

Court File No: 7-1685-16

**FEDERAL COURT**  
**PROPOSED CLASS PROCEEDING**

JANET MERLO and LINDA GILLIS DAVIDSON

Plaintiffs

and

HER MAJESTY THE QUEEN

Defendant

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

**STATEMENT OF CLAIM**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defense in Form 171B prescribed by the Federal Courts Rules, serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, **WITHIN 30 DAYS** after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defense is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defense is sixty days.

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

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

(Date)

OCT 06 2016

Issued by:  
(Registry Officer)

A handwritten signature in black ink, appearing to read 'Steve Green', written over a horizontal line.

**STEPHEN GREEN**  
**REGISTRY ASSISTANT**  
**ADJOINT AU GREFFE**

Address of local office:  
Thomas D'Arcy McGee Building  
90 Sparks Street, 5th floor  
Ottawa, Ontario  
K1A 0H9

TO: Her Majesty The Queen  
Office of the Deputy Attorney General Of Canada  
284 Wellington Street  
Ottawa, ON K1A 0H8

## Relief Sought

1. The plaintiffs, Janet Merlo and Linda Gillis Davidson, claim on their own behalf and on behalf of Class Members (as defined below):

- a. an order certifying this action as a class proceeding and appointing Janet Merlo and Linda Gillis Davidson as representative plaintiffs under the *Federal Courts Rules*, SOR/98-106;
- b. general damages plus damages equal to the costs of administering the plan of distribution;
- c. special damages in an amount to be determined, including but not limited to past and future medical expenses and out-of-pocket expenses;
- d. exemplary and punitive damages;
- e. damages pursuant to the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11, s. 24(1);
- f. punitive damages pursuant to the *Charter of Human Rights and Freedoms*, C.Q.L.R. c. C-12 and the *Civil Code of Quebec*, C.Q.L.R. c. C-1991;
- g. recovery of health care costs incurred by the Ministry of Health Services, the Ontario Health Insurance Plan and other provincial and territorial health insurers on behalf of the plaintiffs and Class Members pursuant to the *Health Care Costs Recovery Act*, S.B.C. 2008, c.27, the *Health Insurance Act*, R.S.O. 1990, c. H.6 and comparable legislation in the other provinces and territories;
- h. damages pursuant to the *Family Law Act*, R.S.O. 1990 c. F-3 (the “FLA”) and comparable legislation in other provinces and territories;
- i. pre-judgment and post-judgment interest;
- j. costs; and
- k. such further and other relief as this Honourable Court may deem just.

## Nature of this Action

2. This action concerns the discrimination against, harassment of, and bullying of current and former female Royal Canadian Mounted Police (“RCMP”) Members, Civilian Members and Public Service Employees on the basis of their gender and/or sexual orientation.

3. “Member” and “Civilian Member” in this claim are as defined in the *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10 (“*RCMP Act*”) and *Royal Canadian Mounted Police Regulations, 2014*, S.O.R./2014-281 (“*RCMP Regulations*”). “Public Service Employees” (“PSEs”) are members of the federal public service hired under s. 10 of the *RCMP Act* for support within the RCMP.

4. The plaintiffs allege that they and fellow female Members, Civilian Members and PSEs were subject to gender and sexual orientation based discrimination, harassment and bullying by other RCMP Members, Civilian Members, PSEs and management. The plaintiffs allege that the RCMP and its management failed to fulfill their statutory, common law and contractual duties to provide the plaintiffs and Class Members with a work environment free of gender and sexual orientation based discrimination, harassment and bullying.

5. As a result of the discrimination, harassment and bullying, the plaintiffs and Class Members have suffered serious physical and psychological damages, out-of-pocket expenses and loss of income.

### **The Parties**

6. The plaintiff, Janet Merlo, was at all material times a peace officer, servant and employee of the RCMP pursuant to s. 7(1) of the *RCMP Act*. At all material times, Ms. Merlo held the rank of Constable and resided in the Province of British Columbia. Ms. Merlo currently resides in St. John’s, Newfoundland.

7. The plaintiff, Linda Gillis Davidson, was at all material times a peace officer, servant and employee of the RCMP pursuant to s. 7(1) of the *RCMP Act*. During her career with the RCMP, Ms. Davidson worked at numerous Canadian Detachments in Newfoundland and Ontario. From in or around 2006 until October 2012, Ms. Davidson worked as an RCMP officer member of the Prime Minister’s Protection Detail. Ms. Davidson currently resides in Bracebridge, Ontario.

8. The defendant, Her Majesty The Queen, represents the Crown and the RCMP in this proceeding pursuant to the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, s. 23 (the “*Crown Liability Act*”). The Crown’s liability arises from the conduct, negligence, malfeasance and vicarious liability of the RCMP and individuals who were at all material times Crown

employees, agents and servants.

### **The Class**

9. The plaintiffs bring this action on behalf of all female persons in Canada who were or are Regular Members, Civilian Members or Public Service Employees of the RCMP (the “Class Members”).

10. Additionally, the plaintiffs seek to maintain this action on behalf of all individuals who are entitled to assert a derivative claim pursuant to the *FLA* and equivalent or comparable legislation in other provinces and territories (the “Secondary Class Members”).

### **The Plaintiffs**

11. Janet Merlo served in the RCMP as a Constable from March 1, 1991 to March 24, 2010. Ms. Merlo was stationed at the Nanaimo Detachment from September 1991 through March 2010.

12. Ms. Davidson served as a Constable at three Detachments in Newfoundland from in or around 1986 to 1994. She was then posted at various Ontario Detachments from in or around 1994 to 2012, first as a Corporal, then as a Sergeant, and then as an Inspector. She was eventually posted to the Prime Minister’s Protection Detail.

13. While Ms. Merlo and Ms. Davidson worked for the RCMP, they were each subjected to systemic, persistent and ongoing gender and/or sexual orientation based discrimination and harassment by individual male RCMP Members and RCMP management.

14. At all material times during their careers and in each Detachment in which they served, Ms. Merlo and Ms. Davidson observed that female RCMP Members, Civilian Members and PSEs were treated differently than their male colleagues, particulars of which include but are not limited to:

- a. sexually explicit comments were frequently made to or about female Members, Civilian Members and PSEs by their male colleagues and by RCMP management;
- b. implicit and explicit comments dismissing female Members’, Civilian Members’ and PSEs’ ability to carry out their duties were frequently made by their male colleagues and by RCMP management;

- c. demeaning comments about sexual orientation and lesbian relationships were frequently made to or about female Members, Civilian Members and PSEs by their male colleagues and by RCMP management;
- d. female Members, Civilian Members and PSEs were often subjected to unwanted physical and/or sexual touching by their male colleagues and by RCMP management;
- e. as between male and female Members, Civilian Members and PSEs of equivalent rank and/or experience, the men received more accommodation with regard to sick leaves, vacation requests, shift changes, and transfer requests;
- f. as between male and female Members, Civilian Members and PSEs of equivalent rank and/or experience, the men were assigned to more complex, high-profile files and tasks;
- g. as between male and female Members, Civilian Members and PSEs of equivalent rank and/or experience, the men received better career education and training opportunities;
- h. as between male and female Members, Civilian Members and PSEs of equivalent rank and/or experience, the men received better career counselling and formal mentorship;
- i. as between male and female Members, Civilian Members and PSEs of equivalent rank and/or experience and/or job performance, the men generally received more positive feedback on their performance reviews; and
- j. as between male and female Members of equivalent rank and experience with similar testing scores, the men received more successful consideration for promotion.

15. All of this behaviour has had the effect of demeaning, humiliating, and limiting the careers of female Members, Civilian Members and PSEs.

16. On many occasions, Ms. Merlo complained to other Members, including her superiors and the Commissioner of the RCMP, that she was suffering gender based discrimination and harassment by individual male Members and RCMP management. On occasion, the Members to whom she complained advised Ms. Merlo to “forget about it” or to “walk away.” On other occasions, Ms. Merlo’s complaints were investigated and dismissed.

17. Likewise, Ms. Davidson complained to a number of her supervisors about the gender and sexual orientation based discrimination and harassment that she was experiencing. These

complaints were never properly investigated or addressed; in some instances, they were not investigated at all. Ms. Davidson was told that if she was “going to swim in the shark tank then she better start acting like a shark”, that she ought to “grow a skin”, and that her complaint was “bullshit”.

18. Often, Ms. Merlo’s and Ms. Davidson’s complaints led to retaliatory abuse from male Members. Their superiors not only failed to stop the retaliatory conduct, they often participated in it.

19. Ms. Davidson also brought official grievances in response to the discrimination and harassment that she suffered. Those grievances were not adjudicated in accordance with the *RCMP Act* or at all.

20. Both Ms. Merlo and Ms. Davidson were diagnosed with Post Traumatic Stress Disorder (PTSD), depression, anxiety, stress, suicidal ideation and irritable bowel syndrome as a consequence of the ongoing harassment and discrimination that they endured while at the RCMP.

21. Ms. Merlo was discharged from the RCMP on or about March 24, 2010.

22. Ms. Davidson went on leave in 2009, and took early retirement from the RCMP on October 31, 2012.

23. Due to the systemic culture of gender and sexual orientation based discrimination, harassment and bullying in the RCMP, Ms. Merlo, Ms. Davidson and other Class Members were ostracized and their career advancement prospects limited.

### **Discoverability**

24. Ms. Merlo was unable to bring an action in respect of her injury, damage or loss as a consequence of the symptoms of depression and post-traumatic stress disorder that she suffered as a result of ongoing discrimination and harassment by individual male Members and management of the RCMP. It was not until December 2011 that, after years of counselling and treatment, Ms. Merlo’s psychological state had progressed to the point where she finally had the mental fortitude to pursue a claim against the RCMP, which she did in the Supreme Court of British Columbia. Ms. Merlo could not reasonably have brought an action prior to this time.

25. Ms. Davidson was unable to bring an action in respect of her injury, damage or loss as a consequence of the symptoms of depression and post-traumatic stress disorder that she suffered as a result of ongoing discrimination and harassment by individual male Members and management of the RCMP. It was not until March 2015 that, after years of counselling and treatment, Ms. Davidson's psychological state had progressed to the point where she finally had the mental fortitude to pursue a claim against the RCMP, which she did in the Ontario Superior Court of Justice. Ms. Davidson could not reasonably have brought an action prior to this time.

### **RCMP Negligence**

26. At all material times, the RCMP and its management owed a duty of care to Ms. Merlo, Ms. Davidson and other Class Members to ensure that they could work in an environment free of gender and sexual orientation based discrimination and harassment. Specifically, the RCMP and its management had a duty to:

- a. use reasonable care to ensure the safety and well-being of Ms. Merlo, Ms. Davidson and the other Class Members;
- b. provide safe workplace environments free from gender and/or sexual orientation based discrimination, harassment and bullying;
- c. provide equal employment and advancement opportunities to Ms. Merlo, Ms. Davidson and other Class Members, regardless of their gender or sexual orientation;
- d. establish and enforce appropriate policies, codes, guidelines and procedures to ensure that Ms. Merlo and Ms. Davidson and the other Class Members would be free from gender and/or sexual orientation based discrimination, harassment and bullying;
- e. educate and train RCMP Members, Civilian Members and PSEs to promote a universal understanding that gender and sexual orientation based discrimination, harassment and bullying are harmful and will not be tolerated;
- f. properly supervise the conduct of male RCMP Members, Civilian Members and PSEs in order to prevent Ms. Merlo, Ms. Davidson and other Class Members from being exposed to gender and/or sexual orientation based discrimination, harassment and bullying;



g. investigate and adjudicate complaints of gender and/or sexual orientation based discrimination, harassment and bullying fairly and with due diligence, and make efforts to prevent retaliation; and

h. act in a timely manner to resolve situations of gender and/or sexual orientation based discrimination, harassment and bullying.

27. The RCMP and its management negligently breached its duty of care to Ms. Merlo, Ms. Davidson and other Class Members by, among other things:

a. failing to properly supervise RCMP management, Members, Civilian Members and PSEs so as to prevent and/or minimize the risk of Ms. Merlo, Ms. Davidson and other Class Members being subjected to gender and sexual orientation based discrimination, harassment and bullying;

b. failing to have or, alternatively, failing to enforce adequate legislation, policies, procedures, codes of conduct and guidelines to ensure Ms. Merlo's, Ms. Davidson's and Class Members' safety, health and welfare and to minimize the risk of them being subjected to gender and sexual orientation based discrimination, harassment and bullying;

c. failing to properly investigate allegations of gender and sexual orientation based discrimination, harassment and bullying in the workplace in a thorough, timely and impartial manner, or at all;

d. permitting practices which denied employment training and advancement opportunities to Ms. Merlo, Ms. Davidson and the other Class Members on the basis of gender and/or sexual orientation;

e. failing to provide adequate, or any, training and/or educational programs to RCMP management, Members, Civilian Members and PSEs regarding the dangerous and harmful effects of gender and/or sexual orientation based discrimination, harassment and bullying;

f. failing to make sufficient efforts to promote the universal understanding among RCMP management, Members, Civilian Members and PSEs that gender and/or sexual orientation based discrimination, harassment and bullying are harmful and will not be tolerated;

g. permitting a workplace environment and/or culture that normalized the occurrence of gender and/or sexual orientation based discrimination, harassment and bullying;

- h. failing to adjudicate complaints of gender and/or sexual orientation based discrimination, harassment and bullying fairly, or at all;
- i. failing to act in a timely fashion to stop incidents of gender and/or sexual orientation based discrimination, harassment and bullying;
- j. failing to ensure that perpetrators of gender and/or sexual orientation based discrimination, harassment and bullying were appropriately reprimanded/punished; and
- k. failing to protect Ms. Merlo, Ms. Davidson and other Class Members from the continuation or re-occurrence of gender and/or sexual orientation based discrimination, harassment and bullying and/or failing to protect them from retaliation after reporting such behaviour.

28. The RCMP and its management knew, or ought to have known, that the negligent acts described above were of a kind reasonably capable of traumatizing a normal person and that Ms. Merlo, Ms. Davidson and other Class Members would suffer damages as a result.

#### **Breach of Contract**

29. The RCMP entered into a contract in writing, or in the alternative, a contract made partly orally and partly in writing, or in the further alternative, a contract made orally, for the purposes of employing each of Ms. Merlo and Ms. Davidson and each Class Member under the *RCMP Act*.

30. It was an express or implied term of each employment contract that the RCMP would provide Ms. Merlo, Ms. Davidson and other Class Members with a work environment free of gender and sexual orientation based discrimination and harassment and that any such conduct would be investigated, and that the safety of the workplace for Ms. Merlo, Ms. Davidson and each Class Member would be provided in accordance with applicable legislation, policies, procedures, codes of conduct and guidelines.

31. The RCMP and its management breached the aforementioned contractual term by, among other things:

- a. failing to have or, alternatively, failing to enforce adequate legislation, policies, procedures, codes of conduct and guidelines to ensure Ms. Merlo's, Ms. Davidson's and

other Class Members' safety, health and welfare and to minimize the risk of them being subjected to gender and/or sexual orientation based discrimination and harassment;

b. failing to properly investigate allegations of gender and sexual orientation based discrimination and harassment in the workplace in a thorough, timely and impartial manner;

c. failing to supervise the conduct of RCMP employees properly so as to prevent Ms. Merlo, Ms. Davidson and other Class Members from being subjected to gender and/or sexual orientation based discrimination and harassment;

d. failing to act in a timely manner to put a stop to incidents of gender and/or sexual orientation based discrimination and harassment;

e. failing to ensure that perpetrators of gender and/or sexual orientation based discrimination, harassment and bullying were appropriately reprimanded/punished; and

f. failing to protect Ms. Merlo, Ms. Davidson and other Class Members from the continuation or re-occurrence of gender and/or sexual orientation based discrimination, harassment and bullying and/or failing to protect them from retaliation after reporting such behaviour.

### ***Breach of Canadian Charter of Rights and Freedoms***

32. The RCMP and its management has breached Ms. Merlo's, Ms. Davidson's and Class Members' right to be free from discrimination on the basis of sex, pursuant to s. 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11 by, among other things:

a. failing to properly supervise RCMP management, Members, Civilian Members and PSEs so as to prevent and/or minimize the risk of Ms. Merlo, Ms. Davidson and other Class Members being subjected to gender and sexual orientation based discrimination, harassment and bullying;

b. failing to have or, alternatively, failing to enforce adequate legislation, policies, procedures, codes of conduct and guidelines to ensure Ms. Merlo's, Ms. Davidson's and Class Members' safety, health and welfare and to minimize the risk of them being subjected to gender and sexual orientation based discrimination, harassment and bullying;

- c. failing to properly investigate allegations of gender and sexual orientation based discrimination, harassment and bullying in the workplace in a thorough, timely and impartial manner, or at all;
- d. permitting practices which denied employment training and advancement opportunities to Ms. Merlo, Ms. Davidson and the other Class Members on the basis of gender and/or sexual orientation;
- e. failing to provide adequate, or any, training and/or educational programs to RCMP management, Members, Civilian Members and PSEs regarding the dangerous and harmful effects of gender and/or sexual orientation based discrimination, harassment and bullying;
- f. failing to make sufficient efforts to promote the universal understanding among RCMP management, Members, Civilian Members and PSEs that gender and/or sexual orientation based discrimination, harassment and bullying are harmful and will not be tolerated;
- g. permitting a workplace environment and/or culture that normalized the occurrence of gender and/or sexual orientation based discrimination, harassment and bullying;
- h. failing to adjudicate complaints of gender and/or sexual orientation based discrimination, harassment and bullying fairly, or at all;
- i. failing to act in a timely manner to stop incidents of gender and/or sexual orientation based discrimination, harassment and bullying;
- j. failing to ensure that perpetrators of gender and/or sexual orientation based discrimination, harassment and bullying were appropriately reprimanded/punished; and
- k. failing to protect Ms. Merlo, Ms. Davidson and other Class Members from the continuation or re-occurrence of gender and/or sexual orientation based discrimination, harassment and bullying and/or failing to protect them from retaliation after reporting such behaviour.

33. Damages should be awarded pursuant to section 24(1) of the *Charter* as they are just and appropriate to 1) provide compensation that might not otherwise be awarded to Ms. Merlo, Ms. Davidson and other Class Members, 2) vindicate Ms. Merlo, Ms. Davidson and other Class Members and society at large for the harm caused by the RCMP's violation of section 15 of the *Charter*, and 3) deter future breaches.

### RCMP Member and Employee Negligence

34. At all material times, certain individuals who were Members, Civilian Members and PSEs and who were each Crown employees, agents and servants (the “Negligent Individuals”) owed a duty of care to Ms. Merlo, Ms. Davidson and the other Class Members to ensure that they could work in an environment free of gender and sexual orientation based discrimination and harassment.

35. Section 37 of the *RCMP Act* makes it incumbent on every Member and Civilian Member to, among other things:

- a. respect the rights of all persons;
- b. to maintain the integrity of the law, law enforcement and the administration of justice;
- c. to perform the Member’s duties promptly, impartially and diligently, in accordance with the law and without abusing the Member’s authority;
- d. to ensure that any improper or unlawful conduct of any Member is not concealed or permitted to continue;
- e. to act at all times in a courteous, respectful and honourable manner; and
- f. to maintain the honour of the RCMP and its principles and purposes.

36. The Code of Conduct established by regulation under s. 38 of the *RCMP Act* requires Members and Civilian Members to, among other things, respect the rights of every person. Ms. Merlo, Ms. Davidson and the other Class Members plead and rely upon the *RCMP Regulations*, s. 18 and the Scheduled Code of Conduct.

37. The Negligent Individuals breached the aforementioned duties by, among other things:

- a. pursuing practices that deprived or tended to deprive Ms. Merlo, Ms. Davidson and other Class Members of employment opportunities because they were women;
- b. failing or neglecting to adhere to the appropriate legislation, policies, procedures, codes of conduct and guidelines in respect of gender and sexual orientation based discrimination and harassment;
- c. failing to properly investigate allegations of gender and sexual orientation based discrimination and harassment in the workplace in a thorough, timely and impartial manner;

- d. failing or neglecting to exercise their authority to put an end to gender and sexual orientation based discrimination, harassment and bullying;
- e. failing to adhere to s. 37 of the *RCMP Act*;
- f. failing to hold accountable those found to be in breach of the applicable legislation, policies, procedures, codes of conduct and guidelines;
- g. failing to properly supervise Members, Civilian Members and PSEs; and
- h. harassing and discriminating against Ms. Merlo, Ms. Davidson and other Class Members because they are woman.

38. The conduct that the RCMP, its management and the Negligent Individuals directed toward Ms. Merlo, Ms. Davidson and the other Class Members was repetitive and extreme and calculated to harass Ms. Merlo, Ms. Davidson and other Class Members. As a result of that conduct, Ms. Merlo, Ms. Davidson and other Class Members suffered mental and physical injury, particularized below.

39. The RCMP, its management and the Negligent Individuals knew or ought to have known that their conduct was of a kind reasonably capable of terrifying and harming a normal person. In particular, the RCMP, its management and the Negligent Individuals knew or ought to have known that their conduct would:

- a. harm;
- b. offend;
- c. demean;
- d. belittle;
- e. humiliate;
- f. embarrass;
- g. petrify;
- h. terrify;
- i. intimidate; and/or
- j. threaten

another person or persons in the workplace.

40. In the alternative, the RCMP, its management and the Negligent Individuals knew or ought to have known that Ms. Merlo, Ms. Davidson and the other Class Members were especially

sensitive, susceptible and vulnerable to injury through mental distress.

41. The RCMP and its management knew or ought to have known about the presence of gender and/or sexual orientation based discrimination, harassment and bullying within the RCMP. Among other things, the RCMP and its management commissioned various reports and inquiries that recognized the prevalence of gender based discrimination and harassment within the RCMP and/or within certain divisions of the RCMP.

### **Injury and Damage**

42. As a result of the breach of contract by the RCMP and the fault and negligence of the RCMP, its management and the Negligent Individuals, Ms. Merlo, Ms. Davidson and other Class Members have sustained serious injuries and consequences, including:

- a. post-traumatic stress disorder;
- b. diminished self-worth;
- c. diminished ability to concentrate;
- d. repeated and ongoing nightmares;
- e. depression;
- f. anxiety;
- g. difficulty in coping with emotional stress;
- h. suicidal ideation;
- i. attempted suicide;
- j. feelings of guilt, responsibility, and self-blame;
- k. nervous shock;
- l. mental anguish;
- m. insomnia;
- n. irritable bowel syndrome;
- o. failed relationships;
- p. substance abuse;
- q. loss of consortium; and
- r. loss of enjoyment of life.

43. These injuries have caused and continue to cause Ms. Merlo, Ms. Davidson and other Class

Members pain, suffering, loss of enjoyment of life, permanent disability, loss of physical, mental and emotional health and loss of earnings, past and prospective.

44. These injuries aggravated or exacerbated earlier injuries of Ms. Merlo, Ms. Davidson, and other Class Members such that they are impossible to separate.

45. As a further result of the breach of contract by the RCMP and the negligence of the RCMP, its management and the Negligent Individuals, Ms. Merlo, Ms. Davidson and other Class Members have sustained certain special damages and loss and expenses for medical and psychological treatment. Ms. Merlo, Ms. Davidson and other Class Members continue to undergo medical and psychological care and treatment and continue to incur loss and expense.

46. As a result of the breach of contract by the RCMP and the negligence of the RCMP, its management and the Negligent Individuals, Secondary Class Members have also sustained and will continue to sustain injury, loss and damages, including but not limited to:

- a. actual expenses reasonably incurred for the benefit of Class Members;
- b. travel expenses incurred while visiting Class Members during medical procedures and/or counselling and/or recovery; and
- c. loss of income and/or the value of services provided by Secondary Class Members to Class Members, where such services, including nursing and housekeeping have been provided.

47. Secondary Class Members seek compensation for the costs set out in paragraph 45 as well as compensation for loss of support, guidance, consortium, care and companionship that they might reasonably have expected to receive from Class Members.

### **Punitive Damages**

48. A punitive damage award in this case is necessary to express society's condemnation of the conduct engaged in by the RCMP, its management and the Negligent Individuals, and to achieve the goals of both specific and general deterrence.

49. The actions of the RCMP, its management and the Negligent Individuals were reckless, arrogant, high-handed, wanton, willful, reprehensible, vindictive, malicious and abusive and showed a callous disregard for Ms. Merlo's, Ms. Davidson's and other Class Members' rights.



50. The conduct of the RCMP, its management and the Negligent Individuals was deliberate, lasted for many years and represented a marked departure from ordinary standards of decent behaviour.

51. Compensatory damages are insufficient in this case. The conduct of the RCMP, its management and the Negligent Individuals merits punishment and warrants a claim for punitive damages.

### **Provincial Health Insurers**

52. As a consequence of the conduct of the RCMP, its management and the Negligent Individuals, as set out above, the British Columbia Ministry of Health Services (the “Ministry”), Ontario Health Insurance Plan (“OHIP”) and comparable provincial and territorial health insurers have incurred various expenses with respect to the medical treatment of Ms. Merlo, Ms. Davidson and other Class Members. Accordingly, the Ministry, OHIP and other provincial and territorial health insurers have suffered, and will continue to suffer, damages including the ongoing medical monitoring of Ms. Merlo, Ms. Davidson and other Class Members, for which they are entitled to be compensated by virtue of their subrogated and direct rights of action in respect of all past and future insured services.

53. This action is maintained on behalf of the Ministry, OHIP and all other provincial and territorial health insurers.

### **Legislation**

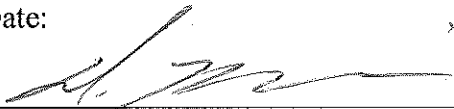
54. Ms. Merlo, Ms. Davidson and the other Class Members plead and rely upon, *inter alia*:
- a. *Alberta Health Care Insurance Act*, R.S.A. 2000, c. A-20
  - b. *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (U.K.)*, 1982, c. 11
  - c. *Charter of Human Rights and Freedoms*, C.Q.L.R. c. C-12
  - d. *Civil Code of Quebec*, C.Q.L.R. c. C-1991
  - e. *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50
  - f. *Crown Proceeding Act*, R.S.B.C. 1996, c. 89
  - g. *Excise Tax Act*, R.S.C. 1985, c. E-15
  - h. *Family Law Act*, R.S.O. 1990, c. F.3
  - i. *Fatal Accident Act*, R.S.A. 2000, c. F-8

- j. *Fatal Accident Act*, R.S.N.L. 1990, c. F-6
- k. *Fatal Accident Act*, R.S.N.W.T. 1988, c. F-3
- l. *Fatal Accident Act*, R.S.P.E.I. 1988, c. F-5
- m. *Fatal Accident Act*, R.S.S. 1978, c. F-11
- n. *Fatal Accident Act*, R.S.Y. 2002, c. 86
- o. *Fatal Accidents Act*, R.S.N.W.T. (Nu) 1988, c. F-3
- p. *Fatal Accident Act*, S.N.B. 2012, c. 104
- q. *Fatal Injuries Act*, R.S.N.S. 1989, c. 163
- r. *Federal Courts Rules*, SOR/98-106
- s. *Health Care Cost Recovery Act*, S.B.C. 2008, c. 27
- t. *Health Insurance Act*, R.S.O. 1990, c. H.6
- u. *Health Services and Insurance Act*, R.S.N.S. 1989, c. 197
- v. *Health Services Insurance Act*, C.C.S.M., c. H35
- w. *Hospitals Act*, R.S.A. 2000, c. H-12
- x. *Hospital and Diagnostic Services Insurance Act*, R.S.P.E.I. 1988, c. H-8
- y. *Hospital Insurance Agreement Act*, R.S.N.L. 1990, c. H-7
- z. *Hospital Insurance and Health and Social Services Administration Act*,  
R.S.N.W.T. 1988, c. T-3
- aa. *Hospital Insurance and Health and Social Services Administration Act*,  
R.S.N.W.T. (Nu) 1988, c. T-3
- bb. *Hospital Insurance Services Act*, R.S.Y. 2002, c. 112
- cc. *Hospital Services Act*, R.S.N.B. 1973, c. H-9
- dd. *Royal Canadian Mounted Police Act*, R.S.C. 1985, c. R-10
- ee. *Royal Canadian Mounted Police Regulations, 2014*, SOR/2014-281
- ff. *The Fatal Accident Act*, C.C.S.M. c. F50
- gg. *The Health Administration Act*, R.S.S. 1978, c. H-0.0001

### Place of Trial

The plaintiff proposes that this action be tried at the City of Ottawa, in the Province of Ontario.

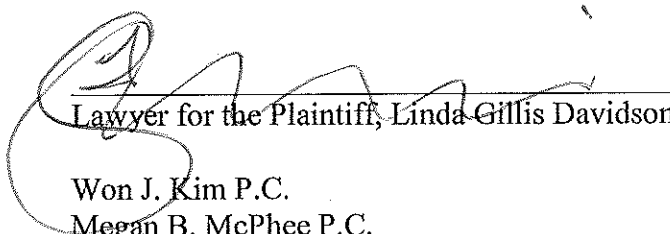
Date:



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SOR/2004-283, s. 35

Federal Court File No.:

**MERLO, et al** - and - **HER MAJESTY THE QUEEN**  
Plaintiffs Defendant

**FEDERAL COURT**

Proceeding commenced at Ottawa

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

**STATEMENT OF CLAIM**

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