Court File No.: T-1296-23

FEDERAL COURT BETWEEN: FRANCESCO GABRIELE QUALIZZA, and others

Plaintiffs

AND

HIS MAJESTY THE KING IN RIGHT OF CANADA, and others

Defendants

Reply to Statement of Defence

1. The Statement of Defence incorrectly lists three Directives issued by the Chief of Defence Staff ("CDS") regarding mandatory injections of COVID-19 pharmaceuticals. There are, in fact, four Directives: Directive 001 issued on October 8, 2021; Directive 002 issued on November 3, 2021; Directive 002—Amended issued on December 22, 2021; and Directive 003 issued on October 11, 2022 "(the Directives").

2. The Directives all stated that the primary goal of these documents is to show leadership to the Canadian people to encourage more uptake of the COVID-19 injections by the general population. All other stated goals were secondary to this leadership role which is not the legislated role of the Canadian Armed Forces ("CAF") in Canadian society.

3. The Defendants rely on the application of Public Service policy and actions to defend their positions. This is a false flag as the CAF does not follow the Public

Service policy and is not bound by any actions taken on behalf of the Public Service.

4. The Defendants admit to the use of an attestation process which will be shown to have allowed for a serious breach of privacy contrary to the *Privacy Act* RSC 1985 c P-21 ("*Privacy Act*") and *The Constitution Act, 1982, Schedule B to the Canada Act 1982* (UK), 1982, c 11 ("*Charter*").

Failure to use *NDA*

5. According to the CAF vaccination policy, adherence to the vaccination policy was an expected behaviour and non-compliance was considered a breach of the CAF Code of Values and Ethics. Unvaccinated members, unless accommodated, were to face career implications, remedial measures ("RM") and release for continued non-compliance. The CAF, and the Defendants acting on behalf of the CAF, therefore, tied the right to refuse medical treatment to the loss of employment without the proper authority granted under *National Defence Act* RSC 1985 c N-5 ("*NDA*") Section 126.

6. In a blatant misuse of authority, the CDS chose to implement Directives by altering and misapplying the administrative measures process rather than use his authority under *NDA* s126 which allows for vaccination of CAF members under a direct order. This section also allows a member to refuse the vaccination. Upon refusal, the member can then be charged and sent to Court Martial for an independent decision maker to assess if the reasons for refusal are reasonable and justified.

7. Established case law in *R* v *Kipling* 6 CMAR 249 supports the members' right to refuse an order under s126 and have their case determined under our legal system. The actions of the CDS and the Chain of Command ("CoC") denied the

Plaintiffs their right to a fair and unbiased hearing. The Crown is silent on this issue.

8. The measures outlined by the Directives were purported to be administrative rather than disciplinary. Disciplinary measures in the CAF require a charge under the *NDA* followed by a hearing with an impartial decision maker. The Defendants have failed to support their actions on this issue.

9. The Defendants have also failed to show that the authority for implementing the Directives came from the proper Chain of Command. Under *NDA* s18(2), the only authority to give the CDS an order is the Monarch of Canada or the Governor General in their place. The Minister of National Defence under *NDA* s13 is limited in their authority to make any regulations for the CAF. The Defendants fail to answer to whether this order was given to the CDS by the proper authority. The lack of defence would indicate the Directives were an unlawful order and the enforcement of it must withstand the scrutiny of the Court.

Directives did not apply to Primary Reserve

10. There is a question of the applicability of the CDS COVID-19 vaccination Directives to the Primary Reserves which resulted in harm to several of the Plaintiffs through a systemic abuse of power. COs of Reserve units acted on the Directives to punish and release CAF members without contemplating that the Directives were not written in a manner that included the members under their command.

11. The Directives state that it "[a]pplies to all officers and non-commissioned members of the Canadian Armed Forces (CAF). This includes the Regular Force, all Class A, B, and C Reserve Forces, Canadian Rangers, and Cadet Organizations Administration and Training Service (COATS)."

12. The QR&O Chapter 9, *Reserve Service* and the Defence Administrative Orders and Directives ("DOAD") 2020 series, clearly show that the term "Class A, B, and C Reserve Forces" does not exist within CAF policy and it is not equivalent to the Primary Reserve. Thus, the Primary Reserve was not included in the applicability paragraph, and the CDS Directives on COVID-19 vaccination were applied to members of the Primary Reserve without legal authority. Many commanding officers ("COs"), including senior officers, therefore implemented an unlawful directive, unlawfully, with severe and permanent consequences for members under their command.

Accommodations/Exemptions Predetermined

13. The CAF had already predetermined the outcome of any application for an accommodation or exemption request from a member. This was a deliberate action taken at the highest levels, including the Chaplain General, and distributed down the CoC to ensure there could be no accepted reason for refusing the COVID-19 injections.

14. It was unprecedented for requests for religious accommodation or exemption to be rejected even where the member's beliefs were determined to be sincere in nature. The CAF accommodated members for religious grounds without question until the COVID-19 Directives became a tool to forcibly remove members from service for their religious beliefs which had never been an issue prior to October 2021. Established Canadian jurisprudence on the issue (*Syndicat Northcrest* v. *Amselem* 2004 SCC 47) was ignored and a different standard on religious and personal belief was applied to CAF members.

15. COs also put themselves in place of medical doctors to determine that no medical reason would be acceptable for a medical accommodation/exemption. These rejections were made despite decades of the CAF allowing members

who were unable to meet the universality of service requirements to continue to serve in adjusted roles, including work from home options.

16. The Defendants also fail to defend the necessity of the Directives for protection of the CAF when they have allowed members to serve for years with no vaccinations of any kind, accommodating some members who were unvaccinated but releasing others, and removing the requirement for COVID-19 injections for members not released by Directive 003 as well as for new recruits.

Release for Not Following Order

17. Plaintiffs who were released under the guise of not following an order by a superior officer were neither charged for the alleged offence nor were they given a Court Martial that proved them guilty of this service offence. These Plaintiffs were accused and/or judged guilty of a serious service offence by superiors acting outside the scope of their authority and denied their right to a full hearing with the evidence of their actions put before a trier of fact and law.

18. The Defendants have failed to defend the 5(f) releases for not following the lawful order from the CDS regarding COVID-19 injections. Some Plaintiffs were threatened with this release category, but the threat was never followed through so their service continued. Others released – against their choice – after stellar careers to avoid the stigma of the 5(f) release category, and the rest were compulsory released. The CAF is now allowing these same members, released due to "moral weakness" that made them unsuitable for further service, to return to the CAF as if nothing happened.

Constructive Dismissal

19. The Plaintiffs are prepared to show that the implementation of the Directives by the CoC was arbitrary and applied inconsistently throughout the CAF. In most cases, it was the CAF's actions that indicated an intention to no longer be bound by the Terms of Service ("TOS") by CAF members who were not vaccinated or refused additional vaccinations (*Potter* v *New Brunswick Legal Aid Services Commission* 2015 SCC 10). The administrative measures were cloaked in a "temporary measures" vocabulary while having permanent consequences for those who invoked their right to refuse medical treatment.

20. The CAF's intention to not be bound by the TOS is seen by their unilateral change to these terms. In so doing, the CAF breached the TOS and substantially altered an essential term of the TOS for the Plaintiffs. The CAF's course of conduct through the CoC after the Directives were issued also demonstrates that their treatment of the Plaintiffs made continued employment intolerable.

21. The breach of the TOS by the CAF resulted, in most cases, in unauthorized administrative suspension and, therefore, the suspension amounted to a substantial change. The CAF cannot show the suspension to be reasonable and justified. They cannot justify this suspension by saying that a reasonable member would have felt that a lack of compliance with the Directives evinced an intention by the Plaintiffs to no longer be bound by the TOS. Any exception to this rule would likely arise only if the unauthorized suspension was of particularly short duration which is not the case at hand.

Reasonableness of the Remedial Measures

22. The Plaintiffs were placed on Recorded Warning ("RW") for conduct deficiency, commencing a series of Remedial Measures ("RM") and administrative actions

against the Plaintiffs for non-compliance with CDS Directive 002. The administration of RM pursuant to CDS Directive 002 and its amendment, CANFORGEN 012/22, and DMCA Aide-Memoire, has shown significant procedural fairness shortcomings that made these RM unreasonable.

23. DAOD 5019-4, Remedial Measures, is the policy detailing the administration of RM.

24. Paragraph 4.16 of this DAOD says that RM are not a punishment, while paragraph 5.6 directs initiating authorities to consider a list of factors, including the member's entire period of service and relevant prior deficiencies. DAOD 5019-4 recognizes that basic procedural fairness should be afforded to members in the administration of RM. The duty of procedural fairness in administrative decisions has been well established in Canadian jurisprudence (*Baker* v *Canada (Minister of Citizenship and Immigration* 2 SCR 817 and *Canadian Pacific Railway Company* v *Canada (Attorney General)* 2018 FCA 69 as well as others).

25. Refusing vaccination should not have been considered a conduct deficiency since it was an exercise of a right protected by the *Charter* and recognized by existing laws and regulations. The direction to disregard reasonable monitoring periods, to issue RM without consideration of the Plaintiffs' representations, and to impose pre-determined outcomes in response to the Plaintiffs non-compliance constituted serious breaches of the CAF's duty of procedural fairness under DAOD 2-17-1 s8.14.

26. For the reasons explained above the RW and the Counselling and Probation ("C&P") issued to the Plaintiffs were unreasonable and unjustified.

Remedial Measures are not Punishment

27. DAOD 5019-4 is the policy for the administration of RM, which, according to paragraph 4.3, are serious steps used to assist a CAF member in overcoming a performance or conduct deficiency. Importantly, paragraph 4.16 of DAOD 5019-4 says that RM are not a punishment. Paragraph 5.6 of that DAOD directs initiating authorities to consider a list of factors, including the member's entire period of service and relevant prior deficiencies. As outlined by paragraphs 4.16 through 4.18 of DAOD 5019-4, the disciplinary actions of the military justice system operate independently from administrative actions and serve different purposes.

28. DAOD 5019-4 recognizes that basic procedural fairness should be afforded to members in the administration of RM. The duty of procedural fairness in administrative decisions has been well established in Canadian jurisprudence. Nevertheless, this essential principle was set aside by the CAF COVID-19 Directives. Based on DMCA's Aide-Memoire, the outcome of non-compliance with the policy was pre-determined, including the templated wording, the truncated compliance periods, and the escalation of RM. No room was left for consideration of any particular circumstances, the member's representations, or the member's service record. This process was fundamentally unfair.

29. Additionally, the members' protected right to accept or refuse medical treatment, recognized under s126 of the *NDA* and article 103.58 of *Queens Regulations & Orders* ("*QR&O*"), was also set aside. As with any medical treatment, the CAF's established military standards recognize that vaccination is voluntary and that a refusal, in itself, does not constitute a misconduct. The January 2021 vaccine rollout statement by the Surgeon General is fully in-line with the law in this regard. Nevertheless, the CAF vaccination policy removed the voluntary aspect of vaccination, making it mandatory for members to accept

the vaccines and using RM to force compliance which was unfair and unreasonable.

Military Grievance System

30. In *Neri* v *Canada* 2021 FC 1443, the Federal Court explained that Plaintiffs must go through the grievance process as a first step. The process has been followed by the Plaintiffs and is now effectively stopped by awaiting the decision of the Final Authority ("FA"). The FA is the CDS—the same person who initiated the Directives.

31. The claim for a remedy in the case at the Bar – to answer whether the same person issuing the order is the appropriately appointed one to determine if the order was fair and reasonable – is justified under Canadian law. The grievance system does not allow this appointment to happen at lower ranks so it must be answered why the CDS is different, and able to act as a deciding party for his own orders. The requirement under current policy is for the grievance to go to a superior officer of which there is none above the CDS other than the Monarch of Canada or the Governor General acting in their place (DAOD 2017-1), yet no such redress is available to these members and veterans of the CAF. It is well established that, to afford procedural fairness, the review must be conducted by an unbiased decision maker (DAOD 2017-1, para 8.14).

32. In addition, the Defendants have failed to recognize that breaches of the *Charter* have no relief within the grievance system. The Military Grievance External Review Committee, appointed by the Defendants, has issued recommendations to the Plaintiffs to seek remedy in the Court for the wrongs and harms from the actions of the Defendants.

33. Finally, the grievance system has admitted that it is unable to cope with the grievances on this matter and have stated, in writing, to the Plaintiffs that the

system can no longer accept grievances from the members. The only avenue of remedy left, therefore, is for the Court to address the harms to the Plaintiffs and address the inadequate means of redress available to members and veterans who have limited time and resources to seek remedy for wrongs within the CAF.

Breach of Ethics Laws and Mismanagement of DND

34. The Case Report—Department of National Defence September 2023 ("Report") from the Office of the Public Sector Integrity Commissioner of Canada has established that the Department of National Defence ("DND") has an environment of gross mismanagement concerning reports of wrongdoing within the Department. Whistleblowers have found that bringing forward a complaint results in no consequences for wrongdoing and no change is implemented.

35. The Report establishes that there is a systemic problem within DND and the CAF along with a lack of accountability for wrongdoing.

36. The internal system has failed to protect against and offer correction for wrongdoing within the military of Canada. The Plaintiffs must therefore seek relief in the Court.

Plaintiffs are not barred

37. The Crown's defence that the claims are barred fails as the Statement of Claim seeks no relief for injuries from injection with any COVID-19 pharmaceutical.

38. In any case, no injury related to any COVID-19 pharmaceutical, or the Directives, is currently recognized by Veterans Affairs Canada for compensation under the *Veterans Well-being Act* SC2005 c 21. There is no

agency relief available to members and/or veterans who have been harmed as a result of the actual receiving of the injections nor of the actions of the CDS and CoC.

39. The Defendants would be vicariously liable for any wrongful acts found to have been committed by Ministry of National Defence and Canadian Armed Forces officials: see *Crown Liability and Proceedings Act*, RSC 1985, c C-50, s 3(b)(i) and s 36. The Crown is immune to liability directly; however, the actions or omissions of servants (or agents) of the Crown are to be assessed (*Hinse v Canada (Attorney General)*, 2015 SCC 35 para 58). The agent of the Crown whose acts or omissions are in question in the Pleadings of the Plaintiffs are the named Defendants. (*Big Eagle* v *R* 2021 FC 504).

40. Damages are as outlined in the Statement of Claim due to the deliberate negligent and unlawful acts of the Defendants in their role for the Crown. The Plaintiffs would not have suffered damages but for the actions of the Defendants.

***Charter*--Portions of the CAF's Vaccination Policy are Unreasonable**

41. The CAF COVID-19 vaccination policy engages the Plaintiffs' rights protected under the *Charter*. For example, the right to liberty under s7 protects the freedom of capable adults to make choices about their medical care, including the right to accept or refuse medical treatment. Recognizing that protected rights are not absolute and can be limited, it is understood that the limitation must be in accordance with the principles of fundamental justice, i.e., in a manner that is not arbitrary, overly broad, or disproportionate.

42. The issuance of a CAF vaccination policy, in the context of global COVID-19 pandemic, was not in itself arbitrary. However, the different treatment of members who were "unable" and those who were deemed "unwilling" to be

vaccinated appeared arbitrary considering the lack of evidence justifying the difference in treatment between the two groups of unvaccinated members. Portions of the CAF COVID-19 vaccination policy was also overly broad and disproportionate in their implementation.

43. The policy applied to all CAF members and allowed no room to consider various settings in which the members were serving and the associated risks of contamination. Then, temporary COVID-19 related restrictions were relaxed and removed once the spread of the virus was brought under control. For example, public servants temporarily placed on leave without pay were recalled to work. Despite the temporary nature of restrictions, the implementation of CAF vaccination policy had permanent consequences for members who were released from the CAF.

44. The termination of service for non-compliant members was a disproportionate response to the COVID-19 vaccination requirement under the policy. When the rights protected under the *Charter* are engaged, further analysis is required. Under section 1 of the *Charter*, the CAF had to meet its obligation to ensure the minimal impairment of protected rights in the implementation of its COVID-19 vaccination policy. Recognizing that fundamental rights are not absolute, and that the government can limit them when necessary to achieve an important objective, as long as the limits are proportional. This requires an examination of alternatives to ensure the use of the least impairing ways to achieve the objective of the COVID-19 vaccination policy, which was to show leadership to the Canadian public, ensure the health and safety of the CAF members and the public, and the CAF's operational readiness.

45. Under the jurisprudence and legal tests set out for section 1 of the *Charter*, the impairment of the protected rights by the CAF was not minimal. The onus was on the CAF to demonstrate that broader public interest justified the infringement on individual rights. The test for minimal impairment is whether the

government, or the CAF in this case, can demonstrate that among the range of reasonable alternatives, there was no other less-impairing means of achieving the objective of the policy in a real and substantial manner. Since reasonable alternatives were available, as evidenced by accommodation measures for members unable to be vaccinated, the CAF did not demonstrate minimal impairment of the protected rights. This makes the provisions of the CAF COVID-19 vaccination policy contrary to the *Charter* and, as such, unreasonable. The adequate remedy for such a breach is usually the cancellation of the offending provisions, which was partially implemented pursuant to CDS Directive 003.

46. Regretfully, cancellation of the RM and other administrative actions taken under the policy was not covered in CDS Directive 003. This means that RM and administrative actions taken under the previous Directives remain without change. This negligent act requires an examination of the justification and reasonableness of RM and other administrative actions taken by the CAF vis-à-vis the Plaintiffs pursuant to the CAF COVID-19 vaccination policy under CDS Directive 002, as amended, CANFORGEN 012/22 and the DMCA Aide-Memoire.

CDS cannot be inconsistent with *NDA*

47. The CDS cannot issue any order which is inconsistent with the *NDA* under *QR&O* 1.23. The CAF's own military review committee has found that the Directives violated the *Charter* rights of the CAF members and is not saved by s 1. This is a live issue with merit for the Court to hear and determine if the Directives breached the *Charter* rights of members and determine if the CDS therefore issued an unlawful order which was then carried out to the harm on the Plaintiffs through the CoC.

Privacy Breaches

48. In a systemic abuse of power within the CAF, there were illegal disclosures contrary to s. 8 of the *Privacy Act*. At no point had any of the Plaintiffs given consent for their medical and religious beliefs information to be shared with any other party, person, or institution.

49. The stated purpose of the attestations of COVID-19 vaccination status and accommodation status based on religion, medical, or *CHRA* findings are not congruent with using that information to fire any member who was non-compliant with the requirement to attest which is a violation of the *Privacy Act*. This personal information was used for a purpose other than the reason it was originally collected and/or a reason consistent with why it was collected. The Privacy Notice displayed on Monitor MASS ("MM") gave no notice that the information would be used for adverse administrative action or possible release from the CAF. When members expressed concerns, including in writing, about the data collection and use, they were not informed that the information would be used to punish certain groups within the CAF.

50. In addition, there were significant breaches of religious and medical privacy through email communications that were widely distributed between members who should not have received such information. This breach of privacy resulted in actions by members of the CAF and the CoC against the Plaintiffs which were discriminatory and harmful.

51. The top levels of the CAF compounded the privacy breaches by creating a website that that revealed confidential medical information of every member of the CAF. No measures were put into place to restrict access or control who would be able to see this information.

52. Under the command of then Lieutenant Colonel Rutland, a Defendant in this action, the medical unit at CFB Edmonton allowed approximately 1000 complete medical charts of members to be accessed and viewed by other members who did not have the authority or necessity to see complete medical files of their fellow members.

53. Then Lieutenant Colonel Rutland also formed an Edmonton Brigade Command COVID Review Board for evaluating requests for accommodation or exemption from members at CFB Edmonton. The Board had members who had no authority or position within the CAF to see private information on members that included religious beliefs and medical information.

Safe and Effective

54. The Crown fails to show the relevance of saying the COVID-19 injections were safe and effective to the primary claim of abusive tactics used by all levels of command in the implementation of the Directives. This use of deflection from the actual claims made by the Defendants also fails. It was well established before the Directives began in October 2021 that the use of Moderna was not safe for the CAF demographic nor was it effective in any way for the prevention or treatment of COVID-19. In August 2021, the Centre for Disease Control ("CDC") in the USA declared that the COVID-19 vaccination campaign had no effect on the prevention or spread of COVID-19. This information would have been available to the CoC in the CAF, including the Surgeon General.

55. The CAF was aware of these facts yet carried out a damaging campaign against its own members to force a medical treatment that causes harm. Indeed, the Briefing Note provided to General Eyre on August 26, 2021 made clear that the medical team could not determine if the COVID-19 injections were safe and/or effective.

56. After the Somalia Inquiry into the use of mefloquine, which was not fully tested before being used on the CAF members, DAOD 5061 established that no CAF member is to be used for experimental research without full informed consent. Informed consent was not given by any member of the CAF prior to administration of COVID-19 injections. The senior command was told, in writing, by a qualified senior medical officer in February 2021, that they had failed to establish informed consent from any member for these injections. The CAF also failed to correct that error up to and including the present day. It is well-established law in Canada that everyone undergoing a medical procedure is entitled to receive full disclosure of benefits and risks and only then is the test for informed consent met by the person administering the medical treatment (*Hopp* v *Lepp* 2 SCR 192; *Reibl* v *Hughes* 1980 2 SCR 880).

57. The medical staff within the CAF also proceeded to inject members even when told directly by the member that consent was not given, and that the member was under duress. The CAF, as the employer, is responsible for the actions of its medically assigned members when professional negligence and/or assault and battery occurs.

58. It is CAF policy (Reproductive Hazards Canadian Forces Health Services Group Instruction, Annex C, page 21, paras 4C and 5C) to not inject any pregnant member with any vaccination. This policy against biological reproductive hazards was completely ignored by the CoC in their drive to force pregnant members and breastfeeding mothers to have the COVID-19 injectables, even if they were on maternity leave and not present in the workplace. In addition, it is established that the COVID-19 injections were not tested nor approved for use in pregnant or breastfeeding women at the time of the enforcement of the Directives. None of the pregnant and breastfeeding Plaintiffs were told that there had been no clinical trials on this demographic and the safety of the injections was unknown. These Plaintiffs, therefore, cannot have given informed consent.

59. On September 19, 2022, a briefing note was provided that identified "key gaps in CAF policy and planning" regarding COVID-19 vaccinations. Almost a full year after the Directive 001, the CoC was aware of the failings of the mandate and its implementation. The CAF has failed to show that they were not negligent and have met the duty to disclose as well as to obtain informed consent of the members. They have no defence in stating that previous administrations of vaccines to CAF members is consent, as consent must be obtained for each instance of medical treatment.

Abuse of Authority

60. The Plaintiffs plead that the Defendants committed the tort of misfeasance in public office by deliberately conducting themselves unlawfully in the exercise of their public functions. The Defendants knowingly and in bad faith acted unlawfully outside the scope of their authority by implementing and maintaining the Directives.

61. The Defendants' actions were knowingly taken without any legitimate or lawful basis and for no legitimate purpose. These actions were known to cause harm to the Plaintiffs.

62. At all material times, there was no reasonable basis for the Defendants to trample the rights of the Plaintiffs. It was readily apparent to the Defendants that COVID-19 did not present a serious threat to the Plaintiffs while the Directives would violate the Plaintiffs' rights.

63. The Defendants further abused their public office, acted in bad faith, and intentionally misled the Plaintiffs about the COVID-19 vaccines by claiming they were safe and effective and would stop the transmission of infection. To justify the Directives, the CAF ignored and even hid data showing severe short-term risks of COVID-19 vaccination for the population group of the CAF and never

admitted that the abbreviated studies could not have been long enough in duration to assess long-term, severe, and irreversible injury.

64. The Defendants knew of the increased risks of the vaccines and intentionally censored and suppressed this information from the Plaintiffs. This was done to intentionally prevent the Plaintiffs from making independent and informed assessments about whether to take the vaccines.

65. The Defendants intentionally engaged in this conduct, which they knew was unlawful and likely to cause harm to the Plaintiffs. As a result, the Plaintiffs suffered severe, permanent physical, psychological, and emotional harm, and other quantifiable damages.

66. The Plaintiffs each provide abundant evidence of the abuse of authority by the Defendants. As shown by the Plaintiffs, the widespread abuse affected every branch, trade, unit, and Base of the CAF from the rank of Lieutenant Colonel (and Royal Canadian Navy equivalent) to the rank of Private (and Royal Canadian Navy equivalent). The abuses were not isolated incidents but throughout the Department of National Defence and CAF towards the men and women who served in uniform.

67. The Defendants have failed to show that the actions of the CDS and the CoC toward the Plaintiffs do not meet the definition of an abuse of authority under DAOD 5012-0:

> "abuse of authority" may mean: taking advantage of a position of authority to exploit, compromise or mistreat others; the improper use of power or authority to endanger a person's job or threaten a person's economic livelihood, or to interfere with or influence the career of an individual; intimidation, threats, blackmail and coercion. Abuse of Power may include behaviour such as shouting, belittling a person's work, favouritism/disfavourtism, unjustifiably withholding

information that a person needs to perform their work and asking subordinates to take on personal errands. DAOD 5012-0 (3.1)"

68. The Plaintiffs experienced administrative acts, physical acts, psychological acts, financial acts, false statements, and other acts of intimidation, threat, blackmail, and coercion under the guise of the Directives. *QR&O* 120.03 makes it a service offence to engage such conduct in relation to military service. *QR&O* 103.3 is clear that condoning any act or omission on any grounds, even by superior authority, is not a justification, excuse or defence for the actions or omissions of the CoC. The Defendants have no defence to their actions towards the Plaintiffs.

Mitigation and Declarations

69. Mitigation of damages will be shown at trial.

70. Declarations are sought as a means of addressing the underlying issues of an abuse of power by the Chain of Command of the Canadian Armed Forces.

Charter Violation Damages; Aggravated and Punitive Damages

71. The Plaintiffs have suffered significant mental anguish as a result of the rapidly evolving situation. They are left to contemplate whether or not they will have the funds available to meet their basic needs, including the purchase of food, clothing, and shelter.

72. The Plaintiffs claim punitive damages for the prejudice suffered as a result of the implementation of the Directives, which are discriminatory. The Plaintiffs reserve their right to amend the amounts claimed for punitive damages to account for future economic losses, including but not limited to loss of income due to release as a result of their refusal to comply with the Directives.

73. In addition to damages for *Charter* violations, the Defendants are liable for further aggravated and punitive damages stemming from the unduly harsh, insensitive manner in which they carried out the disciplinary procedures and release.

74. The Plaintiffs have suffered measurable damages, including mental distress, anxiety, and, in particular, injury to dignity and self-respect. The Plaintiffs are therefore entitled to significant damages due to the manner in which the CAF and DND suspended their employment, including a claim for punitive aggravated damages arising from flagrant human rights and *Charter* violations.

75. As a result of these breaches, the Plaintiffs have suffered the following damages:
    a. Severe and permanent psychological, physical and emotional trauma;
    b. Loss of employment opportunities;
    c. Worsening physical health because of inadequate medical support;
    d. Threats and assaults;
    e. Loss of sleep;
    f. Loss of trust in others;
    g. Loss of self-confidence;
    h. Loss of income;
    i. Loss of opportunity for future income;
    j. Post-traumatic stress disorder; and
    k. Other such damages as will be proven at the trial of this action.

76. The Defendants actively, knowingly, and willfully participated in harming the Plaintiffs. The Defendants' conduct was high handed and discriminatory.

77. The Defendants have failed to defend any part of the Statement of Claim. The Plaintiffs, therefore, seek Summary Judgment as plead with solicitor-client costs.

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