

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

JOANNA GUALTIERI

Plaintiff

and

ATTORNEY GENERAL OF CANADA, FRANK TOWNSON, IAN DAWSON,
KEN PEARSON, JAMES JUDD, GORDON SMITH, GEOFF CLIFFE-PHILLIPS,
DONALD CAMPBELL and LUCIE EDWARDS

Defendants

FRESH STATEMENT OF CLAIM

TO THE DEFENDANTS

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 an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or 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 is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,
LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID
OFFICE.

Dated: "June 10, 1998"

ISSUED BY: "S. Lord"

ADDRESS OF COURT OFFICE:
161 Elgin Street
Ottawa, Ontario
K2P 2K1

TO: ATTORNEY GENERAL OF CANADA
Justice Building
239 Wellington Street
Ottawa, Ontario
K1A 0H8

Foreign Affairs and International Trade Department of Canada
Sussex Drive
Ottawa, Ontario
K1A 0G2

AND TO: FRANK TOWNSON
c/o 125 Sussex Drive
Ottawa, Ontario
K1A 0G2

AND TO: IAN DAWSON
c/o 125 Sussex Drive
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AND TO: KEN PEARSON
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AND TO: JAMES JUDD
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AND TO: GORDON SMITH
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AND TO: GEOFF CLIFFE-PHILLIPS
c/o 125 Sussex Drive
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AND TO: DONALD CAMPBELL
c/o 125 Sussex Drive
Ottawa, Ontario
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AND TO: LUCIE EDWARDS
c/o 125 Sussex Drive
Ottawa, Ontario
K1A 0G2

CLAIM

1. The Plaintiff claims as against the Defendants:

- (a) general damages in the amount of \$5,000,000.00 for:
 - (i) intentional and/or negligent infliction of mental distress;
 - (ii) negligence;
 - (iii) abuse of power and public office;
 - (iv) breach of fiduciary duty;
 - (v) intentional interference with economic relations;
 - (vi) conspiracy to injure the Plaintiff; and,
 - (vii) infringement and/or denial of the Plaintiff's fundamental freedoms of thought, belief, opinion and expression;
- (b) special damages in an amount to be determined before trial for:
 - (i) loss of salary, future income and/or earning capacity and/or competitive advantage;
 - (ii) loss of pension earnings; and,
 - (iii) past and ongoing medical expenses;
- (c) aggravated and punitive damages in the amount of \$1,000,000.00;
- (d) pre-judgment and post-judgment interest on the above amounts, pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) the costs of this action on a substantial indemnity basis plus G.S.T.; and
- (f) such further and other relief as this Honourable Court may deem just.

2. The Plaintiff, Joanna Gualtieri, is a resident of the City of Ottawa, a non-practising lawyer of the Bar of the Province of Ontario, and is and was at all material times an employee of the

Government of Canada (the Crown) for the Bureau of Physical Resources for the Department of Foreign Affairs and International Trade.

3. The Defendant, the Attorney General of Canada, is the representative of the Government of Canada, the Crown and the Department of Foreign Affairs and International Trade (the "Department") in all matters relating to this action.
4. The Defendant, Frank Townson ("Townson"), is a resident of the City of Ottawa, and at all material times was a manager and/or supervisor of the Plaintiff in his capacity as the Director of the Bureau of Physical Resources (the "Bureau").
5. The Defendant, Geoff Cliffe-Phillips ("Cliffe-Phillips"), is a resident of the City of Ottawa, and at all material times was a manager and/or supervisor of the Plaintiff in his capacity as Director of the Bureau.
6. The Defendant, Ken Pearson ("Pearson"), at all material times was an employee of the Federal public service and was a manager and/or supervisor of the Plaintiff in his capacity as Director of the Bureau.
7. The Defendant, Ian Dawson ("Dawson"), is a resident of the City of Ottawa, and at all material times was a manager and/or supervisor of the Plaintiff in his capacity as the Director General of the Bureau.
8. The Defendant, James Judd ("Judd"), is a resident of the City of Ottawa, and at all material times was a manager and/or supervisor of the Plaintiff in his capacity as Assistant Deputy Minister of the Department.
9. The Defendant, Lucie Edwards ("Edwards"), is a resident of the City of Ottawa, and at all material times was a manager and/or supervisor of the Plaintiff in his capacity as Assistant Deputy Minister of the Department.

10. The Defendant, Gordon Smith ("Smith"), is a resident of the Province of British Columbia, and at all material times was an employee of the Federal public service and was a Deputy Minister of the Department and senior manager of the Department.
11. The Defendant, Donald Campbell ("Campbell"), is a resident of the City of Ottawa, and at all material times was a Deputy Minister of the Department and senior manager of the Department.

The Plaintiff's Employment History

12. The Plaintiff is 42 years of age. Her education and experience prior to her career in the public service are as follows:
 - (a) 1980 - Bachelor of Arts (Psychology) at Carleton University, Ottawa, First Class Honours with Distinction;
 - (b) 1983 - 1985 - Law Review, University of Ottawa Law School
 - (c) 1985 - Bachelor of Laws, cum laude, University of Ottawa;
 - (d) 1985 - 1986 - Gowling & Henderson, Ottawa (as it then was), student-at-law
 - (e) 1988 - Called to the Bar of the Law Society of Upper Canada; and,
 - (f) 1981-1992 - real estate acquisition and development in Ottawa.

The Bureau of Physical Resources and Framework Governing the Plaintiff's Duties

13. The Government of Canada owns a vast real property portfolio worth approximately \$2.5 - 3 billion in other countries to support and operate its diplomatic and overseas programs. The Department is the custodian of these holdings and has delegated the responsibility for managing this portfolio to the Bureau. The Bureau's mandate, as set out in its Charter document is:

"to satisfy in a **timely, economically justifiable, and ethical manner** the movable and real property requirements of government departments

operating at posts abroad. In this context, **real property must be managed to the maximum long-term economic advantage of the government**, to honour environmental objectives, to provide adequate facilities, and to respect other government policies.” (emphasis added)

14. The Bureau is governed, *inter alia*, by the following statutes and regulations:

- (a) *Financial Administration Act*;
- (b) *Federal Real Property Act*;
- (c) *Federal Real Property Regulations*;
- (d) *Treasury Board Real Property Policies*; and,
- (e) *Department of Foreign Affairs and International Trade Act*.

15. The *Federal Real Property Act* implemented in 1992 was part of a series of fundamental changes initiated in 1985 regarding the Government’s system for managing federal real property. *Understanding Federal Real Property and the Management Reform Initiative*: a paper prepared by the Bureau of Real Property Management, April 30, 1992, states, *inter alia*:

A major part of the reform [was] to clarify and strengthen the policy themes that federal lands are held to support programs, that land is a valuable asset not a ‘free good’, and that managers have a special stewardship responsibility for lands.

16. In addition, the Bureau is subject to numerous Treasury Board Policies and directives. The Policy in the *Treasury Board Manual for Real Property Management* states:

It is government policy to acquire, manage and retain real property only to support the delivery of government programs and to do so in a manner consistent with the principle of sustainable development. Within this context, real property must be managed to the **maximum long term economic advantage of the government, to honour environmental objectives, to provide safe and adequate facilities, and to respect other relevant government policies**. (emphasis added)

17. The theme that the Federal Government and its custodian departments must be vigilant with respect to their role as stewards of public monies and, more specifically, the requirement to

systematically assess their property needs against a standard of cost effectiveness and reduction of costs where possible, is repeated in numerous government rules, regulations, directives and policies. Specifically, the *Treasury Board Manual for Information and Administrative Management* states, *inter alia*:

Custodian departments must fully analyse proposed real property investments made in support of program requirements. This analysis shall take into account:

- Opportunity costs and the time value of money;
- Costs associated with the location of the real property;
- Disinvestments or disposal opportunities; and
- The highest and best use of the property.

18. On or about July 1993, the Bureau became a Special Operating Agency with its own framework and charter documents. The Charter document for the Bureau provides, *inter alia*, the following Mission Statement:

The Mission of the Bureau is to support Canadian international objectives and programs through the provision of office and staff accommodation, as well as asset management, maintenance and material services, to Bureau clientele in a **cost-effective, economical and efficient manner**. (emphasis added) The Bureau is also subject to numerous Treasury Board policies, rules, regulations, financial controls and directives. The policy in the *Treasury Board Manual for Real Property Management* states:

The Plaintiff's Employment with the Bureau

19. In or about February 1992, the Plaintiff made a reflective and conscious decision to join the Department and commence a career in public service. The Plaintiff worked in the Property Program Division of the Bureau. The Plaintiff has the following history with the Bureau for the Department:

- (a) February 3, 1992 to February 1, 1993 - Realty Strategist at the AS/4 level;
- (b) February 1, 1993 to June 1995 - promoted to Portfolio Manager for Latin America and the Caribbean at the AS/5 level;

- (c) June 1995 to September 1995 - illegally deployed to a non-existent position without any defined duties at the AS/5 level;
- (d) September 1995 to May 1996 - resumed prior position as Portfolio Manager for Latin America and the Caribbean but with virtually no assigned work;
- (f) May 1996 to December 12, 1997 - medically authorized - unpaid leave resulting from the harassment and abuse of power in the workplace;
- (g) October 1997 - removed from Portfolio Manager for Latin America and the Caribbean position during her absence on medically authorized leave;
- (h) December 12, 1997 to April 1998 - returned to the Bureau without a position and no assigned duties;
- (i) April 1998 to present - deployed without her consent to a new position, Realty Manager, at the AS/6 level but with reduced responsibilities;
- (j) April 20, 1998 to June 1998 - leave pursuant to the Treasury Board Directive on Danger in the Workplace;
- (k) June 1998 to present - medically authorized - unpaid leave.

20. As Portfolio Manager for Latin America and the Caribbean, one of the primary components of the Plaintiff's management duties was to pursue feasibility studies to determine the most cost-effective way to provide appropriate overseas offices and residential accommodations for Canada's Foreign Service. This included managing and advising on the leasing, acquisition, and disposal of existing properties and/or new construction. The Plaintiff's job description as a Real Estate Portfolio Manager is as follows:

To support Canadian International objectives and programs through the **effective stewardship** and management of the Government's real property investment portfolio abroad to provide **cost effective office and residential accommodation and facilities which meet program requirements while reducing program costs and improving service quality**. (emphasis added)

21. The Plaintiff as an employee of the Federal public service is and was subject, *inter alia*, to the *Public Service Employment Act*, the *Public Service Staff Relations Act*, the *Financial Administration Act*, and other government-wide statutes and Treasury Board policies.
22. The Plaintiff is a loyal public servant. The Plaintiff properly performed the duties and functions of her employment in a competent, efficient, ethical and accountable fashion in accordance with the statutes, rules, regulations, policies and the mandate of the Bureau pleaded herein.

Departmental Overspending, Waste and Financial Mismanagement

23. The Plaintiff states that the statutes, regulations, policies, rules and Departmental directives enacted to protect the public interest and preserve public trust in Government operations were routinely flouted by the Defendants and the Department was pervaded by a long-standing culture of entitlement and careerism resulting in employees securing for themselves while posted abroad luxurious accommodations in violation of the rules and to the detriment of ordinary Canadian taxpayers.
24. This culture and status quo was maintained through the acquiescence of the Defendants, Departmental employees, senior management, and thwarted the Plaintiff as a public servant from executing her duties with integrity and in the public interest.
25. In the course of properly carrying out her duties and responsibilities, the Plaintiff exposed the following misuse and mismanagement of public funds, violations and lack of accountability in the Department:
 - (a) Millions of dollars of Crown-owned land, office space, official residences (also known as ambassadorial residences), staff quarters and other government facilities were underutilized, underdeveloped and/or left vacant in Ankara (Turkey), Bridgetown (Barbados), Brussels (Belgium), The Hague (the Netherlands), Copenhagen (Denmark), Sao Paulo and Brasilia (Brazil) and Tokyo (Japan);

- (b) Million dollar Crown-owned condominiums in Tokyo were used to house the Ambassador's Japanese butler and chef in clear violation of stated rules and despite the fact that the Official Residence was approximately 25,000 square feet with dedicated servant quarters;
- (c) A large mansion in Tokyo valued at approximately \$18 million dollars, was left to sit vacant for approximately 3 - 4 years while the intended occupant, Joseph Caron, was provided with public monies to rent a luxury apartment of his own choosing.
- (d) A luxurious new embassy was constructed in Tokyo on Crown-owned lands valued in the billions of dollars without full disclosure of the true costs to Canadian taxpayers and/or Cabinet, and pursuant to a joint venture financing partnership that the Department of Justice had advised might put our Crown assets at risk contrary to the *Financial Administration Act*;
- (e) Adopting the so-called "Tokyo" model, questionable joint venture government/private sector financing schemes were advanced by the Defendants, Dawson and Townson, as a way to provide newer, more luxurious diplomatic accommodations;
- (f) Public funds were wasted by the Bureau's improper authorisation of unnecessary construction, renovations and decorations of overseas properties, such as the Costa Rica Chancery, the Sao Paulo Chancery, the Port of Spain Chancery, and the Mexico City Trade Centre;
- (g) Seven million dollars of public monies were squandered through gross bureaucratic ineptitude and mismanagement and in direct violation of an express Cabinet approval that provided the funds only on the basis that they be used for a permanent Canadian trade centre in Mexico City. Instead, only a few months after being open, the Centre was closed with a lease penalty pay out of approximately \$600,000;

- (h) Foreign Service officers were housed in oversized and unnecessarily luxurious staff quarters in gross violation of the Treasury Board Regulations and the Department's rule regarding "comparability". Instances of over housing were exposed in, amongst other places, Tokyo, Sao Paulo, Brasilia, Kingston (Jamaica), Mexico City, and Guatemala City;
 - (i) Lavish official residences including, but not limited to, Copenhagen, Oslo, Brasilia, Brussels and Dublin were retained despite a Departmental direction to sell in order to bring millions of dollars into public coffers and prudently acquire residences that complied with Treasury Board Regulations. In addition, the Plaintiff was expressly forbidden by Dawson and Townson from undertaking feasibility studies on the potential disposal and replacement of official residences in Tokyo, Mexico City, and Brasilia.
26. Despite the numerous requests of the Plaintiff, including written communications to the Defendants to deal with the concerns of fiscal responsibility and accountability regarding the misuse of Canadian taxpayers' dollars which the Plaintiff found while working in the Bureau, and despite specific meetings between the Plaintiff and the Defendants, Townson, Dawson, Pearson, and Judd, the Defendants purposely stonewalled the Plaintiff, ignored their mandate, and maintained the prodigal status quo.
27. The Plaintiff states that the lack of financial control and accountability by the Defendants, Judd, the Assistant Deputy Minister, and Smith and Campbell, the Deputy Ministers of the Department, and their improper administration of the duties delegated to them by virtue of their senior positions in the Department, and the lack of ministerial accountability by the Minister, André Ouellet, perpetuated the flagrant abuses of governing policies by the personal Defendants within the Bureau.

The Harassment, Abuse and Retaliation Against the Plaintiff by the Defendants

28. As a result of the Plaintiff's ethical pursuance of her job mandate, and as a result of her conscientious good-faith exposure of, and objection to the Departmental flouting of laws, regulations, rules, policies and directives, the Defendants, Dawson, Townson and Pearson, retaliated against the Plaintiff with a calculated callousness and indifference to the well-being of the Plaintiff thereby creating a working environment both hostile and dangerous to the mental and physical health of the Plaintiff.
29. The Plaintiff, as a whistleblower, reported to the Defendants the illegalities and violations caused by their wilful neglect and mismanagement of public funds, and as a result of reporting such violations and abuses of authority, she suffered serious injuries from the retaliatory harassment and abusive treatment of the Plaintiff by the Defendants.
30. The Plaintiff states that her diligence in her role as a public servant and that of a steward of public monies and trust resulted in an unrelenting and debilitating campaign by the Defendants to rid the Department of the Plaintiff.
31. The tactics of retaliation employed by the Defendants, Dawson, Townson and Pearson, against the Plaintiff included, but were not limited to, repeated and unjustified criticisms, public humiliation, stonewalling and nay-saying of Plaintiff's legitimate concerns, undermining the Plaintiff's authority, threats and innuendos which prevented the Plaintiff from exercising her job responsibilities, the withdrawal of meaningful work, illegal deployment, blacklisting the Plaintiff, setting the Plaintiff up for failure, unlawful salary penalties and isolation.
32. The Defendants Judd, Smith, Cliffe-Phillips, Campbell and Edwards, although informed by the Plaintiff of the above-described adverse personnel actions against the Plaintiff, failed to investigate and/or take any remedial action.

33. The Departments' conduct was in direct violation of the Department's Policy on harassment which states, *inter alia*:

Everyone at the Department of Foreign Affairs and International Trade has a right to be treated with respect and has a responsibility to treat others the same way, **in an environment free of all forms of harassment.** (emphasis added)

34. The Department's Policy essentially reiterates the government-wide Treasury Board Policy on Harassment in the Workplace which states:

Every employee **must be treated fairly in the work place in an environment free of harassment.** Harassment of another employee constitutes a disciplinary infraction subject to penalties up to and including discharge. (emphasis added)

35. The objective of the Policy is: **"To provide a work environment that supports productivity and the personal goals, dignity and self-esteem of every employee."** (emphasis added)

36. The Defendants harassed the Plaintiff in breach of both the Treasury Board's and Department's Policies on harassment. The Plaintiff was not treated fairly in the workplace by the Defendants in an environment free from harassment.

37. Moreover, as a result of legitimately challenging the adverse personnel actions and harassment, the Plaintiff found herself only subject to further harassment by the Defendants.

38. The Defendants systematic harassment, abuse of power and bad faith conduct commenced in or about 1992, and caused the Plaintiff enormous suffering and anguish, magnified by the fact that she was alone as a conscientious dissenter without any network or support group to assist her.

39. The particulars of the Defendants' unlawful abuse of power and retaliatory harassment of the Plaintiff are as follows:

- (a) Commencing in the summer/fall of 1992, the Plaintiff was subject to criticism and ridicule from Dawson for her professional thoroughness and dedication to the stewardship of public monies as prescribed by the statutes, regulations, policies, rules and directives governing the management of real property by the Bureau. In addition, Dawson increasingly ignored and avoided the Plaintiff's analysis and comments on Bureau projects and excluded her from work communications;
- (b) In or about October 1992, Dawson wrongfully ignored and belittled the Plaintiff's analysis of the issues surrounding the Ankara Chancery Development Project including her assessment that Canada would have to honour its long outstanding obligation to deed a piece of land to Turkey in Ottawa for diplomatic representation. Dawson publicly demeaned the Plaintiff's work in this regard in front of her Director, Cliffe-Phillips;
- (c) In or about January 1993, Dawson in a closed-door meeting with the Plaintiff, arbitrarily and without forewarning stated to the Plaintiff that another job "might be better suited" for her and that he could assist her to relocate. Dawson further told the Plaintiff that he had prepared a letter to send to the mission in Ankara to admonish her initiatives on the Ankara file but would not disclose it thereby causing the Plaintiff severe distress in not knowing whether she was being unfairly maligned;
- (d) In or about February 1993, Townson assigned the Plaintiff to the position of Portfolio Manager for Latin America and the Caribbean with duties at the AS/5 level and promised to promote the Plaintiff from an AS/4 to an AS/5 with increased pay effective February 1, 1993. Although she fulfilled her duties at the AS/5 level from that date, Townson ignored his promise and took close to two and a half years to comply with his commitment;

- (e) Since in or about February 1993, Dawson and Townson wrongfully prevented the Plaintiff from pursuing cost saving measures, including reducing leasing costs, disposing of excessively large and/or lavish accommodations, by denying her the ability to properly undertake feasibility and planning studies at diplomatic missions in Bridgetown, Brasilia, Sao Paulo, Kingston, Santiago, Port-au-Prince, Bogota, Buenos Aires, Tokyo, Mexico City and Guatemala;
- (f) In or about March 1994, the Plaintiff sought to view the residential accommodations in Sao Paulo as part of her duties as Portfolio Manager for Latin America and the Caribbean. The embassy staff barred the Plaintiff and when she requested the support of Townson, her Director at the time, she was arbitrarily brushed aside and humiliated;
- (g) In or about August 1994, Townson and Dawson improperly instructed the Plaintiff not to complete a trip report of her investigation of the staff housing in Sao Paulo which was part of the Plaintiff's debriefing duties. Having so instructed her, Townson and Dawson then failed to counter in a timely manner the libellous and inaccurate allegations levied by Mary Vandenhoff, the Head of Mission in Sao Paulo, that the Plaintiff had not completed her report. Townson and Dawson's lapse in countering these false allegations, which had resulted from their own directions to the Plaintiff, led to whisper campaigns regarding the alleged incompetence of the Plaintiff and caused serious distress, humiliation and stigmatization to the Plaintiff;
- (h) In or about September 1994, the Plaintiff wrote a letter to Smith, the Deputy Minister of the Department, outlining the fiscal abuses and personal harassment of the Plaintiff by the Defendants. He never responded to the letter and no corrective action was taken;
- (i) Dawson, Townson and Pearson, routinely barred the Plaintiff from even pursuing feasibility studies or discussing cost-cutting measures and the responsible

management of the diplomatic accommodations in her portfolio. She was also forbidden to travel to those Canadian missions for which she was responsible, including, but not limited to, Port au Prince, Bridgetown, Buenos Aires, Santiago, and Bogotá;

- (j) Dawson, Townson and Pearson subjected the Plaintiff to a hostile work environment characterized by intimidation, threats, and a calculated callousness and bad faith which had the effect of isolating, demoralizing and breaking the spirit of the Plaintiff, and foreclosing her from properly pursuing her job;
- (k) In or about March 1995, Townson wrongfully and in bad faith used the Plaintiff's annual performance appraisal as a means to deny her 7 months of retroactive pay that was rightfully owed to her. The Plaintiff informed Townson that she would contest this unjust salary penalty and he threatened her in response;
- (l) In or about June 1995, Townson illegally deployed the Plaintiff contrary to the *Public Service Employment Act* to a non-existent job without any defined duties, without any place on the Bureau's organizational chart and against the express objection of the Plaintiff. The Plaintiff states that Dawson acted in bad faith in expressly telling her that there was no superior behind the deployment as the Plaintiff subsequently discovered that the Assistant Deputy Minister, Kathryn McCallion, was involved in a secret agreement to remove the Plaintiff from the Latin American files. Despite the pleas from the Plaintiff not to deploy her, Townson belligerently and with callous disregard for the dignity and well-being of the Plaintiff made a public announcement to the Plaintiff's colleagues that she was out of her job as Portfolio Manager. Dawson supported the wrongful and improper deployment of the Plaintiff. Approximately one week following her illegal deployment, the Plaintiff attempted to return to her job as portfolio manager but Townson and Dawson forbade her;

- (m) In or about September 1995, after the Plaintiff advised Dawson that she would take further steps to contest the deployment, Dawson placed her back in her position as Portfolio Manager for Latin America and the Caribbean and described the Plaintiff's humiliating ordeal as a simple "misunderstanding". Nevertheless, Townson had directed that her name be struck as Portfolio Manager from the Departmental phone directory and her nametag was removed from her office entrance. From this point onwards, despite her repeated requests, she was given no meaningful work, ignored and marginalised within the Bureau by Defendants Dawson, Townson and Pearson;
- (n) In 1995 and 1996, the Plaintiff was not permitted by Dawson and Townson to meaningfully and actively participate in the Mexico City Trade Centre closure and the Santiago Chancery projects which were part of her portfolio duties;
- (o) Townson and Dawson repeatedly did not defend against the unwarranted and malicious criticisms of the Plaintiff by Foreign Service officers in Bridgetown, Kingston, Sao Paulo, Tokyo, Mexico City and Guatemala, which resulted from the Plaintiff's efforts to properly comply with mandate of the Bureau;
- (p) The Plaintiff's feasibility reports, project memorandums and status reports were subject to arbitrary, false and misleading changes and omissions and amendments by Dawson, Townson and Pearson, so as to prevent a paper trail that would be subject to the *Access to Information Act* and to prevent upsetting the Foreign Service officers;
- (q) The Plaintiff was wrongly and cruelly subjected to regular abuse in the workplace and personally harassed by Townson, Dawson and Pearson, including the following flagrant conduct:
 - (a) rebuffs, humiliating, disrespectful and belittling treatment;
 - (b) abusive and unsavoury language;

- (c) ridicule, threats and intimidation;
 - (d) hostile and aggressive behaviour;
 - (e) unwarranted attacks on the Plaintiff's credibility and competence;
 - (f) censure of the Plaintiff's work and reports;
 - (g) wrongfully withholding legitimate work and changing the Plaintiff's duties;
 - (h) exclusions from workplace activities and communications;
 - (i) a lack of response to the Plaintiff's legitimate complaints and concerns;
 - (j) salary penalties; and,
 - (k) illegal deployments without the consent of the Plaintiff;
- (r) In or about January 1996, and only after persistent requests by the Plaintiff, the Plaintiff had a meeting with Judd and discussed in detail both the personal harassment and the lack of accountability with respect to public finances within the Bureau. He expressly promised to get back to the Plaintiff, but he failed to respond in any way, even after further written requests by the Plaintiff. Following this meeting, the Plaintiff was subject to numerous whisper campaigns regarding her meeting with such a senior Departmental official;
- (s) In or about October 1997, the Plaintiff was wrongfully removed as the Portfolio Manager for Latin America and the Caribbean during her absence on authorised medical leave;
- (t) In or about April 1998, the Plaintiff returned to the Bureau and was *persona non grata* as she was neither given a proper title and assigned no real duties; and,
- (u) In or about 1998, the Plaintiff was illegally deployed without her consent to a new position, Realty Manager, with fewer responsibilities and was given no substantial work.

40. The Plaintiff at all material times advised all of the Defendants of the aforementioned harassment and abuse by the personal Defendants and the misuse of public funds within the Department. However, the Defendants took no action to investigate, stop and rectify the unlawful harassment of the Plaintiff nor did they take any corrective action regarding the lack of accountability for public funds.
41. The suffering of the Plaintiff was exacerbated by the fact that the Department, despite its commitment to “zero-tolerance” on harassment, failed completely to provide any legitimate recourse mechanism and exhorted pressure on the Plaintiff to only use the so-called “internal processes”. Accordingly, in good faith, the Plaintiff pursued a dialogue with the internal Departmental auditors, with the Employee Assistance Program and with the Department’s personnel section. None of the above parties investigated or took any remedial action.
42. The Plaintiff also pursued internal measures with various senior members of the Department, members of the Justice Department, members of her union - The Public Service Alliance of Canada, and the Public Service Commission – Investigations Branch to seek constructive changes in the work environment, including the cessation of the harassment and abuse of power by the Defendants. All proved ineffective and/or unable to properly redress the issues and serious damages of the Plaintiff. Furthermore, the Plaintiff filed a request for an investigation through the Public Service Commission but withdrew it because of the futility of the process and the lack of an independent review of her complaint.
43. The Plaintiff further states that the Defendants knew, or ought to have known, that the internal processes described above were “Trojan Horses” with no authority to order any remedial action and the Defendants supported and promoted a Departmental rule that the Plaintiff must only use such internal processes thereby causing her further injury. It was only following years of her attempts to comply with the internal measures, that the Plaintiff ascertained that they were a smokescreen and that her only remedy was to pursue an action in the courts.

Intentional and Negligent Infliction of Mental Suffering

44. The Defendants, individually and collectively, created, maintained and promoted a work environment in the Department which was dangerous to the Plaintiff's well-being. The Plaintiff was routinely harassed, threatened, marginalised, publicly ridiculed, isolated, and refused meaningful and substantive work by the Defendants.
45. The Defendants intentionally and deliberately conducted themselves, in an egregious and calculated callous manner towards the Plaintiff, so as to cause serious injury to her physical and mental health. As a direct result of the Defendants' conduct, the Plaintiff has suffered prolonged and severe mental distress which forced her to go on medical leave from her employment with the Bureau on several occasions, and she has been diagnosed with post traumatic stress disorder and major reactive depression. Since in or about June 1998, the Plaintiff was forced to go on medically authorised unpaid leave from her employment with the Bureau.
46. The Defendants engaged in such wrongful and reprehensible conduct to retaliate against the Plaintiff who, as act of good conscience, lawfully disclosed information which evidenced the illegality, gross waste and mismanagement of public funds, as well as the Defendants' abuses of authority within the Bureau.
47. The Plaintiff states that her mental suffering and emotional distress was exacerbated by the Defendants, Townson, Dawson, Pearson, Cliffe-Phillips, Judd, and Campbell, complete and utter disregard for the Plaintiff's concerns raised with the Defendants regarding the violations of the Federal Government's governing framework for the management of public lands and the retaliatory harassment to which she was subjected.
48. The Plaintiff states that her mental distress and anguish was further exacerbated by the Defendants, Edwards, Campbell, Smith and Judd, who were senior managers of Defendants, Cliffe-Phillips, Townson, Dawson and Pearson, and chose to ignore completely her written

communications that detailed the abuse of public monies and personal harassment and retaliation suffered by the Plaintiff.

49. The Plaintiff states that the conduct of the Defendants towards her was callous, flagrant, extreme, insensitive and outrageous. Furthermore, the Defendants acted in bad faith and with complete disregard for the mental and physical damage inflicted on the Plaintiff.
50. The personal Defendants knew, or ought to have known, that their egregious conduct would cause serious injury to the Plaintiff's mental and physical health, particularly after the Plaintiff returned to work in 1997 from her medical leave which was as a result of the Defendants harassment of the Plaintiff in the workplace.

The Defendants Breach of Duty of Care and Negligence

51. The Plaintiff states that the Defendants, Townson, Dawson, Pearson and Cliffe-Phillips, breached their duty of care as managers and/or supervisors of the Plaintiff by failing to create, maintain and promote a healthy work environment in the Department which is free from harassment and discrimination, and to refrain from personally harassing the Plaintiff.
52. The Defendants, Judd, Edwards, Smith, Cliffe-Phillips and Campbell, breached their duty of care as supervisors and managers of the Department, the Plaintiff and the other Defendants when the harassment complaints were brought to their attention and they neglected, failed and/or omitted to investigate, acknowledge, correct and prohibit the occurrences of abuse, thereby approving the wrongful conduct of the other Defendants.
53. The Defendants, Townson, Dawson, Pearson and Cliffe-Phillips, further breached their duty of care by refusing the Plaintiff meaningful work and improperly impeding her from carrying out her duties as prescribed by her office with respect to the proper management of public lands and in accordance with the *Public Service Employment Act*, the *Public Service Staff Relations Act*, the *Financial Administrations Act*, the *Federal Real Property Act*, and all relevant Treasury Board rules, regulations and policies pleaded herein.

The Defendants Abuse of Power and Public Office

54. The Plaintiff states that the Defendants, Townson, Dawson, Pearson and Cliffe-Phillips, wilfully and intentionally abused their power, public office and government authority for purposes foreign to their administrative duties thereby favouring Foreign Service officers aboard in breach of government rules and policies and wrongfully foreclosed the Plaintiff from properly pursuing her job duties with the knowledge that they were likely to injure the Plaintiff as a consequence, or they should have reasonably known that such conduct would injure the Plaintiff.
55. Furthermore, the Defendants, Judd, Edwards, Smith, Cliffe-Phillips and Campbell, intentionally abused their power, authority and public office as managers in the Department by failing to protect or take any reasonable steps to stop the abuse and work-related harassment of the Plaintiff knowing that their inaction was likely to injure the Plaintiff's career and health, or that they should have reasonably known that such injuries would result to the Plaintiff.

The Defendants Breach of Fiduciary Duty

56. The Plaintiff states that the Defendants owe a fiduciary duty to the Plaintiff as an employee to treat her fairly and to provide a healthy and harassment free work environment by virtue of their status, responsibilities and positions of power over her as managers and/or supervisors in the Department.
57. The Plaintiff as an employee was particularly vulnerable to and at the mercy of the Defendants holding the discretion, authority and power in the workplace as her superiors.

58. The Defendants breached their fiduciary duty to the Plaintiff and unilaterally exercised, in bad faith and improperly, such discretion or power as her superiors and managers to further their own careers and personal agendas, which negatively affected the Plaintiff's beneficial and legal interests by marginalising her in the workplace and devastating her career.
59. The Defendants breach of their fiduciary duty caused irreparable harm to the Plaintiff's professional career and grave injury to her mental and physical health.

The Defendants Intentional Interference with Economic Relations

60. The Plaintiff states that the Defendants intentionally interfered with the Plaintiff's employment contract obstructing her from performing her responsibilities and duties. The Defendants intentionally and wilfully engaged in a pattern of conduct that degraded, ostracized, marginalised and demeaned her, stripping all of her employment duties and destroying her career as a public servant and thereby causing her loss of pension earnings, and loss of salary and future income.

Conspiracy to Injure the Plaintiff

61. The Plaintiffs state the personal Defendants agreed and/or conspired with each other to unlawfully harass the Plaintiff in order to push her out of the Department or stop her from doing her job functions thereby harming the Plaintiff's career with the public service, and all this was done knowing or they should have known that it was harming the Plaintiffs' career, and mental and physical health.

The Infringement and Denial of the Plaintiff's Fundamental Freedoms

62. The *Canadian Charter of Rights and Freedoms* (the "*Charter*") applies to Government of Canada and section 2(b) of the *Charter* guarantees to every individual the fundamental freedoms of thought, belief, opinion and expression.

63. As a result of the Plaintiff's commitment to maintaining and promoting ethical standards and transparency in the Department, the personal Defendants retaliated against her by unilaterally revising, editing, and modifying her written communications, reports and memorandums thereby prohibiting the Plaintiff from freely expressing her thoughts, beliefs, opinions and findings of the Department's misuse and mismanagement of public funds. In addition, the Defendants abused their authority by marginalising the Plaintiff and denying her any meaningful work, as well as the right to participate in work meetings, travel to diplomatic missions, communicate with third parties, and generally, pursue her job functions thereby preventing the Plaintiff from further exercising her fundamental freedoms. The wrongful interference of the Defendants constitutes an infringement and denial of the Plaintiff's fundamental freedoms under the *Charter*.
64. The Plaintiff has suffered the physical and mental anguish described herein as a result of the Defendants infringement and denial of her fundamental freedoms of thought, belief, opinion and expression, and the Plaintiff claims damages pursuant to sections 2 and 24 of the *Charter*.

The Attorney General of Canada

65. The Plaintiff states that the Attorney General of Canada is vicariously liable for the negligence and actions of its employees, including all of the personal Defendants, pursuant to the *Crown Liability and Proceedings Act*.

Resulting Injuries and Damages Caused by the Defendants to the Plaintiff

66. The Defendants' unrelenting course of conduct as described herein caused the Plaintiff to suffer profound mental and physical injuries.
67. As a direct result of the Defendants' conduct, the Plaintiff suffers from post traumatic stress disorder and major reactive depression, mental distress, stress, debilitating fatigue, migraine headaches, anxiety, a weakened immune system and gastrointestinal problems which requires

medical leave from her employment with the Bureau and ongoing medical care and medication. The Plaintiff was and is unable to perform her job duties and functions because of her complete physical and mental disability caused by the wrongful conduct of the Defendants.

68. In May 1996, the Plaintiff was diagnosed with depression and placed on long-term medical leave by her treating physician. The Department terminated her pay without adequate notice, and the insurer, Sun Life Assurance Company of Canada ("Sun Life"), wrongfully denied her disability benefits claim.
69. Due to the Plaintiff's fragile physical and emotional state, she was unable to appeal the decision of Sun Life until February 1998. Subsequently, she received full long-term disability payments from Sun Life for the period during which she was absent from the Department as a result of the aforementioned harassment and abuse of the Plaintiff by the Defendants.
70. In December 1997, the Plaintiff returned to the workplace. Upon her return, she was *persona non grata* with no possibility of any future public service career and confronted with the daily risk of further injury to her mental and physical health.
71. Since April 20, 1998, the Plaintiff has been on leave due to her total disability as a result of the toxic and dangerous workplace environment created by the Defendants.
72. The Defendants improper and unlawful actions have caused her immense emotional suffering and damages to her physical and mental health, interpersonal relationships and all other aspects of her personal and professional life. The conduct of the Defendants towards the Plaintiff devastated her quality of life. She has been and continues to be under the supervision of her various physicians and health care professionals.

73. The Defendants knew, or ought to have known, that their actions would result in the total physical and mental breakdown of the Plaintiff and the complete devastation of her professional career.
74. The Plaintiff has suffered and will continue to suffer loss of enjoyment and amenities of life, injury to her reputation, loss of pension earnings, loss of salary and future income and/or loss of earning capacity and/or loss of competitive advantage.

Punitive Damages

75. The Plaintiff further states that the conduct of the Defendants was extreme, flagrant, harsh, offensive, vindictive, malicious, highhanded and reprehensible, and the Defendants have acted with callous disregard for the welfare and rights of the Plaintiff.
76. Wherefore, the Plaintiff claims aggravated and punitive damages in the amount of \$1,000,000.00 as against the Defendants.
77. The Plaintiff proposes that this action be tried in the City of Ottawa.

Date: March 19, 2004

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Joanna Gualtieri
Plaintiff

v.

A.G. OF CANADA et al.
Defendants

ONTARIO SUPERIOR COURT OF JUSTICE

Proceeding commenced at Ottawa

FRESH STATEMENT OF CLAIM

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