

Court File No. T-160-90

IN THE FEDERAL COURT OF CANADA  
(Trial Division)

B E T W E E N:

MICHELLE DOUGLAS

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

AFFIDAVIT

I, CLAYTON RUBY, of the City of Toronto, in the Municipality of Metropolitan Toronto, MAKE OATH AND SAY AS FOLLOWS:

1. That I am counsel for the Plaintiff in the within matter and as such have knowledge of the matters hereinafter deposed to.
2. That on August 14, 1990 the Security Intelligence Review Committee, per the Honourable Paule Gauthier, made the following findings and recommendations in relation to a complaint by the Plaintiff herein pursuant to section 42 of the Canadian Security Intelligence Service Act:

I find that:

it was not by reason of any action, omission, statement, or "defect of character" that Ms. Douglas became, in the eyes of the SIU, a possible threat to the security of Canada, it was, rather, simply by reason of the effect of the departmental policy contained in CFAO 19-20;

the Respondent did not focus on the policy which gave rise to actions or suspicions in this case; it did not conduct a proper evaluation of the Complainant's loyalty or of her reliability as related to her loyalty and, consequently, it did not consider the Complainant's suitability to hold a security clearance in a proper manner;

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the Respondent erred in not concluding that the policy enunciated in CFAO 19-20 was inconsistent with the provisions of the Constitution (section 2(d) and 15(1)) and, to the extent of this inconsistency, was of no force or effect; and

- the Complainant is not a security risk.

Therefore, I recommend that:

1. the Complainant be granted a Top Secret security clearance retroactively to April 17, 1989;
2. the Complainant be reinstated as an employee of the respondent with all seniority and other benefits, privileges, promotions, and financial compensation that would have accrued to her had she not been released from the Armed Forces; and

An appeal is pending in the Federal Court of Appeal.

3. That on January 19, 1990 the Statement of Claim for the within matter was filed. The Statement of Defence was dated March 20, 1990 and the Plaintiff's Reply was dated April 5, 1990. The Trial Record was filed on April 18, 1991. Attached to this my Affidavit and marked as Exhibit A is a copy of the Statement of Claim dated January 19, 1990.

4. That on April 18, 1991 a Joint Application for Time and Place for Trial was submitted to the Court, indicating convenient trial dates in September and October of 1991. Attached to this my Affidavit and marked as Exhibit B is a copy of the Joint Application.

5. That on May 10, 1991 a directive was received from the Associate Chief Justice indicating the requested dates were not available and that counsel should suggest dates in 1991. Attached to this my Affidavit and marked as Exhibit C is a copy of that directive.

6. That I am informed by Svend Robinson, MP, and verily believe that there are three civilians whose contracts with the Armed Forces will not be renewed in the next few months solely on the basis of their sexual orientation.

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7. That it is not possible to determine the number of homosexuals currently employed by the Canadian Armed Forces, as many, because of fear, do not publicly declare their sexual orientation. If 10% of the general population is gay, as is often assumed, however, it would not seem unreasonable to assume any smaller percentage obtains in the military. By any measure, a large number of Canadians will be affected by this decision.

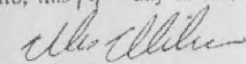
8. That the declaratory relief claimed by the Plaintiff would clearly have a broad-based impact on the manner in which homosexuals are employed by the Canadian Armed Forces. At present, homosexuals are subject to discriminatory and abusive employment policies which daily affect their conditions of work, their option for advancement, and their security status, as set out in the Statement of Claim.

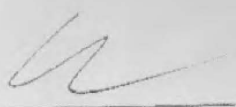
9. That the policy of the Armed Forces thus creates an ongoing "chilling" effect upon the working lives of a portion of its employees. As noted in the SIRC report (at page 45): "It is clear in my mind, after having reviewed the evidence, that such a policy created among homosexuals in the forces a climate of secrecy and uncertainty, which could only adversely affect their behaviour both before and after being discovered."

10. That the ongoing effect of Armed Forces policies on homosexuals is such that trial of the issues in this matter are of substantial urgency and concern fundamental human rights.

11. That I make this affidavit in support of a motion to expedite trial of this matter and for no other or improper purpose.

SWORN BEFORE ME at the City of Toronto  
in the Municipality of Metropolitan  
Toronto, this 19<sup>th</sup> day of June, 1991

  
a Commissioner, etc.

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) CLAYTON C. RUBY  
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