

Federal Court



Cour fédérale

Date: 20210326

Docket: T-138-19

Citation: 2021 FC 267

Fredericton, New Brunswick, March 26, 2021

PRESENT: Madam Justice McDonald

PROPOSED CLASS PROCEEDING

BETWEEN:

SYLVIE CORRIVEAU

Plaintiff

and

HER MAJESTY THE QUEEN

Defendant

ORDER AND REASONS

[1] This Motion, brought with the consent of the Defendant, is for the certification of this action as a class proceeding pursuant to Rule 334.16 of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*]. The parties agree on the terms of the Certification Order.

[2] The proposed representative Plaintiff, Sylvie Corriveau, asks the Court to certify a class proceeding against the Royal Canadian Mounted Police (RCMP) for the inappropriate conduct of medical doctors designated by the RCMP (Designated Physicians) to conduct medical examinations (Applicant's Examination) as a prerequisite for admission to the RCMP.

[3] The claims against the RCMP are for negligence, breach of the duty of care, vicarious liability, and systemic negligence.

[4] For the reasons that follow this action is being certified as a Class Proceeding.

Background

[5] The RCMP is Canada's national police force and is governed by the *Royal Canadian Mounted Police Act*, RSC 1985, c R-10 [*RCMP Act*] and the *Royal Canadian Mounted Police Regulations*, 2014, SOR /2014-281 [*RCMP Regulations*].

[6] Individuals employed by the RCMP generally fall into three categories: Regular Members who are sworn police officers; Civilian Members who provide specialized services; and, Public Service employees who provide administrative and technical support.

[7] Section 9.1(1) of the *RCMP Act* states that those applying to become a member (Regular or Civilian) of the RCMP must have the "necessary physical qualities." The physical qualities are assessed, in part, by a mandatory medical examination conducted by RCMP Designated

Physicians. In addition to the medical doctor being designated by the RCMP, the medical examination, referred to as the Applicant's Examination, is conducted at an RCMP facility.

[8] The Applicant's Examination is mandatory and is often the final step in the recruitment process for those applying to the RCMP. Designated Physicians complete a form and provide their opinion on whether an applicant is fit for acceptance into the RCMP. Designated Physicians exercise tremendous power as they often have the final say on whether an applicant can become a member of the RCMP.

[9] Ms. Corriveau applied to the RCMP as a Civilian Member and on September 1, 1989, she underwent an Applicant's Examination by Designated Physician, Dr. John A. MacDougall at the RCMP division headquarters in Toronto.

[10] In her Statement of Claim and her Affidavit, Ms. Corriveau describes in detail the "examination" conducted by Dr. MacDougall. The examination included Dr. MacDougall performing what he described as the "tweaking method" for the examination of her breasts and physically and visually examining her while she was completely naked. Even though it was not necessary for Dr. MacDougall to perform a Pap test, he insisted that he was required to "take a peek" of both her genitalia and anal areas.

[11] Ms. Corriveau describes the examination as sexualized and inappropriate and explains feeling vulnerable and anxious during the examination. But, she was aware that her future

employment with the RCMP was dependant upon passing the Applicant's Examination, a fact that was reiterated by Dr. MacDougall throughout the examination.

[12] Following the examination, Ms. Corriveau describes being in a state of shock and feeling humiliated and violated. This event caused her trauma and has had life-long physical, psychological, and emotional consequences for Ms. Corriveau.

[13] After being sworn into the RCMP in October 1989, and learning that other women had similar experiences with Dr. MacDougall, Ms. Corriveau contacted the RCMP Member Employee Assistance Program (MEAP) to report her experience with Dr. MacDougall. This report led to the incidents also being reported to the College of Physicians and Surgeons of Ontario (CPSO) and the Metropolitan Toronto Police Service (MTPS).

[14] Despite the reports of Dr. MacDougall's conduct and various investigations, no action was taken by the RCMP, the CPSO or the MTPS and Dr. MacDougall continued to perform Applicants Examinations as a Designated Physician for the RCMP.

[15] In 2018, the Halifax Regional Police reported that they were investigating allegations of sexual assault against another RCMP Designated Physician, Dr. Donald Campbell, for events between 1981 and 2003. Following this report by Halifax police, numerous additional allegations were made against Dr. Campbell.

[16] In the Statement of Claim, Ms. Corriveau claims that the RCMP had long-standing knowledge of the issues with Designated Physicians but failed or refused to take appropriate action. This resulted in the continuation of inappropriate examinations and assaults on male and female applicants who were required to submit to Applicant's Examinations by RCMP Designated Physicians.

The Evidence

[17] The following evidence was filed in support of this Motion:

- Affidavit of Sylvie Corriveau, sworn November 21, 2019
- Affidavit of Yvette Gallo, sworn November 26, 2019
- Affidavit of Pierre LeBrun, affirmed July 20, 2019.

Issue

[18] The sole issue is if this action should be certified as a class proceeding pursuant to Rule 334.16 of the *Federal Courts Rules*.

Analysis

[19] As noted by Justice Rothstein in *Pro-Sys Consultants Ltd. v Microsoft Corporation* 2013 SCC 57 at para 102 [*Pro-Sys Consultants*]:

The certification stage does not involve an assessment on the merits of the claim and is not intended to be a pronouncement on the viability or strength of the action; “rather, it focuses on the form of the action in order to determine whether the action can appropriately go forward as a class proceeding”

[20] Rule 334.16(1) of the *Federal Courts Rules* states:

<p>334.16(1) Subject to subsection (3), a judge shall, by order, certify a proceeding as a class proceeding if</p> <p>(a) the pleadings disclose a reasonable cause of action;</p> <p>(b) there is an identifiable class of two or more persons;</p> <p>(c) the claims of the class members raise common questions of law or fact, whether or not those common questions predominate over questions affecting only individual members;</p> <p>(d) a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact; and</p> <p>(e) there is a representative plaintiff or applicant who</p> <p style="padding-left: 20px;">(i) would fairly and adequately represent the interests of the class,</p> <p style="padding-left: 20px;">(ii) has prepared a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the class and of notifying class members as to how the proceeding is progressing,</p> <p style="padding-left: 20px;">(iii) does not have, on the common questions of law</p>	<p>334.16(1) Sous réserve du paragraphe (3), le juge autorise une instance comme recours collectif si les conditions suivantes sont réunies :</p> <p>a) les actes de procédure révèlent une cause d'action valable;</p> <p>b) il existe un groupe identifiable formé d'au moins deux personnes;</p> <p>c) les réclamations des membres du groupe soulèvent des points de droit ou de fait communs, que ceux-ci prédominent ou non sur ceux qui ne concernent qu'un membre;</p> <p>d) le recours collectif est le meilleur moyen de régler, de façon juste et efficace, les points de droit ou de fait communs;</p> <p>e) il existe un représentant demandeur qui :</p> <p style="padding-left: 20px;">(i) représenterait de façon équitable et adéquate les intérêts du groupe,</p> <p style="padding-left: 20px;">(ii) a élaboré un plan qui propose une méthode efficace pour poursuivre l'instance au nom du groupe et tenir les membres du groupe informés de son déroulement,</p> <p style="padding-left: 20px;">(iii) n'a pas de conflit d'intérêts avec d'autres</p>
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or fact, an interest that is in conflict with the interests of other class members, and

(iv) provides a summary of any agreements respecting fees and disbursements between the representative plaintiff or applicant and the solicitor of record.

membres du groupe en ce qui concerne les points de droit ou de fait communs,

(iv) communique un sommaire des conventions relatives aux honoraires et débours qui sont intervenues entre lui et l'avocat inscrit au dossier.

Reasonable Cause of Action

[21] The task of the Court on a certification motion is “not to resolve conflicting facts and evidence or assess the strength of the case. Rather, the task is simply to answer, at a threshold level, whether the proceeding can go forward as a class proceeding” (*Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 28 [*Wenham*] citing *Pro-Sys Consultants Ltd v Microsoft Corporation*, 2013 SCC 57 at paras 99 and 102).

[22] In considering if there is a reasonable cause of action, the Court is to assume that the facts contained in the Statement of Claim are true (*Condon v Canada*, 2015 FCA 159 at para 13).

[23] In her Statement of Claim, Ms. Corriveau explains the process of applying to become a Civilian Member of the RCMP and the requirement to undergo an Applicant’s Examination. She details the conduct of Dr. John A. MacDougall who performed her examination at the RCMP division headquarters in Toronto.

[24] In 1989, Ms. Corriveau and two other women filed a complaint with the RCMP MEAP regarding the conduct of Dr. MacDougall. In the Statement of Claim, Ms. Corriveau alleges that the RCMP had knowledge of the sexual assaults and improper and invasive procedures of Dr. MacDougall, but failed to investigate or interfered with the investigations of Dr. MacDougall's conduct and thereby condoned his actions.

[25] At paragraph 58 of the Statement of Claim, Ms. Corriveau states as follows:

RCMP employees knew from many years of issues with Designated Physicians, including issues occurring during the Applicant's Examination and covered these issues up. Multiple class members, both male and female, were subjected to inappropriate and unnecessary procedures, assault, and battery, including sexual assault and battery. Nonetheless, RCMP employees continued to send class members to Designated Physicians who they knew or ought to have known were harming class members during the applicant's examination.

[26] The Statement of Claim alleges that the Defendant was negligent by failing to provide Ms. Corriveau, and other Class Members, with an "Applicant's Examination free of sexual assault and battery, and inappropriate and unnecessary procedures."

[27] Ms. Corriveau states that the RCMP had a duty of care to those who were obligated to participate in a process fully controlled by the RCMP that included a mandatory medical examination (Applicant's Examination) by a doctor chosen by the RCMP (Designated Physician). She argues that the RCMP breached its duty of care when it failed to establish, update, and enforce appropriate policies regarding the Applicant's Examination and when it failed to investigate complaints of inappropriate conduct of Designated Physicians.

[28] Although the claims are made against the RCMP, the Attorney General of Canada is the appropriate Defendant by virtue of section 36 of the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50 [*Crown Liability and Proceedings Act*]. The Plaintiff also alleges vicarious liability of the Crown on the basis of sections 3 and 10 of the *Crown Liability and Proceedings Act*.

[29] The systemic negligence claim is based upon the assertion that the RCMP created and maintained a recruitment process that put applicants at risk, and that the RCMP continued with the process even after it had knowledge of inappropriate conduct by Designated Physicians. Courts have recognized "systemic negligence" claims in *Davidson v Canada (Attorney General)*, 2015 ONSC 8008 at para 25 [*Davidson*] and *Rumley v British Columbia*, 2001 SCC 69 at para 30 [*Rumley*]. Similarly, claims of systemic harassment within the RCMP were found to meet the cause of action requirement in *Merlo v Canada*, 2017 FC 51 [*Merlo*] and *Tiller v Canada* 2019 FC 895 [*Tiller*].

[30] Accepting the facts contained in the Statement of Claim, I am satisfied that a reasonable cause of action has been established pursuant to Rule 334.16(1)(a).

Identifiable Class

[31] In order to establish an identifiable class, the Court in *Wenham* at paragraph 69 states "all that is required is 'some basis in fact' supporting an objective class definition that bears a rational connection to the common issues and that is not dependent on the outcome of the litigation" (citing *Western Canadian Shopping Centres Inc v Dutton*, 2001 SCC 46 at para 38

[*Western Canadian Shopping Centres*] and *Hollick v Toronto (City)*, 2001 SCC 68 at paras 19 and 25 [*Hollick*]).

[32] In *Pro-Sys Consultants*, the Supreme Court of Canada confirmed (at para 108) that it is not necessary for class members to be identically situated but all class members must benefit from the successful prosecution of the action.

[33] The Plaintiffs' proposed class is defined as follows:

- a. all persons who underwent an Applicant's Examination by a Designated Physician (the "Class");
- b. all individuals who are entitled to assert a claim pursuant to the *Family Law Act*, R.S.O. 1990, c. F. 3, and equivalent or comparable legislation in other provinces and territories (the "Family Class"); and
- c. excluded from the Class are individuals whose Applicant's examination occurred when they were members of the Class certified in *Janet Merlo and Linda Gillis Davidson v Her Majesty the Queen*, court file T-1685-16 or *Tiller v Her Majesty the Queen*, Court File T-1673-17 and individuals who are or where, at the time of their Applicant's Examination, able to grieve under s. 208 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22 s. 2.

[34] Pierre Lebrun, who is currently the RCMP Executive Liaison Officer to Veterans Affairs Canada, has provided an Affidavit with information from internal records regarding RCMP

personnel who were required to undergo Applicant's Examinations and the potential scope and size of the proposed class membership.

[35] At paragraph 23 of his Affidavit Mr. Lebrun states as follows:

I am informed by the Occupational Health and Safety branch through Natacha Lamontagne that the categories of RCMP personnel who are or were required to undergo Applicant's Examinations have included the following:

- a) All Regular Members;
- b) From January 1979 to March 15, 1996 all civilian members (CMs);
- c) From May 16, 1996 to June 1, 2016, CMs who are or were classified as set out in the chart in the next paragraph;
- d) Special Constable members;
- e) From February 20, 2014 to the present, Public Service Employees (PSEs) who are or were classified as set out in the next paragraph;
- f) Reservists if they join the RCMP from an external police force; and
- g) Cadets from 1994 onwards.

[36] At paragraphs 46 to 51 of his Affidavit, Mr. Lebrun describes the search conducted through the RCMP Human Resources Management Information System records and the predecessor human resource tracking system (PARADE) to determine the number of potential class members. Based on that information, the number of potential class members is approximately 41,339 people.

[37] However, as noted by the Plaintiff, the RCMP human resource tracking systems do not include information on those who did not join the RCMP but nonetheless underwent an Applicant's Examination. Accordingly, the potential class number may be higher.

[38] Ms. Corriveau states in her Affidavit that she has spoken to approximately 20 potential class members. Ms. Gallo in her Affidavit states that she has spoken to approximately 100 potential class members.

[39] Based upon this information, I am satisfied that the class members are rationally connected to the common questions. Further, I am also satisfied that it is appropriate to include the family class identified in the proposed class definition.

[40] The class definition excludes those who were entitled to compensation under the *Merlo* or the *Tiller* class actions. However, it is important to note that in order to be entitled to compensation in the *Merlo* action class members had to be female and a current or former employee of the RCMP. The class definition here includes both male and female claimants. Similarly, the Class definition recognizes that as the examination took place as part of the employment application process, those affected were not employees or members of the RCMP at the relevant time and therefore outside the definition of the Class in *Merlo*.

[41] The class definition meets the requirements of Rule 334.16(1)(b) and the Plaintiff has satisfied the "identifiable class" requirement of the certification criteria.

Common Questions

[42] In *Vivendi Canada Inc v Dell'Aniello*, 2014 SCC 1 at para 46 [*Vivendi*], the Supreme Court of Canada explained that:

... a question will be considered common if it can serve to advance the resolution of every class member's claim. As a result, the common question may require nuanced and varied answers based on the situations of individual members. The commonality requirement does not mean that an identical answer is necessary for all the members of the class, or even that the answer must benefit each of them to the same extent. It is enough that the answer to the question does not give rise to conflicting interests among the members.

[43] In *Vivendi*, at para 72, the Supreme Court of Canada confirmed that “the threshold that must be met to find that there are common questions is a low one”. Similarly, Courts should take a purposive approach in assessing common issues (*Pro-Sys Consultants* at para 108). However, there must be some evidentiary basis or "some basis in fact" demonstrating that common issues exist beyond a bare assertion in the pleadings (*Hollick* at para 25).

[44] The Plaintiff proposes the following common questions:

Negligence

- 1) Did the RCMP, through its agents, servants and employees owe a duty or duties of care to the plaintiff and other Class Members to take reasonable steps to provide an Applicant's Examination free of inappropriate and/or unnecessary procedures, assault and battery, including sexual assault and sexual battery?
- 2) If yes, what was the applicable standard or standards of care? Was there a breach of this duty or duties by the RCMP through its agents, servants and employees?
- 3) If yes, is the Crown vicariously liable for the failure of its agents, servants and employees at the RCMP to take reasonable steps to provide an Applicant's Examination free of inappropriate and/or unnecessary procedures, assault and battery, including sexual assault and sexual battery?

Designated Physicians

- 4) Do the RCMP's servants, agents or employees include Designated Physicians?

Damages

- 5) Can the Court make an aggregate assessment of any damages as part of the common issues trial? If so, to whom and in what amount?
- 6) Does the RCMP's conduct through its servants, agents or employees justify an award of aggravated, exemplary, and/or punitive damages? If so, to whom and in what amount?

[45] It is undisputed that the Applicants Examination was a mandatory step in the RCMP application process. It is also undisputed that the RCMP selected the Designated Physician and made all the arrangements for the medical examination. In my view, these facts are a sufficient "basis in fact" to support common questions 1 and 2.

[46] The answers to questions 3 and 4 are related to the resolution of questions 1 and 2 and the answers will be applicable to all class members.

[47] Although the answers to questions 5 and 6 relating to damages are less certain in terms of commonality among class members, at this time, I am satisfied the questions have "some basis in fact" so as to meet the common question threshold.

[48] Overall, I am satisfied that the common question objective as required by Rule 334.16(1)(c) is met here.

Preferable Procedure

[49] The factors relevant to determining if a class proceeding is the preferable procedure are set out in Rule 334.16(2) of the *Federal Courts Rules* as follows:

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| <p>(2) All relevant matters shall be considered in a determination of whether a class proceeding is the preferable procedure for the just and efficient resolution of the common questions of law or fact, including whether</p> <p>(a) the questions of law or fact common to the class members predominate over any questions affecting only individual members;</p> <p>(b) a significant number of the members of the class have a valid interest in individually controlling the prosecution of separate proceedings;</p> <p>(c) the class proceeding would involve claims that are or have been the subject of any other proceeding;</p> <p>(d) other means of resolving the claims are less practical or less efficient; and</p> <p>(e) the administration of the class proceeding would create greater difficulties than those likely to be experienced if relief were sought by other means.</p> | <p>(2) Pour décider si le recours collectif est le meilleur moyen de régler les points de droit ou de fait communs de façon juste et efficace, tous les facteurs pertinents sont pris en compte, notamment les suivants :</p> <p>a) la prédominance des points de droit ou de fait communs sur ceux qui ne concernent que certains membres;</p> <p>b) la proportion de membres du groupe qui ont un intérêt légitime à poursuivre des instances séparées;</p> <p>c) le fait que le recours collectif porte ou non sur des réclamations qui ont fait ou qui font l'objet d'autres instances;</p> <p>d) l'aspect pratique ou l'efficacité moindres des autres moyens de régler les réclamations;</p> <p>e) les difficultés accrues engendrées par la gestion du recours collectif par rapport à celles associées à la gestion d'autres mesures de redressement.</p> |
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[50] With respect to Rule 334.16(2)(a), and as noted above in the common question analysis, a determination of the legal duties owed by the RCMP to the members of the class in these particular circumstances is a necessary precondition to the determination of any claim for compensation. Therefore, the common questions take precedence over any individual questions that may arise. I am satisfied that a common issues trial could effectively respond to the majority of the issues arising from these claims.

[51] On Rule 334.16(2)(b), I would note that there is no evidence that others have sought or seek to bring a similar claim.

[52] In my view, the objectives of Rule 334.16(2)(c), (d) and (e) are also satisfied. It is likely that the common issues will be best served through litigation on a class basis and not through multiple individual actions. The risk of double recovery is addressed as the proposed Class excludes those who were eligible under the *Merlo* and *Tiller* actions.

[53] Those who were assaulted but who were not eligible to claim under the *Merlo* settlement because they were not members of the RCMP at the time of the examination, or because they are men, are included in the above Class definition. With respect to internal mechanisms for resolution of claims, as the conduct at issue here occurred pre-employment, there may not have been any internal RCMP processes or other means to respond to claims.

Appropriateness of the Representative Plaintiff

[54] The Plaintiff, Sylvie Corriveau, is a Civilian Member of the RCMP and currently serves as the Officer-in-Charge at the Operational Communications Centre, National Support Services.

[55] Ms. Corriveau began her career with the RCMP in 1989. Prior to being hired with the RCMP, she was required to undergo an Applicant's Examination. In the Statement of Claim she details her experience of assault and sexual abuse by the Designated Physician.

[56] As stated in *Western Canadian Shopping Centres* at paragraph 41:

... in assessing whether the proposed representative is adequate, the court may look to the motivation of the representative, the competence of the representative's counsel, and the capacity of the representative to bear any costs that may be incurred by the representative in particular (as opposed to by counsel or by the class members generally). The proposed representative need not be "typical" of the class, nor the "best" possible representative.

[57] Historically, Ms. Corriveau has attempted to address the issues raised here within the RCMP and through the Metropolitan Toronto Police Service and the College of Physicians and Surgeons of Ontario without any resolution. I am satisfied that she does not have interests in conflict with the class on the common issues and she is a suitable representative plaintiff.

[58] I am therefore satisfied that Sylvie Corriveau will fairly and adequately represent the interests of the class.

Litigation Plan

[59] The litigation plan contains the essential ingredients for the next steps in this matter including a communication plan, a notice program, plans with respect to oral and documentary discovery, retention of experts, and the assessment of damages.

[60] As noted in *Wenham*, courts must recognize that litigation plans are a work in progress, they are "not cast in stone" and they can be amended as the litigation proceeds (*Wenham* at para 103).

[61] In my view, the Plaintiff has provided a reasonable and practical Litigation Plan. The parties have also agreed to a Notice Program, which sets out multiple mechanisms for distributing the Notice to potential Class Members. The plan also provides appropriate opting out steps and confidentiality provisions. The Defendant has agreed to cover the costs of the Notice Program.

[62] With respect to legal fees, Ms. Corriveau confirms her agreement with legal counsel, Kim Spencer McPhee Barristers P.C., that they will only be paid fees if there is a settlement or successful judgment on the common issues that benefits one or more members of the Class. Ms. Corriveau is not obliged to fund any disbursements or taxes as the matter proceeds. Finally, any legal fees will be subject to Court Approval.

[63] In addition to the above, I am satisfied that certification of this action will heighten awareness and assist in behaviour modification and facilitate access to justice (*AIC Limited v Fischer*, 2013 SCC 69 at para 22).

Conclusion

[64] For the reasons outlined above, I grant the Motion and order that this matter be certified as a Class Proceeding.

ORDER IN T-138-19

THIS COURT ORDERS that:

1. This action is certified as a class proceeding against the Defendant, Her Majesty the Queen.
2. The Class is defined as:
 - a. all persons who underwent an Applicant's Examination by a Designated Physician (the "Class");
 - b. all individuals who are entitled to assert a claim pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3, and equivalent or comparable legislation in other provinces and territories (the "Family Class"); and,
 - c. excluded from the Class are individuals whose Applicant's Examination occurred when they were members of the Class certified in *Janet Merlo and Linda Gillis Davidson v Her Majesty the Queen*, Court File T-1685-16 or *Tiller v Her Majesty the Queen*, Court File T-1673-17 and individuals who are or were, at the time of their Applicant's Examination, able to grieve under s. 208 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2.
3. Sylvie Corriveau is appointed as the Representative Plaintiff for the Class;
4. Kim Spencer McPhee Barristers P.C. is appointed counsel for the Class ("Class Counsel");
5. The Class claims the following relief:
 - (a) General damages (plus damages equal to the costs of administering the plan of distribution of the recovery in this action);
 - (b) Loss of income;

- (c) Special damages;
 - (d) Exemplary and punitive damages;
 - (e) Damages pursuant to the *Family Law Act*, RSO 1990, c. F-3 and equivalent or comparable legislation in other provinces and territories;
 - (f) Pre-judgment and post-judgment interest; and
 - (g) Costs of this action;
6. The plaintiff's Litigation Plan is approved in the form attached as Schedule "A" to this Order.
 7. The common issues attached to this Order as Schedule "B" are certified as common issues.
 8. The Notice of Certification as a Class Proceeding, substantially in the form and content attached to this Order as Schedule "C" is approved (the "Certification Notice"). The Certification Notice shall be available in both French and English.
 9. The Certification Notice will be distributed substantially in the manner set out in the Notice Program set out in the Litigation Plan.
 10. Dewar Communications Inc. is appointed as Notice Administrator to administer the Notice Program.
 11. The costs of effecting Notice of certification shall be paid by the Defendant.
 12. For the purpose of facilitating the Notice Program, the RCMP and other federal government departments and agencies who are reasonably expected to have relevant names and contact information shall make reasonable efforts to identify and provide to Dewar Communications Inc. the names and last known address or other last known

contact information of the Class Members, except where disclosure of such information is prohibited by law.

13. The form and manner of providing Notice of certification as approved in paragraphs 8 and 9 represents fair and reasonable notice to all persons entitled to Notice of certification.
14. The Opt-Out form, substantially in the form and content attached to this Order as Schedule “D” is approved.
15. A member of the Class may only opt out of this class proceeding by sending a signed, written election to opt out to the address set out in the Certification Notice. Notice of the decision to opt out must be received by Dewar Communications Inc. as set out in the Certification Notice within 90 days of the date of the latest publication of the Certification Notice in the newspapers set out in Schedule “E”.
16. If a Class Member opts out of this class proceeding, their Family Class Members shall also be deemed to have opted out. No person may opt out a minor or a mentally incapable Class Member without the permission of the Court after notice to the Children’s Lawyer or Public Guardian and Trustee, as applicable to Class Members resident in Ontario, and to comparable or equivalent entities in the other provinces and territories as applicable to Class Members resident in other provinces and territories.
17. Dewar Communications Inc. will serve on the parties and file with the Court an affidavit stating the date upon which the Certification Notice is published and attaching a list of all persons who have opted out of the class proceeding in accordance with this Order, within 30 days of the opting-out deadline.
18. The affidavit referred to in paragraph 18 shall be filed under seal so that the identities of those individuals electing to opt out of this proceeding are not accessible to the public.

19. No other class proceeding may be commenced with respect to the matters in issue in this action absent leave of this Court.
20. This Class Proceeding excludes claims that are covered under *Merlo v Her Majesty the Queen*, Federal Court File No. T-1685-16, and *Tiller v Her Majesty the Queen*, Federal Court File No. T-1673-17.
21. No costs are payable on this motion for certification.

"Ann Marie McDonald"

Judge

SCHEDULE “A”

Court File No.: T-138-19

**FEDERAL COURT
PROPOSED CLASS PROCEEDING**

B E T W E E N:

SYLVIE CORRIVEAU

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

Brought pursuant to the *Federal Courts Rules*, SOR/98-106

LITIGATION PLAN OF THE PLAINTIFF

I. INTRODUCTION

1. The *Federal Courts Rules*, SOR/98-106 (“*FCR*”) requires that a representative plaintiff produce a plan for the proceeding that sets out a workable method of advancing the proceeding on behalf of the Class and of notifying Class Members as to how the proceeding is progressing. Subject to issues of scheduling and appeals, the plaintiff proposes that the proceeding be conducted in accordance with the following draft Litigation Plan. The final Litigation Plan is subject to revision and approval by this Honourable Court.
2. This proposed class action is brought on behalf of all persons who, as part of applying to work for and/or with the Royal Canadian Mounted Police (“RCMP”), underwent a mandatory full medical examination (“Applicant’s Examination”) by doctors selected and approved by the RCMP (“Designated Physicians”). This action is also brought on behalf of

family members of these individuals who are entitled to assert a claim pursuant to provincial or territorial legislation.

3. Excluded from the Class are individuals whose Applicant's Examination occurred when they were members of the Class certified in *Janet Merlo and Linda Gillis Davidson v. Her Majesty the Queen*, court file T-1685-16 or *Tiller v Her Majesty the Queen*, court file T-1673-17 and individuals who are or were, at the time of the Applicant's Examination, able to grieve under s. 208 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2.

4. This action involves allegations of the RCMP's systemic negligence in creating, providing, and maintaining an application and recruitment process that subjected recruits to abuse at the hands of Designated Physicians. The Designated Physicians were the sole-decision maker regarding whether a recruit would pass the Applicant's Examination and be permitted to gain entry to employment in the RCMP. As described in the Claim, some Designated Physicians abused that power and the Class Members' vulnerability to sexually assault recruits and/or conduct improper and unnecessary procedures. The plaintiff pleads that the RCMP was aware of the assaults and failed to act on that knowledge. Instead, the RCMP interfered with investigations, covered up complaints, and even condoned the behaviour.

5. The plaintiff claims that in allowing this abusive process to function as it did, the RCMP, through its agents, servants, and employees, failed to meet its duty of care to provide the plaintiff and the other Class Members with an Applicant's Examination free from sexual assault and battery, and inappropriate and unnecessary procedures.

6. The plaintiff claims that the defendant, Her Majesty the Queen, is vicariously liable for the actions of the RCMP's agents, employees, and servants.

7. The plaintiff seeks general, special, loss of income, exemplary and punitive damages, as well as damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F-3 (“FLA”) and equivalent or comparable legislation in other provinces and territories.

II. CLASS COUNSEL

8. The plaintiff and putative Class are represented by the law firm of Kim Spencer McPhee Barristers P.C. (“KSM”) (“Class Counsel”). Class Counsel have extensive experience in class action litigation and are currently class counsel in *Greenwood and Gray v. Her Majesty the Queen*, which involves the systemic bullying, intimidation and harassment of individuals who worked for and/or with the RCMP, *Merlo and Davidson v. Her Majesty the Queen*, involving gender and sexual-orientation based harassment and discrimination of female employees of the RCMP, and a number of medical device, pharmaceutical, insurance, and securities class actions. Class Counsel have the requisite knowledge, skill, experience, personnel, and financial resources to prosecute this class action.

9. Class Counsel anticipate that prosecuting this action will require:

- (a) reading, organizing, profiling, scanning, managing and analyzing thousands of documents;
- (b) the taking of testimony of relevant witnesses; and
- (c) the analysis of complex legal issues.

10. This action may also require expert evidence. KSM has retained and worked with expert witnesses in a range of fields.

III. REPORTING TO AND COMMUNICATING WITH PUTATIVE CLASS MEMBERS

11. The proposed Class consists of:

- (a) all persons who underwent an Applicant's Examination by a Designated Physician (the "Class");
- (b) all individuals who are entitled to assert a claim pursuant to the *FLA*, and equivalent or comparable legislation in other provinces (the "Family Class"); and
- (c) excluded from the Class are individuals whose Applicant's Examination occurred when they were members of the Class certified in *Janet Merlo and Linda Gillis Davidson v. Her Majesty the Queen*, court file T-1685-16 or *Tiller v. Her Majesty the Queen*, court file T-1673-17 and individuals who are or were, at the time of the Applicant's Examination, able to grieve under s. 208 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2.

12. Although there is no way to calculate the number of Class Members with any accuracy at this stage, it is anticipated, based on the current number of RCMP employees, that there are tens of thousands of Class Members across Canada. As of the date of service of the motion for certification, Class Counsel has been contacted by approximately 100 potential class members. Media have reported that police in Halifax, Toronto, and Newfoundland have, together, received sworn statements from approximately 190 potential class members.

13. Class Counsel have developed a webpage ([http://complexlaw.ca/index.html#FL-RCMP Medical Examination](http://complexlaw.ca/index.html#FL-RCMP_Medical_Examination)) where information about this action is posted (the "Website"). Through these online postings, Class Members will be kept apprised of the progress of the litigation. The Website may also provide access to some of the publicly filed court documents, court decisions, notices, documentation and other information relating to the action, as well as answers to frequently asked questions regarding class actions.

14. The Website provides contact information for Class Members to submit inquiries to Class Counsel. Prompt responses will be provided. The Website lists contact information for specific

members of Class Counsel's class action team so that Class Members can make inquiries to a live person if they wish.

IV. PLEADINGS AND PROPOSED LITIGATION TIMETABLE

15. Justice Ann Marie McDonald has been assigned as the Case Management Judge in this matter.

16. The plaintiff will ask the Case Management Judge to set the schedule for the conduct of the proceeding, including:

- (a) the motion for certification, on consent;
- (b) the delivery of the statement of defence;
- (c) the delivery of the reply (if any);
- (d) documentary production;
- (e) examinations for discovery;
- (f) the delivery of experts' reports; and
- (g) the trial of the common issues.

The parties may also ask that the schedule be amended from time to time, as required.

17. The plaintiff intends that any individual issues determinations that may be required after conclusion of the common issues trial shall be conducted by persons appointed to conduct references using streamlined procedures, as envisioned under s. 334.26 of the *FCR*.

18. Throughout the litigation, the plaintiff proposes that a schedule of hearing days be set aside for regular case management conferences with the Case Management Judge in order to facilitate the orderly progression of this litigation under the supervision of the Court.

19. Post-certification motions, including those relating to documentary production, may be required and will be scheduled as necessary as the case progresses.

V. NOTICE OF CERTIFICATION & OPT-OUT PROCEDURE

20. Notice of certification of this action as a class proceeding will be delivered pursuant to section 334.32 of the *FCR* in a form and manner approved by this Court.

21. The Court will be asked to:

- (a) settle the form and content for notification of certification in accordance with the requirements of *FCR* s. 334.32(5) (the “Certification Notice”), which may include a form for mailing and a summary form for media publication;
- (b) settle the means by which the Certification Notice will be disseminated (the “Notice Program”); and
- (c) set an opt-out deadline approximately 90 days after the Certification Notice is disseminated.

22. The identities and residences of most of the Class Members are not known to Class Counsel. As members are frequently subjected to transfers during their employment with the RCMP, class members may no longer reside in the province in which their Applicant’s Examination was conducted. Based on the belief that the Class Members are distributed across Canada, a national Notice Program is proposed.

23. The proposed Notice Program for dissemination of the Certification Notice includes:

- (a) publication in national and major market newspapers and magazines, as set out in Schedule “E” to the proposed certification order;
- (b) publication in the RCMP’s *Gazette* magazine;
- (c) posting on the Website developed by Class Counsel;
- (d) posting by the defendant on its websites <http://www.canada.ca/> and <http://www.rcmp-grc.gc.ca/> and on its relevant intranet websites;

- (e) posting links to the Certification Notice on the social media accounts of the defendant and Class Counsel;
- (f) posting the Certification Notice in all RCMP detachments and at Headquarters;
- (g) dissemination of a press release by the defendant in a form to be agreed upon by the parties;
- (h) dissemination via email and regular mail to the last known addresses of every current and former Class Member by the defendant;
- (i) dissemination via email or regular mail to Class Members who have provided their mail or email address to Class Counsel; and
- (j) delivery by Class Counsel and the defendant to any person who requests it.

24. The plaintiff will request that the costs of the Notice Program be paid by the defendant.

25. The plaintiff will request that the Notice Program be administered by Dewar Communications Inc.

26. The Certification Notice will outline the significance of opting out – namely, that those members of the Class who choose to opt out before the stipulated deadline must advise Dewar Communications Inc. of their desire to do so in writing, and, as a result, will not participate in this action, will not stand to recover any damages from this action, and will not be bound by any judgment or settlement made in this action. The Certification Notice will state that Class Members who do not opt out will be bound by the proceedings, including any judgment or settlement. The Certification Notice will state that all Class Members shall be excluded from the proceeding if the member does not, before the expiry of the time for opting out, specified in the certifying order, discontinue a proceeding brought by the member that raises the common questions of law or fact set out in that order.

27. Within 30 days after the expiry of the opt-out period, Dewar Communications Inc. will deliver, to the parties and file with the Court, an affidavit listing the names of all persons who have opted out of the class action.

28. Further, the plaintiff will ask the Court to order that:

- (a) no Class Member may opt out of the class proceeding after the expiration of the opt-out deadline set by the Court, except by court order;
- (b) members of the Family Class shall have no independent right to opt out and will be deemed to have opted out if the related Class Member opts out;
- (c) no person may opt out a minor or a mentally incapable Class Member without permission of the Court after notice to the Children’s Lawyer or Public Guardian and Trustee, as applicable to Class Members resident in Ontario, and to comparable or equivalent entities in the other provinces and territories as applicable to Class Members resident in other provinces and territories; and
- (d) the affidavit listing those Class Members who have opted out will be sealed to protect the identities of individuals electing to opt out.

VI. DOCUMENTARY DISCOVERY AND DOCUMENT MANAGEMENT

29. Documentary discovery is expected to be a significant component of this litigation. It will potentially be a contentious and time-consuming process.

30. In the context of documentary discovery, “document” includes an audio recording, a video recording, a film, a photograph, a chart, a graph, a map, a plan, a survey and a book of account, as well as data that is recorded or stored on any medium in or by a computer system or other similar device and that can be read or perceived by a person or a computer system or other similar device.

31. The defendant possesses most, if not all, of the documents relating to the common issues, such as: internal rules, policies and guidelines; medical files; grievance and complaint files; personnel files; memoranda and reports; and internal correspondence. These documents, among others, will be produced to Class Counsel through the normal production, cross-examination and examination for discovery processes.

32. The plaintiff and the defendant will devise and agree to a Discovery Plan in accordance with the *Sedona Canada Principles*. The Discovery Plan will describe the scope of documentary discovery; the methods for identifying producible documents; the dates for service of both parties' affidavits of documents; information respecting the timing, costs and manner of the production of documents; the names of persons intended to be produced for oral examinations for discovery; information regarding the timing and length of the examinations; and a timetable for service of expert reports. The Discovery Plan will address the production of hardcopy and electronic documents, and the tools the parties may use to process, copy, sample, search, select, identify and produce relevant documents, including electronic documents in accordance with the *Sedona Canada Principles*.

33. In accordance with *FCR* 223(2) the plaintiff will require detailed schedules of all documents in the defendant's possession, power or control and for which no privilege is claimed, documents over which privilege is claimed, documents which are no longer in the possession, power or control of the party, and documents which are in the possession, power or control of non-parties, with a statement of the grounds for each claim of privilege in respect of a document, dates and details of lost or destroyed documents and names and addresses of non-parties. The plaintiff will similarly follow all production requirements as mandated by the *FCR*.

34. The plaintiff anticipates that documentary production will be voluminous. Class Counsel are able to handle the intake and organization of the large number of documents that will likely be produced by the defendant. While the manner of production will be specified in the Discovery Plan, the plaintiff intends to seek production from the defendant in electronically searchable format.

35. If required, the documents may be maintained on a secure, password-protected internet website for the purpose of access by members of Class Counsel via the Internet.

36. It is proposed that the parties will file their Affidavit of Documents within 60 days of the signing of the Discovery Plan, or as agreed to by the parties or directed by the Court.

37. It is anticipated that it may be necessary to conduct examinations concerning the list of documents produced by the defendant in order to ensure completeness. The plaintiff thus anticipates seeking leave of the Court to examine on the Affidavit of Documents, or the consent of the person being examined and all other parties entitled to examine that person, pursuant to the *FCR*.

VII. EXAMINATIONS FOR DISCOVERY

38. It is proposed that the plaintiff be examined within 120 days of the filing of her Affidavit of Documents, unless otherwise agreed to by the parties or ordered by the Court.

39. The plaintiff may need to examine more than one representative from the defendant. In the event that the defendant does not consent to producing more than one representative, the plaintiff may move for an order requesting leave of the Court to examine more than one representative of the defendant.

40. Class Counsel estimate that, subject to undertakings and refusals, a total of 5 to 8 days will be required to discover the representatives of the defendant. It is further proposed that the

examinations of the representatives of the defendant be completed within 60 days of the completion of the examination of the plaintiff.

VIII. ANTICIPATED PRE-TRIAL MOTIONS

41. Incidental motions and case conferences may be required by either or both parties as the case progresses.

42. Depending on the outcome of the defendant's productions and the examinations for discovery, it may be necessary for the plaintiff to initiate a production motion or a motion to compel answers to undertakings.

43. The plaintiff is open to having certain issues decided on summary judgment in order to reduce the ultimate length of the trial.

IX. EXPERT OPINIONS

44. The Plaintiffs may retain an expert to address duty of care issues, as appropriate.

X. DISPUTE RESOLUTION

45. The plaintiff is willing to participate in mediation or other non-binding alternative dispute resolution efforts.

XI. THE COMMON ISSUES AND THE COMMON ISSUES TRIAL

46. The plaintiff proposes to set the matter down for a three-week trial to determine any of the remaining common issues described in Schedule "B" to the proposed certification order, if not already adjudged upon by summary judgment.

47. Following examinations for discovery and the exchange of expert opinions and before the trial of the common issues, the plaintiff will ask for an order to clarify and/or redefine the common issues, if required.

48. The plaintiff plans to ask the Court to hold the trial of the common issues approximately six months after the completion of examinations for discovery, undertakings and any motions for refusals. The plaintiff anticipates that the common issues trial will require approximately three weeks of hearing time.

49. The common issues trial will proceed pursuant to the *FCR*.

50. If a motion for summary judgment and/or the common issues trial results in a determination of some or all issues in favour of the plaintiff, the plaintiff will request the Court to enter a common issues judgment under *FCR* 334.24, and to decide whether, and to what extent, the Court considers that the participation of individual Class Members will be required to determine individual issues under *FCR* 334.26.

XII. NOTICE OF RESOLUTION OF THE COMMON ISSUES

51. Assuming all or some of the common issues are determined in favour of the plaintiff, the Court will be asked to settle the form and content of a notice of resolution of the common issues (the “Notice of Resolution”) in accordance with *FCR* 334.33. The plaintiff will ask the Court to order that the Notice of Resolution be distributed in accordance with the Notice Program set out above, except that the Notice of Resolution will not be mailed to any Class Member who validly opted out or were deemed to have opted out, to the extent that such are known, of the class action in accordance with the procedure set out herein.

52. At present, the plaintiff anticipates that, depending on the Court’s resolution of the common issues with respect to damages and remedies, it is possible that some individual issues may remain to be determined. If a determination of individual issues is to proceed under *FCR* 334.26, the plaintiff will request that this information be included in the Notice of Resolution.

XII. ASSESSMENT OF DAMAGES AND INDIVIDUAL ISSUES

Quantification

53. It is proposed as a common issue whether the quantum of damages for some or all of the Class Members can be determined by the Court on an aggregate basis pursuant to *FCR* 334.28(1). Where appropriate, a judge may order any special modes of proof per *FCR* 334.28(3).

54. If the Court determines that an aggregate assessment of relief is appropriate, the plaintiff may ask the Court to proceed forthwith to make such an assessment; determine whether individual claims are needed to give effect to the assessment; and enter judgment accordingly requiring the defendant to pay the assessed amount into a global fund for distribution to Class Members.

55. In addition, it is proposed that, if there are individual general damages that cannot be determined on an aggregate or other basis, a separate adjudicative procedure will be established to address these damages. Such a procedure is provided for under *FCR* 334.26 and will involve the participation of individual Class Members. The plaintiff anticipates that this adjudicative procedure will resolve the question of specific causation, and the nature and extent of the damages suffered by the individual Class Member.

56. It is proposed that the above individual issues be determined by means of individual assessments and/or mini-hearings, with evidence filed by the Class Member and defendant, as appropriate. Where possible, these assessments will be streamlined as contemplated by section *FCR* 334.26. It is anticipated that the mode of individual issue determination and assessments will be determined as part of or following the common issues trial.

57. It may be possible to categorize and value claims in accordance with a grid according to the nature and severity of the damages, having due consideration for any personal injuries. However, based on the current state of Class Counsel's knowledge with regard to the individual

circumstances of the Class Members, it is not possible at this time to provide particulars of any such procedure.

58. Class Members who require individual assessments or otherwise participate in a mini-hearing process will be entitled to retain individual legal representation with respect to the assessment if so desired.

Distribution

59. It is proposed that Class Counsel will work with a third-party administrator, to be jointly appointed by the parties, to contact Class Members, establish individual entitlement, and distribute damages.

60. Specifically, it is proposed that any amounts recovered from the defendant for general damages will be paid into a general repository. Once the number of Class Members has been determined by Class Counsel, and the individual damages suffered by each determined in accordance with the process described above, a third-party administrator to be jointly appointed by the parties will ensure damages are paid to Class Members out of the general repository.

61. To the extent possible, damages will be distributed on an ongoing basis to Class Members as they come forward.

62. It is proposed that Class Counsel will engage this third-party administrator, an independent and specialized claims management firm, to administer and oversee any fund as a trust on behalf of the Class Members. The exact terms and conditions of the contract between Class Counsel and the administrator. will be determined at a later date.

63. It is proposed that, after a reasonable time has passed, any unclaimed amounts will be distributed on a *cy prés* basis, pursuant to *FCR 334.28(2)* to those Class Members who can be identified and located.

XIII. FEES AND DISBURSEMENTS

64. Class Counsel fees, disbursements and applicable taxes will be subject to Court approval and will be paid out of the monies recovered, unless otherwise agreed between the parties. Counsel fees will constitute a first charge upon the monies recovered and will be paid as the first payments from the monies recovered.

65. The plaintiff will seek to have all administrative costs paid by the defendant, subject to Court approval.

XIV. FINAL REPORT

66. Following the final distribution of recovered monies by the third-party administrator, including any *cy præs* distribution, the administrator will make a final report to the Court on such terms and in such manner as directed by the Court. Following the submission of the final report, the administrator will be discharged.

XV. REVIEW OF THE LITIGATION PLAN

67. This Litigation Plan will be reviewed periodically as the litigation progresses, both before and after the determination of the common issues, and may be revised, as necessary, under the continuing case management authority of the Court.

SCHEDULE "B"

PROPOSED COMMON ISSUES

Negligence

- 1) Did the RCMP, through its agents, servants and employees owe a duty or duties of care to the plaintiff and other Class Members to take reasonable steps to provide an Applicant's Examination free of inappropriate and/or unnecessary procedures, assault and battery, including sexual assault and sexual battery?
- 2) If yes, what was the applicable standard or standards of care? Was there a breach of this duty or duties by the RCMP through its agents, servants and employees?
- 3) If yes, is the Crown vicariously liable for the failure of its agents, servants and employees at the RCMP to take reasonable steps to provide an Applicant's Examination free of inappropriate and/or unnecessary procedures, assault and battery, including sexual assault and sexual battery?

Designated Physicians

- 4) Do the RCMP's servants, agents or employees include Designated Physicians?

Damages

- 5) Can the Court make an aggregate assessment of any damages as part of the common issues trial? If so, to whom and in what amount?
- 6) Does the RCMP's conduct through its servants, agents or employees justify an award of aggravated, exemplary and/or punitive damages? If so, to whom and in what amount?

SCHEDULE "C"

RCMP MEDICAL EXAMINATION CLASS ACTION - NOTICE OF CERTIFICATION

IF YOU APPLIED TO WORK AT AND/OR WITH THE RCMP THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ CAREFULLY.

THE NATURE OF THIS CLASS ACTION

This class action seeks damages and other relief as a result of the alleged failure by the RCMP to take reasonable measures in providing the Class (as defined below) with a mandatory applicant's medical examination free from sexual assault and battery, and inappropriate and unnecessary procedures. The plaintiff claims that the defendant, Her Majesty the Queen, is vicariously liable.

CERTIFICATION

By Order dated ●, the Federal Court certified this action as a class action and appointed Sylvie Corriveau as the representative plaintiff. The Court also appointed Kim Spencer McPhee Barristers P.C. as Class Counsel.

The allegations made by the plaintiff have not been proven in Court. The Court has made no determination of the merits of the plaintiff's claims. The defendant may deny some or all of the allegations made by the representative plaintiff, which remain to be determined at a future trial. This notice is being provided because you may be a member of the Class whose rights may be affected by the lawsuit.

THE CLASS

The class action has been certified on behalf of the following individuals:

- a. all persons who underwent an Applicant's Examination by a Designated Physician (the "Class");
- b. all individuals who are entitled to assert a claim pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3, and equivalent or comparable legislation in other provinces and territories (the "Family Class"); and
- c. excluded from the Class are individuals whose Applicant's Examination occurred when they were members of the Class certified in *Janet Merlo and Linda Gillis Davidson v. Her Majesty the Queen*, court file T-1685-16 or *Tiller v. Her Majesty the Queen*, court file T-1673-17 and individuals who are or were, at the time of their Applicant's Examination, able to grieve under s. 208 of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2.

Please note that this action applies only to medical examinations of Applicants.

PARTICIPATION AND EXCLUSION FROM THE CLASS

If you are a Class Member, **you will automatically be included** in this class action and are not required to take any further steps at this stage.

If you have an ongoing lawsuit with respect to assault and/or inappropriate and/or unnecessary medical procedures suffered during a medical examination required by the RCMP as part of the employment application process to work at or with the RCMP, and you wish to participate in this proposed class action, you must discontinue your lawsuit before ●. If you do not, you will be deemed by s. 334.21(2) of the Federal Court Rules, SOR/98-106 to have opted out of this class action. Please contact your lawyer to discuss your options.

IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS ACTION (“opt out”) you must deliver a written notice specifying your desire to opt out of the class action to the Notice Administrator at:

Dewar Communications Inc.
Attn: Deborah Bowden-Jones
9 Prince Arthur Ave.
Toronto ON M5R 1B2

Notice of your decision to opt out must be received by the Notice Administrator below within 90 days of the date of this notice, being ●. No person may opt out a minor or mentally incapable person without permission of the Court, after notice to the Children’s Lawyer or Public Guardian and Trustee, as applicable to Class Members resident in Ontario, and to comparable or equivalent entities in the other provinces and territories, as applicable to Class Members resident in other provinces and territories

Where any Class Member opts out, that person’s family members will also be deemed to have opted out. Members of the Family Class shall have no independent right to opt out.

ANY JUDGMENT OBTAINED ON THE COMMON ISSUES IN THIS ACTION, WHETHER FAVOURABLE OR NOT, WILL BIND ALL OF THE CLASS MEMBERS WHO DO NOT OPT OUT OF THIS PROCEEDING.

FINANCIAL CONSEQUENCES

There is no cost to be a class member with respect to the common issues. If the common issues are determined in favour of the class, individual Class Member participation may be required in order to establish individual claims. If this is necessary, each member of the Class may have to bear costs of such individual proceedings. Class Members will have the opportunity at that time to decide whether to make an individual claim.

Counsel has entered into an agreement with the representative plaintiff with respect to legal fees and disbursements. This agreement provides that counsel will not receive payment for their work

unless and until the class action is successful or monies are recovered from the defendants. This agreement must be approved by the Court.

FOR MORE INFORMATION PLEASE CONTACT CLASS COUNSEL:

Kim Spencer McPhee Barristers P.C.
1200 Bay Street
Suite 1203
Toronto, ON M5R 2A5

Attn: Megan B. McPhee
Phone: (416) 596-1414
Fax: (416) 598-0601
mbm@complexlaw.ca

Information can also be obtained from the website: [http://complexlaw.ca/index.html#FL-RCMP Medical Examination](http://complexlaw.ca/index.html#FL-RCMP_Medical_Examination)

Any questions about the matters in this Notice should **not be directed to the Court, because its administrative structure is not designed to address this type of inquiry.**

SCHEDULE "D"

OPT-OUT FORM

Corriveau v Her Majesty the Queen, Court File No.: T-138-19

RCMP MEDICAL EXAMINATION CLASS ACTION

*This is not a claim form.
Submitting this form **EXCLUDES** you from the Class Action.
DO NOT use this form if you wish to remain a part of the Class Action.*

To Opt Out of the Class Action, you must sign and deliver this form to the Notice Administrator at the address below, received or postmarked no later than ●, 2020:

Dewar Communications Inc.
Attn: Deborah Bowden-Jones
9 Prince Arthur Ave
Toronto ON M5R 1B2

PERSONAL INFORMATION

Name Date of Birth (Day/Month/Year)

Street Name and Number Apt. Number, PO Box or RR#

City/Town/Village Province/Territory Postal Code

Phone Number Regimental # (if applicable)

REASON FOR OPTING OUT

Date: _____ **Signature:** _____

SCHEDULE "E"

Newspaper Publication List

Market	Publication	Average Daily Circulation ¹
NATIONAL		
The Globe and Mail		346,543(Weekday) 416,409 (Saturday)
National Post		183,111 (Weekday) 181,525 (Saturday)
BRITISH COLUMBIA		
Vancouver	Vancouver Sun	141,246 (Weekday) 163,344 (Saturday)
Victoria	Times Colonist	55,152 (Weekday) 54,789 (Saturday) 54,904 (Sunday)
ALBERTA		
Calgary	Calgary Herald	113,850 (Weekday) 110,761 (Saturday)
Edmonton	Edmonton Journal	99,044 (Weekday) 102,571 (Saturday)
SASKATCHEWAN		
Regina	Regina Leader-Post	36,541 (Weekday) 37,326 (Saturday)
Saskatoon	Saskatoon <u>StarPhoenix</u>	43,593 (Weekday) 43,728 (Saturday)
MANITOBA		
Brandon, Winnipeg	Winnipeg Free Press	104,909(Weekday) 138,888(Saturday)
ONTARIO		
All Ontario, Toronto	Toronto Star	332,800 (Weekday) 440,442 (Saturday)
Ottawa/Gatineau	<u>leDroit</u> (Fr)	34,755 (Weekday) 31,364 (Weekend)
Ottawa/Gatineau	Ottawa Citizen	105,614 (Weekday) 98,204 (Saturday)
Barrie, Belleville, Brantford, Guelph, Hamilton, Kingston,	Toronto Sun	134,266(Weekday) 124,605 (Saturday)

¹ Circulation numbers are taken from: News Media Canada, "2015 Daily Newspaper Circulation Report" online: <https://nmc-mic.ca/about-newspapers/circulation/daily-newspapers/>

Market	Publication	Average Daily Circulation¹
Kitchener, London, Oshawa, Owen Sound, Peterborough, St. <u>Catharines/Niagara</u> , Sudbury, Toronto		171,639(Sunday)
QUEBEC		
Montréal (Ottawa/Gatineau)	Le Journal de Montréal (Fr)	232,137 (Weekday) 243,957 (Saturday) 229,084 (Sunday)
Québec City	Le Journal de Québec (Fr)	149,635 (Weekday) 157,662 (Saturday)
Québec City (Ottawa, Montreal, New Brunswick)	<u>leSoleil</u> (Fr)	75,374(Weekday) 96,374 (Saturday) 80,068 (Sunday)
NEW BRUNSWICK		
Moncton	Times & Transcript	28,888
Saint John	Telegraph-Journal	26,957
NOVA SCOTIA		
Halifax	The <u>ChronicleHerald</u>	91,952 (Weekday) 93,178(Saturday)
PRINCE EDWARD ISLAND		
Charlottetown	The Guardian	14,918 (Weekday) 15,368 (Saturday)
NEWFOUNDLAND		
St. John's	The Telegram	31,823 (Weekday) 39,700 (Saturday)

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-138-19

STYLE OF CAUSE: SYLVIE CORRIVEAU v HER MAJESTY THE QUEEN

PLACE OF HEARING: HELD BY VIDEOCONFERENCE BETWEEN
TORONTO, ONTARIO, EDMONTON, ALBERTA,
AND FREDERICTON, NEW BRUNSWICK

DATE OF HEARING: MARCH 24, 2021

ORDER AND REASONS: MCDONALD J.

DATED: MARCH 26, 2021

APPEARANCES:

Won J. Kim FOR THE PLAINTIFF
Megan B. McPhee
Aris Gyamfi
Rachael Sider

Bruce Hughson FOR THE DEFENDANT
Deborah Babiuk-Gibson

SOLICITORS OF RECORD:

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Toronto, Ontario

Attorney General of Canada FOR THE DEFENDANT
Department of Justice Canada
Prairie Region
Edmonton, Alberta