

Court File No. T-724-19

**FEDERAL COURT**

**BETWEEN:**

**SHAUN WILLIAM ARNTSEN, MICHAEL GRANT RUDE and MARTIN LEPINE**

**PLAINTIFFS**

**and**

**HER MAJESTY THE QUEEN IN RIGHT OF CANADA**

**DEFENDANT**

**STATEMENT OF CLAIM**

**TO THE DEFENDANT**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiffs. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a solicitor acting for you are required to prepare a statement of defence in Form 171B prescribed by the Federal Courts Rules serve it on the plaintiffs' solicitor or, where the plaintiffs do not have a solicitor, serve it on the plaintiffs, and file it, with proof of service, at a local office of this Court, WITHIN 30 DAYS after this statement of claim is served on you, if you are served within Canada.

If you are served in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period for serving and filing your statement of defence is sixty days.

Copies of the Federal Court Rules information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO DEFEND THIS PROCEEDING, judgment may be given against you in your absence and without further notice to you.

DATE: MAY 01 2019

ISSUED BY: 

(Registry Officer)

**Charlene Cho  
Registry Officer  
Agent du greffe**



Address of local office: 180 Queen Street West  
Suite 200  
Toronto, ON M5V 3L6

TO: HER MAJESTY THE QUEEN IN RIGHT OF CANADA  
Ontario Regional Office  
Department of Justice Canada  
120 Adelaide Street West  
Suite #400  
Toronto, Ontario M5H 1T1

## RELIEF SOUGHT

1. The Plaintiffs each claim:
  - a. a Declaration that the Defendant, Her Majesty the Queen in Right of Canada, owed and was in breach of statutory and common law duties to the Plaintiffs;
  - b. a Declaration that the Defendant is liable to the Plaintiffs for the damages caused by its breach of statutory and common law duties;
  - c. general and aggravated damages arising from the Defendant's breach of statutory and common law duties in the amount of \$380,000.00;
  - d. a Declaration that the Defendant has breached the Plaintiffs' s. 7 rights under the *Canadian Charter of Rights and Freedoms* ("Charter");
  - e. damages for violation of the Plaintiffs' *Charter* rights pursuant to s. 24(1) of the *Charter* in the amount of \$5,000,000.00;
  - f. special damages in an amount to be determined, including future and anticipated medical and out of pocket expenses;
  - g. punitive and/or exemplary damages in the amount of \$5,000,000.00;
  - h. prejudgment and post-judgment interest;
  - i. the costs of this action, including HST and other taxes as applicable, on a substantial indemnity basis; and
  - j. such further and other relief as this Honourable Court may deem just.

## OVERVIEW

2. From 1992 to 2017, the Canadian Armed Forces and the Department of National Defence ordered thousands of members of the Canadian Armed Forces ("CAF Members") to take the anti-malarial drug Mefloquine before and while being deployed to malaria-endemic regions.
3. Mefloquine is a potent psychotropic anti-malarial drug that can cause severe and potentially permanent neurological and psychological health harms. The drug manufacturer warns that Mefloquine can cause prolonged and sometimes permanent severe

mental problems including anxiety, paranoia, depression, hallucinations, suicidal thoughts, and mood disorders, and severe nervous system problems including dizziness, vertigo, issues with balance, tinnitus, seizures and insomnia.

4. The consequences of the Government of Canada's decision to force its military personnel to take Mefloquine has been disastrous. The Government of Canada sent CAF Members to active combat zones while suffering from Mefloquine-induced psychosis, rages, paranoia, and hallucinations that at times made it impossible to separate reality from fantasy. CAF Members' Mefloquine-induced mental health issues were compounded by other combat-related mental health issues including post-traumatic stress disorder.
5. The Government of Canada continued to force CAF Members to take Mefloquine on pain of court martial even after CAF Members reported severe adverse reactions in spite of the drug manufacturer's warning that anyone experiencing adverse reactions must immediately cease taking the drug.
6. Hundreds of CAF Members have returned home with long term and in many cases permanent disabilities caused by Mefloquine that have ruined marriages, families, job prospects and lives. CAF Members describe suffering debilitating mood issues, aggression, bouts of explosive anger, violent behavior, night terrors, panic attacks, anxiety, paranoia, hallucinations, suicidal thoughts, psychotic behavior, memory loss, depression, convulsions and more. Tragically, Mefloquine toxicity has been a major factor in the suicide crisis currently plaguing military veterans and their families.
7. The above harms were entirely avoidable. The Government of Canada always had alternative anti-malarial drugs available to it that posed none of the severe neurological or psychological health risks of Mefloquine.
8. This lawsuit is one of several brought by hundreds of current and former CAF Members against the Government of Canada for harms caused by being forced to take Mefloquine.

## THE PARTIES

### *The Defendant*

9. The Defendant is Her Majesty the Queen in Right of Canada (the “Government” or “Canada”). The Department of National Defence (“DND”) and the Canadian Armed Forces (“CAF”) are the departments in the Government of Canada that are responsible for implementing government decisions concerning the operation and management of the Canadian military.

### *The Plaintiffs*

10. The Plaintiffs are all members or former members of the Canadian Armed Forces who were ordered to take the anti-malarial drug Mefloquine, and who have suffered serious harms as a result.

### *Nature of relationship between Canada and the Plaintiffs*

11. CAF Members are in a uniquely dependent and vulnerable relationship with the CAF and DND. CAF and DND have an extraordinarily high level of control over the lives of CAF Members. When CAF Members enroll in the military, they are subject to its hierarchical and authoritarian culture and command structure until such time as they are discharged. CAF Members are by law required to obey all lawful commands and orders of a superior officer on pain of court martial. Section 126 of the *National Defence Act* specifically requires CAF Members to obey all orders to submit to inoculation, vaccination and other medical treatments against infectious diseases; failure to follow such orders is punishable by up to two years imprisonment.

## BACKGROUND

### *Mefloquine*

12. Mefloquine, sometimes sold under the brand name Lariam, is a potent psychotropic anti-malarial drug that can cause severe and potentially permanent neurological and psychological health harms.
13. The manufacturer of Mefloquine has long recognized the health risks posed by Mefloquine, including the potential for long-lasting adverse neurological and psychological events that

can last for years after stopping the medication. The manufacturer of the drug currently provides the following Health Canada-mandated warning regarding the potential for serious negative side effects on its product information sheet:

- **MEFLOQUINE can cause serious mental problems in some people.** These serious side effects may occur suddenly and may last for months to years after stopping MEFLOQUINE. Symptoms of serious mental problems may include:
  - anxiety
  - unreasonable feeling that people are trying to harm you, do not like you, etc. (Paranoia)
  - depression
  - seeing or hearing things that are not there (hallucinations)
  - thought of suicide or harming yourself
  - feeling restless
  - feeling confused
  - unusual behavior
- **MEFLOQUINE can cause serious nervous system problems in some people.** Symptoms of serious nervous system problems may include:
  - dizziness
  - a feeling that you or things around you are moving or spinning (vertigo)
  - loss of balance
  - ringing sound in your ears (tinnitus)
  - convulsions (seizures) in people who already have seizures (epilepsy)
  - unable to sleep (insomnia)
- These serious mental and nervous system side effects may occur at any time while you are taking MEFLOQUINE, may last for months or years after stopping MEFLOQUINE, and in some cases may become permanent in some people.

14. The drug manufacturer also clearly states that Mefloquine must not be used by anyone who have currently, or in the past, suffered from any mental health illness that affects mood, thinking and behavior such as depression, anxiety, psychosis, or schizophrenia.
15. The drug manufacturer also clearly states that individuals who suffer any of the following symptoms after taking Mefloquine must stop taking the drug and get immediate medical help:
  - a. mental problems, including anxiety, depression, paranoia, hallucinations, feeling restless, confused or disoriented, unusual behavior or changes to mood;
  - b. nervous system changes, including dizziness, spinning, ringing in the ears, loss of balance, seizures or convulsions; or
  - c. issues with nerves, including prickling or tingling sensations, numbness and loss of an ability to feel pain or changes in temperature, a burning or sharp pain, loss of balance

or co-ordination, feeling pain from a very light touch, and muscle weakness or paralysis.

16. The drug manufacturer also warns that Mefloquine can negatively interact with alcohol and consuming alcohol while on Mefloquine, which increases the risk of experiencing mental problems.
17. Because of the risk of the above serious adverse effects, Mefloquine should only be prescribed after a qualified health care professional conducts an individual risk assessment.

### ***The use of Mefloquine in the Canadian Armed Forces***

18. Mefloquine was developed in a US military research facility in the 1970s. By the early 1990s, Mefloquine was the anti-malarial drug of choice for the Canadian military.
19. The drug was first issued to CAF Members during the 1992-1993 mission to Somalia. At the time, Mefloquine was not licenced in Canada, and the drug was given to CAF Members as part of a botched clinical trial, in which CAF failed to implement or follow proper protocols for clinical trials, and failed to obtain informed consent from CAF Members.
20. Throughout the 1990s and continuing until 2003, over 90% of CAF Members who were deployed in regions where there was a risk of contracting malaria were ordered to take Mefloquine. Between 2004 and 2009, the rate of prescription of Mefloquine to CAF Members serving in malarial regions was approximately 50%. By 2016, that number dropped to less than 2%. In June 2017, DND announced that Mefloquine would no longer be prescribed unless either a CAF Member requests it, or as a last resort if it is not possible to prescribe other anti-malarial drugs because of contraindications.
21. From its initial use in 1992, the CAF ordered CAF Members to take Mefloquine in a number of deployments around the world including to Somalia, Cambodia, Mozambique, Papua New Guinea, Central African Republic, Western Sahara, Rwanda, Angola, Ethiopia, Eritrea, Sierra Leone, Democratic Republic of Congo, East Timor and Afghanistan. In total, CAF ordered approximately 18,000 CAF Members to take Mefloquine.

***CAF Members ordered to take Mefloquine without screening and despite reports of side effects***

22. Despite the fact that the Government knew that individuals at risk or with a history of psychological disorders should not take Mefloquine, CAF did not conduct any individualized screening of CAF Members before requiring them to take Mefloquine. As a result, many of the CAF Members who the Defendant ordered to take Mefloquine had a history of anxiety, depression or post-traumatic stress disorder (“PTSD”).
23. Despite the fact that the Government knew that CAF Members should immediately stop taking Mefloquine if they suffered any of a number of neurological, psychiatric or neuropathic symptoms, the Government did not have in place any mechanism for reporting of or screening for such symptoms. On the contrary, even in instances where CAF Members reported symptoms, these reports were ignored, and the CAF Members in question were ordered to continue taking Mefloquine. In a particularly high profile instance, Lieutenant-General Romeo Dallaire (Ret’d) reported to DND headquarters that he was suffering from side effects from Mefloquine including issues with memory and thought process. In spite of this report, Lieutenant-General Dallaire was ordered to continue to take the drug, and told if he did not he would be court martialed.
24. Throughout, CAF and DND failed to keep records of reports of adverse reactions or side effects resulting from Mefloquine made by CAF Members.

***CAF Members suffer serious side effects and problems***

25. CAF Members who were forced by the Government to take Mefloquine have reported serious neurological and psychiatric side effects caused by Mefloquine including debilitating mood issues, aggression, bouts of explosive anger, violent behavior, night terrors, panic attacks, anxiety, paranoia, hallucinations, suicidal thoughts, psychotic behavior, memory loss, depression, convulsions, dizziness, vertigo, tinnitus, loss of balance and more.
26. The neurological and psychiatric side effects caused by Mefloquine have had catastrophic impacts on the lives of hundreds of CAF Members and their families. The neurological and psychiatric damage done by Mefloquine has lead to suicide, ruined marriages, lost jobs, homes and families, permanent disability, and ruined lives.



### ***Continued denial of problem by the Government***

27. Throughout the relevant period, and up to the present time, the Government has and continues to, on both an individual and systemic level, wilfully deny and conceal the risks posed by Mefloquine to CAF Members. This willful concealment includes, but is not limited to the following:
- a. DND and CAF has consistently denied any risk posed by Mefloquine to CAF Members.
  - b. The Government prematurely shut down the Commission of Inquiry into the Deployment of Canadian Forces to Somalia prior to it being able to consider Mefloquine.
  - c. In 1999, representatives of the Government testified at the House of Commons Standing Committee on Public Accounts. A representative from Health Canada stated that it “was confident that when used properly, Lariam is a drug that is safe and effective.” A representative from the Department of National Defence testified that Mefloquine has an “established record of safety and efficacy” and “was and is a safe and very effective anti-malarial drug,” and “neither the health nor the safety of Canadian Forces personnel were compromised.”
  - d. In 2016, the Surgeon General Brigadier, General Hugh MacKay, told the House of Commons Veterans Affairs Committee that he did not think there was sound science behind the assertion that the drug has long-term side effects.
  - e. In 2017, DND and CAF released a “Surgeon General Report on Mefloquine” written by the Surgeon General’s Task Force on Mefloquine. This report continued to deny and willfully conceal the risks posed by Mefloquine, stating “[w]e did not identify any evidence (that met our inclusion criteria) addressing potential long term adverse effects of Mefloquine or other MCP agents on health.”
  - f. In 2017, Health Canada stated that there was limited evidence supporting that long-lasting and permanent neurological and psychiatric adverse events are caused by the use of Mefloquine.
  - g. In June 2017, a subset of the Standing Committee on Veterans Affairs issued a supplementary report Mental Health of Canadian Veterans in which it recommended

that “the Government of Canada, in cooperation with all federal, provincial and international institutions concerned, initiate an independent research program to study the long term neurotoxicity of Mefloquine. The research program should be in place no later than 12 months from the day the report is tabled in the House of Commons.”

This recommendation was not adopted by the Government.

## **CLAIMS OF THE PLAINTIFFS**

### **Shaun William Arntsen**

28. Corporal Shaun William Arntsen (“Cpl Arntsen”) is a former member of the Canadian Armed Forces. Cpl enlisted for service with the CAF in April 1994, and served with the 3<sup>rd</sup> Battalion, Princess Patricia’s Canadian Light Infantry. Cpl Arntsen was medically discharged from the CAF on September 30, 2004 owing to a post-traumatic stress disorder diagnosis.
29. In the fall of 2001, Canada launched Operation Apollo in Afghanistan in response to 9/11 and to support the American mission in Afghanistan. Cpl Arntsen was deployed to Afghanistan as part of that operation. Cpl Arntsen was ordered to and did take Mefloquine from February 2002 until the end of his deployment in July 2002, and then again upon his return home until September 2002.
30. Prior to taking Mefloquine, Cpl Arntsen was not screened by a physician, informed of any of the potential side effects or told he should immediately stop taking Mefloquine if he experienced certain side effects. Cpl Arntsen did not provide informed consent prior to taking Mefloquine.
31. Cpl Arntsen began experiencing adverse side effects shortly after first taking Mefloquine. He had terrible nightmares and trouble sleeping, was unable to concentrate or effectively multitask, and suffered from severe nausea, headaches and random dizzy spells. He also began to experience severe and sudden mood changes and bouts of anger. As a result of one of these bouts of anger that occurred while deployed in Afghanistan, Cpl Arntsen received a charge regarding insubordination.

32. Upon his return to Canada and continuing to present, Cpl Arntsen has continued to suffer from serious neurological and psychiatric side effects caused by Mefloquine including debilitating mood issues, aggression, bouts of explosive anger, violent behavior, night terrors, panic attacks, anxiety, paranoia, hallucinations, suicidal thoughts, psychotic behavior, memory loss, depression, convulsions, dizziness, vertigo, tinnitus and loss of balance.
33. Cpl Arntsen has and continues to struggle with anger management issues. His temperament often changes quickly and with little provocation, and he sometimes has outbursts of yelling.
34. Cpl Arntsen's serious neurological and psychiatric side effects caused by Mefloquine has affected every aspect of his life. Mefloquine toxicity has led to the loss of his military career, court martial, marital breakdown, struggles with drug and alcohol addiction, and interactions with the criminal justice system. Cpl Arntsen is currently not able to work because of his symptoms.

### **Martin Lépine**

35. Martin Lépine ("Lépine") is a former member of the Canadian Armed Forces. He joined the CAF in 1995 and attained the rank of Master Corporal. Lépine was discharged from the CAF in 2015.
36. Lépine was deployed to Haiti in 1996, Bosnia in 2002, Afghanistan from 2004-2006 and 2008-2009, and Algeria in 2010-2011.
37. Lépine was ordered to take Mefloquine during his deployment to Afghanistan. He was on Mefloquine for 8 months in 2004-2005, for 12 months in 2006 and for 9 months from 2008-2009. Lépine was either not screened by a physician prior to receiving the order to take Mefloquine, or, when he was screened prior to his 2008 deployment, the CAF medical team failed to take a complete contraindicating psychiatric history prior to prescribing Mefloquine to Lépine.
38. Lépine was not informed of any of the potential side effects of Mefloquine or told he should immediately stop taking Mefloquine if he experienced certain side effects.

39. Lépine immediately began experiencing serious adverse side effects shortly after taking his first dose of Mefloquine. He began experiencing unexplained anxiety, as well as persistent anxiety associated with fear of death, behavior changes, difficulty concentrating, frequent insomnia, nightmares and depressive symptoms.
40. In order to cope with his heightened anxiety, frequent nightmares and insomnia, Lépine began abusing alcohol, both during his tours and in the years that followed.
41. Upon his return from Afghanistan in 2006, Lépine Martin felt irritable, short fused, and very concerned about his future. He felt the need to isolate himself. During a vacation in April 2006, his spouse at the time found him changed. She described Lépine as exhibiting no emotion or joy, and found him being hypersexual. Lépine continued to exhibit aggression and other drastic changes in character.
42. A National Defence Emergency Note dated September 6, 2006 noted that since his return, Lépine feels bad, anxious, cries, has decreased concentration, is always on alert and feels as if his candle is burnt at both ends. In 2006, Lépine was subsequently formally diagnosed with and treated for major depression disorder, mixed mood adjustment disorder, and PTSD.
43. Despite having a clearly documented history of psychiatric disorders, CAF medical personnel authorized the use of Mefloquine as part of Lépine's 2008-2009 deployment to Afghanistan.
44. Within the first few weeks of his arrival to Kandahar, Lépine experienced severe suicidal ideations and admits to almost killing himself at that time.
45. During this last mission to Afghanistan, Lépine continuously struggled with depression, anxiety consistent with a state of post-traumatic stress, elements of re-experiencing, such as, intrusive nightmares and flashbacks, numbing, and hyperarousal. A 2012 report following his discharge notes stated that a standardized personality test found that Lépine showed patterns of responses consistent with those of individuals with avoidant, schizotypal, schizoid and paranoid personality traits.

46. Upon his return to Canada and continuing to present, Lépine has continued to suffer from serious neurological and psychiatric side effects caused by Mefloquine including debilitating mood issues, aggression, bouts of explosive anger, violent behavior, night terrors, panic attacks, anxiety, paranoia, hallucinations, suicidal thoughts, psychotic behavior, memory loss, depression, convulsions, dizziness, vertigo, tinnitus, loss of balance, as well as digestion issues and physical pain associated with stressors.
47. Lépine's struggles with the symptoms of Mefloquine toxicity have had a disastrous impact on his life, costing him his relationship with his first wife, and having a drastic impact on his current relationship with his common law partner and children.
48. The serious neurological and psychiatric side effects caused by Mefloquine and the subsequent criminal charges have also cost Lépine his career. Lépine's behaviour, including excessive alcohol drinking to cope, lead him to being discharged from the military in 2015.
49. Lépine is currently unemployed and has been since his discharge in 2015.
50. Lépine continues to struggle with serious neurological and psychiatric side effects listed above, including unbearable mood swings, severe depression, confusion and problems with memory. Lépine's whole life has become a daily struggle to manage and reduce his symptoms

### **Michael Rude**

51. Michael Rude ("Rude") is a former member of the Canadian Armed Forces. He joined the CAF in January 1988 and attained the rank of Sgt. Rude until he was medically released from the CAF in June 2016.
52. Rude was deployed to Somalia in 1992-1993, Bosnia in 1997 and Afghanistan in 2006.
53. Rude was ordered to take Mefloquine as a part of the Lariam Study, before and during deployment to Somalia in 1992 as part of Operation Deliverance. During this tour, he was on Mefloquine for approximately seven months. He was not aware he was part of the Lariam Study and did not provide informed consent either to participate in the study or to

take Mefloquine. Rude was not screened by a physician prior to receiving the order to take Mefloquine, informed of any of the potential side effects of Mefloquine or told he should immediately stop taking Mefloquine if he experienced certain side effects.

54. Rude immediately began experiencing serious adverse side effects shortly after taking his first dose of Mefloquine. He started to have nightmares right away, before even arriving to Somalia. He became withdrawn, moody, confused and easily angered. Rude suffered from anger issues, severe anxiety attacks, paranoia, hallucinations and severe depression. Starting in Somalia and continuing for years afterwards, Rude became suicidal.
55. Rude began exhibiting out of the norm behaviour, including paranoia, illusions and heightened anxiety.
56. Rude also suffered from tinnitus, photophobia, dizziness and had difficulty regulating his body temperature. Rude struggled with memory loss. He also had difficulty reading maps and even talking on the radio. Rude also suffered severe gastrointestinal problems.
57. Rude reported his symptoms to CAF. CAF did not provide treatment for any of the above symptoms.
58. Upon his return to Canada and continuing to present, Rude has continued to suffer from serious neurological and psychiatric side effects caused by Mefloquine including debilitating mood issues, aggression, bouts of explosive anger, violent behavior, night terrors, panic attacks, anxiety, paranoia, hallucinations, suicidal thoughts, psychotic behavior, memory loss, depression, dizziness, vertigo, tinnitus and loss of balance. He was diagnosed and treated for PTSD.
59. Rude was again ordered to take Mefloquine during his deployment to Afghanistan. He was on Mefloquine during his service in 2006. Rude was either not screened by a physician prior to receiving the order to take Mefloquine, or, when he was screened prior to his 2006 deployment, the CAF medical team failed to take a complete contraindicating psychiatric history prior to prescribing Mefloquine to Rude.
60. Rude's struggles with the symptoms of Mefloquine toxicity have had a disastrous impact on his life and has put severe strains on many of his relationships.

61. The serious neurological and psychiatric side effects caused by Mefloquine lead Rude to engage in risky behaviour, often times in a state of psychosis. He also began abusing alcohol as a result of his injuries.
62. The serious neurological and psychiatric side effects caused by Mefloquine have cost Rude his career.
63. Rude is currently unemployed, and has been unable to work in any capacity since 2016.
64. Rude continues to struggle serious neurological and psychiatric side effects listed above, including antisocial, unbearable mood swings, sleeplessness due to panic attacks, severe depression, confusion and problems with memory. Rude's whole life has become a daily struggle to manage and reduce his symptoms. He requires a service dog in order to cope with his activities of daily living.

## **CAUSES OF ACTION**

65. Pursuant to s. 3 of the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50, the Defendant is directly and vicariously liable for any wrongs committed by DND, CAF or any of its employees and agents.

### ***Negligence***

66. The Government owed a duty of care to CAF Members. The Government knew or ought to have known that if it carried out its duties negligently, it could reasonably cause the kind of harm that was in fact suffered by the Plaintiffs.
67. The Government was required to:
  - a. use reasonable care to ensure the safety and well-being of the Plaintiffs;
  - b. obtain the informed consent of the Plaintiffs before requiring them to take Mefloquine; and
  - c. use reasonable care in the operation, administration, prescribing, dispensing, managing, supervising, and monitoring of the use of Mefloquine.
68. The Government breached that duty of care by:

- a. ordering the Plaintiffs, on pain of court martial, to take a drug that it knew or ought to have known was not safe and could have serious and long term adverse health effects;
- b. ordering the Plaintiffs to take Mefloquine without conducting a proper medical screening for contraindications;
- c. failing to provide a medication guide or other information to the Plaintiffs regarding the proper use of Mefloquine;
- d. failing to adequately warn the Plaintiffs of the risks associated with taking Mefloquine;
- e. failing to warn the Plaintiffs not to consume alcohol while taking Mefloquine because of the risk of adverse interactions with alcohol, including the greatly increased risk of experiencing mental problems;
- f. failing to tell the Plaintiffs to immediately stop taking Mefloquine if they experienced any of the following symptoms: mental problems, including anxiety, depression, paranoia, hallucinations, feeling restless, confused or disoriented, unusual behavior or changes to mood; nervous system changes, including dizziness, spinning, ringing in the ears, loss of balance, seizures or convulsions; or issues with nerves, including prickling or tingling sensations, numbness and loss of an ability to feel pain or changes in temperature, a burning or sharp pain, loss of balance or co-ordination, feeling pain from a very light touch, or muscle weakness or paralysis;
- g. ordering the Plaintiffs to continue taking Mefloquine after the above symptoms were reported;
- h. failing to monitor or record adverse reactions and complications experienced by the Plaintiffs and other CAF Members as a result of taking Mefloquine;
- i. failing to properly investigate the side effects, adverse reactions and complications experienced by the Plaintiffs and other CAF Members as a result of taking Mefloquine;
- j. failing to consider and account for the risk of interaction of Mefloquine with other psychological conditions and injuries commonly experienced by CAF Members including anxiety, depression, post-traumatic stress disorder and traumatic brain injury;
- k. failing to provide and/or consider suitable alternative anti-malarial drugs to Mefloquine;



- l. requiring that the Plaintiffs take an anti-malarial drug that was unsuitable for use in a military or combat setting;
  - m. failing to provide necessary medical treatment to the Plaintiffs in a timely manner;
  - n. failing to refer the Plaintiffs to appropriate medical specialists in a timely manner, or at all;
  - o. failing to administer Mefloquine to the Plaintiffs in a safe and competent manner;
  - p. putting its own interests ahead of the interest of the Plaintiffs by ignoring and remaining wilfully blind to the risks of Mefloquine to individual CAF Members; and
  - q. such further and other particulars as may become apparent and counsel may advise.
69. As a result of the Government's breach of its duty of care, the Plaintiffs suffered damages as set out below.

### ***Negligent Misrepresentation***

70. The Plaintiffs were highly dependent on information provided by the Government regarding the risks posed by Mefloquine. The Government knew that the Plaintiffs would rely on information provided by DND and CAF to the Plaintiffs in order to make decisions regarding risks to their health and safety.
71. DND and CAF repeatedly represented to the Plaintiffs and CAF Members as a whole that Mefloquine was safe. These representations specifically downplayed or denied the risks associated with Mefloquine and were inaccurate, incomplete, false, deceptive and/or misleading.
72. Canada knew or ought to have known that the representations made by CAF and DND regarding the safety of Mefloquine were inaccurate, incomplete, false, deceptive and/or misleading.
73. The Plaintiffs state that Canada owed a duty of care to the Plaintiffs and is liable in deceit and/or negligent misrepresentation for the Representations that were inaccurate, incomplete, false, deceptive and/or misleading and as a result of which the Plaintiffs' suffered damages as set out below.

### ***Breach of Fiduciary Duty***

74. The Government owed the Plaintiffs a fiduciary duty. The relationship between the Plaintiffs and the Defendant is one of complete trust, reliance and dependency. While in the Canadian Armed Forces, the Government had extraordinary and unilateral powers over the lives of CAF Members. Because of the hierarchical and authoritarian command structure of the CAF, the binding nature of enrolment in the CAF, the oaths and declarations required by CAF Members, and the strict requirement to follow all orders of superiors, the Plaintiffs were in a position of complete vulnerability and dependence on the CAF and DND. In particular, the Plaintiffs were at the Government's mercy regarding what drugs they were ordered to take prior to and during deployment. Prior to and while deployed, the Government was solely responsible for the protection of the health, safety and well-being of the Plaintiffs.
75. The Government breached its fiduciary duties to the Plaintiffs. The particulars of the breach include:
- a. putting its own interests ahead of the interest of the Plaintiffs by ignoring and remaining wilfully blind to the risks of Mefloquine to individual CAF Members;
  - b. ordering the Plaintiffs to take Mefloquine;
  - c. ordering the Plaintiffs to take Mefloquine without conducting a proper medical screening for contraindications;
  - d. ordering the Plaintiffs to continue taking Mefloquine after adverse symptoms were reported; and
  - e. failing to safeguard the physical and psychological health of the CAF Members.

### ***Charter claim (breach of s. 7)***

76. The Government's action in forcing the Plaintiffs to take a drug that seriously impaired the Plaintiff's mental and physical health and caused severe psychological harm is an infringement of the Plaintiff's right to security of the person as enshrined in s. 7 of the *Canadian Charter of Rights and Freedoms*. This infringement is not justified in accordance with the principles of fundamental justice.

77. The breaches of the Plaintiffs' *Charter* rights are not demonstrably justified in a free and democratic society.
78. The Plaintiffs are entitled to a declaration that their *Charter* rights were infringed.
79. The Plaintiffs are also entitled to a monetary remedy pursuant to section 24(1) of the *Charter* in order to:
- a. compensate the Plaintiffs for pain and suffering;
  - b. vindicate the Plaintiffs' fundamental human rights; and
  - c. deter systematic violations of a similar nature by the Government in future.

***Battery***

80. The Plaintiffs assert that the forced ingestion of Mefloquine without their informed consent, in the circumstances pleaded above, amounts to battery.

***Wilful Concealment***

81. The Government has and continues to willfully conceal the fact that the injuries suffered by the Plaintiffs were caused by the fact that the Government ordered the Plaintiffs to take Mefloquine.

***Mental and psychological state***

82. The Plaintiffs have suffered severe and debilitating mental and psychological conditions as described above as a result of taking Mefloquine and otherwise. As a result of these severe and debilitating mental and psychological conditions, the Plaintiffs were previously incapable of commencing a claim against the Defendant.

***Misdiagnosis***

83. The Plaintiffs have been misdiagnosed by doctors, including doctors employed by the Government, as suffering only PTSD or Traumatic Brain Injuries, when in fact, the Plaintiffs were suffering from neurological and psychological injuries caused by Mefloquine.

## **DAMAGES**

84. The Plaintiffs have suffered at the hands of the Government, and are entitled to damages, including pecuniary and non-pecuniary general damages, special damages and aggravated, exemplary and punitive damages.
85. Both before and after the Government ordered CAF Members to take Mefloquine, the Government knew or ought to have known that Mefloquine can cause, contribute to, or materially increase the risk of neurological and psychological harm.
86. As a result of being forced to take Mefloquine, the Plaintiffs have suffered and continue to suffer prolonged psychological symptoms, including anxiety, paranoia, depression, hallucinations, thoughts of suicide or self harm, aggression, bouts of explosive anger, violent behavior, night terrors, panic attacks, memory loss, and a lack of emotional regulation.
87. As a result of being forced to take Mefloquine, the Plaintiffs have suffered and continue to suffer prolonged neurological symptoms including dizziness, vertigo, loss of balance, tinnitus, convulsions and insomnia.
88. As a result of being forced to take Mefloquine, the Plaintiffs have suffered and continue to suffer prolonged neuropathological symptoms including prickling or tingling sensations, numbness and loss of an ability to feel pain or changes in temperature, a burning or sharp pain, loss of balance or co-ordination, feeling pain from a very light touch, and muscle weakness or paralysis.
89. As a result of the actions, errors and omissions of the Government as set out above, the Plaintiffs suffered damages including:
  - a. Creation or exacerbation of neurological disorders and illnesses, including damage to the brain stem and nervous system;
  - b. Creation or exacerbation of psychological disorders and illnesses;
  - c. Creation or exacerbation of neuropathological disorders and illnesses;
  - d. Emotional and psychological harm and distress;

- e. Impairment of mental and emotional health;
  - f. Impairment of ability to participate in or transition to a normal family life, including alienation from family, spouses and children;
  - g. Impairment of ability to perform household chores and to perform certain daily tasks;
  - h. Impairment of ability to participate in recreational, school, social, and athletic activities;
  - i. Impairment of the capacity to function in the work place and a corresponding loss of income, a loss of competitive advantage in the employment field and a diminution of income earning capacity;
  - j. Pain and suffering, a loss of enjoyment of life and a loss of amenities; and
  - k. Such further and other harms and injuries as shall be discovered and/or particularized.
90. As a further result of the injuries suffered, the Plaintiffs have incurred, and will continue to incur expenses, including expenses for: hospitalization, medication, therapy, rehabilitation, medical treatment, and other forms of care and out-of-pocket expenses, the full particulars of which are not within the Plaintiffs' knowledge at this time.

***Punitive, Aggravated and Exemplary Damages***

91. The Government forced the Plaintiffs, on pain of court martial and imprisonment, to take a drug that has caused great neurological and psychological damage. The Canadian Government treated the issue surrounding Mefloquine with wanton and callus disregard for the Plaintiffs' interests, health, safety and well-being. Canada has responded to the growing crisis regarding Mefloquine toxicity within the military veteran community by concealing, denying and downplaying the problem, even as those suffering from Mefloquine toxicity continue to die by suicide.
92. Canada's wrongful conduct is of such a reprehensible nature as to warrant an award of aggravated, exemplary and/or punitive damages in order to deter Canada from taking such wrongful acts in the future.

### ***Provincial Health Insurers***

93. As a consequence of the misconduct set out above, OHIP and the comparable provincial and territorial health insurers have incurred various expenses with respect to the medical treatment of the Plaintiffs. As such, OHIP and other provincial and territorial health insurers have suffered, and will continue to suffer, damages including the ongoing medical support for the Plaintiffs, and they are entitled to be compensated by virtue of their subrogated and direct rights of action in respect of all past and future insured services. This action is maintained on behalf of OHIP and all other provincial and territorial health insurers.

### **APPLICABLE LEGISLATION**

94. The Plaintiffs plead and rely upon the following:

*Federal Courts Act*, R.S.C., 1985, c. F-7;

*Federal Courts Rules*, (SOR/98-106);


*Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50, ss. 3, 21, 22, and 23;

*Canadian Charter of Rights and Freedoms*, ss. 7 and 24; and

*National Defence Act*, R.S.C., 1985, c. N-5.

95. The Plaintiffs propose that this action be tried at Toronto, Ontario.

May 1, 2019



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