

IN THE FEDERAL COURT OF CANADA

TRIAL DIVISION

B E T W E E N:

MICHELE POIRIER

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

STATEMENT OF CLAIM

(Filed on the day of November, 1990)

1. The Plaintiff, Michele Poirier, resides in the City of Kingston, in the Province of Ontario, and is a former Officer 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 became a member of the Canadian Armed Forces in 1980 as a Private.

3. In or about 1984, the Plaintiff was promoted to the rank of Corporal and thereafter her military designation was: 251-043-543-CPL(W) Poirier MREEJM RDRTECH 231.

4. In or about 1981, the Plaintiff admitted to military authorities that she had been engaged in a homosexual relationship. Notwithstanding this admission, she was given a remote posting in an isolated location and granted a "SECRET" security clearance.

5. Throughout her service with the Canadian Armed Forces, the Plaintiff performed her duties in a loyal and competent manner. In December 1985, the Plaintiff was rated third out of

thirteen Corporals in her squadron and second out of seven Radar Technicians with respect to overall performance. In 1986, the Plaintiff was ranked as top Corporal out of eighty-nine Corporals and was highly recommended for promotion. In 1990, the Plaintiff's performance was rated as excellent. The Plaintiff was rated the top Corporal of twenty-six in her squadron and rated fourth out of seventy-one Corporals at CFSCE.

THE CANADIAN ARMED FORCES' POLICY ON HOMOSEXUALITY:

6. Canadian Armed Forces Policy CFAO 19-20 is a policy enacted pursuant to the provisions of the National Defence Act, and is entitled "Homosexuality - Sexual Abnormality Investigation, Medical Examination and Disposal". This policy contains the following provisions:

7. Service policy does not allow homosexual members or members with a sexual abnormality to be retained in the CF. When it is decided that a member is to be released, appropriate action shall be taken as quickly as possible, with a minimum of publicity.

8. Normally, the member should be released under item 5(d) of the table to QR & O 15.01. However, if the member is to be released as a direct result of a conviction by a civil or service tribunal, consideration shall be given to effecting the release under item 2(a) of the table to QR & O 15.01.

7. A release under Queen's Regulations & Orders ("QR & O") 15.01, item 5(d), is described as a "method of compulsory release for the benefit of the CF or the member, or both". The member is to be released under item 5(d) if, among other things, he is unable to adapt to military life; he is unable to meet officer classifications or trade standards; his job performance is acceptable but he becomes an administrative burden, (eg. when it is determined a character disorder exists); his prolonged compassionate circumstances result in an unacceptable administrative burden; his social conduct, on or off duty, fails to meet the high standards expected of a member of the CF; or his continued employment is not in the best interest of the CF.

8. In February, 1987, Canadian Armed Forces Policy CFAO 19-20 was modified to provide that if a member of the Canadian Armed Forces refuses to be released under QR & O 15.01, item 5(d), then that member will be retained with "career restrictions" until the policy is reviewed. Under these career restrictions, the member is ineligible for promotion, conversion of her present terms of service, posting outside the geographical area or transfer to the Reserve Force. In addition, the member

is ineligible for further qualification courses or training except those required to enable her to carry out her restricted duties.

THE PLAINTIFF'S ATTEMPTS TO OBTAIN REDRESS:

9. In early 1987, Colonel G.L. Coady called in a Special Investigation Unit to investigate the sexual orientation of the Plaintiff pursuant to Canadian Armed Forces Policy CFAO 19-20.

10. The report of the Special Investigation Unit found the Plaintiff to be a person to whom Policy CFAO 19-20 applied. The Plaintiff pleads that the report of the Special Investigation Unit was signed by Colonel G.L. Coady, who was the Plaintiff's active Base Commander. The Plaintiff further states that this conduct on the part of Colonel Coady was contrary to the principles of natural justice and also contrary to the requirements of Policy CFAO 19-20, which required the Commanding Officer to call in the Local Special Investigation Unit to conduct the investigation.

11. On or about June 12, 1987, Colonel G.L. Coady advised the Plaintiff that it was his intention to initiate the Plaintiff's release because of her homosexuality under the provisions of the QR & O, Article 15.01, item 5 (d). The Plaintiff was further advised that if she did not accept a release under QR & O, Article 15.01, item 5 (d), she would not be eligible for promotion or career courses until such time as a final policy decision was made on the subject of homosexuality.

12. On or about January 17, 1988, the Plaintiff advised her superiors that she did not wish to be released but that she strongly objected to the limitations placed upon her career, feeling them to be harsh treatment, disappointing and unfair.

13. In or about October, 1988, the Plaintiff requested a transfer to Quebec. The Plaintiff was advised on or about October 7, 1988 that she was not eligible for any postings because of her career restrictions. This type of restriction was not mentioned at the time the original restrictions were placed upon the Plaintiff.

14. On or about July 31, 1989, the Plaintiff filed a grievance with respect to her treatment, as provided under QR & O 19.20 and requested the removal of the restrictions imposed upon her career. On August 17, 1989, the Plaintiff's Commanding Officer advised her that it was not within his power to

adjudicate her grievance and that he was forwarding her grievance to the Base Commander. On or about August 31, 1989, the Base Commander advised that Plaintiff that he did not support the Plaintiff's grievance but that he had no power to adjudicate the grievance.

15. On or about September 6, 1989, the Plaintiff requested that her grievance be referred to the Commander of CFTSHQ. On September 29, 1989, the Plaintiff was advised that R. Robert, Colonel Acting Commander, felt the resolution of her application was beyond his powers and that he was forwarding it to the Chief of the Defence Staff and that he was very much concerned at the inordinate period of time that the Plaintiff had been forced to endure while awaiting resolution of her grievance.

16. On October 12, 1989, the Plaintiff was advised that her grievance had been forwarded to the Chief of the Defence Staff for consideration. On or about October 25, 1989, the Plaintiff was advised by Lieutenant K.W. Nodorft that her application had been received and a further reply would be made as soon as a decision had been obtained from the Chief of the Defence Staff.

17. The Plaintiff repeatedly requested a response to her grievance from the Chief of the Defence Staff. On November 30, 1989, the Plaintiff was advised by Lieutenant K.W. Nodorft that her application was with NDHQ pending decision. On February 20, 1990, the Plaintiff was advised that her application for redress of grievance was pending decision at NDHQ.

18. On or about September 25, 1990, the Plaintiff received a response to her application for redress of grievance from A.J.G. de Chastelain, General, which decision found that the Plaintiff was a person to whom the provisions of policy CFAO 19-20 applied and upheld the career restrictions which were placed upon the Plaintiff.

THE PLAINTIFF'S CONSTRUCTIVE DISMISSAL:

19. On or about March 19, 1990, the Plaintiff advised her superiors that she was now heterosexually oriented and provided them with medical information to that effect. In spite of this information, the Plaintiff's superiors refused to lift the restrictions on her career.

20. Despite the restrictions placed upon the Plaintiff by her superiors, the Plaintiff continued to perform her duties in an exemplary fashion. The Plaintiff undertook and completed

duties and responsibilities of a significantly higher rank but without the attendant rights, privileges, benefits or authority.

21. The Plaintiff pleads, however, that these restrictions caused her extreme emotional distress, anxiety and mental anguish. As a result of this distress, anxiety and anguish, the Plaintiff felt she had no alternative but to be released under QR & O Article 15.01, item 5 (d), which release took effect on or about the 10th day of August, 1990.

22. The Plaintiff says that she was effectively terminated from the Canadian Armed Forces as a result of the failure of the Canadian Armed Forces to promote her, train her, or even transfer her. The Plaintiff further says that orders placing these restrictions on her career were illegal and contrary to law in that they were:

- i) made by a Special Investigation Unit, which was not properly constituted and which was contrary to the rules of natural justice;
- ii) made pursuant to Canadian Armed Forces Policy CFAO 19-20 "Homosexuality - Sexual Abnormality Investigation, Medical Examination in Disposal", which policy is contrary to the Canadian Charter of Rights and Freedoms;
- iii) based upon a finding that the Plaintiff was a homosexual in spite of medical evidence to the contrary;

THE CHARTER OF RIGHTS AND FREEDOMS:

23. The Plaintiff states that the employment policies and practices of the Defendant in the administration of the Canadian Armed Forces are actions which are subject to the application of the Canadian Charter of Rights and Freedoms. The Plaintiff further states that the policy of the Canadian Armed Forces with respect to homosexuality violates the rights and freedoms guaranteed to the Plaintiff under the Charter, including, her guaranty of equality before and under the law, her right to equal protection and equal benefit of the law without discrimination, her right not to be subjected to cruel and unusual treatment or punishment, her right to freedom of thought, belief, opinion and expression and her right to freedom of association.

THE RELIEF CLAIMED:

24. The Plaintiff therefore claims:

- a) an Order reinstating the Plaintiff as Master Corporal in the Canadian Armed Forces;
- b) damages for lost wages and benefits in the amount of \$200,000.00;
- c) general damages in the amount of \$1,000,000.00 for the denial of the Plaintiff's rights under the Canadian Charter of Rights and Freedoms, including a denial of her equality rights, her right to freedom of thought, belief, opinion and expression and her right to freedom of association and her right to liberty;
- d) damages for emotional distress in the amount of \$250,000.00 for the adverse affects the Plaintiff has suffered and will continue to suffer as a result of the Defendant's denial of her rights;
- e) punitive, exemplary damages in the amount of \$250,000.00;
- f) prejudgment interest on the same said damages from June 12, 1987 to the date of payment or judgment;
- g) a declaration that the policies of the Canadian Armed Forces, with respect to homosexuality and homosexuals are contrary to the Canadian Charter of Rights and Freedoms;
- h) her costs of this action on a solicitor and client basis;
- i) such further and other relief as to this Honourable Court may seem just.

NOTICE TO DEFENDANT

YOU ARE REQUIRED to file in the Federal Court of Canada, at the City of Ottawa, or at a local office, your Defence to the within Statement of Claim within thirty (30) days (or such

other time as may be fixed for 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 thereof.
- (2) This Statement of Claim is filed by Beard, Winter, 150 King Street West, Suite 900, Toronto, Ontario, M5H 2K4 - telephone (416) 593-5555 - solicitors for the Plaintiff.

DATED AT TORONTO, this 15th day of November, 1990

John A. Olah
Solicitors for the Plaintiff

BEARD, WINTER
Suite 900
150 King Street West
Toronto, Ontario
M5H 2K4

(416) 593-5555

TO: HER MAJESTY THE QUEEN
c/o Deputy Attorney
General of Canada
Justice Building
239 Wellington Street
Ottawa, Ontario
K1A 0H8

No.

IN THE FEDERAL COURT OF CANADA
TRIAL DIVISION

B E T W E E N:

MICHELE POIRIER

Plaintiff

- and -

HER MAJESTY THE QUEEN

Defendant

STATE OF A TRUE COPY HEREOF
REPRODUCTION DE COPIE CONFORME-

of this 28th day
le November 19 90 jour

10:10 a.m.

Nancy Mackenzie

Registry Officer
Bureau des Registres du Canada
Büro des Registrieren in Kanada

STATEMENT OF CLAIM

BEARD, WINTER
Suite 900
150 King Street West
Toronto, Ontario
M5H 2K4

John A. Olah
(416) 593-5555

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 11th day

of November A.D. 19 90 :

Dated this 11th day of Nov 19 90 :

Susan Findlay
SUSAN J. FINDLAY
Registry Officer