

C A N A D A

PROVINCE OF QUÉBEC
DISTRICT OF MONTRÉAL

(Class Action)
S U P E R I O R C O U R T

N°

MARTINE ROY, 111 Chemin de la pointe-
nord, Unité 130, Ile des Sœurs, Québec
H3E 0B3

Petitioner

v.

ATTORNEY GENERAL OF CANADA,
Justice Canada, Complexe Guy Favreau,
9th Floor, East Tower, 200 René-Lévesque
Blvd. W., Montréal, Québec, H2Z 1X4

Respondent

**APPLICATION FOR AUTHORIZATION TO INSTITUTE A CLASS ACTION
AND TO OBTAIN THE STATUS OF REPRESENTATIVE**
(Arts. 574 ff. C.C.P.)

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
AND FOR THE DISTRICT OF MONTREAL, PETITIONER RESPECTFULLY SUBMITS
THE FOLLOWING:**

I. INTRODUCTION

1. Beginning in the 1950s, thousands of lesbian, gay, bisexual and transgender (“**LGBT**”) Canadians were investigated, targeted, sanctioned and terminated from their careers in the Canadian Armed Forces and federal public service not because of anything they had done, but because of their sexual orientation, gender identity or gender expression.
2. Homosexual acts were officially decriminalized in Canada on June 27, 1969, but the Government of Canada continued to carry out a deliberate and widespread campaign to systematically identify and purge LGBT individuals from the public

service. The campaign, referred to in these proceedings as the “**LGBT Purge**”, was implemented at the highest levels of the Canadian government and carried out with a callous disregard for the dignity, privacy and humanity of its targets.

3. The proposed class action seeks damages, both compensatory and punitive, for all Quebec residents who were investigated, targeted, sanctioned and/or terminated from their careers by the Government of Canada because of their sexual orientation, gender identity or gender expression. The LGBT purge is a blight on Canadian values and must be denounced in the clearest of terms.

II. DESCRIPTION OF THE CLASS

4. The Petitioner wishes to institute a class action, on her own behalf and on behalf the members forming part of the following class:

All residents of Quebec who are current or former members of the Canadian Armed Forces or employees of the Government of Canada (collectively, “**Federal Public Servants**”), who were investigated, targeted, sanctioned, and/or who were discharged or terminated by the Government of Canada because of their sexual orientation, gender identity, or gender expression, between June 27, 1969 and the present.

III. THE BASIS OF PETITIONER’S PERSONAL CLAIM

A. Martine Roy’s Story

5. Martine Roy joined the Canadian Armed Forces at the age of 19 because she wanted to serve and protect her country.
6. The training was gruelling, but she was determined. She completed basic training at Saint-Jean-Sur-Richelieu and went on to complete language and medical assistant training at Borden. She was proud, committed, and looking forward to a long and rewarding military career.

7. One day, while Ms. Roy was participating in field training at Borden, a K-car approached. Two individuals approached and asked her to get in the car. She thought they were civilians who had gotten lost on the base. They were not.
8. The individuals identified themselves as part of a “Special Investigation Unit” and told her she was being arrested. They drove her to a small building at the edge of the base that Ms. Roy did not know existed.
9. In a small, dimly lit room, she was interrogated for nearly five hours about every detail of her sexual history, habits and preferences. Questions included: “Who did you sleep with”? “How often do you have sex”?
10. Ms. Roy’s interrogators told her that if she confessed to her “perversions”, she could stay in the army. Exhausted, scared and humiliated, she said she was young, experimenting and confused.
11. After she “confessed”, she was released from the interrogation. She felt a fear unlike any she had ever imagined.
12. Following her release, Ms. Roy’s life in the army seemed to resume its course. She began a two-year contract as a medical assistant at the National Defence Medical Center in Ottawa.
13. A few months later, she was summoned to the office of a psychologist so he could determine whether she was “normal” or “abnormal”. She attended a few humiliating and degrading sessions, and then again, no news for several months.
14. Prior to the end of her two-year contract, Ms. Roy was offered her dream job: a three-year contract as a communications researcher in Kingston. She received the necessary “Top Secret” clearance. She bought her first car.
15. Shortly thereafter, in December 1984, Ms. Roy was called from her post in the pharmacy and ordered to report to the office of the base Colonel. She was asked whether she knew why she was there. She answered: “no”. Ms. Roy was told

that she was a deviant, and that she was being dishonorably discharged for homosexuality. She had nine days to pack her things and go.

16. That day changed Ms. Roy's life. She pleaded to stay and tried everything to change their minds. Her self-esteem and value system were decimated.
17. Ms. Roy lost the opportunity to pursue her career in the military, to rise through the ranks, to earn benefits, and a pension. She returned to Quebec where she experienced severe emotional trauma, which continues to this day. She struggled for years with drug addiction, underwent intensive therapy, had difficulty maintaining relationships, and lived with the constant fear and anxiety that she could not be her authentic self, lest the same thing would happen again.
18. Ms. Roy is a survivor. She has dedicated the last 15 years to demystifying homophobia in the workplace. Her story is harrowing and it is not unique. She and the class members she seeks to represent are entitled to be compensated for what they endured at the hands of the Canadian government.

B. Extent of the LGBT Purge and Liability of the Federal Government

19. Stories like Ms. Roy's are not uncommon in the Canadian Armed Forces. The LGBT Purge was however not limited to the Armed Forces and Department of National Defence. It extended to the Royal Canadian Mounted Police ("RCMP"), the Department of Finance, the Post Office, Central Mortgage and Housing, Health and Welfare, Public Works, the Ministry of State for Science and Technology, the Department of Industry, the National Film Board, and the Canadian Broadcast Corporation, among others.
20. The campaign of surveillance targeted thousands of LGBT Canadians. The RCMP, for example, at one time held a list of more than 9000 suspected homosexuals. Being identified on this list could result in interrogation with a device known colloquially as the "Fruit Machine", the creation of which was funded by the Federal Government, and developed by the Carleton Psychology Department.

21. In addition to the obvious violation of their privacy and dignity, LGBT Federal Public Servants affected by this purge faced various sanctions, including dismissal, transfer, demotion, denial of opportunities for promotion, being forced to live a double-life, and other forms of systemic discrimination. They also experienced severe psychological injuries sometimes leading to suicide.
22. For example, in the Canadian Armed Forces, many victims of LGBT discriminatory treatment were either terminated or placed in such a hostile environment that they simply left. While the official policy of institutional discrimination in the Canadian Armed Forces ended in the 1990's, LGBT employees continue to face a poisoned work environment.
23. The full extent of this state-authorized discrimination against LGBT employees is not known. This is in large part because the details surrounding the LGBT purge have been deliberately concealed by the Government of Canada.
24. Many persons in the LGBT community continue to live "in the closet", especially the older generation most sharply impacted by the LGBT Purge. Because of the psychological trauma they suffer and the shame they were made to feel by the Government of Canada, many victims of the LGBT Purge have been reluctant or unable to disclose what happened to them, let alone take action about it. The need for redress for this aging population is particularly acute.
25. Although this situation has been brought to the attention of the Government of Canada, notably through the submission of the Just Society Report in June 2016, and despite progress in protecting LGBT rights, to date there has been no program of redress for the victims of the LGBT Purge. A copy of the Just Society Report (First Edition) is communicated as **Exhibit P-1**. A copy of a Globe and Mail article dated August 11, 2016 regarding the Government of Canada's acceptance in principle of the Just Society Report is communicated as **Exhibit P-2**.

26. In investigating, targeting, sanctioning and/or terminating the Federal Public Servants on the basis of their sexual orientation, gender identity or gender expression, the Government of Canada abused its power, committed a fault under the *Civil Code of Lower Canada* or the *Civil Code of Quebec*, as the case may be, and breached the Federal Public Servants' rights under the *Quebec Charter of Human Rights and Freedoms* (the "**Quebec Charter**") and/or the *Canadian Charter of Rights and Freedoms* (the "**Canadian Charter**"), as applicable.

IV. THE BASIS FOR THE INDIVIDUAL CLAIMS OF THE CLASS MEMBERS

27. In addition to those set out above, the facts giving rise to an individual action on behalf of each class member are as follows:
- i. Each class member was a Federal Public Servant.
 - ii. Each class member was investigated, targeted, sanctioned and/or terminated on the basis of his or her sexual orientation, gender identity or gender expression.
 - iii. Each class member suffered pecuniary and/or non-pecuniary damages as a result of being investigated, targeted, sanctioned and/or terminated.

V. THE COMPOSITION OF THE CLASS MAKES THE APPLICATION OF THE RULES GOVERNING MANDATE AND CONSOLIDATION OF PROCEEDINGS DIFFICULT AND IMPRACTICAL

28. The proposed class covers potentially hundreds, if not more, class members in Quebec.
29. Given the Government of Canada's efforts to conceal the LGBT Purge and considering that many individuals are still reluctant or unable to come forward, it is impossible to know the identity of all Federal Public Servants who were targeted, investigated, sanctioned and/or terminated because of their sexual orientation, gender identity or gender expression.

30. Accordingly, it is difficult and impracticable for the Petitioner to locate and contact all members of the class and to obtain a mandate to institute proceedings on their behalf.

VI. ISSUES TO BE DETERMINED ON A COLLECTIVE BASIS

31. The identical, similar or related questions of fact and law that unite each class member and that the Petitioner wishes to have decided in the proposed class action are as follows:
- i. Did the Government of Canada commit an abuse of power in investigating, targeting, sanctioning and/or terminating the Federal Public Servants on the basis of their sexual orientation, gender identity or gender expression?
 - ii. Did the Government of Canada commit a fault, under the *Civil Code of Lower Canada* or the *Civil Code of Quebec*, in investigating, targeting, sanctioning and/or terminating the Federal Public Servants on the basis of their sexual orientation, gender identity or gender expression?
 - iii. Did the Government of Canada breach the Federal Public Servants' rights under the *Quebec Charter* or the *Canadian Charter*, as applicable, in investigating, targeting, sanctioning and/or terminating the Federal Public Servants on the basis of their sexual orientation, gender identity or gender expression, in a manner that cannot be justified in a free and democratic society?
 - iv. Is the Government of Canada liable to the class members for pecuniary damages?
 - v. Is the Government of Canada liable to the class members for non-pecuniary damages, and if so, in what amount?

- vi. Is the Government of Canada liable to the class members for punitive damages, and if so, in what amount?

VII. ISSUES TO BE DETERMINED ON AN INDIVIDUAL BASIS

32. The only issue to be determined on an individual basis is the amount that the Government of Canada should be ordered to pay to each class member for pecuniary damages.

VIII. APPROPRIATENESS OF CLASS PROCEEDINGS

33. Given the costs and personal toll of bringing an individual action, the institution of a class action is the only means of providing class members with reasonable access to justice.

IX. THE NATURE OF THE ACTION

34. The nature of the action Petitioner intends to bring on behalf of the class members is an action in damages and punitive damages for abuse of power, fault under the *Civil Code of Lower Canada* or the *Civil Code of Quebec*, as the case may be, and, as applicable, unjustified breaches of the *Quebec Charter* and the *Canadian Charter*.

X. CONCLUSIONS SOUGHT IN THE PROPOSED CLASS ACTION

35. The conclusions sought by the Petitioner on the proposed class action are the following:
 - I. **CONDEMN** the Government of Canada to pay to each member of the class an amount to be determined for non-pecuniary damages, and **ORDER** collective recovery of these sums;
 - II. **CONDEMN** the Government of Canada to pay to each member of the class an amount to be determined for punitive damages, and **ORDER** collective recovery of these sums;

- III. **CONDEMN** the Government of Canada to pay to each member of the class an amount to be determined in pecuniary damages;
 - IV. **CONDEMN** the Government of Canada to pay legal interest and additional indemnity on the above amounts from the date of service of the Application for Authorization to Institute a Class Action;
 - V. **CONDEMN** the Government of Canada to bear the costs of the present action including the costs associated with all notices;
 - VI. **RENDER** any other order that the Court shall determine and that is in the best interests of the class members.
- XI. **PETITIONER IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS**
- 36. The Petitioner requests that she be ascribed the status of representative. Petitioner is in a position to properly represent the class members for the reasons that follow.
 - 37. She is a member of the proposed class.
 - 38. She is not aware of any conflict of interest with other class members.
 - 39. She has the time, will and determination to assume all responsibilities incumbent upon her in order to diligently carry out the proposed class action.
 - 40. She is acting in good faith with the goal of obtaining justice and reparation for herself and each member of the class.
 - 41. She is actively involved in survivors' networks including: the Apology Network, the Just Society Committee and the informal network of veterans "Retour à la maison".
 - 42. She is well informed of and understands the facts giving rise to the proposed class action.

43. She is represented by an experienced law firm, with expertise in class action and human rights issues.
44. She has fully and diligently cooperated with her attorneys in order to prepare this application for authorization and is committed to continue doing so in the future.

XII. PROPOSED JUDICIAL DISTRICT

45. The Petitioner proposes that the class action be brought in the judicial district of Montreal for the following reasons:
 - i. Petitioner resides in the district of Montreal, and to the best of her knowledge, many of the potential class members reside in the district of Montreal or nearby;
 - ii. Petitioner's attorneys practice their profession in the district of Montreal.

FOR THESE REASONS, MAY IT PLEASE THE COURT TO:

GRANT the Petitioner's Application for Authorization to Institute a Class Action and to Obtain the Status of Representative;

AUTHORIZE the institution of a class action as follows:

An action in damages and punitive damages for abuse of power, fault under the *Civil Code of Lower Canada* or the *Civil Code of Quebec*, as the case may be, and, as applicable, unjustified breaches of the *Quebec Charter* and the *Canadian Charter*.

DESIGNATE Petitioner Martine Roy as representative of the following class:

All residents of Quebec who are current or former members of the Canadian Armed Forces or employees of the Government of Canada (collectively "**Federal Public Servants**"), who were investigated, targeted, sanctioned, and/or who were discharged or terminated by the Government

of Canada because of their sexual orientation, gender identity, or gender expression, between June 27, 1969 and the present.

IDENTIFY the principal questions of law and fact to be dealt with collectively as follows:

- i. Did the Government of Canada commit an abuse of power in investigating, targeting, sanctioning and/or terminating the Federal Public Servants on the basis of their sexual orientation, gender identity or gender expression?
- ii. Did the Government of Canada commit a fault, under the *Civil Code of Lower Canada* or the *Civil Code of Quebec*, in investigating, targeting, sanctioning and/or terminating the Federal Public Servants on the basis of their sexual orientation, gender identity or gender expression?
- iii. Did the Government of Canada breach the Federal Public Servants' rights under the *Quebec Charter* or the *Canadian Charter*, as applicable, in investigating, targeting, sanctioning and/or terminating the Federal Public Servants on the basis of their sexual orientation, gender identity or gender expression, in a manner that cannot be justified in a free and democratic society?
- iv. Is the Government of Canada liable to the class members for pecuniary damages?
- v. Is the Government of Canada liable to the class members for non-pecuniary damages, and if so, in what amount?
- vi. Is the Government of Canada liable to the class members for punitive damages, and if so, in what amount?

IDENTIFY the conclusions sought by the class action as follows:

- I. **CONDEMN** the Government of Canada to pay to each member of the class an amount to be determined for non-pecuniary damages, and **ORDER** collective recovery of these sums;
- II. **CONDEMN** the Government of Canada to pay to each member of the class an amount to be determined for punitive damages, and **ORDER** collective recovery of these sums;
- III. **CONDEMN** the Government of Canada to pay to each member of the class an amount to be determined in pecuniary damages;
- IV. **CONDEMN** the Government of Canada to pay legal interest and additional indemnity on the above amounts from the date of service of the Application for Authorization to Institute a Class Action;
- V. **CONDEMN** the Government of Canada to bear the costs of the present action including the costs associated with all notices;
- VI. **RENDER** any other order that the Court shall determine and that is in the best interests of the class members.

ORDER the Respondent to provide to class counsel, in electronic form, a list containing the names and last known coordinates of all members of the proposed class;

DECLARE that any member of the class who has not requested his/her exclusion from the class be bound by any judgment to be rendered on the class action, in accordance with law;

FIX the deadline for exclusion from the class at sixty (60) days from the date of the notice to the members, after which time those members who did not request exclusion from the class shall be bound by all judgments to be rendered with respect to the class action;

ORDER the publication of a notice to the members of the class in accordance with Article 579 CCP in the manner and locations to be determined by the Court;

REFER the present file to the Chief Justice for determination of the district in which the class action should be brought and designation of the Judge before whom it will be heard;

THE WHOLE with costs, including the costs of publication of all notices.

MONTRÉAL, October 31, 2016

(S) Irving Mitchell Kalichman LLP

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Lawyers for the Petitioner

Our file: 4463-1

BI0080

SUMMONS

(Articles 145 and following C.C.P.)

Filing of a Judicial Application

Take notice that the Petitioner has filed this Application for Authorization to Institute a Class Action and to Obtain the Status of Representative in the office of the Superior Court of Quebec in the judicial district of Montreal.

Respondent's Answer

You must answer the application in writing, personally or through a lawyer, at the Montreal Courthouse situated at 1 Notre-Dame Street Est, Montréal, Québec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Petitioner's lawyer or, if the Petitioner is not represented, to the Petitioner.

Failure to Answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of Answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the Applicant.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of Application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the Application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative, the Petitioner intends to use the following exhibit:

Exhibit P-1: Copy of the Just Society Report (First Edition)

Exhibit P-2: Copy of a Globe and Mail article dated August 11, 2016

These Exhibits are available upon request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

MONTRÉAL, October 31, 2016

(S) Irving Mitchell Kalichman LLP

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Lawyers for the Petitioner

Our file: 4463-1

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NOTICE OF PRESENTATION
(Articles 146 and 574 aJ.2 C.P.C.)

TO: ATTORNEY GENERAL OF CANADA
Justice Canada, Complexe Guy Favreau
9th Floor, East Tower
200 René-Lévesque Blvd. W.
Montréal, Québec, H2Z 1X4

TAKE NOTICE that the Application for Authorization to Institute a Class Action and to Obtain the Status of Representative will be presented for adjudication before one of the Honourable Judges of the Superior Court of Quebec, sitting in practice division in and for the District of Montreal, on **December 8, 2016**, at **9:00 a.m.**, or so soon thereafter as counsel may be heard, in **Room 2.16** of the Montreal Courthouse, located at 1 Notre-Dame Street East, Montreal, Quebec.

DO GOVERN YOURSELF ACCORDINGLY.

MONTREAL, October 31, 2016

(S) Irving Mitchell Kalichman LLP

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