

T-2017-93

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

B E T W E E N :

ANNEX A

DONNA MAE BELADO

PLAINTIFF

- and -

HER MAJESTY THE QUEEN
IN RIGHT OF CANADA

DEFENDANT



STATEMENT OF CLAIM

(Filed on the 16th day of AUGUST, 1993)

1. The Plaintiff resides in the City of Richmond, in the Province of British Columbia, and is a former Corporal in the Canadian Armed Forces and as such was in the service of the Defendant, Her Majesty the Queen.

HISTORY OF THE PLAINTIFF'S SERVICE IN THE CANADIAN ARMED FORCES

2. The Plaintiff joined the Canadian Armed Forces on the 4th day of October, 1984. She reported to Basic Training on the 8th day of October, 1984.

3. The Plaintiff subsequently graduated from Basic Training and proceeded through various training programs, postings and promotions. She achieved the rank of Corporal. She was at all times an exemplary member of the Canadian Armed Forces and performed her duties competently.

4. In June of 1985, the Plaintiff was interrogated by two members of the Canadian Armed Force concerning her sexual orientation. The Plaintiff did not answer any questions regarding her sexual orientation or sign any documents.

5. In November of 1988, the Plaintiff was again extensively interrogated by members of the Canadian Armed Forces concerning her sexual orientation. During the course of this interrogations the Plaintiff admitted she was a lesbian.

6. In April of 1989, the Plaintiff was informed that she was to be compulsorily released from the Canadian Armed Forces based on the grounds that she was a homosexual even though it was determined that she was not a security risk.

7. On or about March 9, 1989, the Defendant issued to the Plaintiff a Notice of Intent to Recommend Release from the Canadian Armed Forces because of "admitted homosexual activities". On or about March 16, 1989, the Defendant issued a Recommendation for Compulsory Release concerning the Plaintiff which was approved and signed by the responsible officers for the Canadian Armed Forces on the sole grounds of her homosexuality.

8. On April 24, 1989, the Plaintiff was compulsorily released from the Canadian Armed Forces.

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THE CANADIAN ARMED FORCES' POLICY ON HOMOSEXUALITY

9. At the times material to this proceeding, the Canadian Armed Forces Administrative Order (CFAO) 19-20 provided in paragraph 7 thereof:

"Service policy does not allow homosexual members or members with a sexual abnormality to be retained in the CF."

and further provided in paragraph 8 thereof that in such a case a member is to be released under Item 5(d) of the table to Queen's Regulations and Orders (Q.R. + O.) 15.01, made pursuant to the National Defence Act.

10. At the times material to this proceeding, Item 5(d) of Q.R. + O. 15.01 was a category under "Reasons for Release" headed "Not Advantageously Employable". The "Special Instructions" incorporated as part of Item 5(d) of Q.R. + O. 15.01 indicate that this item:

"applies to the release of an officer or man because of an inherent lack of ability or aptitude to meet military classification or trade standards, or who is unable to adapt to military life; or who, either wholly or chiefly because of the conditions of military life or other factors beyond his control, develops personal weaknesses or has domestic or other personal problems that seriously impair his usefulness to or impose an excessive administrative burden on the Canadian Forces."

11. On the 11th of February, 1987, CFAO 19-20 was modified to provide that if a member of the Canadian Forces refused to take a release under Item 5(d) of Q.R. + O. 15.01 then that member would be retained "with career restrictions" in the Canadian Forces while the policy was being reviewed. Even if she had not been compulsorily released, as a career restricted officer the Plaintiff would have been ineligible for promotion, conversion of her terms of service, posting outside the geographic area or transfer to the Reserve Force. In addition, she would have been ineligible for further qualification courses for training except as required for her to carry out restricted employment.

CHARTER OF RIGHTS AND FREEDOMS

12. The Canadian Charter of Rights and Freedoms (the "Charter") guarantees to every individual equality before and under the law and the right to equal protection and equal benefit of the law without discrimination.

13. The Charter also guarantees freedom of thought, belief, opinion and expression, freedom of association and the right to liberty and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

14. The employment policies and practices of the Defendant in the administration of the Canadian Armed Forces are actions subject to the application of the Charter.

VERSE EFFECTS OF THE DEFENDANT'S ACTION

15. As a result of the Defendant's action towards the Plaintiff, the Plaintiff was forced to give up a career in the Canadian Armed Forces, a career in which she excelled and which she enjoyed. She achieved the rank of Corporal but received no further promotions solely because she was a homosexual.

16. The Defendant's policies and actions towards homosexuality and homosexuals in the Canadian Armed Forces made it impossible for the Plaintiff while a member of the Canadian Armed Forces to express her opinion or thoughts or beliefs concerning homosexuality and restricted the Plaintiff's ability to associate freely with other homosexuals.

17. The Defendant's policies and actions towards homosexuality and homosexuals caused the Plaintiff to lose her security clearance, a clearance she would need if she worked for the Defendant and wished to advance in such employment.

18. The Defendant's actions towards the Plaintiff caused the Plaintiff to be denied promotions to which she was otherwise entitled, which promotions carried pay increases.

DENIAL OF EQUALITY AND OTHER RIGHTS

19. The policies and practices of the Defendant towards homosexuality and homosexuals constitute a denial of the Plaintiff's right to equality before and under the law and the right to equal protection and equal benefit of the law without discrimination and her rights to freedom of expression and association, and her right to liberty guaranteed in Sections 2(b) and (d), 7 and 15 of the Charter.

20. As a result of the denial of her rights by the Defendant, the Plaintiff suffered the consequences described in paragraphs 16 through 18 herein. Full particulars of her damages will be provided prior to the trial of this action.

21. The Defendant applied these discriminatory practices and policies despite studies and reports which have concluded that sexual orientation is irrelevant to whether one can perform one's job in the Canadian Armed Forces and that, therefore, any discrimination on this basis should cease. The studies include: Equality for All: Report of the Parliamentary Committee on Equality Rights, Chair, Patrick Boyer, M.P. (October, 1986) and Toward Equality: The Response to the Report of the Parliamentary Committee on Equality Rights (Department of Justice, 1986).

RELIEF CLAIMED

22. The Plaintiff therefore claims pursuant to s. 24(1) of the Charter:

- (a) general damages in the amount of \$350,000.00 for the denial of her equality rights under the Charter and her right to freedom of thought, belief, opinion and

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expression and her right to freedom of association and her right to liberty and for compensation for the adverse effects she has suffered and will continue to suffer as a result of the Defendant's denial of her rights;

- (b) punitive or exemplary damages in the amount of \$50,000.00;
- (c) pre-judgment interest thereon at the average prime rate for the period from March 16, 1989 to date of payment or judgment herein;
- (d) a change of Release Status from a 5(d) to a 4(c);
- (e) a declaration that the Plaintiff's rights as provided in the Charter and in particular Sections 2(b) and (d) and s. 7 and s. 15(1) thereof have been denied by the Defendant;
- (f) a declaration that the Defendant's policies and practices with respect to homosexuality and homosexuals in the Canadian Armed Forces are contrary to the Charter;
- (g) a declaration that the Defendant is to adopt and carry out policies and practices which do not discriminate against homosexuals in the Canadian Armed Forces;
- (h) her costs of this action on a solicitor and client basis; and
- (i) such further and other relief as to this Court seems just.

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NOTICE TO DEFENDANT

You are required to file in the Registry of the Federal Court of Canada, at the City of Ottawa or at a local office, your defence to the within Statement of Claim within 30 days (or such other time as may be fixed by an order for service ex juris or other special order) from the service thereof in accordance with the Rules of Court.

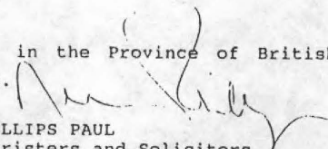
If you fail to file your defence within the time above limited, you will be subject to have such judgment given against you as the Court may think just upon the Plaintiff's own showing.

Note:

(1) Copies of the Rules of Court, information concerning the local offices of the Court, and other necessary information may be obtained upon application to the Registry of this court at Ottawa - Telephone: 922-4238 - or at any local office thereof.

(2) This Statement of Claim is filed by PHILLIPS PAUL, Barristers and Solicitors, #215 - 4800 Number 3 Road, Richmond, British Columbia, Telephone: (604) 273-5297 - Solicitor for the Plaintiff.

DATED at the City of Richmond, in the Province of British Columbia, this 16TH day of August, 1993.


PHILLIPS PAUL
Barristers and Solicitors
#215 - 4800 Number 3 Road
Richmond, BC
V6X 3A6

G. Allan Phillips
(604) 273-5297

Solicitors for the Plaintiff

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA
c/o Deputy Attorney General of Canada
Justice Building
OTTAWA, Ontario

007123

AGC-2297_0005

Court File No.

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PHILLIPS PAUL
Barristers and Solicitors
#215 - 4800 Number 3 Road
Richmond, BC
V6X 3A6

G. ALLAN PHILLIPS
(604) 273-5297

Solicitors for the Plaintiff

I HEREBY CERTIFY that the above document is a
true copy of the original filed of record in the Registry
of the Federal Court of Canada the day

of AUG 16 1993 A.D. 19.....

Dated this AUG 16 day of AUGUST 19.....

Wendy Petersmeyer
WENDY PETERSMEYER
REGISTRY OFFICER

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