



Court File No. T- 2158-16

**FEDERAL COURT**

**PROPOSED CLASS PROCEEDING**

BETWEEN:

**MARC FRENETTE, WALLACE FOWLER and JEAN-PIERRE ROBILLARD**

Plaintiffs

-and-

**ATTORNEY GENERAL OF CANADA**

Defendant

**STATEMENT OF CLAIM**

Filed the 14<sup>th</sup> day of December, 2016

**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' solicitors 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 THIRTY 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 of 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 filing and serving your Statement of Defence is sixty days.

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

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

**DATED** at Halifax, Nova Scotia, this 14<sup>th</sup> day of December, 2016.

**Issued by:**

  
Elizabeth Caverly  
Director - Directrice  
Registry Office

**Address of Local Office:** 1801 Hollis Street  
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## **CLAIM**

### **I. INTRODUCTION**

1. When individuals enroll in the Canadian Forces, they do so honourably and willing to risk life and limb to protect and advance the ideals that Canada purports to uphold: equality, fundamental justice, due process, and the essential right to live and work in an environment that fosters human dignity and that is free from intolerance, racism and systemic discrimination.
2. These are among the most noble of pursuits, and the courage and decency of those who work toward these ideals cannot be understated. But unfortunately, the Canadian Forces has failed to look after its own with respect to these most basic human rights.
3. In the result, the Honour of the Crown and the reputation of the Canadian Forces have been tarnished. The lives of many have been devastated.
4. This Action concerns systemic racial discrimination and harassment in the Canadian Forces. From top to bottom, the Canadian Forces has failed to protect racial minorities and Aboriginal peoples from racism within the ranks.
5. Derogatory slurs, racial harassment and violent threats are tolerated or ignored. The “system” for responding to such misconduct within the Canadian Forces is nothing more than a mechanism authorized by Canada to silence the wrongs, thereby perpetuating and encouraging the racism itself.
6. Rather than properly punishing the wrongdoers and deterring insidious behaviour, victims of racism within the Canadian Forces are forced into isolation, subjected to further trauma and, in many cases, catapulted toward early release from their careers.

7. The Plaintiffs have each suffered racism and systemic discrimination during their time enrolled in the Canadian Forces. They bring this Action under Part 5.1 – Class Proceedings of the *Federal Courts Rules* on their own behalf and on behalf of a proposed class of similarly situated persons.
8. Pursuant to the *Crown Liability and Proceedings Act*, RSC 1985, c. C-50, the Defendant, the Attorney General of Canada, represents the Crown, the Canadian Forces and those Crown Servants (as defined below) who are responsible for the creation, continuation and perpetuation of systemic racial discrimination and harassment within the Canadian Forces.
9. The Plaintiffs plead and rely upon the following:
  - (a) *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c. 11.
  - (b) *Crown Liability and Proceedings Act*, RSC 1985, c. C-50, as amended.
  - (c) *National Defence Act*, RSC 1985, c. N-5, as amended, and the regulations made thereunder.
  - (d) *Canadian Forces Superannuation Act*, RSC 1985, c. C-17, as amended, and the regulations made thereunder.
  - (e) *Federal Courts Act*, RSC 1985, c. F-7, as amended, and the *Federal Courts Rules* made thereunder.
  - (f) All governing policies, procedures and guidelines that purport to address racial discrimination and harassment within the Canadian Forces, as they may have applied or continue to apply at any material time.

## II. THE CANADIAN FORCES

10. The Canadian Forces is Canada's military, bound to serve Her Majesty the Queen.
11. Section 14 of the *National Defence Act* provides that: "The Canadian Forces are the armed forces of Her Majesty raised by Canada and consist of one Service called the Canadian Armed Forces."
12. Within this Statement of Claim, the Plaintiffs use the term "**Canadian Forces**" in accordance with the *National Defence Act*, so to include the following:
  - (a) the three forces that form part of the Canadian Armed Forces: the regular force; the reserve force; and the special force; and
  - (b) the sea, land and air elements referred to, respectively, as the Royal Canadian Navy, the Canadian Army, and the Royal Canadian Air Force.
13. For the purposes of this Statement of Claim, "**Member**" or "**Members**" is defined as all members of the Canadian Forces, including all officers, non-commissioned members and cadets of the elements referred to in subsection 17(1) of the *National Defence Act*.
14. Pursuant to section 36 of the *Crown Liability and Proceedings Act*, a Member of the Canadian Forces is deemed to be a servant of the Crown.

## III. THE PROPOSED CLASS

15. The Plaintiffs will seek to certify this proceeding as a class proceeding, pursuant to Part 5.1 – Class Proceedings of the *Federal Courts Rules*, to represent the following class of persons:

All persons in Canada who have been enrolled as Members in the Canadian Forces in any capacity and who are, or who identify as,

racial minorities, visible minorities or Aboriginal peoples (hereafter, the "**Class**" or the "**Class Members**").

16. This definition of proposed Class Members is subject to further refinement and development in the Plaintiffs' motion for certification.

#### **IV. THE REPRESENTATIVE PLAINTIFFS**

17. There are three Plaintiffs, each of whom proposes to represent the Class: (a) Marc Frenette; (b) Wallace Fowler; and (c) Jean-Pierre Robillard.

##### **A. Marc Frenette**

18. The Plaintiff, Marc Frenette, was born on January 28, 1978. He is an Aboriginal man and member of the Abenaki First Nation.
19. Marc Frenette is a college graduate, who enrolled in the Canadian Forces on March 24, 2006, finishing second in his apprenticeship program at the Canadian Forces Base ("**CFB**") in Borden, Ontario.
20. Because of the standing achieved in his apprenticeship program, Mr. Frenette was given some preference in terms of his posting and chose to take a position in Aircraft Maintenance with the Canadian Forces Snowbirds, 431 Air Demonstration Squadron, based in CFB Moose Jaw, Saskatchewan.
21. For the first four years of his service at CFB Moose Jaw, Mr. Frenette went about his work without incident. In the last year of his service at CFB Moose Jaw, however, Members of his section became aware that he was Aboriginal. He was thereafter treated differently from other Members and discriminated against on the basis of his race.

22. He was denied requests for leave, which were routinely granted to other Members. He was denied opportunities for additional training which were routinely granted to other Members, including (but not limited to) specialist parachute training. While other Members in his section were sent on training, he was the lone Member tasked with watching over the Aircraft Maintenance shop. When he was observed wearing a cowboy hat on base, Members suggested that he ought to wear a traditional Aboriginal feather headdress instead.
  
23. In July 2013, an opportunity arose to transfer to 450 Tactical Helicopter Squadron based at CFB Petawawa, Ontario. Mr. Frenette accepted this opportunity in order to be closer to his family, but also to extricate himself from the increasing levels of racial harassment and discrimination that he encountered while stationed at CFB Moose Jaw.
  
24. Immediately upon his arrival at the Maintenance Flight section at CFB Petawawa, Mr. Frenette was subjected to racial harassment, including but not limited to the following:
  - (a) An officer stated that it was well known that Aboriginal men were pre-disposed to physically and mentally abuse their family members.
  
  - (b) A Member encouraged Mr. Frenette to drink excessive amounts of alcohol, because the Member wanted to see if Aboriginal people get angry when they become intoxicated.
  
  - (c) A Member, in the presence of an officer, told Mr. Frenette that he was "lazy" and "abused the system" because that is "what all Aboriginal people do".
  
  - (d) In the mess hall, a Member asked Mr. Frenette, in the presence of other Members, if he got his wife drunk before sexual intercourse because the Member had heard that a "a drunken Indian is a better lay".

- (e) In connection with (d) above, other Members responded by stating that Aboriginal women were all "fat and ugly" and that all were either "strippers or prostitutes".
  - (f) Members continuously referred to Mr. Frenette as a "wagon burner" and the "kawish", a derogatory French-Canadian racial slur referring to Aboriginals and Native Americans.
  - (g) When passing him in the hallway, Members would look at Mr. Frenette, pat their hands against their mouths and state: "oh-oh-oh".
25. When Mr. Frenette reported the above-noted conduct to his superiors, he was told to "laugh it off", to keep his mouth shut and to not escalate any complaints up the Chain of Command. Although his commanding officers assured him that harassment education and training would become a priority for the Maintenance Flight section, no such training was ever provided or delivered.
26. One particularly distressing incident occurred in February 2015 when a Member approached Mr. Frenette from behind, grabbed his left shoulder, held a lighter between his legs and stated in the presence of other Members: "time to burn this Indian before he burns any more wagons".
27. On February 17, 2015, Mr. Frenette wrote a Memorandum to his superior officers requesting an intra-squadron transfer out of Flight Maintenance. The Memorandum detailed the racial harassment that Mr. Frenette had experienced since his arrival at CFB Petawawa.
28. On February 24, 2015, the commanding officer of 450 Tactical Helicopter Squadron ordered a Unit Disciplinary Investigation. While this investigation was undertaken, Mr.



Frenette was hidden in another section of CFB Petawawa where he was subjected to long periods of isolation from other Members and ordered not to speak to Members outside of that section. Though he was given no work to do, he was subjected to a series of negative performance reviews from his superior officers.

29. On April 7, 2015, the commanding officer of 450 Tactical Helicopter Squadron issued an internal Memorandum after receiving the Unit Disciplinary Investigation Final Report.

That Memorandum stated, in part, as follows:

*It is clear to me from the contents of the final report (Ref A) that significant breakdowns in leadership occurred within Maintenance Flight that allowed for unacceptable conduct to continue without proper Chain of Command follow-up or disciplinary action taken to decisively end the alleged harassment activity. In my view, this is inexcusable and is counter to the closely held principles of leadership that are espoused by the RCAF and CAF. It is also very clear to me that those interviewed by the [Investigating Officer] either withheld information or provided only partial accounts of what are very serious allegations of improper conduct and harassment of a fellow RCAF member on the basis of his ethnic background.*

...

*My disappointment not only in the poor behaviour and performance of the THS junior NCO's named in Ref A is only surpassed by the poor, incompetent, and often inconsistent leadership provided within Maintenance Flight, AMCRO, and ASO 1 in this situation, when faced with a member being harassed by his peers for reasons of his ethnic background. I am appalled at the lack of immediate and swift action and I remain disappointed that this incident was not brought to the attention of the SAMEO, SAMS, SCWO or myself sooner. We cannot accept this sort of behavior within the RCAF and 450 THS as it degrades morale, combat effectiveness, and will ultimately stand in the way of delivering tactical aviation effects on a battlefield of the future.*

30. Ultimately, the Member responsible for the incident with the lighter was transferred – for unrelated reasons – to CFB Shearwater, beyond the disciplinary jurisdiction of the commanding officer referred to in paragraph 29.

31. As a direct result of the culture of discrimination, harassment and intimidation he encountered while stationed at CFB Petawawa, Mr. Frenette sought assistance and counselling from the Warrior Support Centre (Base Mental Health Services) at CFB Petawawa. The Member assigned to provide counselling told Mr. Frenette that he should not consume alcohol because Aboriginals have a genetic predisposition to alcohol abuse, while another Member assigned to his treatment asked how he felt when he was drinking before asking if he consumed alcohol at all.
32. The atmosphere of racial discrimination and harassment that Mr. Frenette encountered while stationed at CFB Petawawa had significant and negative effects on his physical and mental health, human dignity and sense of self-worth.
33. Mr. Frenette has experienced poor, irregular and non-restorative sleep, nightmares, significant and chronic levels of stress and anxiety, hypervigilance, nervousness, and major depressive episodes. He has been diagnosed with a Post-Traumatic Stress Disorder and a Disorder of Extreme Stress, both disorders being a direct result of the racial discrimination and harassment he encountered while enrolled as a Member in the Canadian Forces. Mr. Frenette continues to suffer from these serious health issues today, none of which were present at the time he enrolled in the Canadian Forces.
34. Mr. Frenette was ultimately released from the Canadian Forces in February 2016, thereby depriving him of the opportunity for advancement and progression through the ranks within the Canadian Forces, along with the resulting loss of income, pensionable earnings and future pension income.
35. Mr. Frenette enrolled in the Canadian Forces in search of honour, order and discipline. What he encountered was the complete opposite. Rules and policies were ignored. Those deserving of punishment – being those involved with or complicit in the creation of

a systemically racist environment within the Canadian Forces – received little and, in most cases, no punishment, while Mr. Frenette was alienated, isolated and labelled a troublemaker for raising concerns and filing complaints about the racism and harassment he endured.

36. At every juncture, Mr. Frenette reached out for assistance from the Canadian Forces. Although there may be policies within the Canadian Forces that purport to address racial harassment and discrimination, they are inadequate and were (in any event) either ignored or improperly applied at every step, all to the prejudice of Mr. Frenette's health and career.

37. Mr. Frenette has tried to work within the system that has been established as a response to complaints of racial discrimination and harassment within and by the Canadian Forces. This has failed because this "system" is itself a failure. It has done nothing more than silence the wrongs, further isolate Mr. Frenette and protect and insulate the culture of racism within the Canadian Forces, thereby keeping it from public scrutiny and condemnation.

**B. Wallace Fowler**

38. The Plaintiff, Mr. Fowler, was born on November 5, 1973. He is a black man from Nova Scotia. Over the course of many years, he has courageously raised many questions and concerns about the systemic racism within the Canadian Forces.

39. Mr. Fowler's experiences with racism in the Canadian Forces began in 2000, when he was posted to CFB Borden for training as a vehicle technician (where he finished first in his class).

40. On the basis of his race, Mr. Fowler was subjected to racial harassment and discrimination by his superiors. Without limitation, this included:

- (a) being the subject of racist nicknames and racist jokes, often being referred to as “sunshine” and “boy” by his superiors and other Members in his section;
- (b) being denied administrative time, which was allowed for other (Caucasian) Members within his section;
- (c) being singled out for punishment in a discriminatory fashion;
- (d) being denied, on the basis of his race, the necessities of food, shelter and proper clothing during adverse weather conditions; and
- (e) being isolated and removed from the rest of his section, thereby reinforcing the culture of racist division within the Canadian Forces.

41. After filing a complaint with his Chain of Command at CFB Borden, it was suggested to Mr. Fowler that the matter should be informally addressed. Thereafter, Mr. Fowler was inappropriately coerced by his superiors into dropping the complaint.

42. Along with his family, Mr. Fowler was then posted to CFB Esquimalt. Shortly after their arrival in August 2001, Mr. Fowler and his family suffered a series of racially motivated incidents. Racist slurs and derogatory actions were hurled at Mr. Fowler's family. His step-children were spat on, subjected to drive-by verbal assaults, put off the school bus, and denied lunch in the cafeteria. His spouse had bananas thrown at her while walking home on the base, and Members often refused to be served by her at the shop where she worked.

43. The Canadian Forces did nothing to respond to Mr. Fowler's concerns – concerns which, by this time, had escalated beyond the affront to basic human dignity and had moved into a real fear for the safety and security of his family.
44. Instead, Mr. Fowler's concerns were cast aside as falling beyond the responsibility of the Canadian Forces. This all despite the following recommendation that was made by the Formation Social Work Officer to the Base Commander at CFB Esquimalt:

*Pte Fowler reported that none of the discrimination happened in direct relation to his duty or in his workplace, and hence it can be argued that the CF cannot be held directly responsible for the discrimination the Fowlers have experienced. However, consideration must be given to the optic that could result were the CF to refuse to post a member out of a locale where the family was subjected to racial discrimination, some of which occurred in a PMQ area and possibly involved the PMQ residents, after having posting them there in the first place. In that respect, granting him a posting to Halifax as requested would both provide the family respite from the torment they currently perceive and demonstrate the CF's commitment to its members. With the help of a supportive extended family and community the Fowlers could learn to better tolerate racial discrimination they might encounter at another posting.*

*It is recommended that Pte Fowler be posted to a Halifax area unit and that his employment be restricted such that he be available to provide his family with a stable home environment, and facilitate their attendance in a program which would heal the harm done by the racial discrimination experienced in his current posting and teach them the coping skills to deal with any future occurrences. It is further recommended that CFB Esquimalt make it a priority to extend its multicultural integration / anti-racism education program to its residential communities.*

45. None of these recommendations were followed. CFB Esquimalt did not extend any anti-racism programs. Rather than being posted to Nova Scotia, Mr. Fowler was sent to CFB Trenton.

46. At CFB Trenton, the racial harassment and discrimination continued against Mr. Fowler and his family. In addition, Mr. Fowler was placed under the command of the very same superior officer who tried to block his transfer out of CFB Esquimalt. When a harassment officer attempted to assist Mr. Fowler with the ongoing concerns, he was told by this same superior officer to "stay out of this, this is being handled by the higher ups". In fact, nothing was being done by the "higher ups".
47. In the result, and after months of ridicule and isolation, Mr. Fowler was diagnosed with serious and deteriorating psychological illness. While Mr. Fowler was stationed at CFB Trenton, he was referred to a psychiatrist at CFB Downsview and diagnosed with Major Depressive Disorder, Racial Abuse. Mr. Fowler continues to suffer from these serious health issues today, none of which were present at the time he enrolled in the Canadian Forces.
48. The atmosphere of racial discrimination and harassment that Mr. Fowler encountered while serving in the Canadian Forces had significant and negative effects on his physical and mental health, human dignity and sense of self-worth.
49. Unable to work, Mr. Fowler was released early from the Canadian Forces – at the age of 30 – as being "Not Advantageously Employable", thereby further restricting his employability and employment options into the future. Accordingly, Mr. Fowler was deprived of the opportunity for advancement and progression through the ranks within the Canadian Forces, along with the resulting loss of income, pensionable earnings and future pension income.
50. At every juncture, Mr. Fowler reached out for assistance from the Canadian Forces. He attempted to file complaints about the racism he was experiencing, only to be forced into

signing a release. He attempted to work through the formal grievance process, but was told that the racism he perceived and suffered did not actually exist.

51. Although there may be policies within the Canadian Forces that purport to address racial harassment and discrimination, they are inadequate and were (in any event) either ignored or improperly applied at every step, all to the prejudice of Mr. Fowler's health and career.
52. Even the National Defence and Canadian Forces Ombudsman (hereafter, the "Ombudsman") acknowledged that a formal investigation was never conducted, noting:

*A/DMGIEE [Director Military Gender Integration and Employment Equity] advised in a memo dated May 10, 2003 that there was "no substantiation or evidence supporting his (Pte Fowler's) allegations on the file". Their memo also states "it appears that he (Pte Fowler) has been provided with more than equitable treatment in an attempt to accommodate his particular needs, and has been given the benefit of the doubt on several occasions". My investigators learned from DMGIEE that their review was limited to an audit of Pte Fowler's file, and that they did not conduct a formal investigation or contact anyone outside of DMGIEE.*

53. The Ombudsman also highlighted the systemic concerns within the Canadian Forces. Through a series of preliminary reports, the Ombudsman referred to these systemic concerns as follows:

*However, my office's assessment did identify two systemic issues that should be pursued further, the first being: what is the CF's role and responsibility with respect to assisting with the integration of members and their dependents, specifically those that are visible minorities, into the community. The second issue concerns the CF's policy with respect to independent or higher level review of harassment complaints and more specifically of racism. At present the existing policies are either silent or lacking on these two issues.*

*However the harassment policy is silent on the responsibility of the CF to integrate members and their families from visible minority groups and who are experiencing harassment or racial discrimination in the community. As a result NDHQ has no clear mechanism to provide for Pte Fowler's accommodation within the CF.*

...

*From a systemic perspective, DND and the CF should undertake a policy review of its harassment and racism policies with the aim of introducing a higher level review or oversight function which would introduce a "systemic" monitoring perspective.*

...

*However, I believe that we have found sufficient evidence to warrant a more in-depth investigation into the posting of visible minorities and the efficacy of NDHQ in dealing with possible racism with DND/CF, to determine if policy change is required. The statements of visible minority members we spoke to during the course of this assessment were credible and compelling. Their evidence was also worrying.*

*Again, I invite your comments on my findings before my proposed submission date to MND Graham on 5 December 2005. I believe these systemic concerns merit immediate attention and action ...*

54. Despite this call for "immediate attention and action" more than 10 years ago, nothing has been done.
55. Indeed, and after improper communication and collusion between the Ombudsman and the Department of National Defence, the final Ombudsman report contained no reference to the above-noted systemic concerns and simply concluded:

*We found no evidence that he was the subject of racism or unfair treatment in the workplace at either Esquimalt or Trenton.*

*With respect to his treatment at CFB Borden, his allegations of racist treatment appear to have been addressed appropriately ...*



*Overall, given the results of our review, I have determined that, in accordance with paragraph 18(2) of the Ministerial Directives regarding my Office, it would not be a judicious and efficient use of the Ombudsman's resources to conduct a full investigation into Private Fowler's complaint.*

56. Regarding Mr. Fowler's case, a Lieutenant-Commander has acknowledged the reputational impact of any failure to combat racism within the Canadian Forces, as follows:

*In the CF, we pride ourselves on fairness, duty, loyalty and honour, to name a few. We stand between warring factions, seeking peace and demand justice for people we don't even know. All we know is that they are people in need; even visible minorities and we will go to extraordinary lengths to assist them, regardless of the cost. This is what makes Canada a great and respected nation. Yet, for all of our good intentions, our national and world image could be deeply stained on just one accusation of failing to take care of one of our own families, facing severe discrimination (to them) because they are from a visible minority, and because "no one would listen to them". If the member were to seek the assistance of his racial community, I believe that this could be perceived a national scandal.*

57. Mr. Fowler has tried to work within the system that has been established as a response to complaints of racial discrimination and harassment within and by the Canadian Forces. This has failed, because this "system" is itself a failure. It has done nothing more than silence the wrongs, further isolate Mr. Fowler and protect and insulate the culture of racism within the Canadian Forces, thereby keeping it from public scrutiny and condemnation.

**C. Jean-Pierre Robillard**

58. The Plaintiff, Jean-Pierre Robillard (formerly Menard), was born on January 4, 1976. He is a black man of Haitian descent, raised in Quispamsis, New Brunswick.

59. Mr. Robillard is a college graduate, who enrolled in the Canadian Forces on October 19, 1995 as an infantryman in the reserve force. Mr. Robillard is fluent in English and French.
60. While in the reserve force, Mr. Robillard served with the reserve unit at Saint John Armouries, as well as at CFB Gagetown and CFB Aldershot. His years of service with the reserve force passed without incident, but everything changed when he transferred to the regular force in 2005 and was posted to CFB Winnipeg as a Mobile Support Equipment Operator.
61. In late 2005, Mr. Robillard's section was sent on a training exercise to the United States Air Force Base in Thule, Greenland. He observed a rampant level of daily alcohol abuse by Members from his section, including his section commander. Mr. Robillard voiced concerns about this conduct, particularly given the potential impact on Canada's reputation. From that point forward, Mr. Robillard was subjected to a persistent stream of racially-motivated harassment, discrimination and bullying by other Members.
62. When Mr. Robillard returned to CFB Winnipeg from the exercise in Thule, numerous Members and his section commander focused a significant amount of negative attention on Mr. Robillard as the only black Member within the section. Without limitation, this included the following:
  - (a) On a daily basis, the section commander singled out Mr. Robillard as a black man and repeatedly called him "useless", "stupid" and "a dummy".
  - (b) One Member routinely referred to Mr. Robillard as "the nigger". The same Member would say to other Members – "Oh, we got a nigger" – and confront Mr. Robillard in circumstances where he had no reason to do so and say – "where

you going, nigger?" When Mr. Robillard and the Member were sent to CFB Borden on training, the Member continued to refer to him as a "nigger" at every opportunity.

- (c) When Mr. Robillard reported this Member's harassing conduct to his superior officers, he was told that he should just "punch [the Member] out" if he had an issue with the Member's conduct. No further action was taken.
  - (d) In another incident, Mr. Robillard was physically assaulted by a section commander on the basis of his race. Although he reported the incident to his sergeant, no action was taken against the section commander.
  - (e) On another occasion, Mr. Robillard was driving home from CFB Winnipeg and encountered an unusual number of cars honking their horns and waving at him. When he later examined his vehicle, he found that Members had placed a sticker on the back of his vehicle which stated "Fuck me, I am gay". Mr. Robillard reported the incident to his commanding officer, who called a section meeting and told the Members to "knock it off". No other action was taken.
63. When Mr. Robillard sent a Memorandum to his commanding officer reporting this racial harassment and discrimination, he was tasked with cleaning out the showers and latrines.
64. In an effort to avoid the racially-motivated harassment he was experiencing, Mr. Robillard requested a transfer from CFB Winnipeg. On March 16, 2009, he was posted from CFB Winnipeg to CFB Gagetown. Nothing changed. The harassment continued and became even worse.

65. On January 12, 2010, a catastrophic earthquake struck Haiti. At the time, Mr. Robillard's mother was in Haiti, though her whereabouts and condition were unknown.
66. Mr. Robillard immediately volunteered to join the Disaster Area Recovery Team (DART) being sent to Haiti as part of Operation Hestia, the Canadian Forces participation in humanitarian operations conducted in response to the earthquake.
67. On January 16, 2010, Mr. Robillard was sent to CFB Valcartier in preparation for deployment. While there, the racial harassment and discrimination continued, with Mr. Robillard being forced to eat by himself and being denied the opportunity to work with other Members in his assigned section.
68. On January 27, 2010, Mr. Robillard deployed to the Canadian Forces Interim Staging Base for Operation Hestia in Barahona, Dominican Republic. There, a superior officer discovered that Mr. Robillard's mother was in Port-au-Prince and contacted Mr. Robillard to advise that she had been located. Mr. Robillard subsequently made arrangements to transport his mother from Port-au-Prince to Barahona.
69. After the arrival of his mother in Barahona, Mr. Robillard was subjected to a constant stream of racially motivated harassment and discrimination by a number of Members, including his superior officers. Without limitation, this included:
  - (a) When ordered to move equipment that he was not qualified to operate, Mr. Robillard was subjected to open and hostile criticism from his commanding officer. Mr. Robillard was the only racial minority in the section and no other Members received similar treatment. Mr. Robillard reported the incident to senior officers. No action was taken.

- (b) On one occasion, Mr. Robillard approached an officer to see if there was anything that could be done to support his mother's immigration to Canada. The officer agreed to raise the issue with a captain. In the course of the resulting discussion, Mr. Robillard overheard the captain state that he would "never help out that monkey and his foul mother", adding that Canadians had "done enough for these niggers", all the while referring to Mr. Robillard and his mother as "dirty" and "porch monkeys".
- (c) On other occasions, Mr. Robillard witnessed this same captain openly refer to the local Dominican population, many of whom were black, as "monkeys". Mr. Robillard filed a complaint. Again, no action was taken and Mr. Robillard was sent back to Canada on March 29, 2010.
70. Upon his return to Canada, Mr. Robillard made inquiries as to the status of the various reports and complaints he had made while deployed in Haiti. He was advised that any administrative paperwork completed on deployment had to be resubmitted in Canada. Mr. Robillard resubmitted the paperwork. No action was taken, and he was later told that the Chain of Command had "lost the paperwork".
71. Following his return to Canada, the acts of harassment and discrimination against Mr. Robillard continued. He was denied leave requests which were routinely granted to other Members. He was passed over for promotions in favour of other, less qualified Members, including one who had a recorded conviction for driving under the influence.
72. The atmosphere of racial discrimination and harassment that Mr. Robillard encountered while serving in the Canadian Forces had significant and negative effects on his physical and mental health, human dignity and sense of self-worth.

73. Mr. Robillard has experienced poor, irregular and non-restorative sleep, nightmares, severe avoidance of social interactions, severe hypervigilance, difficulty with concentration, severe depression and chronic and heightened levels of stress and anxiety. He has since been diagnosed with Major Depressive Episodes and Severe Post-Traumatic Stress Disorder. These conditions are a direct result of the racial discrimination and harassment he encountered while enrolled as a Member in the Canadian Forces. Mr. Robillard continues to suffer from these serious health issues today, none of which were present at the time he enrolled in the Canadian Forces.
74. Mr. Robillard was ultimately released from the Canadian Forces on July 11, 2012, on the basis that he was "unsuitable for further service" and an "administrative burden", thereby depriving him of benefits to which he otherwise would have been entitled if he was properly released on a medical basis.
75. Mr. Robillard has also been deprived of the opportunity for advancement and progression through the ranks within the Canadian Forces, along with the resulting loss of income, pensionable earnings and future pension income.
76. Mr. Robillard has tried to work within the system that has been established as a response to complaints of racial discrimination and harassment within and by the Canadian Forces. This has failed, because this "system" is itself a failure. It has done nothing more than silence the wrongs, further isolate Mr. Robillard and protect and insulate the culture of racism within the Canadian Forces, thereby keeping it from public scrutiny and condemnation.

**V. LIABILITY OF THE DEFENDANT**

77. The Plaintiffs make three general claims against the Defendant, each of which is particularized in the subsequent paragraphs:

- (a) The racism, racial harassment and discrimination in the Canadian Forces rises to the level of systemic negligence. The Defendant is vicariously liable for the systemic misconduct that has occurred in the Canadian Forces as committed by Crown Servants (as defined below).
- (b) The Defendant has unjustifiably breached the Plaintiffs' and the Class Members' right to be free from discrimination on the basis of race, national or ethnic origin and/or colour under section 15 of the *Charter*.
- (c) The Defendant has breached the Honour of the Crown.

**A. Vicarious Liability for Systemic Racial Harassment and Discrimination**

- 78. The Defendant is liable for the systemic racial discrimination negligently committed by those individual Crown servants who have – individually or collectively – failed to adequately create, follow and/or apply policies, procedures and guidelines to address racial discrimination and harassment within the Canadian Forces.
- 79. The Defendant is also liable for the negligent misconduct of those individual Crown servants who have created or contributed to the systemic culture of racism within the Canadian Forces, pervasively or intentionally or subconsciously or otherwise.
- 80. Collectively, the above-noted individual Crown servants are referred to in this Statement of Claim as the “**Crown Servants**”.
- 81. Section 36 of the *Crown Liability and Proceedings Act* deems a member of the Canadian Forces to be a servant of the Crown. At all material times, these Crown Servants were (and continue to be) governed and bound by a common set of rules of conduct and legal obligations.

82. Each of these Crown Servants owed duties of care to the Plaintiffs and Class Members as subordinates and/or colleagues to ensure they were at all times working in an environment free of racism and racial discrimination, particularly in light of: (i) the extraordinary commitment made by all Class Members to honourably serve their country in the Canadian Forces; and (ii) the undertaking and commitment by the Department of National Defence and the Canadian Forces to eliminate racial discrimination and harassment within and amongst the ranks.

83. These Crown Servants breached their duties of care by:

- (a) making derogatory comments about the Plaintiffs' and Class Members' race, which suggested the Plaintiffs and Class Members were less worthy and less competent because of their race;
- (b) harassing the Plaintiffs and Class Members because of their race, national or ethnic origin, and colour;
- (c) failing to intervene when derogatory racial comments and harassing misconduct were observed and to hold accountable those Crown Servants who so commented and harassed in a racist fashion;
- (d) perpetuating a workplace culture where racism was considered acceptable;
- (e) failing to have in place and/or implement policies, procedures and guidelines to proactively or adequately address, investigate, and remedy complaints of racial discrimination;
- (f) failing to adequately investigate complaints of racial discrimination in a thorough, timely, impartial and effective manner;



- (g) depriving the Plaintiffs and Class Members of opportunities within the Canadian Forces because of their race;
- (h) ignoring and/or improperly interfering with reports from the Ombudsman highlighting the systemic problem of racial discrimination in the Canadian Forces and the absence of adequate policies, procedures or guidelines to effectively respond thereto;
- (i) interfering in complaints without authority to do so; and
- (j) effectively punishing the Plaintiffs and Class Members for making complaints, thereby further isolating these individuals from their peers in the Canadian Forces.

84. The negligent misconduct that Crown Servants directed toward the Plaintiffs and Class Members or otherwise tolerated was repetitive, extreme, and calculated to harass the Plaintiffs and Class Members. As a result of this misconduct, the Plaintiffs and Class Members have suffered ongoing injuries and damages as particularized in this Statement of Claim.

**B. Breach of Section 15 of the *Charter***

85. The Defendant has breached the Plaintiffs' and Class Members' right to be free from discrimination on the basis of race, national or ethnic origin and/or colour, pursuant to subsection 15(1) of the *Charter*, by a combination of action and inaction on the Defendant's own part and on the part of the Canadian Forces and Crown Servants, including but not limited to:

- (a) failing to have and/or implement adequate policies, procedures or guidelines to ensure the Plaintiffs' and Class Members' dignity, safety, health and welfare, and

to minimize the risk of their being subjected to discrimination and harassment on the basis of race;

- (b) failing to properly supervise Crown Servants to ensure they were not committing acts of discrimination and harassment, thus contributing to an environment that creates, contributes to and tolerates systemic racial discrimination;
- (c) failing to properly investigate allegations of racial discrimination and harassment in the workplace in a thorough, timely, impartial and effective manner;
- (d) ignoring and/or improperly interfering with reports from the Ombudsman highlighting the systemic problem of racial discrimination in the Canadian Forces and the absence of adequate policies, procedures or guidelines to effectively respond thereto;
- (e) permitting and/or failing to prevent differential negative treatment of the Plaintiffs and Class Members on the basis of their race; and
- (f) perpetuating racial stereotypes.

86. The very nature of racial harassment, and the systems that perpetuate it, is to treat racial minorities and Aboriginal persons differently because of their race, ethnicity, and/or colour. The impugned action and inaction has perpetuated systemic and arbitrary disadvantages faced by members of these enumerated groups as protected under the *Charter*, all of which has thwarted the achievement of substantive equality in the Canadian Forces.

87. These infringements of subsection 15(1) cannot be justified under section 1 of the *Charter*, because the basis for such systemic racial discrimination and harassment: (i)

was and is not prescribed by law; (ii) was and is not based on any objective that could be considered pressing and substantial; and (iii) was and is not, in any event, rationally connected to any such pressing and substantial objective (which does not exist). Put simply, there are no ends that can justify systemic racial discrimination and harassment as a means within a free and democratic society.

88. Damages and an Order to remedy these systemic concerns should be awarded pursuant to subsection 24(1) of the *Charter* as they are just and appropriate to: (i) provide compensation that might not otherwise be awarded to the Plaintiffs and Class Members; (ii) vindicate the Plaintiffs, Class Members and society at large for the harm caused by these violations of section 15 of the *Charter*; and (iii) deter future breaches.

**C. Breach of Duty based on the Honour of the Crown**

89. The unique relationship between the Defendant and the Class Members justifies the imposition of a special duty on the Defendant based on the Honour of the Crown.
90. Members of the Canadian Forces voluntarily risk their lives in service to their country. Not only must they be willing to make the ultimate sacrifice, but they must be willing to obey their superiors and put themselves in danger for their fellow Members.
91. This is expressly mandated by the *National Defence Act*, which imposes certain extraordinary obligations and consequences upon all Members, including but not limited to the following:
- (a) the obligation to serve, which is binding until the Member is lawfully released: subsection 23(1);
  - (b) the obligation to perform any lawful duty upon command: subsection 33(1);

- (c) the potential for life imprisonment upon conviction for desertion or attempted desertion during active service: subsection 88(1); and
- (d) the potential for imprisonment for being absent without leave: subsection 90(1).

92. In turn, these extraordinary commitments require all aspects of the Crown (including the Defendant, as Her Majesty's representative) to act honourably.

93. The systemic racial discrimination and harassment in the Canadian Forces is dishonourable, particularly in light of the hierarchy and command structure of the Canadian Forces. This institutional structure causes or contributes to a collective culture within the Canadian Forces to silence the wrongs and to discourage the escalation of complaints up the Chain of Command, thereby leaving the Plaintiffs and Class Members without any (or any adequate and effective) recourse for the racial discrimination and harassment they have suffered at the hands of Crown Servants.

94. The Honour of the Crown obliges the Defendant to ensure all Members of the Canadian Forces receive fair and equitable treatment during their enrolment. This obligation to ensure fair and equitable treatment constitutes an express or implied promise to all Members of the Canadian Forces. The systemic racial discrimination and harassment in the Canadian Forces – all as pleaded and detailed in this Statement of Claim – is a breach of this solemn promise for which the Defendant is liable.

## **VI. APPLICATION OF QUEBEC LAW**

95. Insofar as any of the impugned conduct, action and inaction of the Crown Servants and the Canadian Forces – all as pleaded and detailed in this Statement of Claim – occurred in the Province of Québec, this constitutes:

- (a) fault giving rise to the extra-contractual liability of the Crown Servants, pursuant to Article 1457 the *Civil Code of Québec*, SQ 1991, c. 64, and the *Charter of Human Rights and Freedoms*, RSQ, c. C-12;
- (b) fault giving rise to the extra-contractual liability of the Defendant, pursuant to the *Crown Liability and Proceedings Act*, and Article 1464 the *Civil Code of Québec*; and
- (c) unlawful and intentional interference with the rights of the Plaintiffs and the Class Members, as protected by the *Charter of Human Rights and Freedoms* and thus giving rise to the liability of the Defendant to pay punitive damages pursuant thereto and pursuant to Article 1621 of the *Civil Code of Québec*.

96. In all circumstances where such laws of the Province of Québec will govern, the Plaintiffs and the Class Members have been unable to act within the meaning of Article 2904 of the *Civil Code of Québec*.

## VII. DAMAGES

97. As a result of the above-noted breaches and misconduct, the Plaintiffs and Class Members have sustained serious and continuing physical and psychological injuries, losses and damages for which the Defendant is liable.
98. These injuries have caused, and continue to cause, the Plaintiffs and Class Members pain, suffering, loss of enjoyment of life, permanent disability, mental and emotional anguish, suicidal ideation, a diminished sense of dignity, self-esteem and self-worth, damage to promotional and career opportunities, and loss of earnings and pension benefits, past and prospective.

99. As a further result of the above-noted breaches and misconduct, the Plaintiffs and Class Members have sustained certain special damages, losses and expenses for medical and psychological treatment. The Plaintiffs and Class Members continue to undergo medical and psychological care and treatment and continue to incur such losses and expenses.
100. The Plaintiffs further plead that the Defendant had specific and complete knowledge of the widespread and systemic racism occurring within the Canadian Forces, as well as specific and complete knowledge of the widespread racial discrimination and harassment of the Plaintiffs and Class Members. Despite this knowledge, the Defendant took no steps, or no reasonable steps, to put an end to that conduct, thereby permitting the ongoing harm to the Plaintiffs and Class Members. In these circumstances, punitive, exemplary and aggravated damages are appropriate and necessary.

**VIII. FEDERAL COURTS RULES**

101. The Plaintiffs will apply to have this action certified as a class proceeding under Part 5.1 – Class Proceedings of the *Federal Courts Rules*.

**IX. RELIEF SOUGHT**

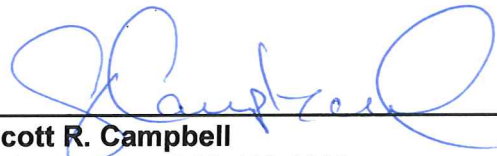
102. The Plaintiffs claim, on their own behalf and on behalf of the proposed Class Members, as follows:
- (a) an Order certifying this action as a class proceeding and appointing them as representative Plaintiffs under Part 5.1 – Class Proceedings of the *Federal Courts Rules*;
  - (b) general damages and special damages;
  - (c) punitive, exemplary and aggravated damages based on the abusive and reprehensible misconduct of the Canadian Forces and those Crown Servants

who have showed a callous disregard for the Plaintiffs' and Class Members' rights, dignity, health, and safety;

- (d) damages and an Order pursuant to subsection 24(1) of the *Canadian Charter of Rights and Freedoms*;
- (e) pre-judgment interest;
- (f) costs; and
- (g) such further and other relief as this Honourable Court may deem just.

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

**DATED:** December 14, 2016.



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