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Newmarket

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N :

HILARY LOCKHART and MELISSA LOCKHART

Plaintiffs

- and -

ATTORNEY GENERAL OF CANADA

Defendant

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, C.6

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 an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiffs' lawyer or, where the Plaintiffs do not have a lawyer, serve it on the Plaintiffs, and file it, with proof of service, in this Court office, **WITHIN TWENTY DAYS** after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or 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 is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT WILL BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: March 1, 2022

Issued by: _____

Address of Courthouse:
50 Eagle St W,
Newmarket, ON
L3Y 6B1

TO: Attorney General of Canada
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario K1A 0H8

CLAIM

1. The Plaintiffs, Hilary Lockhart and Melissa Lockhart, claim on their own behalf and on behalf of the Class against the Defendant:
 - a. an order certifying this action as a class proceeding and appointing Hilary Lockhart and Melissa Lockhart as Representative Plaintiffs of the Class;
 - b. a declaration that the Defendant breached its duty of care and fiduciary duty to the Class Members and violated the Class Members' rights and freedoms set out in section 15 of the *Canadian Charter of Rights and Freedoms* in respect of its failures set out herein relating to systemic sexual assault, sexual harassment and gender-based discrimination in the Canadian Cadet Organization, which is funded and administered by the Government of Canada;
 - c. damages for the Defendant's breach of its duty of care and breach of fiduciary duty and violation of the Class Members' rights and freedoms set out in section 15 of the *Canadian Charter of Rights and Freedoms* in respect of its failures set out herein relating to systemic sexual assault, sexual harassment and gender-based discrimination in the Canadian Cadet Organization, which is funded and administered by the Government of Canada;
 - d. damages for the Defendant's breach of its duty of care and breach of fiduciary duty and violation of the Class members' rights and freedoms set out in section 15 of the *Canadian Charter of Rights and Freedoms* in accordance with section 24(1) of the *Canadian Charter of Rights and Freedoms* in the amount of \$100 million, or other sum as this Honourable Court may find appropriate.
 - e. general damages in the amount of \$100 million;

- f. exemplary, punitive and or aggravated damages in the amount of \$50 million;
- g. on behalf of the Family Law Claimants, damages pursuant to the *Family Law Act*, R.S.O. 1990, c.F-3 and equivalent legislation in the amount of \$100 million for general damages and \$50 million punitive damages;
- h. a mandatory order requiring the Defendant to establish and implement relief and support programs for cadets and their family members, and to properly implement and carry out those programs in a manner that is fair and equitable;
- i. to the extent that relief and support programs for cadets and family members, a declaration that the Defendant was negligent in carrying out these programs;
- j. pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43;
- k. an order directing a reference, or such other directions as may be necessary to determine issues not determined at the trial of the common issues;
- l. costs of this action on a full indemnity basis, inclusive of all disbursements and HST;
- m. costs of notice and of administering the plan of distribution of the recover in this action, plus applicable taxes, pursuant to Rule 334.38 of the *Federal Courts Rules*, SOR/98-106; and
- n. such further and other relief as counsel may advise and this Court may permit and deem just and appropriate in the circumstances.

THE PARTIES

The Proposed Representative Plaintiffs

2. Hilary Lockhart (“Hilary”) was a Cadet with the Canadian Cadet Organization (“Cadets Canada”) in 2008 at the age of 14 years old. She currently resides in North York, Ontario. During her time with Cadets Canada, Hilary was groomed over a period of time by Todd Evans, who was a Cadet Instructor with Cadets Canada. Hilary reported this abuse to a female supervisor with Cadets Canada, however, the report was never taken beyond the initial report.
3. Melissa Lockhart (“Melissa”) is Hilary’s mother and was the one who found explicit messages that were being exchanged between Hilary and her abuser. She currently resides in Fort Frances, Ontario. Melissa reported the abuse to the police. Todd Evans was subsequently charged and convicted.
4. At no time were Hilary or Melissa provided with support or resources through Cadets Canada to deal with the after-effects of the abuse Hilary endured.

The Class

5. The proposed Class (collectively the “Class Members”) herein is defined as:
 - a. All current and former female cadets who experienced sexual assault, sexual harassment and/or gender-based discrimination as part of their time in Cadets Canada from 2000 to present (the “Cadet Class”); and
 - b. Any and all family members of current and former female cadets who experienced sexual assault, sexual harassment and/or gender-based discrimination as part of their time in Cadets Canada from 2000 to present, pursuant to the *Family Law Act*, R.S.O. 1990, c.F-3 and equivalent legislation (the “Family Members Class”).

The Defendant

6. The Defendant, the Attorney General of Canada, is sued pursuant to section 2(1) of the *Class Proceedings Act, 1992* and section 8 of the *Crown Liability and Proceedings Act, 2019* for the wrongful or negligent acts and omissions of members, employees, agents and officers of Cadets Canada. According to the *Crown Liability and Proceedings Act, 2019*, Canada is also the person in whose name proceedings are taken against the Federal Crown.
7. Cadets Canada is a funded program for young Canadians aged 12 to 18 across Canada. Cadets Canada is meant to help these young Canadians develop skills that will help them transition into adulthood by focusing on citizenship, leadership, physical fitness.
8. For the purposes of this action, Cadets Canada and Attorney General of Canada are one and the same.

THE NATURE OF THE ACTION

9. Cadets Canada is poisoned by a discriminatory and sexualized culture that condones and encourages sexual assault and sexual harassment towards young female cadets.
10. The discriminatory and sexualized culture in Cadets Canada is caused by the leadership's failure to implement appropriate policies to properly train its members and to identify, report, investigate and properly resolve incidents of sexual assault and sexual harassment. Moreover, young female cadets who report incidents suffer from negative consequences which discourages further reporting.
11. As a result, sexual assault and sexual harassment against young female cadets are pervasive in Cadets Canada causing harm, fear, humiliation and degradation. Young female cadets

in Cadets Canada are denied equality and equal protection and benefit under the law and the conduct violates basic standards, including section 15 of the *Canadian Charter of Rights and Freedoms*. These conditions and their severe detrimental impact arose and persisted due to the Defendant's breach of its duty of care and fiduciary duty owed to the Class Members.

THE PLAINTIFFS' EXPERIENCE

12. Hilary Lockhart resides in North York, Ontario, and joined Cadets Canada in 2008 at the age of 14.
13. The sexual harassment and grooming of Hilary began approximately one month after she joined Cadets Canada. Hilary was lured and brainwashed into a "relationship" with a Cadet Instructor, Todd Evans, who volunteered with Cadets Canada and taught classes and activities. Todd Evans convinced Hilary to take her clothes off for him on a video call. Hilary reported this incident to a female supervisor, but nothing further was done. Eventually, Melissa discovered the explicit messages and, when she saw a message indicating that Todd Evans convinced Hilary to meet him in a hotel room, she contacted the police. Todd Evans was eventually charged and convicted.
14. As a result of what happened to Hilary during her brief time with Cadets Canada, Hilary has attempted suicide and has been hospitalized at two to three times a year for the past 11 years. She has been diagnosed with Post-Traumatic Stress Disorder, Borderline Personality Disorder, Major Depressive Disorder, Generalized Anxiety, and Social Anxiety Disorder.
15. Melissa resides in Fort Frances and was a single mother who was not equipped to handle the toll that the abuse took on Hilary. As a result of the abuse, Hilary would routinely and

regularly act out with emotional and physical outbursts. Due to this ongoing behaviour, Melissa was forced to place Hilary in a foster home, which led to a loss of the relationship between Hilary and Melissa for many years.

THE DEFENDANT

SEXUAL ASSAULT AND SEXUAL HARASSMENT

16. There have been reports of a culture of sexual assault and sexual harassment in Cadets Canada. Many of the cases involve older staff members, or Canadian Forces personnel.
17. From 2006 to 2015, there were 245 cases of sexual misconduct involving cadets, some involving adult instructors or reserve officers.
18. Data shows 27 per cent of all sexual misconduct cases across the Canadian Forces in 2015 (44 out of 162 cases) involved cadets, a higher proportion than in any of the previous nine years, when the average was 17 per cent.
19. Families are often not aware of the statistics and documented history of sexual assault and sexual harassment for many reasons; the reporting procedures are often difficult and confusing, response procedures can have lag time, and, when utilized, focus on punishing the offender, as opposed to changing the system to make it safer.

THE INHERENT POWER IMBALANCE

20. The inherent power imbalance in Cadets Canada is two-fold. Young female cadets are not only subject to gender-based discrimination, they are also minors. These factors coupled with the underlying sexualized culture in Cadets Canada leads to a culture that encourages and condones sexual assault and sexual harassment.

21. Young female cadets are also reluctant to report incidents of sexual assault and sexual harassment due to a widespread fear of reprisal and negative repercussions, not to mention the air of skepticism that reports may be met with when made. As a result, young female cadets learn to keep their concerns to themselves from the beginning and learn that sexual assault, sexual harassment and gender-based discrimination will go unpunished.

EXISTING POLICIES RELATING TO HARRASMENT AND ABUSE PREVENTION

22. Beginning in the 1990s, Cadets Canada introduced a mandatory “Cadet Harassment and Abuse Prevention” program aimed at cadets and instructors that included a series of videos. Cadets Canada updated the training guide several years ago and renamed it “Positive Social Relations for Youth” in the 2000s.

23. Cadets are supposed to be taught to identify harassment or criminal behaviour and where to go for help. Instructors are supposed to be taught how to manage conflicts and told to never be alone with cadets and to avoid touching them.

24. These policies were put in place as a direct result of the known culture of harassment and abuse prevalent within Cadets Canada. Despite having policies in place and despite amendments to those policies, the culture of harassment and abuse continues.

CAUSES OF ACTION

1. BREACH OF FIDUCIARY DUTY

25. At all material times, the Government of Canada funded and administered Cadets Canada.

26. At all material times, the Government of Canada was aware of the Cadet Class and the Cadet Class was within power and/or control of the Government of Canada and were subject to the unilateral exercise of it or its agents' power or discretion.
27. At all material times, the Government of Canada undertook the express and implied responsibility to act in the best interests of the Class Members through its funding and administration of Cadets Canada.
28. Cadets Canada, by design, is for the benefit of the Cadet Class.
29. The Class Members relied on the skills and expertise of the Defendant to administer Cadets Canada. The Cadet Class, who are vulnerable because of their age, had the reasonable expectation that they would be free from sexual assault and sexual harassment during their time in Cadets Canada.
30. The Defendant breached its fiduciary duties to the Class Members in the administration of Cadets Canada. The particulars of the breach include:
 - a. failing to properly investigate reports of sexual assault and sexual harassment by Cadet Class;
 - b. failing to implement policies, support programs and resources to assist the Cadet Class after incidents of sexual assault and sexual harassment;
 - c. where there such policies exist, failing to abide by and carry out those policies in a way that achieves the actual effectiveness of the policies to allow the beneficiaries of those policies to obtain the intended benefit;
 - d. failing to provide employees, agents and officers of Cadets Canada with adequate training to address sexual assault and sexual harassment;
 - e. failing to adequately screen employees, agents and officers of Cadets Canada; and

- f. failing to safeguard the physical and psychological needs of Class Members during their time with Cadets Canada and afterwards.

2. NEGLIGENCE

31. At all material times, the Defendant owed duties to the Class Members, including but not limited to, a duty to give proper consideration to and to take reasonable care of, the Class Members' physical and mental well-being.
32. At all material times, the Defendant had a direct impact on the Class Members. The harm suffered by the Class Members was a reasonably foreseeable consequence of Canada's acts and omissions.
33. The Class Members were entirely dependent on the Defendant during their time with Cadets Canada. While this would be so in any military environment, this was especially pronounced given that most Class Members were minors.

3. CHARTER DAMAGES

34. The discriminatory and sexualized culture in Cadets Canada is caused by the leadership's failure to implement and administer appropriate policies to properly train its members, employees, agents and officers and to identify, report, investigate and properly resolve incidents of sexual assault, sexual harassment and gender-based discrimination. Furthermore, young female cadets who report incidents suffer from negative consequences and/or skepticism, which discourages further reporting.
35. As a result, sexual assault, sexual harassment and gender-based discrimination against young female cadets is pervasive in Cadets Canada causing tremendous harm, fear,

humiliation and degradation. Young female cadets in Cadets Canada are denied equality and equal protection and benefit under the law and the Defendant's conduct violates basic standards, including section 7 and 15 of the *Canadian Charter of Rights and Freedoms*. These conditions and their severe, detrimental impact arose and persisted due to Cadet Canada's breach of its duty of care and fiduciary duty owed to the Class Members.

4. DAMAGES SUFFERED BY THE CLASS

36. The Class Members have suffered damages as a result of Cadet Canada's actions. Cadet Canada's failure to properly investigate reports of sexual assault, sexual harassment and gender-based discrimination, resulted in intentional inflicted harm on the Class Members. The Class Members should be compensated for their losses as it relates to this negligent or intentional infliction of mental harm.
37. The Cadet Class suffered physical, psychological, emotional and mental distress as a direct result of their mistreatment and the blatant disregard for their wellbeing during their time with Cadets Canada.
38. The Cadet Class also suffered from ongoing physical, psychological, emotional and mental distress as a direct result of the sexual assault and sexual harassment they suffered.
39. The Cadet Class suffered from and continues to suffer from the following, including, but not limited to:
- a. Mental anguish;
 - b. Shame, guilt and feelings of worthlessness;
 - c. Nervous shock, humiliation and degradation;
 - d. Impairment of their physical health, mental health and emotional well-being;

- e. Impairment of their opportunities to experience a normal adolescent life;
- f. Emotional and psychological trauma, post-traumatic stress, anxiety and depression.
- g. A reduction in the activities they enjoyed prior to the sexual assault and sexual harassment;
- h. A reduction in the enjoyment of their lives;
- i. Loss of or reduction in employment;
- j. Insomnia;
- k. Mistrust of men;
- l. Mistrust of authority figures;
- m. Inability to engage in normal human relationships and the loss of interdependent relationships; and
- n. Disassociation.

40. The Family Members Class suffered from and continues to suffer from the following, including but not limited to:

- a. Mental anguish;
- b. Shame, guilt and feelings of helplessness;
- c. Impairment of their physical health, mental health and emotional well-being;
- d. Emotional and psychological trauma, post-traumatic stress, anxiety and depression.
- e. A reduction in the enjoyment of their lives;
- f. Loss of or reduction in employment;
- g. Insomnia;
- h. Inability to engage in normal human relationships and the loss of interdependent

relationships; and

- i. Disassociation.

5. PUNITIVE DAMAGES REQUESTED

41. The conduct of the Defendant merits punitive damages in that the conduct constituted highhanded, malicious, and reprehensible conduct that departs to a marked degree from the standards expected of the Defendant. The Cadet Class were particularly vulnerable and relied on Cadets Canada.

THE RELEVANT STATUTES

42. Hilary, Melissa and the Class Members plead and rely upon, and the amendments made thereto and the regulations thereunder and the Provincial equivalents:

- a. *Canadian Charter of Rights and Freedoms*, s 7, Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11;
 - b. *Class Proceedings Act*, 1992, S.O. 1992, c. 6;
 - c. *Family Law Act*, R.S.O. 1990, c.F-3;
 - d. *Negligence Act*, R.S.O. 1990, c. N.1; and
 - e. *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27.
- a. The Class proposes that this action be tried at the City of Newmarket, in the Province of Ontario.

March 1, 2022

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Plaintiffs

- and -

THE ATTORNEY GENERAL OF CANADA
Defendant

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding Commenced at Newmarket

STATEMENT OF CLAIM

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