



Court File No. T-725-19

FEDERAL COURT

DAVID BONA, CLAUDE LALANCETTE & SHERRI ELMS

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.

MAY 01 2019

DATE: _____

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, David Bona and Claude Lalancette, 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 Plaintiff;
 - b. a Declaration that the Defendant is liable to the Plaintiff 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 Plaintiff's s. 7 rights under the *Canadian Charter of Rights and Freedoms* ("Charter");
 - e. damages for violation of the Plaintiff's *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.
2. The Plaintiff Sherri Elms claims:
 - a. damages pursuant to the *Family Law Act*, R.S.O. 1990, c. F.3 in the amount of \$1,000,000.00;
 - b. special damages in a sum to be disclosed before trial;
 - c. prejudgment and post-judgment interest;
 - d. the costs of this action, including HST and other taxes as applicable, on a substantial indemnity basis; and

e. such further and other relief as this Honourable Court may deem just.

OVERVIEW

3. In the fall and winter of 1992-1993, approximately 1,200 members of the Canadian Armed Forces (“CAF Members”) were deployed to Somalia as part of a United Nations peacekeeping operation called Operation Deliverance.
4. In advance of and during the deployment, the Canadian Armed Forces and the Department of National Defence ordered all CAF Members to take the unlicensed anti-malarial drug Mefloquine as part of a mismanaged and ultimately botched clinical drug trial that was conducted without consent on unwitting CAF Members.
5. Mefloquine is a potent psychotropic anti-malarial drug that can cause severe and potentially permanent neurological and psychological health harms. The drug manufacturer now 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.
6. Psychological side effects from Mefloquine including hallucinations and altered mental state were so severe and widespread across the Somalia mission that CAF Members referred to the day of the week on which they were ordered to take Mefloquine as “Mefloquine Monday”, “Psyco Tuesday” or “Wacky Wednesday”, and referred to the vivid dreams and night terrors as “Meflomares.”
7. 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.
8. 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.

9. 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.
10. 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.
11. 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

12. 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

13. The Plaintiffs are all either members or former members of the Canadian Armed Forces who were deployed to Somalia and ordered to take the anti-malarial drug Mefloquine, and who have suffered serious harms as a result (the "CAF Plaintiff(s)"), or their family members ("Family Plaintiff(s)").

Nature of relationship between Canada and CAF Plaintiffs

14. 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

15. 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.
16. Mefloquine was developed in a US military research facility in the 1970s.
17. 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 sideeffects 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.
18. 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.
 19. 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.
 20. The drug manufacturer also warns that Mefloquine can negatively interact with alcohol and consuming alcohol while on Mefloquine increases the risk of experiencing mental problems.
 21. 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.

Operation Deliverance and the Botched Clinical Trial

22. In late 1992 and early 1993, approximately 1,200 CAF Members were deployed to Somalia as part of the United Nations peacekeeping operation called Operation Deliverance. A large contingent of the CAF Members were soldiers from the specialized elite rapid response unit tasked with rapid deployment into hostile situations, the Canadian Airborne Regiment. This contingent of CAF members also included support personnel.
23. In advance of Operation Deliverance, CAF and DND ordered all CAF Members deployed to Somalia to take Mefloquine as part of a mismanaged clinical trial in which CAF failed to implement or follow proper protocols for clinical trials, and failed to obtain informed consent from CAF Members who were part of the clinical trial.
24. Mefloquine was provided to the DND and the CAF with the approval of Health Canada as part of an experimental study known as the Lariam Safety Monitoring Study (the “Lariam Study”). The Lariam Study was a clinical drug trial involving human subjects. As a clinical drug trial, the Lariam Study was supposed to be conducted by trained professionals under strict conditions in order to protect the health of the subjects in the drug trial. The Lariam Study required that, among other things:
 - a. participation in the study by members of the CAF be strictly voluntary;
 - b. that informed consent be obtained from all subjects prior to participation in the study;
 - c. Mefloquine use be administered and monitored by physicians;
 - d. any side effects from Mefloquine be monitored, recorded and reported to Health Canada; and
 - e. use of Mefloquine be discontinued if study subjects experienced anxiety, emotional upset, restlessness or confusion.
25. DND and CAF failed to follow the Lariam Study protocols. CAF Members did not volunteer to participate in the Lariam Study nor did they provide informed consent to take Mefloquine as part of the Lariam Study. In fact, most CAF Members were not even aware that they were taking Mefloquine as part of a clinical drug trial.

26. 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”).
27. 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.
28. Throughout, CAF and DND failed to keep records of reports of adverse reactions or side effects resulting from Mefloquine made by CAF Members. Throughout, CAF and DND failed to report adverse reacts or side effects resulting from Mefloquine to Health Canada.
29. Throughout, CAF and DND ordered CAF Members to take Mefloquine on pain of court martial and possible imprisonment, pursuant to s. 126 of the *National Defence Act*.
30. Despite serious concerns raised following the use of Mefloquine during and after the Lariam Study, Canada continued to administer and order its troops and support personnel to take Mefloquine without informing them of potential adverse effects. 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.
31. 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 suffer serious side effects and problems

32. 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.
33. 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

34. 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 post 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

David Bona

- 35. David Bona (“Bona”) is a retired member of the Canadian Armed Forces. He joined the CAF in 1984 and attained the rank of Master Corporal. Bona retired from the CAF in 2000.
- 36. Bona was deployed to Cyprus in 1989, Saudi Arabia in 1991, Somalia in 1992 – 1993, and Rwanda in 1993 – 1994.
- 37. Bona 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 and a half 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. Bona 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.

38. Bona immediately began experiencing serious adverse side effects shortly after taking his first dose of Mefloquine. He started to feel ill almost immediately, and suffered his first seizure that night. His vision went black, he would see stars and he would feel disoriented and dizzy afterwards. Initially, Bona suffered seizures only on the days in which he took Mefloquine, but eventually, the seizures happened more frequently.
39. Bona's symptoms became worse when he arrived in Somalia. He became withdrawn, moody, confused and easily angered. Bona suffered from anger issues, severe anxiety attacks, paranoia, and severe depression. Starting in Somalia and continuing for years afterwards, Bona became suicidal.
40. While in Somalia, Bona began having extremely graphic and violent nightmares that involved him murdering his family and section members. He could not tell dream from reality and would wake up in a panic convinced that he was actually strangling his wife. Because of these dreams, Bona would go to great lengths to try to avoid sleeping.
41. Bona began experiencing gaps in memory and consciousness. In one particularly terrifying incident, in the middle of the night, Bona suddenly became aware that he was walking across the compound barefoot in just his shorts with his rifle in his hands, and the overwhelming feeling he was going to shoot someone. He felt entirely disoriented and terrified. He later discovered that sometime during his blackout he had loaded his rifle, despite having no memory of loading it.
42. Bona also suffered from tinnitus and dizziness and had difficulty regulating his body temperature. His balance issues and dizziness were so severe that he would fall off vehicles. Bona struggled with memory loss. He also had difficulty reading maps and even talking on the radio. Bona also suffered severe gastrointestinal problems, and resorted to using charcoal to prevent diarrhea while out on patrol.
43. Bona reported his symptoms to CAF. CAF did not provide treatment for any of the above symptoms.

44. Bona was again ordered to take Mefloquine before and during his deployment to Rwanda in 1993. During this deployment, he took Mefloquine for approximately 4 months. Again, Bona 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. Bona did not provide informed consent prior to taking Mefloquine. Again, Bona suffered from the same symptoms he suffered while in Somalia. Bona actively tried to avoid sleeping and he again suffered from explosive anger and depression. At times, Bona would catch himself holding his rifle in his hands thinking how easy it would be to shoot himself.
45. Upon his return to Canada and continuing to present, Bona 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 and attempts, psychotic behavior, memory loss, depression, dizziness, vertigo, tinnitus and loss of balance.
46. Bona's struggles with the symptoms of Mefloquine toxicity have had a disastrous impact on his life, costing him his relationship with his first wife, his stepson and his daughter.
47. Prior to his deployments to Africa, Bona married Kristin Bona ("Kristin"). They were best friends. Bona became stepfather to Kristin's 2 year old son, and they soon welcomed a daughter to their family. Bona had a great relationship with his stepson. They would take bike rides and canoe trips together.
48. Kristin noticed a radical change in Bona when he returned from Africa. Bona's relationships with Kristin and his children deteriorated precipitously. Bona struggled to regulate his emotions and his anger, and became verbally abusive toward his wife and children. Despite attempts to save their marriage through marriage counselling, Kristin and Bona separated. Bona remains estranged from his stepson and first daughter.
49. The serious neurological and psychiatric side effects caused by Mefloquine have also cost Bona his career. Bona self-medicated with alcohol to try to deal with the symptoms of

Mefloquine toxicity and post-traumatic stress disorder. Bona's problems with alcohol lead him to being court martialled, demoted and released from the military.

50. Bona is currently unemployed. In 2009, Bona worked as an Air Attack Officer, leading the water bombers that fight forest fires for the Saskatchewan Ministry of Environment. He had to quit after two and a half months because of severe problems with balance, vertigo and nausea.
51. Bona continues to struggle serious neurological and psychiatric side effects listed above, including unbearable mood swings, severe depression, confusion and problems with memory. Bona's whole life has become a daily struggle to manage and reduce his symptoms.

Claude Lalancette

52. Claude Lalancette ("Lalancette") is a former member of the Canadian Armed Forces. He joined the CAF in April of 1990 and attained the rank of Cpl. Lalancette was discharged with dishonour from the CAF in May of 2001.
53. Lalancette was deployed to Somalia in 1992 – 1993.
54. Lalancette 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. Lalancette 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.
55. Lalancette 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.
56. Lalancette's symptoms became worse when he arrived in Somalia. He became withdrawn, moody, confused and easily angered. Lalancette suffered from anger issues, severe anxiety

attacks, paranoia, hallucinations and severe depression. Starting in Somalia and continuing for years afterwards, Lalancette became suicidal.

57. While in Somalia, Lalancette's anger and aggression continued to mount. He recalls sitting on watch one night hoping for an attack to happen so that he could open fire. This was completely out of character for him. He reported this unusual feeling to CAF medical personnel, but was told it was "nothing".
58. Lalancette began exhibiting out of the norm behaviour, including paranoia, illusions and heightened anxiety. He would leave the compound, at times in civilian clothes and armed to go "hunt Somalians". He and others often felt they were being watched and became suspicious of their surroundings.
59. Lalancette also suffered from tinnitus, photophobia, dizziness and had difficulty regulating his body temperature. Lalancette struggled with memory loss. He also had difficulty reading maps and even talking on the radio. Lalancette also suffered severe gastrointestinal problems.
60. Lalancette reported his symptoms to CAF. CAF did not provide treatment for any of the above symptoms.
61. Upon his return to Canada and continuing to present, Lalancette 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.
62. Lalancette's struggles with the symptoms of Mefloquine toxicity have had a disastrous impact on his life, costing him his relationship with his ex-wife and children.
63. Prior to his deployments to Africa, Lalancette was married to Nathalie Dupuis ("Dupuis"). They were best friends. Lalancette and Dupuis had 2 children together. Lalancette had a great relationship with his children.

64. Dupuis noticed a radical change in Lalancette when he returned from Africa. Lalancette's relationships with Dupuis and his children deteriorated precipitously. Lalancette struggled to regulate his emotions and his anger, and became verbally abusive toward his wife and children. Despite attempts to save their marriage, Dupuis and Lalancette separated. Lalancette remains estranged from his ex-wife and oldest son, Alexandre.
65. The serious neurological and psychiatric side effects caused by Mefloquine lead Lalancette to engage in risky and unlawful behaviour, often times in a state of psychosis. In one particularly shameful incident, Lalancette was charged with sexual assault and was sentenced to 2 years in jail.
66. The serious neurological and psychiatric side effects caused by Mefloquine have also cost Lalancette his career. He was dismissed with dishonour from the Military in May of 2001.
67. Lalancette tried every treatment and program that was recommended to him. He was referred to the Veterans Hospital in Ste-Anne de Bellevue and completed multiple stays with them totalling almost 9 months. Nevertheless, he continued to be hyper vigilant, depressed, suicidal and more aggressive. He found himself gaining a significant amount of weight and developing diabetes. His road rage became so unbearable that he stopped driving and now only takes public transit with great difficulty.
68. By October 2011, Lalancette was separated from his wife and felt betrayed by his country. He continued to be systematically mistreated and his concerns dismissed by members of Parliament and VAC. His claims for disability were either denied, cancelled or suspended. He eventually left Canada for over 3 years. Upon his return in March 2015, Lalancette found himself homeless until January 2016.
69. Lalancette is currently unemployed, and has been unable to work in any capacity since 2006.
70. Lalancette continues to struggle with 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. Lalancette's whole life has become a daily struggle to manage and reduce his symptoms.

Brad Elms and Sherri Elms

71. Brad Elms is a deceased CAF Member (“Capt Elms”). He died by suicide on November 3, 2014.
72. Capt Elms joined the CAF in 1981 and was a CAF Member for almost 35 years. During his time with the CAF, he attained the rank of Captain.
73. Sherri Elms (“Sherri”) is the widow of Capt Elms. She brings this claim pursuant to the *Family Law Act*, R.S.O. 1900 (“*Family Law Act*”) regarding the death of her husband.
74. Capt Elms was deployed to Somalia in 1992 as part of Operation Deliverance. Capt Elms was ordered to take Mefloquine as part of the Lariam Study before and during deployment to Somalia. 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. Capt Elms 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.
75. Capt Elms began experiencing serious neurological and psychiatric side effects caused by Mefloquine, including mood changes, psychological disturbances and vivid dreams, shortly after first taking Mefloquine.
76. Capt Elms returned from Somalia as a changed man. He suffered from persistent memory problems, frequent night sweats and insomnia. Upon his return to Canada and continuing until his death, Capt Elms 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.
77. Capt Elms’ family life deteriorated significantly after his return from Somalia. He was angry and developed a hair-trigger temper. Sherri could not predict when he would explode. He spoke to Sherri frequently about suicide, and expressed the desire to simply end it all.

78. Capt Elms was deployed three more times, including tours to Haiti and Afghanistan, where he was again ordered to take Mefloquine.
79. Capt Elms mental health deteriorated in the six months before he died. Sherri attempted to get help for her husband by reporting her concerns about his deterioration and suicidal thoughts to his superior and to his physician. Neither CAF nor DND provided Capt Elms with the assistance or support he required.
80. Capt Elms died by suicide on November 3, 2014 as a result of serious neurological and psychiatric side effects caused by Mefloquine.

CAUSES OF ACTION

81. 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

82. 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 CAF Plaintiffs.
83. The Government was required to:
 - a. use reasonable care to ensure the safety and well-being of the CAF Plaintiffs;
 - b. obtain the informed consent of the CAF Plaintiffs before requiring them to take Mefloquine;
 - c. use reasonable care in the operation, administration, prescribing, dispensing, managing, supervising, and monitoring of the use of Mefloquine; and
 - d. to follow the Lariam Study protocol and to adhere to international and Canadian standards regarding conducting experiments on human beings.
84. The Government breached that duty of care by:
 - a. failing to follow the Lariam Study protocol;

- b. failing to adhere to international and Canadian standards regarding experiments on human beings;
- c. failing to obtain informed consent from the CAF Plaintiffs to participate in the Lariam Study or to take Mefloquine;
- d. ordering the CAF 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;
- e. ordering the CAF Plaintiffs to take Mefloquine without conducting a proper medical screening for contraindications;
- f. failing to provide a medication guide or other information to the CAF Plaintiffs regarding the proper use of Mefloquine;
- g. failing to adequately warn the CAF Plaintiffs of the risks associated with taking Mefloquine;
- h. failing to warn the CAF 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;
- i. failing to tell the CAF 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;
- j. ordering the CAF Plaintiffs to continue taking Mefloquine after the above symptoms were reported;
- k. failing to monitor or record adverse reactions and complications experienced by the CAF Plaintiffs and other CAF Members as a result of taking Mefloquine;

- l. failing to properly investigate the side effects, adverse reactions and complications experienced by the CAF Plaintiffs and other CAF Members as a result of taking Mefloquine;
 - m. failing to report side effects, adverse reactions and complications experienced by the CAF Plaintiffs and other CAF Members to Health Canada or the manufacturer of the drug;
 - n. 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;
 - o. failing to provide and/or consider suitable alternative anti-malarial drugs to Mefloquine;
 - p. requiring that the CAF Plaintiffs take an anti-malarial drug that was unsuitable for use in a military or combat setting;
 - q. failing to provide necessary medical treatment to the CAF Plaintiffs in a timely manner;
 - r. failing to refer the CAF Plaintiffs to appropriate medical specialists in a timely manner, or at all;
 - s. failing to administer Mefloquine to the CAF Plaintiffs in a safe and competent manner;
 - t. putting its own interests ahead of the interest of the CAF Plaintiffs by ignoring and remaining wilfully blind to the risks of Mefloquine to individual CAF Members; and
 - u. such further and other particulars as may become apparent and counsel may advise.
85. As a result of the Government's breach of its duty of care, the CAF Plaintiffs suffered damages as set out below.

Negligent Misrepresentation

86. The CAF Plaintiffs were highly dependent on information provided by the Government regarding the risks posed by Mefloquine. The Government knew that the CAF Plaintiffs would rely on information provided by DND and CAF to the CAF Plaintiffs in order to make decisions regarding risks to their health and safety.

87. DND and CAF repeatedly represented to the CAF 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.
88. 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.
89. The Plaintiffs state that Canada owed a duty of care to the CAF 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 CAF Plaintiffs suffered damages as set out below.

Breach of Fiduciary Duty

90. The Government owed the CAF Plaintiffs a fiduciary duty. The relationship between the CAF 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 CAF Plaintiffs were in a position of complete vulnerability and dependence on the CAF and DND. In particular, the CAF 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 CAF Plaintiffs.
91. The Government breached its fiduciary duties to the CAF Plaintiffs. The particulars of the breach include:
 - a. putting its own interests ahead of the interest of the CAF Plaintiffs by using the CAF Plaintiffs as nonconsenting and unwitting subjects in a clinical drug trial;

- b. putting its own interests ahead of the interest of the CAF Plaintiffs by ignoring and remaining wilfully blind to the risks of Mefloquine to individual CAF Members;
- c. ordering the CAF Plaintiffs to take Mefloquine;
- d. ordering the CAF Plaintiffs to take Mefloquine without conducting a proper medical screening for contraindications;
- e. ordering the CAF Plaintiffs to continue taking Mefloquine after adverse symptoms were reported;
- f. failing to follow the requirements of the Lariam Study;
- g. failing to adhere to international and Canadian standards regarding experiments on human beings; and
- h. failing to safeguard the physical and psychological health of the CAF Members.

Charter claim (breach of s. 7)

- 92. The Government's action in using the CAF Plaintiffs as unwitting and nonconsenting subjects in an experimental clinical drug trial is an infringement of the CAF Plaintiffs' 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.
- 93. The Government's action in forcing the CAF Plaintiffs to take a drug that seriously impaired the CAF Plaintiffs' mental and physical health and caused severe psychological harm is an infringement of the CAF Plaintiffs' 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.
- 94. The breaches of the CAF Plaintiffs' *Charter* rights are not demonstrably justified in a free and democratic society.
- 95. The CAF Plaintiffs are entitled to a declaration that their *Charter* rights were infringed.
- 96. The CAF Plaintiffs are also entitled to a monetary remedy pursuant to section 24(1) of the *Charter* in order to:

- a. compensate the CAF Plaintiffs for pain and suffering;
- b. vindicate the CAF Plaintiffs' fundamental human rights; and
- c. deter systematic violations of a similar nature by the Government in future.

Battery

97. The Plaintiffs assert that the forced ingestion of Mefloquine without their informed consent as part of a clinical drug trial, in the circumstances pleaded above, amounts to battery.

Wilful Concealment

98. 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 CAF Members to take Mefloquine.

Mental and psychological state

99. The CAF 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 CAF Plaintiffs were previously incapable of commencing a claim against the Defendant.

Misdiagnosis

100. The CAF Members and 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

101. The CAF 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.
102. 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.

103. As a result of being forced to take Mefloquine as part of the Lariam Study, the CAF 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.
104. As a result of being forced to take Mefloquine, the CAF Plaintiffs have suffered and continue to suffer prolonged neurological symptoms including dizziness, vertigo, loss of balance, tinnitus, convulsions and insomnia.
105. As a result of being forced to take Mefloquine, the CAF 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.
106. As a result of the actions, errors and omissions of the Government as set out above, the CAF 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.
107. As a further result of the injuries suffered, the CAF 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 CAF Plaintiffs' knowledge at this time.

Punitive, Aggravated and Exemplary Damages

108. The Government forced the CAF 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 callous disregard for the CAF 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.
109. 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.

Family Law Act Claims

110. The Defendant owed Capt Elms the same duty of care and fiduciary duty that it owed to the CAF Plaintiffs as set out above, and breached it in the same manner as set out above.
111. Plaintiff Sherri Elms brings a claim pursuant to the *Family Law Act*, R.S.O. 1900 ("*Family Law Act*") with regard to the death of her husband Capt Elms consisting of a claim for:
- a. reasonable expenses incurred for the benefit of Capt Elms;
 - b. loss of guidance, care and companionship; and

- c. reasonable allowance for the value of or the loss of income related to providing nursing, housekeeping and other services to Capt Elms.

Provincial Health Insurers

112. 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

113. 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;

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

Family Law Act, R.S.O., 1990, c. F.3, ss. 61-63.

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

May 1, 2019



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