

FEDERAL COURT

v.:

LIEUTENANT-GENERAL STEVEN WHELAN

Plaintiff

-and-

HIS MAJESTY THE KING IN RIGHT OF CANADA, JODY THOMAS, GENERAL WAYNE EYRE, LIEUTENANT-GENERAL FRANCES ALLEN, LIEUTENANT-JENNIE CARIGNAN, CANADIAN FORCES NATIONAL INVESTIGATION SERVICE, DANA MILLS, LAURIE ANN KEMPTON, MAJOR-GENERAL SIMON TRUDEAU, COLONEL DYLAN KERR

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. 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 plaintiff's solicitor or, if the plaintiff does not have a solicitor, serve it on the plaintiff, and file it, with proof of service, at a local office of this Court

WITHIN 30 DAYS after the day on which this statement of claim is served on you, if you are served in Canada or the United States; or

WITHIN 60 DAYS after the day on which this statement of claim is served on you, if you are served outside Canada and the United States.

TEN ADDITIONAL DAYS are provided for the filing and service of the statement of defence if you or a solicitor acting for you serves and files a notice of intention to respond in Form 204.1 prescribed by the *Federal Courts Rules*.



Copies of the *Federal Courts 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.

Date: May 21 2024

Issued by: Kadara Thompson
Registry Officer

Registries of the Federal Courts
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TO: HIS MAJESTY THE KING IN RIGHT OF CANADA
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AND TO: JODY THOMAS
Former Deputy Minister of National Defence
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AND TO: GENERAL WAYNE EYRE
The Chief of The Defence Staff
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AND TO: LIEUTENANT-GENERAL FRANCES ALLEN

The Vice Chief of The Defence Staff
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AND TO: LIEUTENANT-JENNIE CARIGNAN

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AND TO: CANADIAN FORCES NATIONAL INVESTIGATION SERVICE

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AND TO: DANA MILLS

AND TO: LAURIE ANN KEMPTON

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AND TO: MAJOR-GENERAL SIMON TRUDEAU

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AND TO: COLONEL DYLAN KERR
Director of Military Prosecutions
Judge Advocate General
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THE CLAIM

- 1) The Plaintiff, Lieutenant-General Steven Whelan (“**LGen Whelan**”), seeks the following relief and claims:
 - a) A declaration that the Defendants referred to as the Canadian Armed Forces (“**CAF**”) and the Department of National Defence (“**DND**”), Jody Thomas, former Deputy Minister for Defence (“**DM**”) and former National Security Advisor to the Prime Minister (“**NSA**”), General Wayne Eyre, the Chief of the Defence Staff (“**CDS**”), Lieutenant-General Frances Allen the Vice Chief of the Defence Staff (“**VCDS**”), Lieutenant-General Jennie Carignan, the Chief of Professional Conduct and Culture (“**CPCC**”), Laurie Ann Kempton former Assistant Deputy Minister for Public Affairs DND (“**ADMPA**”), Canadian Forces Provost Marshal Major-General Simon Trudeau (“**CFPM**”), and Director of Military Prosecutions Colonel Dylan Kerr (“**DMP**”), owed and were in breach of constitutional, statutory and common law duties to LGen Whelan;
 - b) Declaration that the Defendants are liable to LGen Whelan for the damages caused by their breach of constitutional, statutory and common law duties;
 - c) An Order instructing the CAF and DND to issue a public apology to LGen Whelan for its abuse of office, negligent investigation, malicious prosecution and involvement in the media leaks that destroyed his reputation and career;

- d) Pecuniary general damages for the loss of income relating to the loss of promotional opportunities, promotions, potential loss of pension and benefits, and loss of employment opportunities in the amount of \$8,000,000;
- e) Non-pecuniary damages arising from irreparable injury to his reputation, self-confidence and social standing in the amount of \$1,500,000;
- f) Special damages in an amount to be determined prior to trial;
- g) Aggravated, exemplary and punitive damages, and damages pursuant to s.24(1) of the *Charter* in the amount of \$500,000;
- h) Prejudgment and post-judgment interest in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- 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.

THE PARTIES

- 2) The Plaintiff, Lieutenant-General. Steven J. R. Whelan (“**LGen Whelan**”) is a three-star general officer in the CAF. He currently resides in Ottawa, Ontario.
- 3) The Defendant, His Majesty the King in Right of Canada, as represented by the DND and the CAF were at all material times the employer of the following personnel and their staff and were vicariously liable for their actions:

- a) Jody Thomas, the defendant, was at all material times the Deputy Minister of National Defence.
- b) General Wayne Eyre, the defendant, the Acting or Chief of the Defence Staff, at the material times.
- c) Lieutenant-General Frances Allen, the defendant, the Vice Chief of the Defence Staff, at the material times.
- d) Lieutenant-General Jennie Carignan, the defendant, the Chief of Professional Conduct and Culture, at the material times.
- e) Laurie Ann Kempton, the defendant, the Assistant Deputy Minister of Public Affairs at the Department of National Defence, at the material times.
- f) Major-General Simon Trudeau, the defendant, the Canadian Forces Provost Marshal, at the material times.
- g) Colonel Dylan Kerr, the defendant, the Director of Military Prosecutions, at the material times.
- h) The Canadian Forces National Investigation Services (“**CFNIS**”), the defendant, and its agents and officers including Warrant Officer Shawn Abella.
- i) Dana Mills (“**Mills**” or the “**Complainant**”), the defendant, a member of the CAF and the source of the original wrongful allegation at the material times.

OVERVIEW

- 4) The Government of Canada, through its agents (the Defendants) in the Prime Minister's Office ("**PMO**"), Privy Council Office ("**PCO**"), DND, and CAF, deliberately or negligently destroyed LGen Whelan's career and well-being to secure a desired political or personal outcome.
- 5) The CAF/DND negligently investigated and maliciously prosecuted LGen Whelan as part of its response to intense political and media pressure to respond to the Sexual Misconduct Crisis besetting the military before, during and after the Federal election in the Fall of 2021 and, in doing so, failed to exercise its duty to an accused owed under the law.
- 6) The claim is based on a historical incident involving Warrant Officer Dana Mills (Mills), who fraudulently misrepresented facts for her personal gain, defamed LGen Whelan, and tampered with evidence. The other Defendants discovered her misrepresentation and tampering during their investigation of the Plaintiff. As a result, they dropped the charges just before Mills was scheduled to testify in the court-martial proceedings against LGen Whelan.
- 7) This claim stems from various failures in the political and military leadership structure. Individuals with inappropriate motives influenced the military justice system, military police processes, and career administration processes. The resulting chaos reflects a military that is still unwilling to free itself from improper political influence.
- 8) The CFNIS and Military Police negligently and incompetently investigated LGen Whelan, falling below the standard of care expected by an independent and competent police force.

The DMP wrongfully prosecuted LGen Whelan to benefit and/or accord with the desires of the chain of command and fell below the standard of care expected of an independent prosecutorial body. In doing so, they ruined LGen Whelan's life and career.

- 9) LGen Whelan is the victim of circumstance. An opportunistic former subordinate who made fraudulent claims to secure financial gain destroyed his career and life's work. Rather than professionally investigating the claims to discover the truth, the CAF, bending to improper political pressure, used the allegations as a media opportunity for political gain. In so doing, they sacrificed LGen Whelan rather than affording him the rights he was owed.
- 10) The prosecution and trial of LGen Whelan was part of a deliberate campaign to show that the authorities were taking action. Military and political personnel covered up a negligent investigation and an incompetent prosecution process to protect themselves and their organizations at the expense of LGen Whelan. Administrative procedures were manipulated after the court-martial to secure a desired outcome of releasing LGen Whelan to make up for a failed prosecution.
- 11) LGen Whelan's court-martial is a noteworthy example of how the chain of command interferes with the military justice and administrative systems. LGen Whelan is the highest-ranking General Officer to have ever faced a court-martial. Concerns arose when the Chief of Defence Staff and Vice Chief of Defence Staff were going to testify at LGen Whelan's court-martial. It appears that the chain of command ordered an end to his court proceedings mid-trial, intending to inflict maximum damage to LGen Whelan while minimizing embarrassment and damage to themselves and other political actors.

- 12) The issue of rank and due process is particularly relevant when it comes to corruption in the military justice system. The prosecutorial and police services of the CAF are not independent and did not always act in the interests of justice. They complied with a chain of command that interfered with the process when it served the interests of their political superiors.

CAF's Ongoing Sexual Misconduct Crisis

- 13) A series of high-profile individual and class-action sexual assault cases resulted in a CAF sexual misconduct crisis in 2015. Operation HONOUR (Duty to Report) was born out of this crisis.
- 14) The sexual assault crisis that gripped the CAF in 2021 was a continuation of the unresolved 2014-2015 crisis. By 2021, Operation HONOUR was defunct; misconduct statistics were spiking; and the CAF was swamped with scandal and class action claims. A legacy of failures in the chain of command and inaction led to well-deserved attention being brought upon the CAF and its response to issues pertaining to sexual assault. The leadership of the CAF struggled to preserve operational effectiveness while navigating the crisis. Desperate leaders resorted to extreme measures to give the appearance of addressing this problem.
- 15) Allegations against high-ranking male senior officers surfaced in early 2021. Canadians, CAF members, political figures, and the media quickly focused on historical allegations to highlight institutional issues. The CAF failed to critically assess whether the unproven allegations were directly related to the crisis at hand. Political actors portrayed the accused individuals as adversaries and targets of opportunity for political and personal gain, making

them the focal point of the crisis. Due process was discarded, and lives and careers were ruined for improper purposes. In the process, the military justice system was negatively influenced by the chain of command.

LGen Whelan's Appointment and Role

- 16) Lieutenant-General Steven LGen Whelan devoted more than thirty-five years of his life to serving Canada. He has a reputation for honesty, integrity, and fair dealing. Throughout his career, he was widely respected for being just, firm, and accessible by all ranks and for being an ally to anyone serving their country, regardless of gender.
- 17) LGen Whelan was appointed Chief of Military Personnel in March 2021 and became part of the leadership architecture managing the most sensitive CAF/DND issues. At the time of his appointment, he was the most decorated General in the CAF and had an exemplary service record. Parallel to his appointment was the ongoing sexual misconduct crisis. LGen Whelan was chosen to address a faltering personnel enterprise that was affecting the morale and operational effectiveness of the military.

The Failure of CAF/DND Senior Leaders in the Face of the Conduct Crisis

- 18) Tragically for the CAF, the presiding government recognized this crisis as an opportunistic tool that could be leveraged to advance its political goals. The CAF became a tool to advance public policy. In doing so, the government destroyed the lives of many senior officers on allegations alone. It perpetuated a forever war that has generationally destroyed operational effectiveness, fractured CAF members' confidence in CAF leadership, and sullied the reputation of Canada's military. Despite his pristine record, LGen Whelan is a

casualty of that war because he stood up to political and military operatives who used the CAF and the Sexual Misconduct Crisis to advance their careers and political agendas.

- 19) In the Spring and Fall of 2021, while managing the CAF responses to multiple allegations against senior officers, LGen Whelan witnessed firsthand his chain of command receiving direction from the sitting government and saw their willingness to sacrifice the careers of officers under allegation. Bad actors were manipulating the press, leaking stories, giving illegal orders, and methodically taking out senior CAF leaders. LGen Whelan became concerned the ongoing targeting of senior leadership was an abandonment of due process that would make the CAF vulnerable to its adversaries. His concerns became a point of contention with his superiors. Ironically, a fraudulent accusation arose that would put him in the sights of the same political operatives looking for a reason to remove a vocal leader who stood in the way of their political objectives.
- 20) On September 2, 2021, in the final weeks before a federal election, LGen Whelan became aware from outside his chain of command that an internal investigation had been launched against him. He immediately notified the CDS, unaware his chain of command had been clandestinely supporting a Military Police investigation for months without his knowledge. In the initial call to his CDS, General Wayne Eyre told LGen Whelan he was unaware of the investigation but would look into it. LGen Whelan was being lied to by his chain of command leaders.
- 21) In a call later that day, the CDS told LGen Whelan a historical complaint had been lodged against him; implying it was the first he had heard of it. LGen Whelan immediately offered his resignation to protect the organization and allow any investigation to run its course,

knowing he had not committed an act of sexual misconduct. The CDS declined his offer and told LGen Whelan, after looking into the complaint, that it was not serious enough to warrant anything other than maintaining the status quo.

- 22) LGen Whelan remained in position, not realizing his chain of command was actually preparing a plan to remove him after the federal election using a well-timed media leak. The Plaintiff alleges the Liberal government did not want another sexual misconduct allegation so close to the election. They directed the CAF to bury it, knowing that if LGen Whelan resigned in early September 2021, public knowledge of it could have threatened the election outcome.
- 23) After the election, on October 15, 2021, LGen Whelan received 20 minutes notice from VCDS Frances Allen that the Globe and Mail, along with dozens of other domestic and international media outlets, would be publishing stories reporting that LGen Whelan was under investigation for sexual assault. The media coverage was widespread and damaging. The leak occurred at the end of the election and before a new Minister of Defence took office.
- 24) LGen Whelan's requests to the chain of command asking how a confidential police investigation that had not yet been completed could be leaked to the media have gone unanswered. No investigations were ever launched to determine the source of the leak. LGen Whelan believes that members of his chain of command enabled the leak. The Plaintiff alleges that his removal through the media was orchestrated by individuals seeking to maximize political gains for a new minority government and a new Minister trying to establish credibility.

The Role of the Director of Military Prosecutions

- 25) One of the roles of the Director of Military Prosecutions (“**DMP**”) is to review cases referred for court-martial, decide which cases should proceed and prosecute those cases in a military courtroom.
- 26) Former Chief Justice Brian Dickson in his 1997 Report of the Special Advisory Group on Military Justice and Military Police Investigative Services, recommended that court-martial prosecution be separated from the chain of command in order to guard against the chain of command interfering or steering military justice processes. A recent Federal Court decision on military judges acknowledged that DMP is still not immune to chain of command interference. The higher the profile of any scandal and the closer the proximity to senior levels of CAF, DND, and Parliament, the higher the propensity there will be from the halls of power to interfere in military justice systems using existing chain of command relationships. As a result, systemic interference can go unnoticed.
- 27) In LGen Whelan’s case, the chain of command, acting at the behest of political operatives, overrode the police charging decision, compelled the DMP to write the charges for the police, hid key information and forced the laying of said charges.
- 28) Despite overwhelming evidence that there were no grounds for a charge, political pressures, CAF leadership interference, and the media leak resulted in the decision to court-martial the LGen Whelan in a very public spectacle that eventually culminated in the withdrawal of all charges before evidence damaging to the chain of command would be called.

- 29) The chain of command intervened when the prosecution's case was about to fail after a disastrous first week of trial. At that point, the chain of command went on high alert to avoid the CDS and VCDS being called to testify. Bringing the two highest-ranking officers in CAF to testify in front of the media was an unacceptable risk. Consequently, proceedings ended suddenly and without warning or fulsome explanation.
- 30) DMP intervened to save the CDS and VCDS when LGen Whelan would not plead guilty. The DMP's loyalty to the chain of command exceeded their professional obligations to the military justice system.

The Role of the CFNIS in this Case

- 31) CFNIS plays a vital role in protecting Canada's national security interests and is charged with leading investigations similar to what other police forces call their major crimes unit.
- 32) By virtue of his rank, LGen Whelan's case was referred to the CFNIS. Rather than undertaking that responsibility diligently and with the seriousness such an investigation warrants, the CAF and its investigative arm were unprofessional, cavalier, and irresponsible. CFNIS negligence ruined LGen Whelan's career, undermined his earning capability and gave rise to public humiliation that destroyed his reputation and caused his family untold trauma and stress.
- 33) Many CFNIS officers voiced serious concerns at various times about the investigation, officers questioned the evidence, others declared deep skepticism with complainant Mills' story, leading many to conclude that charges were not warranted. Every CFNIS officer who dared suggest any other outcome than a charge was ignored, removed or has retired.

- 34) In late 2021, CFNIS informed LGen Whelan's counsel that they did not intend to lay charges but that the chain of command could, at its discretion prefer charges. The chain of command ultimately overrode a CFNIS recommendation not to charge LGen Whelan.
- 35) In July 2022, LGen Whelan was charged with two counts under the *National Defence Act* section 129, Conduct to the Prejudice of Good Order and Discipline. This was the first time in the history of the CAF that such a minor offence was laid against a General Officer.

THE POLITICAL CLIMATE

Confronting Interference

- 36) LGen Whelan saw firsthand political operatives influence CAF decisions in ways that hurt service members so that politicians would be protected. Behind closed doors, the message is clear: protect the Minister from criticism. Do what you must do to make problems disappear when the Minister, Deputy Minister or CDS comes under fire. LGen Whelan knows bad press usually results in someone being told to do something using various means to avoid accountability. LGen Whelan frequently pushed back on the intimidation and coercion that came with panicky Ministers, unstable Deputy Ministers and frenetic military leaders looking for a way out of trouble. This put him in their sights.

The First Signs of Trouble

- 37) In February 2021 shortly after General Jon Vance was thrust in the media as the first in a series of senior officer allegations, LGen Whelan could see that decisions to address the

emerging crisis were increasingly laden with political interference. Concerns brought forward by LGen Whelan to his leaders were brushed aside.

- 38) The struggle for control of the narrative escalated as Generals and Admirals were gradually removed from their positions. Military leaders were worried about their safety, while political actors were concerned about the impact on the political landscape. Consequently, the most senior Canadian Armed Forces leaders decided to surrender to the political establishment and shielded themselves by making grandiose statements about culture.
- 39) The Plaintiff alleges many others noticed the interference. In May 2021, Acting CDS Eyre privately confided to LGen Whelan that he was deeply concerned about Jody Thomas' conduct. He described an exceedingly toxic personality who he said she hated male Generals and shapeshifted in the shadows of PCO. Eyre said he was waiting for Thomas to retire before he could build back morale in senior leadership.

Chain of Command Interference with Due Process

- 40) CDS Wayne Eyre intentionally downplayed the initial complaint against LGen Whelan in September 2021 to avoid affecting the upcoming election. The DND and CAF become subject to a Caretaker Convention during federal elections. This means the CAF and DND are led by a Deputy Minister (DM) instead of their usual leadership. At a crucial time, Jody Thomas was in charge, despite concerns expressed by General Eyre. The unspoken rule during a Caretaker Convention is to avoid becoming the focus of a scandal, as it could affect the election outcome. Therefore, government departments and their senior leaders make significant efforts to prevent potential scandals from arising during elections. The

last senior officer to face allegations was LGen Whelan, and this could have been a tipping point that affected the election.

- 41) When LGen Whelan's allegations became known in September 2021 he immediately offered his resignation to the CDS. The Plaintiff alleges that General Eyre's rejection of LGen Whelan's resignation was a Trojan horse. The Plaintiff alleges General Eyre respected the unspoken rules of the Caretaker's Convention under orders from Jody Thomas and in so doing assisted a struggling political party trying to get re-elected.
- 42) Declining LGen Whelan's offer to resign was not about doing the right thing. Once the election was over, LGen Whelan was swiftly removed from his position and publicly discredited when the political risk had passed.

Interference by the Vice Chief of the Defence Staff

- 43) In LGen Whelan's disclosure package of the CFNIS investigation, it was revealed that in October 2021, there was a phone call between the CFNIS and the original complainant Dana Mills. During the call, Mills expressed her dissatisfaction that the CDS and VCDS were not fulfilling their personal promise to her to remove LGen Whelan from command. Mills felt that it was taking too long to remove LGen Whelan. The call showed that inappropriate off-channel meetings were occurring between the VCDS and LGen Whelan's accuser, adding to the pressure DND/CAF were feeling. The CFNIS officer on the call, Warrant Officer Hollingworth, admitted to Mills that she was actively working with the VCDS to remove LGen Whelan from command.

- 44) The VCDS continues to interfere and abuse due process. Following the court-martial, the VCDS has conscripted the Director General of Military Careers Administration to secure the punitive career outcome the police and courts could not. LGen Whelan has submitted an Abuse of Power complaint against the VCDS that the CDS has ignored.

The Media and Politically Motivated Leaks

- 45) Select media have infiltrated CAF/DND by invitation and are used by the most senior leaders to deflect scandals surreptitiously. Former DM Jody Thomas and former DND Assistant Deputy Minister for Public Affairs Laurie Ann Kempton coordinated the story that exposed the General Vance allegation. The Plaintiff alleges they did the same with LGen Whelan.

THE INVESTIGATIVE DISASTER

The Investigation Disaster Defined

- 46) The police investigation into the historic allegation against LGen Whelan was deficient at every level. It was a political hot potato being passed around as everyone feared to tell the chain of command what they did not want to hear. The allegation was false, the Complainant had no credibility and ulterior motives, the investigation should have been closed, and no charges should have been laid. The chain of command interfered with the process and kept the investigation open until they could find a path to a criminal charge that ended on their terms.

- 47) Dozens of complainants who openly challenge the CFPM's leadership and competence have identified a pattern of deception by CFPM/CFNIS, and that pattern is replicated in the negligent investigation in this case.

Factors of a Negligent Investigation by the CFNIS

- 48) The improper interviews conducted with the Complainant, the failure to interview critical witnesses, the violation of evidence collection and preservation standards, the concealment of information by CFNIS, and the replacement of police officers who did not comply with the chain of command's wishes, all indicate that this investigation was a failure on the part of CFNIS.
- 49) It is believed that the CFNIS did not close the investigation and rule in favour of LGen Whelan due to instructions from the chain of command or fear of reprisal. The decision to lay charges against LGen Whelan was made out of concern for negative media attention.
- 50) LGen Whelan's accuser was a liar with a clear motive. The CFNIS and its agents failed to follow protocol or meet the acceptable standard to identify this and/or were willfully blind to the fact that the Complainant was lying. Although the case was not complex from an investigative standpoint, over 55 police officers and multiple offices worked on it.

LGen Whelan's Court-Martial

- 51) The court-martial showcased the interference and abuse of process crisis that systemically plagues the CAF. Before the commencement of the trial, two lead prosecutors voluntarily

withdrew themselves from the case. The Plaintiff alleges the DMP was being pressured by the JAG, CFPM and/or VCDS to move forward with the case.

- 52) On day one of the court-martial, the prosecutor withdrew the more serious of the two minor charges to the surprise of everyone in the court and for no apparent reason. When questioned, he responded, “All the General has to do is plead to this last one, and the court-martial will go away, and the emails will never be public.”
- 53) LGen Whelan refused to plead guilty despite tremendous pressure to do so. He was concerned about the potential embarrassment of the Prosecutor selectively using out-of-context emails in the public sphere. These emails originated from the Complainant, who provided them to the investigators without context and with many important conversations deleted. The emails could not, in any measure, form the substance of a legitimate charge, yet nonetheless, they were improperly used as a tool in an attempt to force LGen Whelan into compliance with the chain of command’s desire that he plead guilty.
- 54) The prosecution began presenting its case. They requested to immediately make the emails a public exhibit, but the military judge ultimately rejected the application. LGen Whelan refused to back down and the prosecution called the Complainant to the stand. She was the prosecution’s last witness. Minutes before she was to be cross-examined, the prosecution withdrew the final charge, and the court-martial came to an end.

After the Court-Martial – Abuse of Process

- 55) Within hours of the end of the court-martial the chain of command launched an Administrative Review (AR) process (career review). The VCDS and CDS were taking

another run at LGen Whelan from a different direction. The AR process is well known as an ad hoc last resort process used by CAF chains of command to forcibly purge members when they run out of options to release. Administrative measures allow DND/CAF to control outcomes when other disciplinary processes like the military justice system fail.

- 56) The decision to move forward with a strategy to force a guilty plea when the prosecutors knew there was no reasonable prospect of conviction or public interest, the strategic timing of the withdrawal of charges, the politburo reporting on counsel proceedings to the chain of command by LGen Jennie Carignan's (CPCC) team are all indicators of misuse of office by institutions charged with safeguarding due process and the military justice system.
- 57) The CDS and VCDS are currently improperly manipulating evidence from a flawed police investigation and a defunct prosecution to purge LGen Whelan in a manner incongruent with the principles of justice. This is reprisal through administrative measures reflecting a chain of command that will not tolerate the idea of losing or the risk of being accused of being lenient on senior officers.

CAUSES OF ACTION

Negligent Investigation

- 58) The Defendants owed a duty of care at common law to LGen Whelan through their involvement in investigating the allegation. The CFNIS and its agents failed to meet the required standard of care of a reasonable police officer, investigating official or investigative bodies in similar circumstances. They fell below the required standard of care because they:

- a) fell victim to investigator bias;
- b) fell victim to tunnel vision, focusing on potentially inculpatory evidence and disregarding or ignoring obvious exculpatory evidence. CFNIS and its agents owed a duty of care to LGen Whelan to conduct their investigations competently, without influence and at the standard of care necessary for such a critical and high-profile case;
- c) failed to comply with Military Police Policy and Technical Procedures (maintaining proper notes, recording interviews, collection of evidence etc.),
- d) failed to comply with the law on disclosure withholding critical evidence necessary for the defence and transparency in the system;
- e) failed to identify, collect, and preserve evidence critical to a complete and fair investigation;
- f) failed to follow up and interview critical witnesses that would have revealed deception on the part of the Complainant and failed to investigate why the Complainant would be deceiving the police;
- g) failed to interview the Complainant in a manner consistent with investigative protocols such that it fell well below the expected standard of care,
- h) failed to collect and validate evidence, which was otherwise available, that was material to the main issue, namely the email correspondence in its entirety.

- i) failed to maintain records of General Wayne Eyre's testimony to the Military Police. Though listed as a witness in the investigation, the CFNIS and CFPM willfully excluded his evidence, demonstrating their lack of independence. They were unduly influenced in their investigation by political actors who wanted to avoid potential scrutiny.
- 59) The acts and omissions of the Defendants (as pleaded herein) fell below the standard of care required. The Defendant CAF is directly liable for the acts and omissions of its employees. As a foreseeable result of Defendants' negligence, LGen Whelan has suffered damages, as further particularized below.
- 60) Had the investigation been conducted properly, it would have concluded with a favourable finding for LGen Whelan in a reasonable time regardless of political considerations and prevented the damages suffered by him and his family.

Malicious Prosecution

- 61) Dana Mills targeted then Colonel Whelan to get herself placed on a 12-month deployment with her boyfriend at the time. She befriended LGen Whelan and engaged in communications designed to elicit sympathy and friendship for her so that she could manipulate him into bringing her on the tour he was to command in Jerusalem.
- 62) The prosecution arose from allegations Mills made about LGen Whelan years after this tour when facing financial hardship and imminent release from the CAF. Mills had maintained a friendly relationship with LGen Whelan for a decade after the tour and routinely asked for his assistance, which was given when appropriate.

- 63) In September 2019, Mills asked then Major-General Whelan to intervene in his capacity as Chief of Strategy in Chief of Military Personnel to prevent her imminent release in February 2020. When he could not help to her satisfaction, Mills became visibly upset.
- 64) Proximate to her release, Mills concocted a story alleging historic sexual misconduct to qualify for an extension of her release and the financial benefits package under options available to victims of sexual misconduct. The Plaintiff alleges she actively participated in the media leak, working with the chain of command and the DM/VCDS offices. She pushed for prosecution in order to achieve greater financial awards despite knowing her allegations were untrue and, in the process, tampered with evidence and lied to the investigators.
- 65) The decision to prosecute was political, influenced by political actors and careerists in the CAF and DND. Mills fabricated a story to secure financial gain. The prosecutors had evidence of this available that, if explored, would have ended the prosecution.
- 66) The final withdrawal of the last charge came minutes before Mills was about to be cross-examined and before Generals Wayne Eyre and Frances Allen were to appear in court.
- 67) At some point, yet to be determined, the DMP office was aware or deliberately ignored that there were insufficient grounds, no reasonable likelihood of conviction, and/or no public interest in laying charges against LGen Whelan. Despite this, they intentionally developed a strategy to charge LGen Whelan to fulfill the political desires of the chain of command and the ruling government.

- 68) Prosecutors drafted the charges against LGen Whelan for the police when they did not show interest in pursuing the case. The DMP was actively involved in the process, working behind the scenes to guide it, and communicating unofficially with the chain of command. Dropping one charge on day one of the court-martial was part of a deliberate strategy to pressure a guilty plea and save LGen Whelan from threatened embarrassment. When he refused to plead the remaining charge, the DMP proceeded to prosecute until they could get the information that would embarrass and damage him in the public sphere.
- 69) LGen Whelan's legal team was prepared to cross-examine the Complainant and expose the evident deceptions. The legal team would then present its case, summoning the CDS and VCDS to testify about their involvement in the investigation.
- 70) The court was to start at 9:30am. At 9:35am, the military prosecutor was in his vehicle engaged in a heated debate with someone on his cell phone. The Complainant was waiting to take the stand. The prosecutor rushed into court at 9:41am and asked to speak to counsel and indicated the government would be withdrawing the final remaining count. The reason given for the withdrawal of the last charge was “evidence issues.”
- 71) LGen Whelan was improperly denied the opportunity to make his case and clear his name as part of a strategic, top-down scheme to get the damaging information into the public sphere, prevent the government from looking bad, and protect the CDS and VCDS from having to testify.
- 72) CAF had the ability to determine that LGen Whelan was a victim of wrongful allegations. and willfully ignored the truth to please political actors for improper purposes.

Conspiracy

- 73) The Plaintiff alleges the Defendants conspired independently and collectively to ensure the prosecution continued to maximize the political gain and minimize the political fallout. This could only be done through backdoor channels hidden from public view.
- 74) The military justice system can be indirectly influenced by the chain of command based on the government's desires. The Prime Minister's Office (PMO) and the Privy Council Office (PCO) can silence or highlight certain matters for improper purposes without the public being aware of it. This process is something LGen Whelan is intimately familiar with given his high-rank employment within the CAF. The Defendants engaged in this practice to the detriment of LGen Whelan's rights.
- 75) Agents within CAF/DND at the highest levels have relationships with certain media whom they use to distract or go on offensive operations against perceived threats. The leaking of investigations by operatives within CAF/DND is a known pattern of behaviour used strategically to achieve political aims.
- 76) In May of 2021 Jody Thomas, Deputy Minister of DND ordered the JAG and the CFPM to release to the media all investigations involving senior officers before the investigations could be completed, contrary to the legislation and established common law practice. Former VCDS Micheal Rouleau expressed deep concern at the time in a letter to the CDS about Jody Thomas' illegal order. Rouleau retired weeks later.

- 77) Jody Thomas had a direct line with the Clerk of the Privy Council, who is in daily contact with the PMO. The VCDS has/had direct access to the DM, and they communicated daily on matters of concern to the sitting government and the Minister.
- 78) Jody Thomas' attempts to formalize the improper release of confidential information were successfully resisted by the CAF in May 2021. The result was media leaks coming from DND or CAF later exposing investigations before they were completed to pressure investigators to lay charges when no cause existed.
- 79) The Defendants knew, or ought to have known, that, given LGen Whelan's high-profile and public position, leaking the story before the investigation could be completed would irreparably harm his career, family, and health.

Defamation, Public Disclosure of Private Facts, Breach of Confidence

- 80) The media leaks served a political purpose. The leak involving the investigation into the allegations against LGen Whelan was timed to occur after the election and create the impression that the government was competently dealing with the sexual assault crisis. By targeting, identifying, and vilifying LGen Whelan, the political operatives took credit for being proactive at the expense of LGen Whelan's career, reputation and health.
- 81) Failure to address the media leaks in a manner owed to LGen Whelan and the CAF contributed to the damages suffered. LGen Whelan was labelled as someone under investigation for sexual assault despite there being zero evidence of a sexual assault in the ongoing investigation.

- 82) The Plaintiff alleges the CDS was untruthful to LGen Whelan and acted behind the scenes to serve the government improperly and unlawfully, protecting the Minister and his political party rather than the institution and the lives of its service members.
- 83) Investigations should remain confidential until they are completed in order to preserve the integrity of the process and prevent undue influence from outside forces. Publicizing the investigation before it was completed was a strategic move. Jody Thomas, Laurie Ann Kempton, the CDS, the VCDS and Mills were individually or collectively involved in a plan to manage information that undermined the confidence in the military justice system.
- 84) Dana Mills deliberately fabricated a story and lied about her relationship with LGen Whelan, triggering a series of events that destroyed his reputation and career.

Abuse of Office/Breach of Trust

- 85) As Chief of Military Personnel, LGen Whelan frequently resisted attempts by military and political actors to abuse the process. That made him unpopular with people in power.
- a) In March 2021 LGen Whelan resisted immense pressures from Jody Thomas and Harjit Sajjan to release General Jon Vance contrary to established CAF policy. The Minister and DM were trying to get rid of Vance because of the negative media attention that was building. LGen Whelan did not comply.
- b) In August of 2021 LGen Whelan resisted efforts by the VCDS Frances Allen to release Admiral Art Macdonald prematurely before the government had decided on his future as CDS. He believed it was an attempt to subterfuge the system on behalf

of a DM and Minister, seeking to achieve political points, and therefore, he did not cooperate.

86) LGen Whelan's chain of command abused their offices to effect reprisal before, during, and after the court-martial.

a) LGen Whelan's chain of command kept the investigation hidden from him for months for improper purposes.

b) The CDS misled LGen Whelan about his knowledge of an investigation. When confronted, he downplayed the issue by stating that the investigation was not significant. The CDS used his position to influence the process in order to protect the current government, which was concerned about the upcoming election, rather than prioritizing due process.

c) Finally, the CDS, VCDS, DM, and their offices communicated inappropriately with the Complainant during the investigation without police presence.

87) LGen Whelan's chain of command abused their offices to engage in parallel processes that undermined the military justice system and corrupt the administrative review process following the withdrawal of charges.

a) Generals Allen and Carignan sent operatives to the courtroom to report on the daily outcomes of the court-martial, sitting directly behind LGen Whelan's counsel's desk. These operatives were directed to take notes that painted LGen Whelan negatively to build a case against him that would be intentionally used in a later

parallel punitive administrative process. The chain of command relied on these notes instead of the court transcripts and is now using them as ammunition to release LGen Whelan despite the charges having been withdrawn. They have refused to provide these notes to LGen Whelan.

- b) The AR process is being misused, and the chain of command has improperly chosen information to justify a punitive measure that goes beyond the scope of the AR mandate. Essentially, the chain of command is so focused on damaging LGen Whelan's career to save face that they are corrupting the process by using selected, self-serving snippets of evidence from a withdrawn court-martial in which the Complainant's evidence was not tested.
 - c) This court-martial evidence was completely exculpatory, but the chain of command selectively moulded it into a narrative that gives them the power to ruin his career where the failed malicious prosecution could not. This is reprisal and an abuse of process.
- 88) Other actors conspired to secure the desired end states of political power brokers. The Plaintiff alleges Jody Thomas and/or her staff/operatives communicated improperly with the media throughout her time in DND and after; fed them stories to undermine LGen Whelan specifically, and senior leaders collectively and/or improperly used proxies to communicate with complainants to manipulate the case, interfering with due process. The Assistant Deputy Minister for Public Affairs, Laurie Ann Kempton, worked for Jody Thomas and had nurtured relationships with the media that she used to feed them what they needed while protecting leadership.

- 89) The Courts have commented that the presumption that the DMP will carry out its functions independently of partisan concerns cannot be relied upon to safeguard the independence of the military justice system. The protection of the rule of law should not depend on a belief that institutions are immune from impropriety and, above all, that the DMP does not act independently of the chain of command; rather, the DMP performs its functions under the supervision of the Judge Advocate General (JAG), who must be totally loyal and partisan to the interests of the military.
- 90) The JAG is the legal advisor to the CDS and VCDS on military justice issues. Therefore, a reasonable and informed observer would be concerned about institutional bias because the DMP could face discipline from their superiors if he was resistant to what they want. This case is the tipping point to reveal the circumstances that saw this injustice manifest to LGen Whelan's detriment. Even though he was never charged with sexual assault, the chain of command laid charges under Section 129 of the *NDA* in order to satisfy public demand for action. These charges were not supported by law and were unwarranted, and only served to continue the damage to LGen Whelan's reputation. They were an abuse of office on behalf of the chain of command using the DMP.
- 91) There were breaches of duty regarding ATI requests. The chain of command and political operatives suppressed information owed to the Plaintiff and the public. LGen Whelan had the right to receive full disclosure under the *Charter*, but relevant material was and is intentionally being withheld by one or more of the Defendants for improper purposes.
- 92) CAF withheld information that would/could have helped LGen Whelan make a full answer and defence. There was no security imperative or expectation of privilege or privacy

concerning information requested by LGen Whelan. The CAF is destroying and concealing information as part of a known pattern of behaviour to avoid accountability and culpability.

- 93) The Plaintiff alleges the chain of command has been operating under the approbation and protection of Deputy Ministers for Defence, Ministers of National Defence, and the Prime Minister, knowing they were acting unlawfully in committing acts of negligence, defamation, malicious prosecution, breach of trust through constitutional and statutory breaches.
- 94) LGen Whelan states that the Defendants' conduct constitutes a malicious abuse of public office. It was foreseeable that such actions would cause injury and damages to LGen Whelan, and they, in fact, did cause the damages alleged.

VICARIOUS LIABILITY:

- 95) All the agents of the government involved in the destruction of LGen Whelan's career acted in the course of their agency while employed by His Majesty the King, Jody Thomas, Laurie Ann Kempton, Wayne Eyre, Frances Allen, Jennie Carignan, Simon Trudeau, and Dylan Kerr and their subordinates. As such His Majesty the King is liable for its actions and directly and/or vicariously liable for the conduct and misconduct of its employees and agents and is thus liable to LGen Whelan for the damages suffered.
- 96) The acts and omissions of the Defendant (as pleaded herein) fell below the standard of care required. The Defendant is directly liable for the acts and omissions of its employees. As a foreseeable result of the Defendant's negligence, LGen Whelan has suffered damages, as further particularized below.

DAMAGES:

General Damages

97) Loss of Income

- a) LGen Whelan was on a path towards competing to be the CDS. He likely would have been appointed as the VCDS. He could have remained in his position and retired with his reputation intact and continued his service for a number of years.
- b) LGen Whelan has one of the most diverse records of accomplishment within the General Officer Flag Officer cadre. He was the most decorated General Officer at the time of his removal. But for the reputation damage suffered, his opportunities in the private sector were enormously wide and lucrative. He will be denied millions of dollars in lost income and opportunities earned through a life of service and sacrifice to his country.

98) Loss of Reputation

- a) There was a media leak that falsely accused LGen Whelan of sexual assault before the investigation was completed. Despite the fact that he was never charged with sexual assault, the chain of command laid charges under Section 129 of the *NDA* in order to satisfy public demand for action. These charges were not supported by law and were unwarranted, and only served to continue the damage to LGen Whelan's reputation.

- b) LGen Whelan's privacy was invaded, necessitating he take extraordinary measures to protect himself and his family after he received multiple threats. The attention he received after the media leaks made LGen Whelan a pariah in his community, an enemy amongst his colleagues, a target in public spaces for months after the media leak, and a magnet for strangers to stalk him and his family at their place of residence.
- 99) Loss of Enjoyment of Life
- a) On more than one occasion, protesters and or media would stalk LGen Whelan outside his house and stay out there for hours. These stalking incidents traumatized all family members.
 - b) Being thrust into the media and labelled as a perpetrator of sexual assault caused family trauma. A dependent of LGen Whelan working in DND was subjected to a most abhorrent lecture on conduct where the briefer from the Chief of Professional Conduct and Culture (LGen Carignan's organization) defamed LGen Whelan as a sexual predator who deserved what he got. Even warnings to the briefer from a civilian leader present, knowing the dependent was in the audience, went unheeded. This is one example witnessed by chance that showcases the extent of reputation damages that can arise from ignoring due process and the rule of law.
 - c) LGen Whelan's marriage was tested and damaged by the fabricated allegations and the public humiliation.
 - d) Such further details to be particularized at trial and through expert reports.

100) Mental Health Damages

- a) The trauma of being suddenly thrust into national and international media and being wrongfully labelled as a sexual assault perpetrator has resulted in a trauma-related mental health diagnosis for LGen Whelan. Soldiers are trained to withstand violence on the battlefield but attacks from within by trusted members of the CAF strike at vulnerabilities that crack the strongest suits of armour and cripple self-esteem and self-worth. To dedicate a life to the service of one's country only to be sacrificed on the altar of public opinion for political purposes caused LGen Whelan yet untold pain and suffering in quiet solitude.

Aggravated/Punitive Damage

- 101) CAF/DND and its employees acted in bad faith and in a high-handed, malicious, arbitrary, and reprehensible manner that markedly deviated from the ordinary standards of decent behaviour. As such, LGen Whelan claims punitive, aggravated, and exemplary damages.
- 102) The injury and damages suffered by LGen Whelan are all consequences that the defendants intended or knew, or ought to have known, would result from their wrongful conduct and foreseeably did result.
- 103) LGen Whelan states that the actions upon which attract punitive damages include, but are not limited to:

- a) Allowing interference by political bodies, leaders and agents in an independent investigative and prosecutorial process which removed independence from the process;
- b) Misleading LGen Whelan as to the existence of an investigation against him;
- c) Refusing to accept LGen Whelan's resignation to allow for the independence of the investigative process to shield the investigation and interested political bodies, leaders and agents from scrutiny;
- d) Proceeding with a court-martial when the CAF/DND knew or ought to have known was based on alleged facts that were not true;
- e) Leaking information to the media regarding the investigation in order to damage the public's opinion of LGen Whelan while bolstering the credibility of the sitting government; and
- f) Such further damages to be particularized at trial.

LEGISLATION AND LOCATION OF HEARING:

104) The Plaintiff pleads and relies upon:

- a) the *Negligence Act*, R.S.O. 1990, c. N.1 as amended;
- b) the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- c) the *Crown Liability and Proceedings Act*, R.S.C., 1985, c. C-50, as amended;
- d) the *Canadian Charter of Rights and Freedoms*, s. 7, and
- e) the *Canadian Bill of Rights*, R.S.C. 1985, App. III, s.1.

105) The Plaintiff proposes that this action be tried in the City of Ottawa, in the Regional Municipality of Ottawa-Carleton.

May 16, 2024



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I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme À l'original déposé au dossier de la Cour fédérale.

Filing Date

Date de dépôt : May 21 2024

Dated May 21 2024

Fait le : _____