of informal debriefings following a critical incident, the generic Employee Assistance Program remained the primary source of mental health care for regular members – and the only official source of professional psychological help. Regular members who availed themselves of such services risked exposure and subsequent discrimination, as supervisors and officers openly mocked regular members who were known to seek help for Operational Stress Injuries.

72. By 2013, reports of RCMP employees dying by suicide as a result of Operational Stress Injuries became increasingly common. In response, the RCMP released a public statement, referencing the fact that most regular members underwent mandatory psychological assessments every three years. Yet, there was and remains a glaring disconnect between what was ostensibly offered to regular members and the services, treatment and programs ultimately delivered or accessible. Even informal, peer-to-peer debriefings were unavailable or not carried out after many critical incidents – including witnessed suicides and violent assaults. In the face of mounting criticism, a mental health crisis and increasing suicides by current and former regular members, the RCMP began to formulate a formal response to the mental health crisis within its ranks in 2013.

***(ii.) The RCMP's Five-Year Mental Health Strategy (2014-2019)***

73. When the RCMP announced its five-year Mental Health Strategy on May 1, 2014, its public statement that "more can and should be done to address the issue of mental health in the workplace" was amply supported by both empirical evidence and the experiences of numerous Class Members. By the time the Mental Health Strategy was introduced, suicides among RCMP employees had reached record highs. An audit published in the lead-up to the Mental Health Strategy further revealed that 38% of the RCMP's workforce on long-term leave was unable to work due to poor mental health.

74. The 2014 RCMP Mental Health Strategy consisted of provision of care through OHSS Offices, the Health Care Entitlements and Benefits Program, periodic health assessments, the Road to Mental Readiness program and the Peer-to-Peer program, all described below. These programs continue in place today, and constitute the Mental Health Services.

75. Occupational Health and Safety Services Offices ("OHSS Offices") exist in each RCMP division – although smaller divisions may share offices – and these offices are responsible for facilitating access by members to external mental and physical health treatment providers. OHSS Offices are staffed with medical doctors, psychologists, nurses, return-to-work facilitators, duty-to-accommodate coordinators, and administrative support staff, all of whom are employed by the RCMP. OHSS Offices provide referrals to members for diagnosis and treatment, inform supervisors of a member's work-related injury, conduct and review periodic health assessments, review and approve treatment plans, and recommend when members are ready to return to work. OHSS Offices are also responsible for disability case management, including approval and monitoring of medical leave, members' return to work, and medical discharges.

76. OSI Clinics, administered through the Defendant, require a referral by a treating physician and approval by an OHSS Officer. OSI Clinics provide the services of psychiatrists, psychologists, social workers, mental health nurses, and other specialized clinicians.

77. Periodic health assessments, which include a self-reported questionnaire and a physician assessment, are declared and intended to be mandatory every three years to monitor a member's fitness for duty and serve as an early detection tool for mental health illnesses. The outcome of the periodic health assessments may result in referral for diagnosis or treatment due to mental health concerns, or approval or denial for high-risk positions or postings.

78. The Health Care Entitlements and Benefits Program is available to RCMP members to provide access to general physicians, psychiatrists, and community-based psychologists. Members may receive mental health counselling by an approved psychologist without referral or authorization for six hours per year, with an additional six hours only if authorized by their divisional OHSS Office. The Health Care Entitlements and Benefits Program also provides members access to OSI Clinics.

79. The Road to Mental Readiness program was designed by the Canadian Department of National Defence to "improve short term performance and long term mental health outcomes" through increased mental resilience gained through participants' education about mental health and stress, tools and resources to manage and support employees who may be experiencing mental illness, and by training supervisors in the promotion of positive mental health in their employees. The program was adopted from the Canadian Armed Forces/Department of National Defence without modification for the unique and complex needs of the RCMP.

80. The Peer-to-Peer program, available to members for work-related and personal issues, consists of RCMP member volunteers providing "listening support" and information about services available to members.

81. With the announcement of the Mental Health Strategy, the RCMP apparently signaled an intention to provide adequate and appropriate programs and procedures to assist employees with the prevention and early detection of mental health issues. However, despite outlining strategic goals in relation to the elimination of stigma and the provision of improved programming, the RCMP Mental Health Strategy was predominantly a restatement of existing inadequate services. Class Members were encouraged to seek help through the generic Employee Assistance Program, and the Operational Stress Injury pilot program, which was previously canceled before it began, was revived and offered to employees, subject to their receiving a physician's referral. The Mental Health Strategy also re-iterated that periodic health assessments would be held tri-annually for most employees. Funding for additional counseling services was limited to a maximum of 12 hours per year, and access to this was contingent on internal authorization, a deterrent given the ramifications for members once it was known in the chain of command that they were experiencing mental health issues. For many, even this meagre programming was functionally inaccessible, as those who were known to access mental health supports faced discrimination, mockery, and diminished career prospects in an RCMP culture that valorized suffering in silence.

82. Although the RCMP took responsibility for the implementation of the five-year Mental Health Strategy, the resources offered to Class Members were largely based on recycled programming from the Canadian Armed Forces. Following its announcement, one prominent psychologist raised concern that the Mental Health Strategy did not address distinct challenges of serving in the RCMP, including the fact that, for regular members, there is no return home from the areas in which they serve; rather, the line "blurs" between areas of safety and danger. Despite empirical evidence that Class Members required particularized mental health supports due to their unique occupational vulnerabilities to psychological harm, the RCMP chose not to implement any such programming, preferring instead to rely upon generic services and programs. With respect to the programming it did provide, the RCMP failed to properly supervise and carry through with its implementation, making unacceptable operational choices.

83. The effects of Operational Stress Injuries on Class Members continued to receive significant national attention in the years following the implementation of the RCMP Mental Health Strategy. In 2016, for instance, the Standing Committee on Public Safety and National Security published its

Study on Operational Stress Injuries and Post-Traumatic Stress Disorder in Public Safety Officers and First Responders, finding that, despite the implementation of the RCMP Mental Health Strategy, PTSD among Canadian first responders remained at the forefront of national public safety concerns. Rather than expending effort to improve services to promote Class Members' health and wellness, the RCMP continued to operate ineffective mental health supports and cultivate a culture of discrimination toward those who used them.

84. The Standing Committee also identified several deficiencies in relation to existing mental health services within the RCMP, including the lack of situational specificity in the supports available to Class Members, the absence of a clear definition of Operational Stress Injuries, and the lack of Crown effort with respect to data collection and retention on Class Members' mental health. The Study concluded with a formal request for a comprehensive response from the Crown. For their part, the RCMP cited that fact that the Committee's recommendations were not directed specifically at them, and so it chose not to respond, to the ongoing detriment of Class Members.

***(iii.) The RCMP Mental Health Strategy Audit and the Preservation of the Status Quo***

85. In the Spring of 2017, the Office of the Auditor General published findings from an intensive audit of the RCMP Mental Health Strategy, which assessed information from *inter alia* the RCMP's documentary disclosure, interviews with senior officials within the RCMP, and surveys on mental health completed by more than 7,000 RCMP employees. After detailing the ways in which the RCMP has implemented programs and procedures to support mental health amongst its ranks, the Auditor General outlined a series of bleak empirical facts concerning the prevalence of Operational Stress Injuries within the RCMP, including regular members' disproportionate vulnerability to PTSD and the common experience of inaccessibility and delayed access to services, supports and treatment for those seeking appropriate mental health supports.

86. Upon completion of the independent review, the Auditor General concluded that the RCMP did not meet the mental health needs of its employees. It was determined that mental health care was not prioritized by RCMP leadership, and its stated goals of early detection and intervention were not supported by effective actions. Additional health and safety failures were noted in relation to mental health sick leave policies and the inaccessibility of basic mental health services.

87. The Auditor General found that only 57% of surveyed members reported timely access to mental health services, and 20% of members who sought mental health supports and required sick leave never returned to service in the RCMP. Those who returned to work were frequently met with

discrimination, invasions of their medical privacy, and derogatory remarks upon rejoining the RCMP. The prevailing culture was, and continues to be, such that sick leave for mental health correlates negatively with Class Members' career advancement in a workplace that demands employees to "man up" and repress symptoms of mental illness.

88. The RCMP refused to confirm the accuracy of the reported statistics in the Auditor General's report and chose not to modify its impugned mental health supports. The same year brought significant media attention for the RCMP's removal of an employee who developed PTSD in furtherance of his occupational duties, and public statements made in early 2018 brought increased public attention to the psychological trauma experienced by regular members posted to remote and high-risk areas. It was revealed that, notwithstanding empirical evidence of a mental health crisis in the RCMP, and knowledge by the RCMP that remote postings pose an increased risk of Operational Stress Injuries, regular members who were deployed to isolated, high-risk regions received no psychological evaluation, support, or counselling, or adequate and timely access to treatment.

89. Further research conducted in 2018 revealed the persistence of the identified deficiencies in the RCMP's provision of mental health supports. Indeed, after surveying hundreds of RCMP members, it was determined that over half of RCMP employees suffer from a mental health disorder, with 25% reporting signs and symptoms of PTSD. The RCMP was made aware of this research and ultimately posted the report to its website but did not take substantive action to improve employment conditions for members.

90. With the expiration of the five-year RCMP Mental Health Strategy in 2019, there was an opportunity for progress when the Minister of Public Safety and Emergency Preparedness released the RCMP 2019-20 Departmental Plan, which included an Occupational Safety Strategy for 2019 to 2024. While this new Strategy suggested another audit of mental health supports in the RCMP, no steps were taken to alter the demonstrably inadequate mental health services provided to Class Members. To date, there have been no substantive alterations to the RCMP's mental health supports, and the generic, circumscribed, and largely inaccessible Employee Assistance Program remains the primary resource for Class Members.

91. Since the introduction of the RCMP's Occupational Safety Strategy in 2019, and ensuing period of inaction, the harms caused to Class Members by the inadequacy of the Mental Health Services have been further demonstrated, including a recent study showing that, even when compared with other police officers, RCMP members experience a disproportionate incidence of suicidal ideation,

PTSD, depression, anxiety, and panic disorders. Since 2014 – the year in which the Mental Health Strategy was announced – and up to late 2019, 25 RCMP employees are known to have tragically died by suicide after suffering from Operational Stress Injuries.

## F. CAUSES OF ACTION

### *(i.) Systemic Negligence*

92. At material times, the Defendant owed a legal duty to the Plaintiffs and Class Members to take reasonable care in the implementation of the Mental Health Services. Specifically, at all material times hereto, the Defendant owed legal duties to the Plaintiffs and Class Members to, *inter alia*:

a. provide reasonably safe and healthy employment conditions for all Class Members;

b. provide adequate, timely, and substantively accessible Mental Health Services to Class Members in all postings;

c. ensure that the implementation of the Mental Health Services actually addresses the complex and unique needs of the Class Members;

d. supervise adherence by its employees to the policies encompassed in the Mental Health Services;

e. adequately train supervisors to detect and prevent Operational Stress Injuries and to encourage access to treatment;

f. adequately train staff in the OHSS Offices to provide timely, unbiased and adequate care to Class Members;

g. take reasonable steps to prepare and train Class Members for employment as first responders, including in relation to the detection and prevention of Operational Stress Injuries;

h. promote, facilitate, encourage, and/or require the regular use of adequate and appropriate Mental Health Services by Class Members;

i. take all reasonable and necessary steps to ensure that the RCMP operates in compliance with sections 124 and 125 of the *Canada Labour Code*; and

j. reasonably accommodate Class Members in the workplace who have medical restrictions including relating to mental disability.

93. The Defendant breached the requisite standard of care by acting negligently, in its actions and omissions, in the face of mounting evidence of a mental health crisis within Canada's national police force, with debilitating and often fatal consequences for Class Members, who are expected to respond in dangerous and traumatic situations as a condition of employment. Such breaches include, but are not limited to, the following:

a. the Defendant chose not to exercise reasonable care in ensuring accessible and timely access to the Mental Health Services to prevent and/or treat Operational Stress Injuries;

b. the Defendant chose to inadequately implement, and facilitate access to, the Mental Health Services, to the detriment of the Class, including choosing to inadequately adhere to and apply internal policies requiring mental health screening of those at risk of developing Operational Stress Injuries;

c. the Crown did not modify and improve access to existing Mental Health Services despite the proliferation of empirical evidence demonstrating the inefficacy and inaccessibility of the Mental Health Services as implemented by the Crown;

d. the Defendant chose not to take a reasonable interest in the psychological impacts of working as a first responder, despite its responsibility for the occupational health and safety of RCMP employees, its acknowledgement of duty-related risks for Operational Stress Injuries, and its stated goals of the Mental Health Services to reduce such risks;

e. the Defendant failed to properly train and supervise staff and volunteers in OHSS Offices to enable the adequate diagnosis and treatment of Operational Stress Injuries;

f. the Defendant did not operate, manage, administer, and/or supervise employment conditions within the RCMP in a manner consistent with sections 124 and 125 of the *Canada Labour Code*;

g. the Defendant chose to operate Canada's national police force in a dangerous, callous, and reckless manner, such that Class Members were placed at unreasonable and foreseeable risk of Operational Stress Injuries and the exacerbation thereof;

h. the Defendant ignored, disregarded, and/or chose not to consider empirical evidence regarding the distinct mental health needs of RCMP first responders and the implications this evidence had for the manner in which the Mental Health Services ought to have been implemented;

i. the Defendant chose not to adequately implement, or facilitate access by Class Members to, mental health supports, programs, and/or policies for occupational leave in respect of Operational Stress Injuries;

j. the Defendant chose not to provide accommodation in the workplace for Class Members' medical needs and restrictions arising from their Operational Stress Injuries, including when returning from work after off-duty sick leave;

k. the Defendant did not provide equitable and non-discriminatory working conditions for RCMP employees suffering from Operational Stress Injuries; and

l. such further and other particulars as may be provided prior to the trial of this action.

94. The Defendant had access to empirical evidence of a mental health crisis within the RCMP, knowledge of Operational Stress Injury duty-related risks to which Class Members were exposed, and Class Members' accounts of exposure to trauma and associated Operational Stress Injuries. Still, the Defendant chose not to modify or improve the implementation of the Mental Health Services for the protection of Class Members' mental health, resulting in the further proliferation and exacerbation of Operational Stress Injuries and the consequences thereof.

95. The negligence of the Defendant in the implementation of the Mental Health Services created a substantial likelihood of foreseeable harm for Class Members. The Plaintiffs state that, as a result of the Defendant's negligence, the Plaintiffs and Class have suffered pecuniary and non-pecuniary damages, injury and loss. The harms and damages of the Plaintiffs and Class Members were caused by the negligent acts and omissions of the Defendant, for which it is fully liable.

### *(ii.) Breaches of Section 15(1) of the Canadian Charter of Rights and Freedoms*

96. The acts and omissions of the Defendant have violated the basic and fundamental equality rights of the Plaintiffs and Class Members under section 15(1) of the *Charter*. The impugned state conduct is the RCMP's disclosure-based structure for accessing treatment, which requires members to report the existence of an injury, condition, or functional limitation affecting fitness for duty through supervisors and the chain of command as a prerequisite to accessing treatment, thereby intermingling treatment gatekeeping with employment supervision. Although this structure applies on its face to all members, it has an adverse and disproportionate impact on Class Members. In its effect, the structure creates substantively different and inferior access to treatment for members with mental disabilities as compared to members with duty-related physical injuries, perpetuates

stigma and stereotyping associated with mental disability, and reinforces the historical disadvantage experienced by the Class.

***a. The RCMP's structure to access treatment creates a distinction based on mental disability***

97. The Defendant condones, authorizes, and perpetuates a discriminatory workplace where Class Members are subjected to distinct burdens in accessing treatment for duty-related psychological injuries, resulting in differential treatment based on mental disability. Class Members lack the benefit of, and face disproportionate burdens in, accessing and receiving treatment for duty-related psychological injuries as compared to regular members accessing and receiving treatment for duty-related physical injuries. The Defendant's actions and inactions in administering access to the Mental Health Services through the RCMP's disclosure-based structure for accessing treatment impose an adverse impact on Class Members, resulting in a distinction based on mental disability. These systems governing access to Mental Health Services, while seemingly neutral or even attempting to be ameliorative of the conditions experienced by Class Members, fail to account for the already disadvantaged position of individuals with a mental disability and instead impose additional barriers upon them. Class Members receive substantially different and inferior access to treatment, on the basis of mental disability, compared to regular members suffering duty-related physical injuries.

98. Differential treatment based on mental disability is experienced at each stage of the Operational Stress Injury: (a) before a diagnosis, (b) seeking and obtaining treatment; and (c) returning to work. This is as a consequence of the RCMP's disclosure-based structure for accessing treatment, which conditions diagnosis, care, and rehabilitation on reporting through supervisors and the chain of command. Specifically, the benefits of which the Class is deprived include:

*Pre-diagnosis*

i. Effective implementation of tools to equip supervisors to prevent and detect Operational Stress Injuries in their employees, as a result of poor implementation of the Road to Mental Readiness program and a culture of bias against mental disability;

ii. Acceptance by supervisors that Operational Stress Injuries require timely and specialized medical care;

iii. Tools for Class Members to prevent and detect their own Operational Stress Injuries, as a result of inadequate training at the RCMP Academy, inadequate implementation of the Road to Mental Readiness program, and inadequate support from the Peer-to-Peer program;

iv. Timely diagnosis of Operational Stress Injuries impeded by delays of intake and assessment by OHSS Offices and due to the backlog of unprocessed periodic health assessments;

*Seeking and obtaining treatment*

v. Access to timely and adequate treatment, due to delays in OHSS Offices providing recommendations or referrals to external treatment providers including OSI Clinics, and delays in their review and approval of treatment plans;

vi. Options for transfers to facilitate treatment, including to enable a Class Member to be closer to family for mental health support or closer to appropriate treatment programs;

vii. Access to health programs and services while on medical leave for Operational Stress Injuries;

viii. Support from supervisors when on medical leave for Operational Stress Injuries;

ix. Freedom from the requirement to obtain internal authorization from a Class Member's chain of command to receive additional hours of mental health treatment, which deters Class Members from obtaining necessary treatment as a result of the disclosure-based access structure, given the hostile culture of the RCMP;

*Returning to work*

x. Support and accommodation in Class Members' return to work from disability case managers, staff in OHSS Offices, and supervisors; and

xi. Freedom from ostracization and unjustifiable limitation of employment opportunities.

***b. The distinction amounts to a lack of substantive equality for the Plaintiffs and Class Members***

99. Individuals with mental disabilities have historically been disadvantaged in Canadian society, limited in employment opportunities, are vulnerable, and stereotyped. This pre-existing disadvantage of Class Members contributes to the impact of the distinction created by the Defendant, and exacerbates the harm and lack of substantive equality experienced by the Class.

100. The distinction being made on the basis of mental disability, due to the adverse effects of the Defendant's actions, results in a lack of substantive equality for the Plaintiffs and Class Members by reinforcing, perpetuating, and exacerbating disadvantage and stereotypes faced by individuals with mental disabilities. This includes the stereotype that members with Operational Stress Injuries are weak, untrustworthy, or less capable of policing work, and that they are less deserving of accommodation, advancement and security of employment than members with physical injuries.

101. The inadequate access to treatment for duty-related mental health injuries stems from a failure by the Defendant to take into account the actual circumstances and needs of Class Members when administering the structure governing access to treatment. Class Members are exposed to known duty-related mental health risks innate to their roles as first responders, yet they are unable to gain meaningful access to health care treatment. The impugned gate-keeping structure governing access to the Mental Health Services has the adverse effect of disadvantaging, and restricting access to treatment of Class Members suffering from mental disability, a historical disadvantage.

102. The failure of adequate and timely mental health treatment leads to economic deprivation. Class Members become labelled as unfit for service, and are denied equal opportunities for placement, positions and transfers, even when deemed medically fit to return to work. In this, the RCMP perpetuates discriminatory disadvantages with lasting effects on Class Members' abilities to carry out remunerative work and receive employment benefits. Class Members experience discrimination that perpetuates the view that they are less capable or worthy of recognition or value, and less deserving of concern, respect and consideration.

103. The Defendant's violation of this fundamental right cannot be saved by section 1 of the *Charter*, as it does not constitute a reasonable limit prescribed by law that is demonstrably justified in a free and democratic society. The disclosure-based access to treatment structure, which conditions access to treatment on reporting through the chain of command and intermingles treatment gatekeeping

with employment supervision, is not a minimally impairing means of achieving legitimate operational objectives such as fitness-for-duty oversight.

## G. REMEDIES

***Negligence***

104. As a foreseeable result of the Defendant's negligence, the Plaintiffs and Class Members have suffered and continue to suffer damages for which they have not received compensation and which are not the subject to pensionable compensation.

105. The Plaintiffs state that the Defendant knew, or ought to have known, that its negligence would cause the Class Members significant damages, which include but are not limited to the following:

a. emotional, physical, and psychological harm and suffering, including exacerbation of Operational Stress Injuries;

b. pain and suffering, loss of amenities of life, and mental distress;

c. isolation and alienation from colleagues, friends, and family members;

d. an impaired ability to sustain interpersonal relationships;

e. addiction and substance abuse disorders;

f. premature death;

g. the need for ongoing psychological, psychiatric and medical treatment and care; and

h. loss of general enjoyment of life.

106. The Defendant is therefore liable to the Class for general damages and special damages, to be further particularized, caused by the Defendant's negligence.

***Breach of s. 15(1) Charter***

107. As a result of the Defendant's violations of the Plaintiffs' and Class Members' *Charter* rights to equality before and under the law, the Plaintiffs and Class Members are entitled to monetary damages, pursuant to section 24(1) of the *Charter*, in order to:

a. compensate them for their suffering and loss of dignity;

b. vindicate their fundamental human rights; and

c. deter the perpetuation of systemic discrimination in Canada's national police force.

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

109. An award of *Charter* damages is functionally justified to serve interrelated compensatory, vindicatory, and deterrent functions, and is and not duplicative of damages claimed at common law. First, they serve a compensatory function by addressing the collective harm suffered by Class Members arising from the denial of substantive equality, including loss of dignity, psychological harm, and systemic exclusion from equal access to treatment. Second, *Charter* damages serve a vindication function by affirming the equal human dignity of Class Members who have been subjected to denied and delayed access to diagnosis and treatment, mocking and belittling comments, including from peers, supervisors, and their chain of command, members who have experienced the persistence of a culture of intolerance directed toward those suffering from OSIs. Finally, *Charter* damages will serve a deterrent function by discouraging the continuation of disclosure-based treatment access structures and supervisory gatekeeping practices that impose adverse effects on members with mental disabilities.

110. The Plaintiffs state that all or a part of the award of damages under section 24(1) of the *Charter* is appropriate to be assessed by the Court in the aggregate, pursuant to Rule 334.28(1) of the Federal Court Rules.

111. The Plaintiffs further state that systemic remedies, including declarations and mandatory orders, against the Defendant, pursuant to section 24(1) of the *Charter*, would be just and appropriate to ameliorate the pre-existing disadvantage of those with mental disabilities that is perpetuated by the Defendant's breaches and violations of section 15, which are systemic in nature and require mandatory orders to correct and redress.

## H. QUEBEC LAW

112. Where the actions of the Defendant and its contractors, subcontractors, agents, servants, employees, appointees, and departments took place in Quebec, they constitute:

a. fault giving rise to the extra-contractual liability of the Defendant and its contractors, subcontractors, agents, servants, employees, appointees, and departments pursuant to the *Civil Code of Quebec*, S.Q. 1991, c. 64, Art. 1457, and the *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12, s.10, 10.1, and 16; and

b. fault giving rise to the extra-contractual liability of the Defendant and its contractors, subcontractors, agents, servants, employees, appointees, and departments pursuant to the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50, s. 3 and the *Interpretation Act*, R.S.C. 1985, c. I-16, s. 8.1.

## I. LEGISLATION AND RULES

113. The Plaintiffs plead and rely upon the following:

a. *Canadian Charter of Rights and Freedoms,* s. 15, Part 1 of the *Constitution Act, 1982,* being Schedule B to the *Canada Act 1982* (UK), 1982, c 11;

b. *Canada Labour Code,* R.S.C., 1985, c. L-2;

c. *Charter of Human Rights and Freedoms*, R.S.Q., c. C-12;

d. *Civil Code of Quebec*, S.Q. 1991, c. 64;

e. *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50;

f. *Federal Courts Act*, R.S.C. 1985, c. F-7;

g. *Interpretation Act*, R.S.C. 1985, c. I-16; and

h. *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10.

114. The Plaintiffs propose that this action be tried at Halifax, Nova Scotia.

**DATED** at Halifax, Nova Scotia this 14th day of January, 2026.

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**To: The Attorney General of Canada**