

Court File No. T-264-94

**IN THE FEDERAL COURT OF CANADA**  
**TRIAL DIVISION**

BETWEEN:



**SHERRIE ANNE REED**

Plaintiff

- and -

**HER MAJESTY THE QUEEN**

Defendant

**STATEMENT OF DEFENCE**

(filed on the 18<sup>th</sup> day of May, 1994)

The Deputy Attorney General of Canada, on behalf of Her Majesty the Queen, in answer to the Plaintiff's Statement of Claim, says as follows:

1. He admits the allegations contained in paragraphs 1 through 12 of the Statement of Claim except that:
  - (a) in respect of paragraph 1 he says that she was a non-commissioned member of the Canadian Forces;
  - (b) in respect of paragraph 5, he denies that the Plaintiff's responsibilities were other than those assigned to the positions she held, which position called for either a private or a corporal;
  - (c) in respect of the first sentence of paragraph 7, he denies the Plaintiff would have been promoted to the rank of corporal in 1988. He states that the minimum time in rank for promotion to the rank of corporal is four (4) years and that the earliest the Plaintiff could have expected promotion was 1989.

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2. He admits allegations in paragraphs 14 and 15 of the Statement of Claim except that he denies that there is a contract between members of the Armed Forces and Her Majesty. Members of the Armed Forces serve at pleasure.
3. He admits in respect of paragraph 13 of the Statement of Claim that the Plaintiff was initially engaged for a three year term. He denies that a subsequent engagement is on an indefinite basis and states that an initial three year engagement is normally followed by a second three year engagement to a maximum of six years. Only after 48 months can one be considered for an Intermediate Engagement to a total of 20 years continuous service.
4. With respect to paragraphs 16 and 17 of the Statement of Claim, he accepts that the Defendant's employment practices and policies in the administration of the Canadian Armed Forces are subject to the *Charter*, and that since the Plaintiff was released from the Armed Forces in July of 1988, CFAO 19-20 and the policy relating to the recruitment and retention of homosexuals in the Armed Forces have been found by the Federal Court to be contrary to the *Charter*.
5. He denies the allegations in paragraphs 18 and 19 of the Statement of Claim.
6. In answer to the Statement of Claim as a whole, he says that:
  - (a) during the relevant period the Canadian Forces was engaged in a review of CFAO 19-20 and its policy regarding the recruitment and retention of homosexuals and had adopted the interim policy, referred to in paragraph 11 of the Statement of Claim, which modified the provisions of CFAO 19-20;
  - (b) in September of 1991 the Chief of the Defence Staff recommended that the policy be rescinded. In October of 1992 the government accepted that recommendation;


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- (c) at all material times the Canadian Forces and its members were acting in good faith and pursuant to and in accordance with the provisions of CFAO 19-20 and the interim policy.
7. He denies that the Plaintiff has suffered the damage as alleged in paragraph 20(a) of the Statement of Claim and he puts the Plaintiff to the strict proof thereof.
8. In the alternative, he says that the Plaintiff has failed to mitigate her damages.
9. He denies that the Plaintiff is entitled to any of the relief sought in paragraph 20 of the Statement of Claim.

On behalf of Her Majesty the Queen, the Deputy Attorney General of Canada therefore prays that it be adjudged that the Plaintiff is not entitled to the relief sought in the Statement of Claim and that the Defendant is entitled to costs.

DATED at Ottawa this 17th day of May, 1994.

  
John C. Tait, Q.C.  
Deputy Attorney General of Canada  
Per: Barbara A. McIsaac, Q.C.  
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TO: The Administrator  
Federal Court of Canada, Trial Division

AND TO: John A. Olah  
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Counsel 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 18th day

of May A.D. 1994

Dated this 18th day of May 1994

  
A. LE GAL  
Registry Officer  
Agent du greffe

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