

CANADA

PROVINCE OF QUÉBEC  
DISTRICT OF MONTRÉAL  
NO.: 500-06-000952-180

**SUPERIOR COURT**  
**(Class Action)**

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**WOLF WILLIAM SOLKIN**, residing and domiciled at the Ste. Anne's Hospital, 305 Boulevard des Anciens Combattants, Room 1114, City of Sainte-Anne-de-Bellevue, District of Montréal, Province of Québec, H9X 1Y9

*Plaintiff*

**Vs.**

**THE ATTORNEY GENERAL OF CANADA**, having a place of business at Complex Guy-Favreau, Québec Regional Office, Department of Justice, East Tower, 9th Floor, 200 Rene-Levesque Boulevard West, City of Montréal, District of Montréal, Province of Québec, H2Z 1X4

-and-

**THE ATTORNEY GENERAL OF QUÉBEC**, having a place of business at 1, Notre-Dame Street East, office 8.00, City of Montréal, District of Montréal, Province of Québec, H2Y 1B6

-and-

**THE CENTRE INTEGRE UNIVERSITAIRE DE SANTE ET DE SERVICES SOCIAUX DE L'OUEST-DE-L'ILE DE MONTRÉAL**, legal entity constituted under the Act to modify the organization and governance of the health and social services network in particular by abolishing regional agencies (CQLR, chapter O-7.2), having its headquarters at 160 Stillview Avenue, City of Pointe Claire, District of Montréal, Province of Québec H9R 2Y2;

*Defendants*

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**ORIGINATING APPLICATION FOR CLASS ACTION**

(Art.583 C.p.c.)

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**IN SUPPORT OF THE APPLICATION, MR. WOLF WILLIAM SOLKIN, PLAINTIFF AND REPRESENTATIVE, RESPECTFULLY STATES THE FOLLOWING:**

**I. INTRODUCTION**

**A) The Authorization**

1. On October 30, 2018, Plaintiff, Wolf William Solkin (hereinafter referred to as "**Mr. Solkin**") filed an Application for authorization to institute a class action and to obtain status of representative of the class of persons hereinafter described, namely:

"All natural persons who are or were war Veterans from the Second World War and Korean War and who were residents of Ste. Anne's Hospital as of April 1, 2016, or thereafter, as well as their heirs and/or successors."

"Toutes les personnes qui sont ou qui étaient des Anciens combattants de la Seconde Guerre mondiale ou de la Guerre de Corée et qui étaient résidents à l'Hôpital Sainte-Anne à partir du 1<sup>er</sup> avril 2016 ou après, ainsi que leurs héritiers et/ou ayants droit."

(hereinafter referred to as "**Class Members**")

2. On February 20, 2019, the Honourable Mr. Justice Donald Bisson, j.c.s., granted Mr. Solkin's Application for Authorization and granted him the status of representative of the Class Members, the whole as it more fully appears from a copy of the judgment, communicated in support thereof as **Exhibit P-1**;
3. In his authorizing judgment, Mr. Justice Bisson, j.c.s. established the main collective issues as follows:
  - a) Do the Defendants Attorney general of Quebec and the Centre Intégré Universitaire de Santé et de Services Sociaux de l'Ouest-de-l'île de Montréal (hereinafter the "CIUSSS") have contractual obligations

towards the Class Members under the Transfer Agreement and if so, which ones and is there a breach of such obligations;

- b) Does the Defendant Attorney General of Canada have any extra-contractual obligations towards the Class Members and if so, which ones and is there a breach of such obligations;
- c) If there is a breach under questions a) or b), did such breach cause the Class Members, or any of them, damages and if so, what kind and to what extent;
- d) Are the Defendants jointly and severally responsible to pay damages to the Class Members, or any of them;
- e) Have the Defendants breached the Class Members rights to dignity and honour protected by the Québec Charter of Human Rights and Freedoms or the rights to life, liberty and security protected by the Canadian Charter of Rights and Freedoms? If so, are the Class Members, or any of them, entitled to damages as a result, of what kind and to what extent?;

#### **B) The Originating application**

- 4. The present action is a demand for compensation for the contractual, extra-contractual, moral and punitive damages that were and continue to be incurred by the Veterans at the Ste. Anne Hospital (hereinafter referred to as “SAH”) as a result of the failure by the Defendants to provide the same exceptional level of care and services promised to the Veterans following the transfer of SAH, on April 1, 2016, to the provincial government;
- 5. More specifically, the Plaintiff alleges that the Attorney General of Canada failed to meet its fiduciary obligation and extra contractual responsibility and has furthermore infringed on Plaintiff’s fundamental rights allowing for the allocation of punitive damages;

6. As for the Attorney General of Québec acting for the Minister of Health and Social Services and the CIUSSS, Plaintiff alleges that they have failed to meet their contractual obligations and have also infringed on Plaintiff's fundamental rights allowing for the allocation of punitive damages;
7. As of the date of the transfer, the Defendants were obligated to continue providing to the Veterans, in accordance with the law and the provisions of the Ste. Anne Transfer Agreement, signed by the Defendants in April 2015 (hereinafter referred to as "**Transfer Agreement**") the same exceptional level of care and services, the whole as it more fully appears from a copy of the Transfer Agreement, communicated in support thereof as **Exhibit P-2**;

## II. PARTIES

### A. The Class Members

8. The Veterans referred to in the description of the Class are all Veterans of the Second World War or Korean War recognized as "Eligible Veterans" or "Resident Veterans" (hereinafter referred to as "**Veterans**"), the whole as defined in the Transfer Agreement, exhibit P-2, signed in April 2015;
9. The Veterans are or were residents at SAH, situated in Sainte-Anne de Bellevue, Québec, as of April 1, 2016, or thereafter, and they have all incurred the same damages and prejudice as a result of the serious breaches by the Defendants of their contractual and fiduciary obligations towards the Veterans at SAH under the Transfer Agreement, exhibit P-2, namely their failure to provide the same exceptional level of care and services, on a priority basis, due to the Veterans at SAH;
10. As of April 1, 2016, there were approximately 300 Veterans residing at SAH;
11. There currently remains approximately 139 Veterans at SAH;

12. The Veterans are currently housed on four (4) floors of the thirteen (13) floors available in the Main Pavilion, as well as two (2) wings of the Edith-Temple Pavilion for those Veterans with more physical or cognitive restrictions or disabilities, the whole as it more fully appears from a copy of the SAH plan, communicated in support thereof as **Exhibit P-3**;
13. The average age of the Veterans is ninety-three (93) years old;

**B. The Plaintiff and representative**

14. Mr. Solkin, currently ninety-six (96) years of age, was born February 12, 1923, in Romania, and is a Second World War Veteran who volunteered for military service while he was studying at McGill University; he joined the Algonquin Regiment and was commissioned to Europe in the Spring of 1945 in order to assist in the liberation of Holland;
15. Following the end of the war on May 8, 1945, he returned to Canada and was affected by the Department of National Defence to help transition Veterans back into society through the discharge centre situated in Longueuil, Québec;
16. Mr. Solkin was discharged from the military in January 1946 and joined the Brigadier Frederick Kisch Legion (Branch 97) in Montréal, Québec;
17. He then went on to complete a Master's degree in social work at the University of Toronto and to pursue a successful career in real estate management in Palm Beach, Florida and then New York, with Helmsley Spear and then with Greenwin Florida Investments, up until he retired;
18. Mr. Solkin returned to Montréal in 2010 as a retiree;
19. Mr. Solkin is the father of five (5) children, has thirteen (13) grandchildren and six (6) step-grandchildren and is married to Louise Langlois;
20. In December 2012, as a result of a failed hip replacement surgery at the Lakeshore General Hospital, Mr. Solkin suffered a permanent thigh and hip infection which

has left him unable to walk, confined to a wheelchair and for the most part bedridden;

21. As a result of being unable to live independently, and being a Veteran, Mr. Solkin applied for and was admitted to SAH as a Resident Veteran on April 29, 2013;
22. Mr. Solkin has been residing at SAH since April 2013 and has experienced firsthand the exceptional level of care and services that were provided at SAH prior to the transfer on April 1, 2016;
23. At the time of his admittance in SAH and continuously up to the present, Mr. Solkin has been on a regiment of various medications including eight (8) antibiotics per day. He is, furthermore, unable to get in and out of bed or to dress himself, and has a number of other medical issues and conditions that render him entirely dependent on the care providers and nurses at SAH;
24. Mr. Solkin has remained a resident at SAH since the transfer on April 1, 2016, and has unfortunately been a privileged witness to the changes which have occurred thereafter;
25. Mr. Solkin is personally and fully aware of the issues regarding the drastic decline in the care and services provided at SAH, as he has experienced those firsthand, and has had the opportunity to discuss the problems arising from such situations with fellow Resident Veterans and their family members;
26. Prior to the transfer of April 1, 2016, Mr. Solkin was actively involved with the Veterans at SAH, as well as their family members, in trying to inform them of the impending transfer of SAH and to expose the serious concerns he had about the negative impact that the transfer would have on them and to encourage them to voice their concerns, the whole as it more fully appears from a copy of the media coverage, communicated in support thereof en liasse as **Exhibit P-4**;
27. Furthermore, Mr. Solkin has been an active member of the Veterans' Committee and prior to the transfer, he set up a newsletter for Veterans called "Veterans Voice

– La Voix des Vétérans” in order to keep all Veterans at SAH, as well as outside, informed on all matters involving Veterans;

28. Mr. Solkin is currently the vice-president of the Veterans’ Committee which represents the interests of all the Veterans at SAH, the editor in chief of the SAH newsletter “The Veterans’ Voice – La Voix des Vétérans”, as well as the president of the provincially mandated users’ committee, representing all SAH Residents, Veterans and civilians alike;
29. As a Resident Veteran, Mr. Solkin is required to pay a monthly amount for accommodation and meal expenses (hereinafter referred to as the “**User’s Contribution**”) which, prior to the transfer of SAH on April 1, 2016, was paid directly to Veterans Affairs and, since the transfer, directly to the CIUSSS, the whole as it more fully appears from a copy of the directive letter communicated in support thereof as **Exhibit P-5**;
30. Mr. Solkin’s rental currently stands at \$1,039.48 per month, paid directly to CIUSSS, the whole as it more fully appears from a copy of his latest rental increase notice, dated July 24, 2018, communicated in support thereof as **Exhibit P-6**;

### **C. The Defendants**

31. The Defendant, Attorney General of Canada (hereinafter referred to as “**AGC**”) acts for the Minister of Veterans Affairs (hereinafter referred to as “**VAC**”) which was and still is the government authority responsible for administering the *Department of Veterans Affairs Act* and all legislation regarding matters dealing with Veterans such as in this case, and it is also the former owner and administrator of SAH;
32. The Defendant, Attorney General of Québec (hereinafter referred to as “**AGQ**”) acts for the Minister of Health and Social Services (hereinafter referred to as “**MHSS**”) who is the current owner of SAH. Pursuant to the Transfer Agreement, exhibit P-2, MHSS undertook to fulfill the exact performance of the promised obligation contained therein for the specific benefit of the Veterans;

33. The Defendant, CIUSSS, is the provincial government body designated by MHSS to assume the responsibility of transferring SAH to the provincial authorities, and is also the current administrator of SAH;
34. The Defendants are all parties to the Transfer Agreement, exhibit P-2, which was signed in April 2015;

### III. THE FACTS

#### A. Historical Background

35. The Veterans at SAH have always been attributed the highest level of care on a priority basis by VAC in recognition of the service rendered to the country;
36. After the First World War, VAC built Veterans hospitals (hereinafter referred to as “**Departmental Facilities**”) to accommodate and care for returning military;
37. VAC owned and operated eighteen (18) Departmental Facilities across Canada over the years;
38. In the 1950's and 1960's, Canada introduced universal hospital insurance and provincial governments assumed increased responsibilities with respect to health care. In 1963, the Glassco Commission recommended that all VAC departmental facilities be transferred to the provinces, in accordance with the constitutional division of legislative powers;
39. By 1995, all Departmental Facilities were transferred to the provinces, with the exception of SAH, the last remaining Departmental Facility operated by VAC;
40. At all relevant times, SAH served as the benchmark for the assessment standards of all such services and standard of care provided to Veterans across Canada;
41. In March 1998, the Subcommittee on Veterans Affairs of the Standing Senate Committee on Social Affairs, Science and Technology (hereinafter referred to as the “**Subcommittee**”) issued a first report entitled “*The State of Health Care for*



*War Veterans and Service Men and Women*" (hereinafter referred to as the "**1998 Report**"), the whole as it more fully appears from a copy of the report communicated in support thereof as **Exhibit P-7**;

42. The 1998 Report stressed the dramatic deterioration in quality and availability of health care services for Veterans since VAC transferred its facilities to the provinces, reporting in particular on the situation prevailing at Sunnybrook Hospital, where long-term personnel dedicated to caring for Veterans lost their positions following the transfer of the facility;
43. In contrast, the Subcommittee commended the high quality of care and special programs offered to Veterans at SAH, and voiced its concerns that such high quality of care and services could be at risk, given the negotiations which were underway to transfer SAH to the government of Québec:

"We have had the opportunity to take a "hands on" look at the Sunnybrook hospital in Toronto. This being the site of a tragic set of fatalities in the past year concerning veterans, the direct causes of which are only now coming to light. As well, this facility is home to disparate examples of federal-provincial funding arrangements and many innovative programs. The Subcommittee also travelled to the site of the last remaining federal hospital in Ste. Anne de Bellevue outside Montréal, a classic example of high quality veterans' care, whose stability and role are currently in jeopardy."

the whole as it appears from page 4/6 of exhibit P-7;

44. The Subcommittee emphasized that Veterans had been attributed priority and an exceptional level of care by VAC in recognition of the service rendered to the country:

"One important view has been reinforced throughout the Subcommittee's study: that veterans are entitled to a higher level of priority and access when dealing with health care providers, by virtue of the federal government's implied contract to ensure adequate benefits and entitlements in return for war-time service."

the whole as it appears from exhibit P-7;

45. In the 1998 Report, the Subcommittee recommended that VAC establish a federal standard of care to meet the needs of Veterans in facilities transferred to provinces:

"4. That the Department establish a detailed federal standard of care for implementation in long-term care facilities. This standard must meet the needs of veterans to the same or a higher degree than was the case Prior to the Department transferred its facilities to the provinces. Regardless of whether the standard is expressed in terms of patient outcomes or in terms of hours of care per resident per day, etc., it must be readily understandable"

the whole as it appears from page 5/6 of exhibit P-7;

46. In the 1998 Report, the Subcommittee detailed the distinctive system of care developed by VAC for the benefit of Veterans:

"To meet the health care needs of veterans the Department has often "pioneered" new services and treatments. In the years following World War II, most of the health care needs of veterans were provided for by an integrated network of departmental facilities: hospitals, nursing homes, clinics, etc., located across the country. Today, with the exception of Ste Anne's Hospital, the Department relies primarily on provincial health-care systems and on other health-care providers to deliver health care services to veterans. The Department reimburses veterans or a health care provider for the purchase of services over and above those covered by the provincial health-care programs."

the whole as it appears from page 1/14 of exhibit P-7;

47. In the 1998 Report, the Subcommittee voiced the concern that, in the absence of an established national standard of institutional care for Veterans, the transfer of SAH would jeopardize the last remaining benchmark for an acceptable level of care:

"One of the reasons why the Subcommittee has grave reservations about the transfer of Ste Anne's, the last federally administered, chronic care facility, is that, lacking national, clearly stated and enforced standards of institutional care for veterans, Ste Anne's remains an invaluable benchmark of an acceptable level of care. Such a benchmark has become essential, given the increasing disparities between the health care programs of one province and another. These differences have become so substantial that one can no longer say that the Department is dealing with a national health care system; instead, it must negotiate with and adjust to the strengths and weaknesses of ten distinct provincial systems."

(emphasis added)

the whole as it appears from page 6/14 of exhibit P-7;

48. The Subcommittee also wrote in its 1998 Report "The treatment of cognitively impaired geriatric residents at Ste. Anne's Hospital sets a standard against which the programs of other hospitals should be judged";
49. In February 1999, the Subcommittee issued a second report entitled "*Raising the Bar: Creating a New Standard in Veterans Health Care*" (hereinafter referred to as the "**1999 Report**") communicated as **Exhibit P-8**;
50. The 1999 Report looked at the availability, quality and standards of health care provided to Veterans and recommended improving the facilities, premises, staffing, staff training, food quality, level of care, safety, etc.;
51. In the 1999 Report, the Subcommittee reiterated the distinctiveness of the care to be awarded to Veterans:

"Veterans are a group apart. Having volunteered their all, including life itself, they are a proud people not given to undue complaints, and they scorn to be importunate. They have earned the right of proper care within an environment which offers an acceptable quality of life.

Not to be forgotten is that, although elderly and occasionally incapacitated, the quality of life experienced by veterans is greatly enhanced when their rights are recognized and acted upon. Paramount among these is their right to dignity and their right to be consulted."

The whole as it appears from page 5/13 of exhibit P-8;

52. In the 1999 Report, the Subcommittee recommended that VAC adopt the "quality of life" of Veterans as fundamental guiding principle for departmental policy and spending decisions on Veterans health care and that this principle should underlie the standards of care adopted for Veterans in institutions;
53. Furthermore, the Subcommittee underlined the importance of relying on well-trained staff who are familiar with Veteran culture in order to meet the special needs of Veterans in institutional care:

"It is important that all staff who come into contact with veterans have a good knowledge of what a "veteran" is and how the wartime experience left them with physical and mental disabilities and influenced their postwar lifestyle. New staff must come to understand the special medical conditions that set veterans apart from the population at large, conditions such as Post-Traumatic Stress Disorder or the problems arising from long-term abuse of alcohol and the addiction to tobacco. Staff must also be fully aware of the special treatment options and services provided to veterans that are not provided to other residents. The objective of this training must be to encourage staff to offer veterans a level of personal care that recognizes them as special people.

[...]

The Subcommittee has concluded that veterans' wards in chronic care hospitals require higher staffing levels than the other wards. On average veterans are older than other patients, tend to have more severe disabilities and/or a combination of physical and mental disabilities, and are more likely to have behavioural problems. As a result they will require more intensive nursing and care.

The Subcommittee does not believe that the quality of life of veterans is compatible with staffing levels reduced to the level necessary to provide for little more than their safe warehousing."

the whole as it appears from 3/14, exhibit P-8;

54. The standard of care and services described by the Subcommittee as a benchmark to be met in long-term care facilities was the exceptional level of care and services provided to Veterans residing at SAH prior to its transfer on April 1, 2016;

55. In light of the foregoing it is patently clear that VAC was aware of the issues historically associated with these transfers to the provinces and should therefore have instituted specific measures and/or a specific plan to ensure that the exceptional level of care and services provided to the Veterans at SAH would be maintained;

#### **B. The Transfer Agreement**

56. In conformity with the pledge of VAC, which has always had jurisdiction and responsibility for the Veterans, the care and services provided to them at SAH prior to April 1, 2016, were of an exceptional and consistently high level and quality;
57. Starting in 2009 through 2015, the Defendants pursued negotiations aimed at transitioning SAH from the federal government to the provincial government as the final step in an overall transition of all Veteran's hospitals across Canada;
58. VAC, through its governing legislation and regulations, has always committed to provide Veterans with an exceptional level and quality of care and services as it appears from the April 27, 2012, statement of the honourable Steven Blainey, then Minister of VAC, which states:

"Our Government is pleased to announce the signing of this agreement in principle with the Government of Quebec. This is an important step towards undertaking the necessary discussions between our two governments so that the Veterans living at Ste. Anne's Hospital can continue to receive, in English or in French, the exceptional care and service they deserve",

the whole as it more fully appears from a copy of the statement, communicated in support thereof as **Exhibit P-9**;

59. The Defendants entered into the Transfer Agreement, exhibit P-2 in April 2015, providing for the transfer of SAH from the federal government to the provincial government and the Respondent CIUSSS;
60. The Transfer Agreement's purpose is to establish the terms of the takeover of all the "managing, operating and maintaining of SAH and the transfer of the

Immovable, Movables and Supplies and Inventory” by the Defendants, MSSS and CIUSSS, exhibit P-2;

61. The Transfer Agreement specifies that VAC will retain the legislative and regulatory authority with respect to Veterans, and that the Transfer Agreement does not constitute a delegation of authority or functions from VAC to the government of Québec:

“6.1.7. Obligations with Respect to Veterans:

a) In spite of the transfer of the management, administration and maintenance of SAH, CANADA will retain, after the Transfer Date, legislative and regulatory authority with respect to veterans and will continue to fulfill the functions that are incumbent on the federal government, in particular the Department of Veterans Affairs with respect to veterans through the application of the Department of Veterans Affairs Act. [...]

b) This Agreement, any agreement referred to herein or any other document that may be necessary or desirable to accomplish the operation that is the subject hereof neither constitutes nor shall be deemed to constitute a delegation of authority or functions from CANADA to QUÉBEC and shall not be interpreted as such.”

the whole as it appears from exhibit P-2;

62. The Transfer Agreement, furthermore provides special provisions for the benefit of the Resident Veterans, whereby the MHSS and CIUSSS have obliged themselves to maintain the same exceptional level of care and services that was provided to the Veterans prior to the transfer, more specifically:

“6.2.5. Maintenance of the Level of Care and Services for Resident Veterans:

a) The Institution shall continue as of the Transfer Date to use SAH, the Immovable, Movables, and Supplies and Inventory for the purpose of providing care and services for Resident Veterans.

b) In consideration of the per diem provided for in Article 6.1.5 of this Agreement, the Institution shall maintain as of the Transfer Date, the level of care and services provided for Resident Veterans at the level of care and services agreed to by CANADA and QUÉBEC provided

for in Schedule F Maintenance of the Level of Care and Services (components of the care and services and physician availability per diems) to this Agreement.”

the whole as set out in section 6.2.5 and schedule F of exhibit P-2;

63. The Transfer Agreement also provides that the services to the Veterans shall be dispensed in the language of their choice as per section 6.2.11 thereof:

“6.2.11. Languages

Subject to the provisions of the *Charter of the French Language* (CQLR, chapter C-11) the AHSSS and the *Act to modify the organization, services and communications to Resident Veterans or to Eligible Veterans* will be provided by the Institution in French or in English, depending on the language of the Resident Veteran or the Eligible Veteran.”

the whole as it appears from exhibit P-2;

64. As per section 9 and schedule G of the Transfer Agreement, exhibit P-2, the Defendants created a Transition Committee in order to ensure a smooth transition of SAH to the Defendants MHSS and CIUSS, and more specifically to ensure that the level of care and services for Veterans would be maintained;

65. In short, it was to be a “seamless transition” as well as a “two-tier system”, as was stated in the VAC news release of May 30, 2016, entitled “The Government of Canada officially transfers Ste. Anne's Hospital to the Quebec health and social services network”:

*“It is important to both Veteran's Affairs Canada and the Government of Quebec that this transfer be as seamless as possible for Veterans and Employees”,*

the whole as it more fully appears from a copy of said press release, communicated in support thereof as **Exhibit P-10**;

66. This “seamless transition” was supposed to provide continuity in the care and services that the Veterans were receiving prior to the transfer with a minimum



amount of disruption to their environment, it being well documented that, for example, the stability of the personnel who provide the care and services is important to a Veteran's quality of life and paramount to the safety and well-being of Veterans with dementia;

67. Prior to the effective transfer date of April 1, 2016, the Defendants organized information meetings at SAH, to meet with the Veterans and their families, during which the Veterans and their families were assured by the representatives of the Defendants that the level of care they were receiving prior to the transfer would not change after the transfer and in fact, would remain the same;
68. These assurances were propagated to the Veterans even prior to the effective transfer date of April 1, 2016, by senior VAC officials, as can be seen from the letter of the honourable Kent Hehr, Minister of VAC, dated March 9, 2016, to Catherine Hooper, wife of a SAH Veteran wherein he declares:

“The Government of Canada will insure that eligible veteran will continue to have priority access to Ste Anne's Hospital and receive outstanding care and services in his or her preferred official language. Under no circumstances will we compromise the level of care provided to veterans who reside there.”

(emphasis added)

The whole as it more fully appears from a copy of said letter, communicated in support thereof as **Exhibit P-11**;

69. These assurances and pledges were repeated by Minister Hehr shortly after the transition in a letter to Mr. Solkin on October 12, 2016, where he states:

“As you know, a transition committee has been established to ensure that the Veterans at Ste. Anne's continue to receive the same high standard of care in their preferred official language, as stipulated by the Transfer Agreement.”

the whole as it more fully appears from a copy of the letter communicated in support thereof as **Exhibit P-12**;



70. In fact, as appears from Schedule "G" of the Transfer Agreement , exhibit P-2, the Transitions Committee's Mandate includes the specific obligation to "**Ensure that the level of care and services for Veterans is maintained, as stipulated in the Transfer Agreement**", yet despite these reiterated assurances, the Veterans of SAH have suffered and continue to suffer in an environment that no longer properly cares and/or supports them as it did prior to April 1, 2016;
71. As a matter of fact, it appears that the Transition Committee never developed a strategic plan to ensure a smooth transfer nor a plan to address the problems caused to the Veterans arising out of the transfer;
72. Furthermore, it appears that even though the Defendants were advised and informed of the problematic situation, they showed no desire or will to attempt to resolve the ongoing problems affecting the Veterans at SAH, the whole as further outlined hereinafter;
73. Mr. Solkin has, relentlessly, since at least 2015, voiced his concerns as well as those of his fellow Resident Veteran comrades at SAH, through his information newsletter "The Veteran's Voice", that the care and services they were receiving would decline and deteriorate following a transfer;
74. Again in June 2017, following a further letter of complaint from Mr. Solkin referring to the continuous deterioration of the care being provided, Minister Hehr reiterated the following:

"Rest assured that the well-being of the Vets at Ste. Anne's remains a priority for my department, and we will continue to monitor the quality of care provided to them."

the whole as it more fully appears from a copy of Mr.Solkin's letter and Minister Kent Hehr's response, communicated in support thereof en liasse as **Exhibit P-13**;

75. The Veterans' complaints were circulated amongst public officials in Ottawa as evidenced by the letter of Irene Mathyssen, M.P. for London-Fanshawe of August 3, 2017, which states:

“The clear message I have heard from Veterans at the Hospital is that there has been a decline in the quality of care Veterans are receiving and a diminished capacity of staff to communicate with Veterans in their chosen language.”

the whole as it more fully appears from a copy of the letter communicated as **Exhibit P-14**;

76. On January 2, 2018, some twenty-one (21) months after the transfer date and four (4) after receiving a letter from Mr. Solkin, the honourable Seamus O'Regan, the new Minister of VAC, replied to yet another e-mail from Mr. Solkin regarding the level of care being provided to his comrade Veterans at SAH, as follows:

“Veterans affairs Canada is committed to ensuring that those who qualify for the Department’s long-term care program receive the very best care, and we will keep working with the provincial health authorities to monitor the implementation of the provisions, conditions and obligations of the Ste. Anne’s Hospital Transfer Agreement.”

the whole as more fully appears from a copy of Mr.Solkin’s letter dated August 31, 2017 and Minister O’Regan’s response letter communicated en liasse as **Exhibit P-15**;

77. Mr.Solkin responded to Minister O’Regan’s letter (P-15) imploring him to take action on behalf of the Veterans at SAH, the whole as appears from the letter communicated in support thereof as **Exhibit P-16**;

78. Despite the foregoing promises, it is abundantly clear to Mr. Solkin, and the Veterans, that the Defendants are in breach of their respective obligations to maintain the same level of exceptional care and services that existed prior to the transfer, as was promised and guaranteed by the Transfer Agreement, exhibit P-2, the whole at the entire detriment of the Veterans at SAH;\*

### **C. The services promised**

79. In order to ensure that the level of care and services to the Veterans be maintained, the Transfer Agreement, exhibit P-2, provides that the federal government shall

pay to the provincial government a per diem in the amount of \$141.64 per Veteran (hereinafter referred to as “**Care and Services Per Diem**”) as well as an additional per diem in the amount of \$7.01 per Veteran (hereinafter referred to as “**Physician Availability Per Diem**”) in order to provide the attendance of a physician twenty-four (24) hours a day, seven (7) days a week at SAH, as it appears from the provisions of the Transfer Agreement, which stipulate:

#### “2.1. Definitions

For the purposes of this Agreement:

[...]

“Physician Availability Per Diem” means the amount established by CANADA and QUÉBEC to have general practitioners available at SAH 24 hours a day, 7 days a week, as provided for in paragraph 6.1.5 (b) of this Agreement;

“Care and Services Per Diem” means the amount established by CANADA and QUÉBEC to maintain the level of care and services for Resident Veterans, excluding those provided by general practitioners, as provided for in paragraph 6.1.5 (a) of this Agreement;

“User’s contribution” means the amount that represents the difference between the average amount of the contribution of a Quebec resident user in an institution which is part of Québec’s health and social services network and the average amount of the contribution of a Resident Veteran, representing the accommodation and meal fees, which amount is included in the care and services per diem as stipulated in paragraph 6.1.5 (a) of this Agreement;”

(emphasis added)

#### 6.1.5 Per diem

- a) [...] VAC will pay to CIUSSS the per diem monthly according to the number of beds at SAH occupied by Resident Veterans, which per diem amount will be indexed annually, based on the rate of increase at long-term care and residential centres;

- b) [...] VAC will pay to CIUSSS the per diem monthly for the attendance 24 hours a day, 7 days a week of a general practitioner at SAH, which per diem amount will be indexed annually on April 1st, based on the compensation paid to doctors in accordance with the agreement in effect between MHSS and the *Federation des medecins omnipraticiens du Québec.*”

the whole as it appears from exhibit P-2;

80. The Care and Services Per Diem as well as the Physician Availability Per Diem represent a monetary supplement specifically calculated by the Defendants to ensure that the necessary funds required to provide and maintain the same exceptional level of care due to the Veterans at SAH are available;
81. The determination of said per diems clearly demonstrates that the parties to the Transfer Agreement, exhibit P-2, evaluated on an objective basis the value of the care and services provided by the province, as well as the amounts needed to reach VAC's level of care and services that the Defendants have undertaken to provide to the Veterans;
82. The determination of said per diems further means that the Defendants have estimated and quantified the costs of the supplementary services to be rendered by CIUSSS on top of the provincial standards of care in order to meet VAC's standard within SAH, and that they have set a fair value to cover the costs of such supplementary care and services;
83. The Defendants have negotiated and agreed on said per diems amounts and have committed themselves to fulfill their obligations to the Veterans under the Transfer Agreement, exhibit P-2;
84. These obligations, for which the Defendants are responsible, are a well determined and clear obligation of result;

#### **IV. CAUSES OF ACTION**

##### **A. Failure of Defendants to maintain the Level of Care and Services following the Transfer of SAH**

85. As of the transfer on April 1, 2016, the Defendants, collectively, have not only failed miserably to maintain and provide the exceptional level of care and services to the Veterans that existed prior to the transfer, but they have also allowed those services to deteriorate to the point of endangering the health of the Veterans, their quality of life and personal dignity;
86. More specifically, since the transfer, the Defendants have failed to provide the services of competent, bilingual and regular properly trained personnel (nurses and orderlies) for the day-to-day services and care required by the Veterans, as they were provided Prior to April 1, 2016;
87. In fact, almost immediately after the transfer date of April 1, 2016, SAH faced an important exodus, where forty percent (40 %) of its staff resigned;
88. It appears that Defendants had never anticipated that outcome, and therefore had never elaborated an appropriate plan of action that would have prevented the negative impact of that exodus on the Veterans;
89. This exodus had an immediate and debilitating effect on the quality and quantity of care and services provided to the Veterans, resulting in less attentive individual care, mix-ups in medication and dosages, improper handling of patients in and out of their beds, poor or lack of proper hygiene (leaving Veterans in soiled diapers for extended periods of time) and failure to follow treatment protocols established for the maintenance of the Veteran's daily routine;
90. Furthermore, and notwithstanding the fact that the Transfer Agreement, exhibit P-2, explicitly provides that the Veterans shall receive services in the language of their choice (i.e. English for half of them or French) the Defendants have failed to staff the SAH with the appropriate personnel with the ability to perform their duties in both official languages;

91. In fact, the vast majority of new care and service providers, since April 1, 2016, have been unable or unwilling to communicate in English, making it extremely difficult if not impossible for them to communicate effectively with half of the Resident Veterans, thereby often putting them at risk due to their inability to properly understand each other;
92. It is important to understand that SAH used to be a true "*milieu de vie*" where Resident Veterans benefited from a sense of community, and where residents and staff were part of an institutional family, providing a stable and comfortable environment;
93. Resident Veterans at SAH used to benefit from dedicated, caring, well trained and well-paid personnel;
94. Since the transfer, SAH has been unable to recruit and retain new properly qualified and competent staff; there are often staff shortages, absenteeism, excessive staff rotation, inadequate supervision and excessive use of agency personnel who are detached and indifferent to the special needs of the Veterans, leaving them with a sense of loneliness and abandonment;
95. In addition, the staff that did remain after the transfer is often overworked, absent, or required to take sick leaves because of burn outs or stress and are also regularly obliged to do other tasks than what they would not normally do because the revolving agency personnel are unable or unwilling to do them, all of which contributes to the decline in the amount of effective care received by the Veteran's;
96. These changes were witnessed by Ms. Ghislaine Foisy, an outside contracting massage therapist who served at SAH for the past twenty-five (25) years, in an editorial letter she forwarded to Mr. Solkin in November 2017 in which Mrs. Foisy deplores the disappearance of quality services since the transfer of SAH, once a beautiful hospital offering professional and high-end services to Veterans, highly qualified and motivated staff whose priority was the patients' physical, mental and

spiritual well-being, the whole as it more fully appears from a copy of the editorial, communicated in support thereof as **Exhibit P-17**;

97. All of the foregoing problems have been experienced by Mr. Solkin personally as well as by the Veterans of SAH and have also been observed by their families on an ongoing basis since the Transfer;
98. The following events are clear examples of some of the undue difficulties which Mr. Solkin himself has experienced as a result of the decline and disappearance of the services:
  - a. Last year, Mr. Solkin, who requires the use of a permanent catheter, as he is susceptible to urinary tract infections (hereinafter referred to as a "UTI") if not properly monitored, developed a serious UTI because there was no doctor readily available on site at SAH and had to be urgently transported to the hospital by ambulance in order to be treated;
  - b. During the week of January 7, 2019, Mr. Solkin felt faint for several days and complained of discomfort. It was only on January 12<sup>th</sup> that he was seen by the visiting doctor who suggested that he might need a pacemaker, but finally simply prescribed that he have a Holter monitor installed to check his heart, which could not be done until the following Monday since no one was available to do it before.

As a result, early in the morning of January 14<sup>th</sup> Mr. Solkin had to be transported urgently by ambulance to the Glen Hospital, since his heart rate was at 24. As a result a pacemaker was installed on January 16<sup>th</sup> and he returned to SAH on January 17<sup>th</sup>.

On January 27, 2019, the undersigned attorneys wrote to one of CIUSSS's attorneys to denounce the incident and the fact that, as of the date of the letter, i.e. ten (10) days after Mr. Solkin was released from the hospital, no doctor from SAH had called him or come to see him to do a follow-up, the

whole as it more fully appears from a copy of the letter, communicated in support thereof as **Exhibit P-18**;

c. That notwithstanding the said letter P-16) it was only on February 3 , 2019 (some 17 days later) that the doctor at SAH came to check up on Mr.Solkin;

99. CIUSSS's only reaction to the foregoing letter was to indicate that the letter should have been directed to Martine Daigneault, Coordonnatrice des services d'hébergement of CIUSSS, the whole as it more fully appears from a copy of the answer, communicated in support thereof as **Exhibit P-19**;

100. The undersigned attorneys therefore forwarded the letter to Mrs. Daigneault who in turn replied "I refer you to our complaints office" (i.e. the general complaint office of the CIUSSS), the whole as it more fully appears from a copy of her email response communicated herewith as **Exhibit P-20**;

101. The foregoing example is a patent demonstration of the complete lack of respect and empathy that the Veterans have been shown since the transfer, and serves to illustrate the deplorable conditions in which they have been living;

102. The serious decline or disappearance of the care and services since the transfer of SAH from the federal to the provincial authorities is illustrated by, but not limited to, the following:

a) Prior to the transfer, Veterans benefited from the presence of one (1) doctor on the 11th floor, four and a half (4 ½) days per week, who covered two and a half (2 ½) floors and was available to appear on any floor on request.

Since the transfer, only one (1) doctor is present on the 11<sup>th</sup> floor, is paid for seven (7) hours per week and covers two (2) floors, and is available by telephone. One (1) doctor in the Pavilion is present twelve (12) hours per week. There is also one emergency doctor available 24hrs. for the entire hospital;

b) Prior to the transfer, Veterans benefited from the presence of one (1) head nurse and one (1) assistant head nurse on each floor, whereas since the transfer, there is only one (1) head nurse and two (2) assistant head nurses for three (3) floors;



- c) Prior to the transfer, nurses and orderlies at SAH were dedicated, caring, professional, proficiently bilingual who benefitted from full-time employment opportunities, whereas SAH's new nurses and orderlies lack the required long-term care institutional experience, are not bilingual, are unmotivated, and mostly work on a part-time basis. Furthermore, many orderlies lack any training for such basic and essential procedures as operating an electric wheelchair;
- d) Prior to the transfer, there was a replacement unit on site at SAH which provided replacement personnel from on-hand staff within SAH, in the event of absences or missing staff, whereas since the transfer, the replacement service has been relocated to another facility responsible for several institutions with the result that the replacement staff can be anyone from any another institution in the CIUSSS family or an outside agency who are often unqualified or untrained to deal with Veterans;
- e) Prior to the transfer, there was a medical supply store on site at SAH, whereas since the transfer, it was relocated to another facility to serve the entire CIUSSS which is comprised of approximately twenty (20) establishments;
- f) Prior to the transfer, equipment was sterilized at SAH, whereas after the transfer, since the spring 2018, it is now done off-site which results in delays for obtaining some basic everyday supplies;
- g) Prior to the transfer, laboratory clinic services were available on site at SAH from 7 a.m. to 3 p.m., whereas since the transfer, they are only available from 7 a.m. to noon which results in additional delays in getting tests done and obtaining results;
- h) Prior to the transfer, blood test analyses were conducted on site at SAH with results given the same day, whereas since the transfer, a technician draws the blood samples at SAH, which are then sent to outside labs for testing, resulting in longer delays to obtain results. This also applies to blood transfusions which are now outsourced;
- i) Prior to the transfer, there was one (1) urologist on site at SAH once per month, whereas since the transfer, he is only available once every three (3) months, which infrequency leads to disruptive situations such as the one experienced by Mr. Solkin as previously detailed, thereby putting him, as well as others, at risk;
- j) Since the transfer, the positions of staff who used to be available on site periodically at SAH have been left vacant and have not been replaced, so that the services of one (1) surgeon and (1) rheumatologist are no longer available;

- k) Prior to the transfer, there were two (2) radiologists available on site at SAH once every week, whereas since the transfer, there is only one (1) available once a month;
- l) Prior to the transfer, the services of two (2) dentists as well as laryngoscopy services were available on site at SAH, whereas since the transfer only one (1) dentist has been available for many months and laryngoscopy has only recently been restored;
- m) Prior to the transfer, cardiology services, pulmonology services, hematology services, and cystoscopy services were available on site at SAH, whereas since the transfer, they are no longer available on site and have been outsourced;
- n) Prior to the transfer, orthopedic services were available on site at SAH once per week, whereas since the transfer, they are only available one twice per month as needed;
- o) Prior to the transfer, basic X-rays and PPD/Tuberculosis tests were routinely given to every patient admitted to SAH, whereas since the transfer, it is no longer done;
- p) Prior to the transfer, wheelchair-cleaning services were provided by employee on site available at SAH on a regular schedule and as frequently as needed, whereas since the transfer, the service is only available once a year and the position has remained open, but not filled. This resulting in wheelchairs being extremely dirty and unhygienic;
- q) Prior to the transfer, snacks, which provided a treat for the Veterans, were available on site at SAH in a wide variety and ample quantity, whereas since the transfer, the variety and quantity has been reduced;

103. While some of the above listed items may seem benign from an outsider's point of view, their summation has an aggravated negative impact on the Veterans' quality of life and dignity as well as on the level of care and services they receive and it forces them to rely more heavily on their family members to make up for the lack of care and services;

#### **B. The Negative Impact on the Resident Veterans**

104. This ongoing decline and degradation in services has had and continues to have a direct and significant impact on the overall state of physical, mental and emotional health as well as on the day-to-day lives of the Veterans, the whole as it more fully

appears from a letter dated June 21, 2018, from Mr. Thomas McFarlane to Ms. Lynne McVey, communicated in support thereof as **Exhibit P-21**;

105. This is further evident amongst the large number of Veterans who suffer from dementia or other forms of cognitive impairment or disability, as they are disconnected and unable to communicate properly, rendering them more vulnerable and deprived;
106. Moreover, since the transfer in April 2016, these Veterans are often moved from their rooms to other rooms or units which causes them undue stress, agitation and anxiety which many of the new employees cannot properly deal with;
107. In certain acute cases these displacements can cause more severe trauma which can lead to depression, violent behaviour and even death;
108. The negative impact on these Veterans suffering from dementia was noted by the CIUSSS's own representative Stuart Rechnitzer in his report dated May 27, 2017, which was presented to the Transition Committee on June 9, 2017, the whole as it more fully appears from a copy of the report, communicated in support thereof as **Exhibit P-22**;
109. Furthermore, the quality of life of the Veterans is greatly impacted by the reduction in quantity, variety and quality of the food served and available at SAH. As food remains one of the few pleasures of life that they can still enjoy, the reductions since the transfer has had a significant impact on their happiness and well-being;
110. Moreover, the Veterans are left unattended and isolated for hours on end and are receiving substandard care when in fact they were promised the highest and exceptional standard of care, all of which has a deleterious effect on their already fragile health and welfare;
111. Veterans at SAH have endured more than mere unpleasantness and annoyances from the above listed shortcomings and from the Defendants' failure to fulfil their obligations and promises;

112. Veterans have suffered stress, tremendous inconveniences and prejudice due to the decrease in the level of care and services and the high turnover of care providers (nurses and orderlies) which, considering their vulnerability, advanced age, and varied physical, medical and mental state, causes undue anxiety and insecurity as well as a higher risk of medical and procedural errors;
113. Given their advanced age, fragile health, limited mobility and physical restrictions, the removal and/or outsourcing of the services that used to be provided on site at SAH have an ongoing negative effect on the health and well-being of those Veterans who have to go to outside facilities (as in the case of Mr. Solkin referred to herein) and have caused undue delays in receiving essential materials, care and services;
114. Despite their advanced age the Veterans are entitled to the respect of their personal integrity, safety, honour and dignity and should not simply be warehoused while the Defendants sit idly by waiting for them to pass on;
115. The impact on the Veterans has been acknowledged by the Defendants and their various representatives and personnel themselves, but yet without any resolution having occurred, as it appears from the various correspondences produced in support thereof;
116. An example of the ongoing nature of the serious shortfalls in the care and services to the Veterans can be seen from an e-mail sent by Stuart Rechnitzer, of the Office of the Service Quality and Complaints Commissioner of the CIUSSS to the director of the CIUSSS on January 30, 2018, wherein he states:

“J’ai encore reçu cette semaine plusieurs plaintes concernant l’instabilité et l’insuffisance des préposés auprès des bénéficiaires (PAB’S) et des infirmières à l’Hôpital Sainte Anne (HAS). J’avais déjà reçu plusieurs plaintes similaires récemment, de plusieurs unités HAS.

Selon les plaignants, la pénurie du personnel presque constante affecte la qualité des soins et services, au point d’affecter la qualité de vie et même la sécurité des résidents.

En plus, le personnel non régulier est moins formé, connaît moins les résidents, ce qui affecte aussi la qualité des soins et services.

Comme vous le savez déjà, ceci est un problème global et récurrent.

Je comprends que d'autres installations vivent des situations similaires, mais HSA est aussi lié par contrat avec Anciens Combattants Canada à continuer à offrir le niveau de service qui prévalait avant le transfert du fédéral à notre CIUSS.

De façon réaliste, quand prévoyez-vous pouvoir mettre en place des mesures d'amélioration pour minimiser la pénurie du personnel PAB et infirmier à HSA?"

(emphasis added)

the whole as it more fully appears from a copy of said email, communicated in support thereof as **Exhibit P-23**;

### **C. Lack of Transparency and Accountability of Defendants**

117. Given the decline in care and services as described herein above, Mr. Solkin began requesting from the principal representatives of VAC including Michel Doiron and Walter Natynczyk, VAC's deputy minister, information and details as to where and how the money VAC was paying to MHSS and CIUSSS was being spent or otherwise disposed of, the whole to no avail, the whole as appears from Mr. Solkin's e-mail dated May 23, 2018, communicated in support thereof as **Exhibit P-24**;
118. The VAC officials failed to respond to Mr. Solkin's requests;
119. As a result, on May 23, 2018, Mr. Solkin made a formal access to information request in order to obtain the following information:

"An accounting for the precise allocation and disposition of the many millions of Federal taxpayer dollars, being remitted by VAC to the Province of Quebec, in the form of per diem/per Veteran subsidy funds, specifically designed and intended to ensure the maintenance of the pre-existing level of care to all the Veterans at Ste. Anne's

Hospital, in accordance with the terms of the Transfer Agreement since April 1, 2016."

the whole as it more fully appears from a copy of VAC's letter acknowledging receipt of the said request, communicated in support thereof as **Exhibit P-25**;

120. On June 20, 2018, Mr. Solkin received a reply to his request which stated in part that since the date of the transfer on April 1, 2016, until March 31, 2018, VAC had remitted to the provincial government an amount of **\$ 27,083,664.00**, the complete response being as follows:

"Between the dates of April 1, 2016, and March 31, 2018, VAC has remitted **\$27,083,664.00** in order to cover the care and services per diem and also the doctor's per diem, according to the transfer agreement. The current per diem per Veteran resident is **\$151.90**. Specific information on how this funding is being allocated should be directed to the Province of Quebec."

(emphasis added)

the whole as it more fully appears from a copy of VAC's response communicated in support thereof as **Exhibit P-26**;

121. At the date of the present application, the amount has increased to over \$35,000,000.00;
122. Mr. Solkin was also told that this money is remitted by VAC directly to CIUSSS;
123. The aforementioned response and lack of accountability from VAC demonstrates the gross indifference, blatant disregard and failure of VAC to ensure the proper use of these funds by the provincial health authorities in order to provide the exceptional level of care and services due to the Veterans at SAH, the whole in clear violation of their obligations of result under the Transfer Agreement, exhibit P-2;

124. It seems evident that the Defendants are not disposed to providing any details on the disposition of the sums paid by VAC;
125. It seems reasonable to assume that, the per diem allocations provided in the Transfer Agreement, exhibit P-2, although paid to CIUSSS and/or MHSS from VAC, have not been affected to the purposes intended;
126. Which raises the question of the whereabouts of the money, since it certainly wasn't used for the benefit of the Veterans for whom it was destined and intended, as is evidenced by the sharp decline and/or disappearance of services and care to the Veterans, all of which is to the detriment of the Veterans;

#### **V. LIABILITY OF DEFENDANTS**

##### **A. Do the Defendants Attorney general of Quebec and the CIUSSS have contractual obligations towards the Class Members under the Transfer Agreement and if so, which ones and is there a breach of such obligations?**

127. The Defendants, AGQ, MHSS and CIUSSS, have failed to fulfill their contractual obligations under the Transfer Agreement, exhibit P-2, by failing to:
  - a) Ensure that the transfer from VAC to the provincial authorities is a "seamless transition";
  - b) Ensure that the Veterans continue to receive the same exceptional level of care and services on a priority basis after the transition date of April 1, 2016, as before;
  - c) Ensure that the per diem supplements of money remitted by VAC are properly and effectively affected to provide the exceptional level of care owed to the Veterans in the language of their choice;
  - d) Act diligently and properly to respect the personal safety, dignity and quality of life of all Veterans;



128. MHSS and CIUSSS are in clear violation of their contractual obligations of result towards the Veterans at SAH as set out in the Transfer Agreement (P-2) and are therefore liable to compensate them for the contractual damages they have suffered and which are equivalent to the per diem amounts provided for the said care and services, including the Physician Availability, which the Veterans have not received;
129. More specifically, MHSS and CIUSSS have failed to maintain and provide the scope, quantity and exceptional level of care and services the Veterans are entitled to and have allowed those services to decline to the point of outright neglect, putting the lives of the Veterans in danger, shortening their lives and depriving them of the respect and dignity that they deserve, which includes the right to die with dignity;
130. The Veterans, as end beneficiaries of these per diem amounts, are fully entitled to claim them directly from MHSS and CIUSSS;

**B. Does the Defendant Attorney General of Canada have any extra-contractual obligations towards the Class Members and if so, which ones and is there a breach of such obligations? Fiduciary obligation and extra-contractual responsibility of Defendant AGC and VAC**

131. Regardless of the transfer to MHSS and CIUSSS, Vac remains responsible for the Veterans of SAH since it has not delegated its legislative and regulatory authority, as stated in the Transfer Agreement, exhibit P-2, which reads:

6.1.7. Obligations with Respect to Veterans

a) In spite of the transfer of the management, administration and maintenance of SAH, CANADA will retain, after the Transfer Date, legislative and regulatory authority with respect to veterans and will continue to fulfill the functions that are incumbent on the federal government, in particular the Department of Veterans Affairs with



respect to veterans through the application of the *Department of Veterans Affairs Act*. [...]

b) This Agreement, any agreement referred to herein or any other document that may be necessary or desirable to accomplish the operation that is the subject hereof neither constitutes nor shall be deemed to constitute a delegation of authority or functions from CANADA to QUÉBEC and shall not be interpreted as such.

(emphasis added)

132. The Act specifically stipulates VAC's responsibility towards the Veterans as follows:

4. The powers, duties and functions of the Minister extend and apply to
  - (a) the administration of such Acts of Parliament, and of such orders of the Governor in Council, as are not by law assigned to any other department of the Government of Canada or any Minister thereof, relating to
    - (i) the care, treatment or re-establishment in civil life of any person who served in the Canadian Forces or merchant navy or in the naval, army or air forces or merchant navies of Her Majesty, of any person who has otherwise engaged in pursuits relating to war, and of any other person designated by the Governor in Council, and
    - (ii) the care of the dependants or survivors of any person referred to in subparagraph (i); and

- (b) all such other matters and such boards and other bodies, subjects, services and properties of the Crown as may be designated, or assigned to the Minister, by the Governor in Council.
- 5 The powers, duties and functions of the Minister extend and apply to
- [...]
- (c) respecting the care, treatment or other benefits to be provided or that the Minister will pay for in whole or in part, the circumstances in which the Minister will pay in whole or in part and the circumstances in which the Minister may cease to pay in whole or in part;
- [...]
- (g) for furnishing persons with the following benefits:
    - (ii) the treatment of persons classified as wholly incurable, or chronically recurrent cases needing institutional care;

the whole as it more fully appears from a copy of the Act, communicated in support thereof as **Exhibit P-27**;

131. VAC is bound to a fiduciary duty towards the Veterans as confirmed and specifically stated in the Transfer Agreement (P-2) and at law, which it has failed to meet, thereby engaging its liability along with the other co-Defendants;
132. In fact, VAC's fiduciary duty and obligation stem from the following:
- a) VAC undertook to assume the responsibility to act in the best interests of the Veterans at SAH, by maintaining authority and control over the Veterans, as indicated in section 6.1.7 of the Transfer Agreement, exhibit P-2;
  - b) the Veterans at SAH, subject to the Transfer Agreement, exhibit P-2, are a specific, defined and privileged group towards which VAC has committed itself

to protect and provide an exceptional level of care and services, distinct from the public in general;

c) the Veterans are extremely vulnerable given their advanced age, loss of autonomy and need for long-term care, to the exercise by VAC of its discretionary power which has a direct effect on the Veterans' legal entitlement to the care and services to be provided in accordance with the Transfer agreement (P-2);

133. In all respects, VAC has repeatedly and voluntarily undertaken to act in the best interests of the Veterans by ensuring that they are provided exceptional care and services on a priority basis in recognition of the sacrifices they made and the service rendered to the country;

134. The vulnerability of the Veterans vis-à-vis VAC is evident;

135. VAC has previously acknowledged that it has a fiduciary duty and obligation towards veterans, which obligation was recognized by the courts;

136. VAC has a clear responsibility to protect the Veterans, which it has failed to do, and therefore VAC is liable to pay damages to the Veterans for the prejudices they have incurred;

137. In addition, VAC has failed to ensure that the MHSS and CIUSSS respect their obligations and comply with the Transfer Agreement, exhibit P-2, when it has in fact retained the authority and control to do so under said Agreement;

138. Furthermore, VAC has acted irresponsibly and with gross negligence by failing to account for or have the MHSS and/or CIUSSS account for the allocation and use of the millions of dollars VAC has paid to them since April 1, 2016, all to the direct detriment of the Veterans;

**C. If there is a breach under questions a) or b), did such breach cause the Class Members, or any of them, damages and if so, what kind and to what extent?**

**i) Per Diem Damages**

139. As a direct result of the defaults and breaches by Defendants of their contractual as well as their extra-contractual and fiduciary obligations, Mr. Solkin, the Veterans as Class Members, or as the case may be, their heirs or representatives, being the end beneficiaries of the per diem payments set out in the Transfer Agreement, exhibit P-2, are entitled to receive the following amounts:

a) the amount of \$151.90 each, *sauf à parfaire*, per day since April 1, 2016, or since their respective dates of arrival at SAH, in damages for the care and services as well as the Physician Availability service they were deprived of, and this up until the date at which all the services due to the Veterans shall be re-established to the exceptional level to which they are entitled or until the date of their passing;

**ii) Moral Damages**

140. The Class Members are also entitled to claim moral damages in the amount of \$120.00 each per day since April 1, 2016, or since their respective dates of arrival at SAH;

141. There are currently approximately 139 Veterans living at SAH, a large number of whom are represented by their children or family members given their mental and physical incapacity or limitations, many of these family members having complained of the indignity which they have witnessed at SAH while attending to their spouse, parents or relatives who are Resident Veterans;

142. The Veterans are elderly, in poor health and vulnerable, and therefore unlikely to voice their complaints by fear of retribution by the personnel, representatives and executives of SAH and/or the CIUSSS;

143. The Veterans are in varying physical and mental states, which affect their degree of independence and render them extremely vulnerable, insecure and dependant, to varying degrees, on the people who look after them;
144. The Veterans are extremely proud and honourable individuals who deserve to be treated with dignity and utmost respect;
145. The decline in the services that the Veterans are receiving and the prejudices caused to them as a result of uncaring, careless and untrained or unqualified workers has stripped them of their honour and dignity, leaving the Veterans to believe that they have been neglected and marginalized, or as Mr. Solkin stated in a recent news report on TV, "*the government (VAC) went from a culture of we care to a culture of we don't care*";
146. These violations by the Defendants are inexcusable especially considering the repeated promises and undertakings made to the Veterans in relation to the transfer of SAH and in light of their service to the country;

**D. Are the Defendants jointly and severally responsible to pay damages to the Class Members, or any of them?**

147. In light of the foregoing allegations, the Defendants are jointly and severally directly liable to pay damages to the Class members as a result of the following:
  - a) The Defendants breached their contractual and extra-contractual obligations to maintain the level of care and services provided to the Veterans residing at SAH prior to the transfer, under the terms of the Transfer Agreement, exhibit P-2, since April 1, 2016;
  - b) The Defendants are bound to an obligation of result in delivering the level of care and services provided for in the Transfer Agreement, exhibit P-2, and have failed miserably to meet this obligation of result;
  - c) VAC failed to fulfil its fiduciary duty towards the Veterans;

d) VAC has engaged its extra-contractual liability towards the Veterans by failing to ensure that the MHSS and the CIUSSS fulfill their obligations towards the Veterans as set out in the Transfer Agreement, exhibit P-2, VAC having never renounced its legislative or regulatory authority to do so under the Transfer Agreement;

**E. Have the Defendants breached the Class Members rights to dignity and honour protected by the Québec Charter of Human Rights and Freedoms or the rights to life, liberty and security protected by the Canadian Charter of Rights and Freedoms? If so, are the Class Members, or any of them, entitled to damages as a result, of what kind and to what extent?;**

**iii) Punitive Damages**

148. The Defendants have unlawfully and intentionally breached the Veteran's rights to life, liberty and security protected by the Canadian Charter of Rights and Freedoms;

149. As such, the Veterans are entitled to claim punitive damages, for the prejudice suffered due to the Defendants' failure to safeguard their dignity and honour as provided in sections 1 and 4 of the *Québec Charter of Human Rights and Freedoms* and due to the Defendants' failure to safeguard their right to life, liberty and security of their person and the right not to be deprived thereof as provided in section 7 of the *Canadian Charter of Rights and Freedoms*;

150. As such, Mr. Solkin and the Veterans/Class Members are entitled to claim punitive damages for the unlawful and wilful acts and neglect of the Defendants as evidenced by the following:

a) Having allowed manifestly unreasonable delays to have elapsed since April 1, 2016, without being able to deliver the required and promised level of services to the Veterans while knowing full well that the longer the delays the more Veterans will suffer from neglect and eventually die as a result;

- b) The Defendants' total failure to compensate the Veterans in the absence of being able to provide the care and services they are obliged to provide, especially given the fact that the Defendants have been aware since at least 1998 of the particular situation, shortfalls and difficulties regarding the transfer of care and services of Veterans from federal to provincial responsibility and the effect it has on the Veterans safety, health and welfare;
- c) The fact that the Defendants knew or could not ignore their responsibility to maintain the level of care and services provided to the Veterans and nevertheless refused or neglected to abide by this obligation;
- d) They have intentionally chosen to turn a blind eye to the allocation of the millions of dollars paid by VAC to MHSS and CIUSSS, knowing that the Veterans were not receiving the level of exceptional care and services which they are entitled to receive under the Transfer Agreement, exhibit P-2;
- e) The MHSS and/or CIUSSS have deliberately failed to give suit to their obligations to provide the necessary, qualified personnel to care for the Veterans at SAH, while knowing the immediate and natural or extremely probable consequences would result from such failure, the whole in flagrant contradiction of the teachings of the Supreme Court of Canada;

151. As such, the Veterans are entitled to claim punitive damages in the amount of 100,00\$ per week, per Veteran, since April 1, 2016, or a prorated portion of that amount until the date of their passing, for the prejudice suffered due to the Defendants' failure to safeguard their dignity and honour as provided in sections 1 and 4 of the *Québec Charter of Human Rights and Freedoms* and due to the Defendants' failure to safeguard their right to life, liberty and security of their person and the right not to be deprived thereof as provided in section 7 of the *Canadian Charter of Rights and Freedoms*;

152. As a result of the foregoing Mr. Solkin is entitled to claim for his benefit the amount of :

- a) the amount of \$151.90, *sauf à parfaire*, per day since April 1, 2016, in damages for the care and services as well as for the Physician Availability service he was deprived of , and this up until the date at which all the said services due to the Veterans shall be re-established to the exceptional level to which they are entitled or until the date of his passing;
- b) the amount \$120.00 per day since April 1, 2016, for moral damages;
- c) the amount of \$100.00 per week, since April 1, 2016, until the date of his passing for punitive damages;

153. Mr. Solkin is also entitled to claim for each member of the Class the following amounts:

- a) the amount of \$151.90 each, *sauf à parfaire*, per day since April 1, 2016, or since their respective dates of arrival at SAH, in damages for the care and services as well as for the Physician Availability service they were deprived of , and this up until the date at which all the services due to the Veterans shall be re-established to the exceptional level to which they are entitled or until the date of their passing;
- b) the amount of \$120.00 per day for each Class Member for moral damages since April 1, 2016, or since their respective dates of arrival at SAH;
- c) the amount of 100,00\$ per week, per Veteran, since April 1, 2016, or a prorated portion of that amount until the date of their passing for punitive damages

154. Mr. Solkin further requests the preservation of his rights and those of the Class to claim for future damages stemming for Defendants actions, as the judgment to be rendered is unlikely to put an end to the plight of Mr. Solkin and the members of the Class;



155. In summary, Mr. Solkin proposes to answer Mr. Justice Bisson's questions as follows:

- a) Do the Defendants Attorney general of Quebec and the CIUSSS have contractual obligations towards the Class Members under the Transfer Agreement and if so, which ones and is there a breach of such obligations?
  - o Yes, in virtue of the Transfer Agreement, exhibit P-2
- b) Does the Defendant Attorney General of Canada have any extra-contractual obligations towards the Class Members and if so, which ones and is there a breach of such obligations?
  - o Yes, in virtue of its fiduciary obligation to ensure that the Transfer Agreement is respected and the Veterans are cared for as they should and as the AGC promised they would;
- c) If there is a breach under questions a) or b), did such breach cause the Class Members, or any of them, damages and if so, what kind and to what extent?
  - o Yes, the Class members have suffered and continue to suffer numerous damages, prejudices and indignities;
- d) Are the Defendants jointly and severally responsible to pay damages to the Class Members, or any of them?
  - o Yes, to all Class members as compensation for the breach of their respective obligations to the Veterans;
- e) Have the Defendants breached the Class Members rights to dignity and honour protected by the Québec Charter of Human Rights and Freedoms or the rights to life, liberty and security protected by the Canadian Charter of Rights and Freedoms? If so, are the Class

Members, or any of them, entitled to damages as a result, of what kind and to what extent?

- o Yes, in light of articles 1 and 4 of the Québec Charter of Human Rights and Freedoms and 7 of the Canadian Charter of Rights and Freedoms and as a result of their intentional behaviour;

156. The whole cause of action has arisen in the district of Montreal.

**WHEREFORE THE PLAINTIFF PRAYS THAT BY JUDGMENT TO BE RENDERED HEREIN:**

**GRANT** the present Originating Application for Class Action;

**DECLARE** the Defendants in breach of their contractual and extra-contractual obligations under the Transfer Agreement signed in April 2015 and under the law with regard to the Veterans at SAH;

**DECLARE** the Defendants bound to an obligation of result in delivering the level of care and services provided for in the Transfer Agreement and that they have failed to meet said obligation;

**CONDEMN** the Defendants jointly and severally to pay to each Class Member the amount of \$151.90, *sauf à parfaire*, per day for each day she/he has resided at SAH from April 1, 2016, or such other date of arrival thereafter, as per the Care and Services per diem allocation as well as the Physician Availability Service per diem allocation attributed under the Transfer Agreement;

**ORDER** that said amounts be paid to the Class Members until the date at which all the services due to the Veterans shall be re-established to the exceptional level to which they are entitled or until the date of their passing;

**DECLARE** that the nature of the breach by the Defendants and the effect it has had on the safety, dignity, and quality of life of the Class Members allows for the allocation of moral damages;

**CONDEMN** the Defendants jointly and severally to pay to each Class Member moral damages in the amount of \$120.00 per day for each day she/he has resided at SAH from April 1, 2016, or such other date of arrival thereafter;

**CONDEMN** the Defendants jointly and severally to pay to each Class Member punitive damages in the amount of \$100,00 per week as of April 1, 2016, or a prorated portion of that amount until the date of their passing;

**ASSESS** the quantum of damages to which the Class Members are entitled to on a collective basis and **CONDEMN** the Defendants to pay such amounts on a collective basis, or alternatively;

**DECLARE** that the monies to be paid, as well as the damages suffered by the Class Members, were suffered on an individual basis and **ORDER** the Defendants to pay such damages on an individual basis;

**CONDEMN** the Defendants to pay Mr. Solkin and the Class members the above-mentioned sums with interest thereon at the legal rate as well as the additional indemnity provided for in article 1619 C.C.Q.;

**THE WHOLE** with legal costs including the cost of notices, experts, expert reports and attendance fees of the experts to present these reports in Court.

Montréal, April 8, 2019



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

**Filing of a judicial application**

Take notice that the Petitioner has filed this *Originating Application for Class Action* in the office of the Superior court of Quebec in the judicial district of Montreal.

**Defendants' answer**

You must answer the application in writing, personally or through a lawyer, at the **Courthouse of Montreal** situated at 1, rue Notre-Dame Est, Montreal, Quebec, 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 Petitioner 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 Petitioner.

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 originating application, the Petitioner intends to use the following exhibits:

- **EXHIBIT P-1:** Judgment of the Honourable Mr. Justice Donald Bisson dated February 20, 2019
- **EXHIBIT P-2:** Transfer agreement ;
- **EXHIBIT P-3:** The Sainte-Anne's Hospital site plan;
- **EXHIBIT P-4:** Media Coverage, namely five (5) articles;
- **EXHIBIT P-5:** The Directive letter dated March 3, 2016;
- **EXHIBIT P-6:** The Rental increase notice dated July 24, 2018;
- **EXHIBIT P-7:** Senate Subcommittee First report dated March 1998;
- **EXHIBIT P-8:** Senate Subcommittee Second report dated February 1999;
- **EXHIBIT P-9:** News Release of Statement of the Honourable Steven Blainey dated April 27, 2012;
- **EXHIBIT P-10:** VAC press release dated May 30, 2016;
- **EXHIBIT P-11:** Letter of the Honourable Kent Hehr to Catherine Hooper dated March 9, 2016;
- **EXHIBIT P-12:** Letter of the Honourable Kent Hehr to Wolf Solkin dated October 12, 2016;
- **EXHIBIT P-13:** Letter of Mr. Solkin dated June 15, 2017 and letter of the Honourable Kent Hehr dated June 7, 2017;
- **EXHIBIT P-14:** Letter of Irene Mathysen for London-Fanshawe dated August 3, 2017;
- **EXHIBIT P-15:** Letter of the Honourable Seamus O'Regan dated January 22, 2018;
- **EXHIBIT P-16:** Letter of Wolfin Solkin to Seamus O'Regan dated January 27, 2018;
- **EXHIBIT P-17:** The editorial of Mrs Ghislaine Foisy;
- **EXHIBIT P-18:** Letter to Me Rainville dated January 27, 2019;
- **EXHIBIT P-19:** E-mail from Me Rainville dated February 13, 2019;
- **EXHIBIT P-20:** E-mail from Martine Daigneault dated March 15, 2019;

- **EXHIBIT P-21:** Email dated June 21, 2018 from Mr. Thomas McFarlane to Ms. Lynne McVey;
- **EXHIBIT P-22:** Report dated May 27, 2017;
- **EXHIBIT P-23:** E-mail sent by Stuart Rechnitzer dated January 30, 2018;
- **EXHIBIT P-24:** E-mail of Wolf Solkin to Michel Doir on dated May 23, 2018;
- **EXHIBIT P-25:** VAC'S letter acknowledging receipt of the Mr. Solkin formal access to information request;
- **EXHIBIT P-26:** VAC's letter of reply dated June 20, 2018;
- **EXHIBIT P-27:** Department of Veteran's Affairs Act;

These exhibits are available on 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.