

FEDERAL COURT COUR FÉDÉRALE	
FILED	DEPOSE
FEB 06 2019	
VETON MAMUDOV MAVIS GRIFFITH	
TORONTO, ON	/

A

101

Court File No. T-238-19

FEDERAL COURT

BETWEEN:

JOHN DOE 1 individually and as litigation guardian for JOHN DOE 2 and JOHN DOE 3, JANE DOE 1, JANE DOE 2 individually and as litigation guardian for JANE DOE 3 and JOHN DOE 4, JANE DOE 4, JANE DOE 5, JANE DOE 6, JOHN DOE 5 individually and as litigation guardian for JANE DOE 7 and JOHN DOE 6, AND JANE DOE 8 individually and as litigation guardian for JOHN DOE 7

PLAINTIFFS

and

HER MAJESTY THE QUEEN IN RIGHT OF CANADA

DEFENDANT

Seal

STATEMENT OF CLAIM

TO THE DEFENDANT

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

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

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

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

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

DATE: FEB 06 2019

ISSUED BY: Mavis Griffith
(Registry Officer) **Senior Registry Officer**
Agent principal du greffe

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

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

RELIEF SOUGHT

1. The Plaintiffs claim:
 - a. a Declaration that the Defendant, Her Majesty the Queen in Right of Canada (“Canada”) owed and was in breach of contractual, statutory and common law duties to the Plaintiffs;
 - b. a Declaration that Canada is liable to the Plaintiffs for the damages caused by its breach of contractual, statutory and common law duties;
 - c. general and aggravated damages arising from Canada’s breach of contractual, statutory and common law duties in the amount of \$14,000,000.00;
 - d. a Declaration that Canada has breached the Plaintiffs’ s. 7 rights under the *Canadian Charter of Rights and Freedoms* (“*Charter*”), and damages pursuant to s.24(1) of the *Charter* in the amount of \$7,000,000.00;
 - e. special damages in an amount to be determined, including future and anticipated medical and out of pocket expenses;
 - f. punitive and/or exemplary damages in the amount of \$7,000,000.00;
 - g. prejudgment and post-judgment interest;
 - h. the costs of this action, including HST and other taxes as applicable, on a substantial indemnity basis; and
 - i. such further and other relief as this Honourable Court may deem just.

OVERVIEW

2. The Plaintiff group consists of five Canadian diplomats and their family members who were posted to Havana, Cuba by Canada for diplomatic service over the past few years. During this time, diplomatic families in Havana have been targeted and injured, suffering severe and traumatic harm by means that are not clear, but may be some type of sonic or microwave weapon. These mysterious, but extremely serious and debilitating attacks have resulted in brain injuries, which are now referred to as “Havana Syndrome”. In total, fourteen of the Plaintiffs are affected by Havana Syndrome.

3. The attacks are believed to have begun in late 2016, and the original focus appears to have been American diplomats and intelligence officers. Individuals appear to have been targeted for attacks while in their Havana homes, often in the evening or overnight. For some, the physical symptoms followed immediately after unusual sounds and sensations of pressure. For others, the physical symptoms came entirely without warning, leaving an individual gripped in pain, blinded by a headache, or doubled over in dizziness or nausea, confused and disoriented.

4. Despite the absence of any physical trauma, the victims of Havana Syndrome present with symptoms consistent with traumatic brain injuries including headaches, loss of memory, inability to concentrate, cognitive problems, vision problems, tinnitus, dizziness and loss of balance, light sensitivity, nausea, fatigue, sleep disturbances, irritability, mood changes and nosebleeds. Moreover, neurological assessments of victims' brains actually show damage consistent with that seen in cases of concussion.

5. In early 2017, it became clear that the attacks were not limited to American targets. Several Canadian diplomats and their family members fell ill with Havana Syndrome.

6. Canada badly mishandled the growing crisis. Despite knowing of the risks of Havana Syndrome early on, Canada continued to put its diplomats and their families in harm's way by sending them to Havana and requiring them to stay there despite becoming aware of the high and growing risk that they would sustain the brain injuries associated with Havana Syndrome.

7. Worse, Canada actively withheld information regarding Havana Syndrome from diplomatic staff, gave them false assurances of safety, and instructed those who knew of Havana Syndrome not to talk about it with anyone, including other diplomats, their families or their doctors. Throughout the crisis, Canada downplayed the seriousness of the situation, hoarded and concealed critical health and safety information, and gave false, misleading, and incomplete information to diplomatic staff. As the problem grew and information could no longer be contained, some Government actors suggested the harm was psychosomatic, leaving those struggling with the impacts of Havana Syndrome to contend with the rumours that they were faking it, or that their injuries were not real, compounding their injuries with reputational harms. The Government now admits that there are at least fourteen confirmed cases of Canadian diplomats and their spouses and children, who have been affected while in Havana.

8. Canada's failure to ensure the safety of the diplomats and their families, even to be honest about the known risks, has resulted in the injuries they have suffered. Not only were the diplomats prevented from considering the true risks of a Havana posting to their own health, but they were also denied the opportunity to protect their children, and must live with the knowledge that they may never fully recover. The Government's decision to acknowledge these injuries and be forthright about the risks came too late for these Plaintiffs.

9. In April 2018, Canada finally evacuated the families of all diplomats from Havana, and now diplomats are no longer permitted to bring their families with them to Havana because of the risk of Havana Syndrome. In April 2018 and again in November 2018, Canada gave staff posted in Havana the option of returning to Canada if they wished in recognition of the continuing risks associated with the Havana posting. In January 2019, after a further confirmed case of Havana Syndrome, Canada cut its remaining staff in its mission from sixteen to eight.

10. Despite belatedly acknowledging the existence and harm of Havana Syndrome, Canada has actively interfered with the ability of the Plaintiffs to seek appropriate and necessary medical care for their injuries. Canada has greatly restricted the information that the Plaintiffs are permitted to share with health care professionals, placed restrictions on who the Plaintiffs can seek medical care from, and withheld information from the Plaintiffs and medical professionals regarding Havana Syndrome and its possible causes that would help in the diagnosis and treatment of the Plaintiffs. In one particularly egregious case, Canada used diplomatic channels in the United States to instruct the University of Pennsylvania Centre for Brain Injury and Repair to "stop testing the Canadians," despite the fact that the affected individuals were seeking testing and treatment at a world-renowned brain injury and trauma center at their own initiative and expense. As a result of Canada's intervention, testing was immediately halted.

THE PARTIES

The Defendant

11. The Defendant is Her Majesty the Queen in Right of Canada ("Canada"). Global Affairs Canada ("Global Affairs") is the department in the Government of Canada that manages Canada's diplomatic relations, provides consular services, promotes Canada's international trade, and leads Canada's international development and humanitarian assistance. Global Affairs includes the

Canadian Embassy to Cuba (the “Canadian Embassy”) and the Ambassador of Canada to the Republic of Cuba, Patrick Parisot (the “Canadian Ambassador” or “Ambassador Parisot”).

The Plaintiffs

12. The Plaintiffs are all diplomatic staff who were posted to Canada’s embassy in Havana, Cuba, their spouses and their children.

13. The Plaintiffs are named as John and Jane Does and are identified below using pseudonyms because of the sensitivities relating to their work, the nature of the injuries and the concerns expressed by Canada relating to the same.

14. John Doe 1 (“Diplomat Allen”) is a Canadian Diplomat employed by Global Affairs. Jane Doe 1 (“Ms Allen”) is the spouse of Diplomat Allen. John Doe 2 (“Allen Child 1”) and John Doe 3 (“Allen Child 2”) are the school-aged children of Diplomat Allen and Ms Allen (collectively the “Allen Family”).

15. Jane Doe 2 (“Diplomat Baker”) is a Canadian Diplomat employed by Global Affairs. John Doe 4 (Baker Child 1) and Jane Doe 3 (Baker Child 2) are the elementary school-aged children of Diplomat Baker (collectively, the “Baker Family”).

16. Jane Doe 4 (“Diplomat Cooper”) is a Canadian Diplomat employed by Global Affairs. Jane Doe 5 is Diplomat Cooper’s adult daughter.

17. John Doe 5 (“Diplomat Davies”) is a Canadian Diplomat employed by Global Affairs. Jane Doe 6 (Ms Davies) is an employee of Global Affairs and the spouse of Diplomat Davies. John Doe 6 and Jane Doe 7 are the elementary school-aged children of Diplomat Davies and Ms Davies (collectively the “Davies Family”).

18. Jane Doe 8 (“Diplomat Evans”) is a Canadian Diplomat employed by Global Affairs. John Doe 7 (“Evans Child 1”) is the preschool-aged child of Diplomat Evans (collectively the “Evans Family”).

Nature of relationship between Canada and the Plaintiffs

19. Global Affairs was and is at all material times the employer of all diplomatic staff at Canada’s mission to Havana, Cuba.

20. Unlike other employers, Global Affairs retains an extraordinarily high level of control over the lives of its diplomats and their families. Because of the unique nature of the employment and the control exercised by Global Affairs while diplomats are abroad, diplomats and their families are wholly dependent on Canada to ensure their safety while abroad.

21. Global Affairs dictates where diplomatic staff are posted, how long their posting will last, and whether they are allowed to bring their families with them. While posted in Havana, Global Affairs dictates, amongst other things, where diplomats and their families live, when and whether in special circumstances they are allowed to leave their post to travel to Canada to seek medical care, from whom they seek medical care, and what information they are allowed to share with their families, other diplomats and health care professionals. Global Affairs also retains total control over housing of diplomats and their families while in Havana. Global Affairs leases and manages all housing occupied by Canadian diplomatic staff and dictates where diplomats and their families must live while in Havana. Global Affairs can even dictate whether diplomats are permitted to have visitors in their homes.

HAVANA SYNDROME

The growing crisis and Canada's deficient response

22. As outlined above, between January 2017 and November 2018 all of the Plaintiffs suffered brain injuries referred to as Havana Syndrome despite not having suffered any evident physical trauma. The onset of Havana Syndrome was often preceded by strange sensations of sound and pressure, and resulted in symptoms including headaches, cognitive problems such as loss of memory and inability to concentrate, blurred vision, tinnitus, dizziness and loss of balance, light sensitivity, nausea, fatigue, sleep disturbances, irritability, mood changes and nosebleeds.

23. The cause of Havana Syndrome is unknown, but Global Affairs was immediately concerned that it is caused by some form of sonic or microwave attack, potentially by a hostile foreign power.

24. By late 2016, American diplomats and intelligence officers posted in Havana began suffering from cognitive impairment, impacts to hearing, vision and balance, and other symptoms now associated with Havana Syndrome. Global Affairs became aware of the health problems

suffered by some Americans shortly thereafter, and was, or should have been, aware of the risk that these health problems could potentially extend to Canadian diplomats and their families.

25. As set out below, the first Canadian diplomats and their families began suffering from symptoms associated with Havana Syndrome in early 2017.

26. In or around April 2017, an American diplomat who lived on the same street as the Allen Family, told Diplomat Allen about the health problems suffered by some Americans, and warned Diplomat Allen about a potential threat. The American diplomat noted the possibility that the health impacts were being caused by an attack by a foreign power. The American diplomat and his family were evacuated from Cuba shortly thereafter. On April 11, 2017, Diplomat Allen shared this information with the Canadian Ambassador, reported the health impacts his family had been suffering, and requested that they be seen by a doctor. Ambassador Parisot instructed Diplomat Allen not to discuss this information with anyone, including his family or any other Canadian diplomatic staff.

27. On or around April 23, 2017, the U.S. Embassy in Cuba officially informed the Canadian Embassy that U.S. diplomats and intelligence officials had become ill, possibly because of sonic attacks. The information regarding both health impacts and possible sonic attack was highly controlled within the Canadian Embassy. Global Affairs did not share this information with the Plaintiffs or any other diplomatic staff, and did not take any steps to protect the safety of Canadian diplomats and their families. In contrast, the U.S. began evacuating staff from Cuba as early as November 2016.

28. In or around June 2017, the Canadian Ambassador informed managers at the Canadian Embassy of the possibility that Canadian staff were being targeted by attacks that caused symptoms associated with Havana Syndrome. The Canadian Ambassador informed other managers only after Diplomat Allen informed the Canadian embassy that doctors in Miami had confirmed that the health of the Allen Family had been impacted. Global Affairs prohibited diplomatic staff from speaking about Havana Syndrome or the possibility that Canadians were being attacked with anyone outside the Canadian Embassy, including their families, their health providers and incoming Canadian diplomatic staff.

29. In July 2017, Global Affairs began advising those who were soon to be posted to the diplomatic mission in Havana of concerns regarding previous health impacts. Global Affairs, however, significantly downplayed the seriousness of the situation and advised incoming diplomats that only one family had been affected, and that the situation was now fine. New diplomats and their families arrived in August 2017 and were posted in the same houses where diplomats and their families who had suffered from Havana Syndrome had lived previously.

30. In September 2017, the U.S. Embassy reduced its staff by 60% as a result of continuing concerns regarding Havana Syndrome. By the end of September 2017, the U.S. Embassy had become an unaccompanied post. In contrast, Canada continued to adopt a “business as usual” approach, insisted that there was no reason to believe that Canadian diplomats and their families were being targeted and maintained full staff at the Canadian Embassy.

31. In April 2018, Global Affairs evacuated the families of all Canadian diplomats from Havana, prohibited diplomats’ families from accompanying them on their postings to Havana, put in place new rules prohibiting diplomats from having anyone stay overnight in their homes in Havana and changed the hardship rating posting for Havana from three to four. At this time, Global Affairs gave employees the option of returning to Canada. Global Affairs took these steps only after the Plaintiffs independently sought testing and diagnosis at the University of Pennsylvania at their own initiative and expense.

32. In November 2018, as a result of the continuing crisis, Global Affairs changed the hardship rating to its highest rating of five, which is the same rating as missions based in Iraq and Afghanistan. In January 2019, Global Affairs announced that it would be reducing staff at the Havana mission from sixteen to a skeleton staff of eight.

33. Throughout the growing crisis, and in particular from April to mid-August 2017, Global Affairs instructed embassy staff who had become aware of Havana Syndrome not to discuss the situation with anyone, including their families and other Global Affairs staff.

34. Throughout the growing crisis, the Plaintiffs repeatedly and continuously asked Global Affairs for information regarding the situation. Instead of dealing with the Plaintiffs in a forthright and honest manner, Global Affairs actively withheld information regarding Havana Syndrome from diplomatic staff, and gave false assurances of safety to diplomatic staff.

Particulars regarding harms suffered by diplomats and their families

The Allen Family

35. In early 2017, all of the members of the Allen Family began suffering from symptoms associated with Havana Syndrome. Diplomat Allen began to experience sudden onset bouts of extreme dizziness, nausea and headaches while in his home. These incidents came without warning or cause, were physically and mentally debilitating, and extremely stressful, as Diplomat Allen began to question whether he had some serious underlying health issue. Other family members described the same types of experiences. The Allen children began getting nosebleeds, and one of them actually passed out on two occasions. This previously healthy family became chronically ill, with headaches, bouts of dizziness, problems with vision, and problems with memory. Often the symptoms were worse at night and in the mornings.

36. In early April 2017, the Allen Family visited Canada. When they returned, they learned that near neighbours and friends from the US Embassy had left Cuba abruptly and without warning. A mutual friend from the US Embassy surreptitiously disclosed to Diplomat Allen that these friends had been targeted by some kind of signal-sending device that caused a spate of injuries which we now recognize as Havana Syndrome. The friend went on to tell Diplomat Allen that others in the US Embassy were also leaving Havana. It was clear to Diplomat Allen at this point that what he and his family had experienced was in keeping with the phenomena already well known to his US counterparts.

37. Diplomat Allen immediately recognized the import of the information he had been provided, and urgently reported back to the Canadian Embassy, including a written report to the Canadian Ambassador setting out the symptoms suffered by him and his family. The Canadian Embassy instructed Diplomat Allen not to discuss his family's health problems or any possible causes with anyone, including his own family and other Canadian diplomatic staff. Diplomat Allen also sought medical testing for his whole family, and was told it would be considered.

38. Despite the significance of Diplomat Allen's disclosures to the Canadian Embassy, and the obvious urgency to take steps, particularly in light of the action taken by their US counterparts to evacuate some of their staff, among other things, the Canadian Embassy took no apparent action. Diplomat Allen was forced to maintain in secret the knowledge that he and his family, and his colleagues, were at risk. Diplomat Allen waited, with increasing frustration and anxiety.

39. On or around June 1, 2017, the Allen Family suffered a catastrophic event at their house that involved the sudden onset of severe symptoms associated with Havana Syndrome. Diplomat Allen experienced highly irregular auditory sensations akin to a loud screeching metallic noise, lasting twenty to thirty seconds and that seemed to bombard and suffocate him. Diplomat Allen immediately became severely nauseous. At around the same time, Allen Child 1 entered his parents' bedroom shaking and dripping with blood as he tried to stem a severe nosebleed.

40. The next day, Diplomat Allen remained dizzy and disoriented. He immediately informed the Canadian embassy what had happened, and indicated he could no longer wait for the Canadian Embassy to take action.

41. On or around June 4, 2017 the Allen Family traveled to the University of Miami to undergo testing. All members of the Allen Family were diagnosed with traumatic brain injuries akin to concussions. The examining physician recommended that the Allen children not return to Cuba. Diplomat Allen contacted the Canadian Embassy to seek approval to send the boys directly home to Ottawa from Miami. This request was denied. The next day, four senior officials with Global Affairs contacted the physician and asked him to alter his assessment of the Allen Family, arguing that it was possible that the boys could have suffered concussions in Canada, and asked him specifically to downgrade the injury rating. Global Affairs told Diplomat Allen that circumstances did not warrant an immediate return home, and ordered him back to his post.

42. Frustrated, but with limited options, the Allen Family returned to Cuba as directed. Diplomat Allen then immediately handed his children over to the care of another Canadian family which was leaving Cuba that same day, ensuring that his sons did not spend another night exposed to the ongoing risks of Havana Syndrome. Within days, the Allen Family departed for Canada for a three-week holiday.

43. The Allen Family returned to Havana in late July 2017, feeling refreshed from their holiday. Although nervous about returning, Diplomat Allen relied upon Global Affairs that it was safe for him to return with his wife and sons. Shortly after his return, in August 2017, Diplomat Allen learned that the attacks against American diplomats continued. He immediately reported back to the Canadian Embassy, fearful that his family was once again at risk.

44. Finally, in October 2017, Global Affairs instructed the Allen Family to return to Canada for medical testing. Chillingly, on the night before and the morning of October 17, 2017, the day the Allen Family were scheduled to travel back to Canada, members of the Allen Family were hit with another sudden onset of severe symptoms associated with Havana Syndrome.

45. The Allen Family thought they would be in Canada for a week of medical evaluations, but it turned into a two-month wait in Canada with no information, and no substantial medical testing. The Allen Family's belongings and pets were still in Cuba, and the children were out of school.

46. In December 2017, Global Affairs advised the Allen Family that Global Affairs could not guarantee their safety in Havana, and accordingly Diplomat Allen's posting was being terminated. At this time, Global Affairs did not provide accurate information to other diplomatic staff regarding why the family was being repatriated.

47. All members of the Allen Family continue to suffer from symptoms associated with Havana Syndrome.

The Baker Family

48. In early 2017, Diplomat Baker and Baker Child 2 began experiencing symptoms of Havana Syndrome. Diplomat Baker's initial symptoms, which sometimes lasted for days, included intense headaches to the point of nausea, high-pitched tinnitus, dizziness and vertigo. Baker Child 2's initial symptoms included headaches to the point of nausea, exhaustion, and extremely heavy nosebleeds. Baker Child 2's nosebleeds were particularly frequent and heavy over a period of a few days in the first week of April 2017. They would always take place during the night. Baker Child 2's nosebleeds stopped when the Baker family travelled to Canada in mid-April 2017 for Easter.

49. In April 2017, Diplomat Baker's American neighbours' house was inundated with police and other officials and cordoned off. At around this time, the American neighbours were abruptly evacuated from Cuba.

50. In or around May 2017, Diplomat Baker was called to an internal meeting and learned that the Canadian Embassy was aware of the attacks and resulting incidents of Havana Syndrome, including the fact that Diplomat Baker's American neighbours had been targeted.

51. Diplomat Baker requested that the Canadian Embassy re-locate her and her family to a different house in order to reduce the risk. Global Affairs refused this request, effectively forcing her to stay in a home where her family had been targeted.

52. Diplomat Baker provided a written report to the Head of the Political Section of the Canadian Embassy describing the symptoms suffered by her and her child. The Canadian Embassy instructed Diplomat Baker not to discuss her family's health problems or any possible causes with anyone, including their families and other Canadian diplomatic staff. Diplomat Baker asked for medical testing for her entire family and was told that it would be considered.

53. At the end of May 2017, the Baker Family travelled to Canada. Diplomat Baker specifically brought her children with her out of concern for their safety. While in Canada, Diplomat Baker learned that the Allen Family had been affected as well. At this time, Diplomat Baker was sent for medical assessment and testing which confirmed balance and vestibular issues and the need for further investigation. At the end of June 2017, the Head of Political Section at the Embassy in Havana told Diplomat Baker that she could return to Havana, as the required follow-up testing would not take place for months.

54. In August 2017, Diplomat Baker and her children were placed in a new residence in Havana, as their former residence was required for another family. Despite the move, Diplomat Baker and her daughter were still plagued with the symptoms of Havana Syndrome.

55. Baker Child 2 began experiencing worsening cognitive difficulties including difficulty concentrating, a deterioration in speech and the ability to communicate, near constant headaches, and new symptoms, including visual impairment, pain behind her eyes, and tinnitus so extreme that it was painful. Diplomat Baker's symptoms also worsened and she began experiencing memory losses and serious difficulty concentrating.

56. The Baker Family returned to Canada at the end of August 2017, when Diplomat Baker's mission to Cuba was complete.

57. Diplomat Baker became increasingly distressed with the lack of medical care for herself and her family. By January 2018, Diplomat Baker stopped working. Taking care of her family and arranging medical testing and care became a full time occupation. In February 2018, the Baker

Family went to the University of Pennsylvania for testing and treatment. This testing showed that Diplomat Baker was suffering from vestibular issues, visual impairment, and a brain injury that was visible through an MRI. The medical team confirmed the similarity of her symptoms with those suffered by affected American diplomats. Testing on Baker Child 1 disclosed post-concussion symptoms including balance problems and vestibular issues. Testing at the University of Pennsylvania was abruptly interrupted and Diplomat Baker was sent home with her daughter before they had received a full review of their medical condition. Upon return to Canada, Diplomat Baker immediately informed Global Affairs of the medical results received at the University of Pennsylvania in hopes of protecting colleagues and other children.

58. All three members of the Baker Family continue to suffer from symptoms associated with Havana Syndrome. All three members of the Baker Family have been diagnosed with post-concussion visual syndrome, and have required visual therapy. Baker Child 1 has made limited progress and continues to suffer from visual impairment and fusional facility problems. Baker Child 2 continues to suffer from difficulties concentrating, sensitivity to noise, headaches and tinnitus. Baker Child 2 requires a formal adapted school plan for her to manage her symptoms, which has considerably impacted her confidence, her resilience and her interest in pursuing activities requiring concentration.

Diplomat Cooper

59. In or around April 2017, Diplomat Cooper began experiencing symptoms associated with Havana Syndrome, including severe nausea, headaches, bouts of dizziness and severe nosebleeds. Diplomat Cooper's dizziness and nausea were most severe in the morning.

60. In the spring of 2017, Diplomat Cooper attended a meeting of senior managers at the Canadian mission. At this meeting, senior managers were told about health issues suffered by Canadian diplomats, and about possible causes, including an attack by a foreign power. Diplomat Cooper and the other senior managers were told not to tell anyone, including their employees. Diplomat Cooper felt particularly concerned about the new employees and their families who were expected to arrive that summer and who were oblivious to the risks.

61. Throughout the summer of 2017, Diplomat Cooper experienced cognitive difficulties that caused her to struggle with work tasks that she used to complete with ease. Tasks would take much

longer, and required double and triple checking to catch errors that she normally would not make. Diplomat Cooper also experienced vision problems and had increasing difficulty with working on computer screens. She suffered increasingly from sound and light sensitivity and had growing difficulty managing meetings with multiple stimuli.

62. During this period, Diplomat Cooper was also troubled by the Canadian Embassy's apparent indifference to the medical risks associated with housing being made available to diplomats. As Chair of the Embassy Housing Committee, Diplomat Cooper repeatedly sought assurances that houses that were known to have been sites of previous attacks had been evaluated for occupant safety, suggesting that alternative accommodations be sought. No assurances were offered, and instead, she was told that budgetary constraints were determinative. Global Affairs continued to place all people reporting for temporary duty in the very houses where previous attacks had occurred.

63. Diplomat Cooper continued to feel unwell throughout 2017 and into 2018, and in May, she formally reported a resurgence of symptoms to the Canadian Embassy, as well as to the doctor leading the medical file in Canada. Diplomat Cooper's post was scheduled to continue through the end of August 2018, but by May 2018, both because of continuing symptoms and the feeling of being entirely unsupported by Global Affairs, Diplomat Cooper ended her post early and returned to Canada on July 2, 2018.

64. Diplomat Cooper made repeated requests to undergo medical assessment at the University of Pennsylvania, but Global Affairs ignored her requests. Upon return to Canada, she was promised but did not receive any referrals to local practitioners and ultimately reached out herself for testing. Medical testing and imaging have confirmed that Diplomat Cooper has a brain injury and associated brain dysfunction, with the injury most marked on the right side of her brain. Headaches, visual and balance problems, as well as sound sensitivity, persist. Diplomat Cooper has not been able to work since leaving Havana because of her brain injury, and at this time does not have any prospect of returning to work.

The Davies Family

65. In early 2017, members of the Davies Family began experiencing symptoms associated with Havana Syndrome. All members of the Davies Family have since been diagnosed as having symptoms associated with post-concussion syndrome, including visual impairment.

66. Starting in early 2017, Davies Child 1 started having difficulty concentrating at school. She also began suffering from nausea, tinnitus, sensitivity to light, visual impairment, difficulty sleeping and sudden nosebleeds in the middle of the night. Davies Child 1 was eventually diagnosed as having post-concussion syndrome and fusional facility problems. Davies Child 1 has not seen any improvement to her fusional facility problems despite months of visual therapy.

67. Starting in early 2017, Ms Davies also began suffering Havana Syndrome symptoms including headaches, nausea, loss of appetite, dizziness and severe vertigo. On one occasion, Ms Davies abruptly lost not only her balance, but all sense of spacial orientation, effectively causing her to collapse. This experience was unprecedented and frightening, and was compounded by the other unusual symptoms. At around this time, Ms Davies would frequently wake up during the night feeling anxious, unsettled and nauseous.

68. At around this time, Diplomat Davies underwent significant mood changes, and was frequently and unusually irritable.

69. In June, Ms Davies was diagnosed as having damage to her vestibular system. Throughout the remainder of 2017, Ms Davies was hypersensitive to light, hypersensitive to noise, and suffered from headaches, dizziness and muscle twitching that would last for days. Ms Davies was also often extremely tired, and spent long periods of each day sleeping. By mid 2017, Ms Davies symptoms had become so severe that she had to take time off work.

70. On August 31, 2017, Global Affairs made the decision to repatriate the Davies family because of the inability to guarantee their safety; they returned to Canada on September 4, 2017.

71. Upon return to Canada, Diplomat Davies began working four days a week in order to deal with the fallout from Havana Syndrome on his family. Diplomat Davies was eventually diagnosed as having visual impairment and fusional facility problems. In the summer of 2018, he experienced an acute episode of visual impairment that made it impossible to see writing in a notebook.

Recently, in the fall of 2018, Diplomat Davies experienced a disconcerting episode of confusion and disorientation.

72. Ms Davies attempted to return to full time hours, but in early 2018, she regressed significantly. By February 2018, Ms Davies' symptoms had become so acute that she had to stop working entirely. Ms Davies has since attempted to return to work, but is still struggling with exhaustion, headaches and dizziness. Ms Davies currently only has the energy and ability to work half time. If she pushes too hard, or does not get enough rest, she suffers from headaches that last for days. She remains hypersensitive to light and sounds, and has had to severely restrict her environment to avoid triggering severe symptoms.

73. Davies Child 2 was also eventually diagnosed as having fusional facility problems.

74. All members of the Davies family continue to suffer from symptoms associated with Havana Syndrome.

The Evans Family

75. Diplomat Evans arrived in Havana with her son in or around mid-August 2017 when the crisis regarding Havana Syndrome was already underway.

76. Prior to her arrival, Global Affairs withheld all information regarding the health risks to Canadian diplomats and their families at the Havana mission. At a briefing in June 2017, Global Affairs informed her that there were some issues in Havana, but refused to provide any further details. At a briefing in July 2017, Global Affairs informed all incoming diplomats that some Canadians had suffered some health effects resulting from an unknown cause, but significantly downplayed and misled Diplomat Evans about the breadth and seriousness of the issue. Global Affairs falsely told Diplomat Evans and the other incoming diplomats that only one Canadian family had been affected, that no young children had been affected, that Global Affairs thought that it was a "one-off," that the Canadian family had been affected only because of their proximity to Americans who had been impacted, and that there was no ongoing issue to worry about. Global affairs also downplayed the seriousness of the symptoms, suggesting to the incoming diplomats that any symptoms were short term. As a result, Diplomat Evans did not believe there was any risk or threat to her or her young son.

77. Prior to arriving in Havana, Diplomat Evans attempted to arrange for testing through Global Affairs to establish a vision, hearing and balance baseline. Global Affairs refused this request.

78. Diplomat Evans expected to get a better and more complete briefing on the situation when she arrived in Havana, yet when she arrived, the existence of a potential problem was not even mentioned. Diplomat Evans attempted to raise the matter directly with the Ambassador and was told that the situation was not to be talked about, and no further information would be shared until there was something to tell.

79. Shortly after Diplomat Evans arrived in Havana, the Davies family left Cuba abruptly. Global Affairs withheld from Diplomat Evans and other diplomatic staff the fact that the Davies' left because they all were suffering from severe symptoms caused by Havana Syndrome.

80. In or around September 2017, Diplomat Evans and Evans Child 1 began suffering from symptoms associated with Havana Syndrome. In September 2017, Diplomat Evans began regularly experiencing strange sensations in her ear lasting seconds, followed by waves of uncomfortable pressure in her ear that could last for minutes. Generally these waves of pressure would happen at around the same time in the evening, and would often occur again in the middle of the night. Evans Child 1 suffered visible discomfort at the same time Diplomat Evans felt the waves of pressure. He would cover his ears and groan.

81. Diplomat Evans suffered from symptoms including vision problems, cognitive problems, dizziness, nausea, tinnitus and exhaustion. Evans Child 1 suffered from symptoms including cognitive and vestibular problems.

82. Diplomat Evans and her son were evacuated from Havana on October 10, 2017. At that time, she was told only that she was going to Ottawa for one week for medical testing. Instead, she had to wait weeks for testing. After two months, Global Affairs informed her that her posting to Havana was terminated effective immediately.

83. In December 2017, Diplomat Evans travelled back to Havana to pack up her house. At that time, she was again subject to an attack which involved the uncomfortable waves of pressure in her ear. She reported this incident to the Embassy and the RCMP. Upon arrival, a Mission Security

Officer experienced the ear pressure as well, and described it as a painful stabbing in the ear. They were unable to determine a cause.

84. Diplomat Evans originally expected to be in Havana for three years, and had taken numerous steps at considerable expense to move her life to Havana. Diplomat Evans has not been able to recover these costs.

85. Global Affairs did not arrange for adequate testing for Diplomat Evans' son. No testing was provided for months, and when it was provided, it was not effective and was conducted by a doctor who had no background in Havana Syndrome.

86. Diplomat Evans and her son continue to suffer from symptoms associated with Havana Syndrome.

Interference with the Plaintiffs' medical testing and treatment

87. Despite the growing crisis, Global Affairs did not provide reasonable or appropriate medical support to those who suffered from Havana syndrome, and took no steps to conduct comprehensive medical assessments and testing. Instead, Global Affairs actively interfered with the Plaintiff's attempts to receive proper health care, including going so far as instructing hospitals to stop testing and treating them.

88. From June 2017 to August 2017, Canadian diplomatic staff were prohibited from revealing the circumstances around their health problems when speaking with medical professionals in the provincial health care system.

89. In June 2017, a Health Canada doctor assigned to cover Global Affairs arrived in Havana. This doctor did not conduct adequate testing and did not provide any treatment. Instead, the doctor recommended that those affected attend at the Department of National Defence's Montfort Hospital in Ottawa for further testing.

90. In June and July, 2017, many of the Plaintiffs, including the Baker Family, Diplomat Cooper and the Davies Family, travelled to Ottawa to undergo testing at the Department of National Defence's Montfort Hospital. The testing was inconclusive, and no coherent group-based analysis was done on the test results. Despite repeated requests by the Plaintiffs who attended at Montfort Hospital, Global Affairs prohibited Montfort Hospital from releasing the results of

testing to the participants. The Plaintiff children were not properly screened or tested on the grounds that the doctors did not have the competence to test children. At the request of Global Affairs, Montfort Hospital did not provide the results to Health Canada despite the fact that participants signed consent forms allowing the results to be shared with Health Canada.

91. In August 2017, the Department of National Defence (“DND”) and the Montfort Hospital withdrew from providing health care services on the grounds that Global Affairs never made a formal request to DND to provide medical services to Global Affairs civilians. Around this time, Global Affairs instructed the Plaintiffs to seek assessments and treatments through their regular provincial health care systems. Despite requests by the Plaintiffs, neither Global Affairs nor the Department of National Defence provided background information on the health impacts suffered by the Plaintiffs, or the potential causes of these health impacts to provincial health care doctors.

92. In October 2017, Global Affairs belatedly began conducting baseline testing on all Government of Canada visitors to Cuba to allow a comparative analysis in the event of future incidents of Havana Syndrome.

93. In November 2017, Global Affairs belatedly carried out baseline health testing for all embassy personnel and their spouses in Havana.

94. In December 2017, Global Affairs belatedly carried out baseline testing for children under the age of twelve. Despite requests, Global Affairs refused to provide the Plaintiffs with a copy of the report authored by Health Canada regarding this testing.

95. In December 2017, the Center for Brain Injury and Repair at the University of Pennsylvania (“Penn Centre”), which was the lead institution for the investigation and treatment of US diplomats who suffered from Havana Syndrome, reached out to some of the Plaintiffs through the Americans to see if affected Canadians were interested in undergoing testing and assessments.

96. In March 2018, after growing frustrated that Global Affairs was not supporting them in getting comprehensive medical evaluations for ongoing symptoms of Havana Syndrome, some of the Plaintiffs, including the Bakers and members of the Davies Family, travelled to Penn Centre independently and at their own expense. Shortly thereafter, Global Affairs became aware that some of the Plaintiffs were being tested at Penn Centre, and immediately intervened to put a stop to the

testing. While some Plaintiffs were still in Philadelphia, the Penn Centre received a notification from the US government that it should “stop the testing of Canadians.” This request by the US government was made at the behest of Global Affairs. As a result of the interference by Global Affairs, testing at Penn Centre was abandoned partway through. MRIs and other clinical tests conducted at the Penn Centre conclusively showed that the Plaintiffs suffered from brain damage. The Penn Centre shared the partial test results with Global Affairs, and again offered to assist Global Affairs with further testing. Global Affairs failed to finalize a memorandum of understanding with Penn Centre, and as a result the Plaintiffs were never sent to Penn Centre for further testing.

97. Global Affairs did not make any further testing available to the Plaintiffs until August 2018 when Global Affairs signed an agreement with Dalhousie University. Global Affairs did not provide information, support or assistance to the Plaintiffs to participate in this study. The study at Dalhousie was not at all tailored to the needs of the Plaintiffs, and did not provide treatment or support to the Plaintiffs.

98. The Plaintiffs are clearly the victims of some kind of new weaponry, or method of attack, in which the harms, treatment and prospects for recovery are still being discovered and developed. This is extremely frightening for the Plaintiffs, and particularly those whose children have been injured, because so little is known about recovery and long term impacts. In these circumstances, it is extremely important that all possible information about Havana Syndrome be gathered and shared with the affected families and their caregivers. The Government knows this, and yet, these families have been reduced to seeking information through ATIP requests, which the Government has said will take years to process.

99. The Plaintiffs continue to be without adequate support and treatment for continuing effects of Havana Syndrome. The minor Plaintiffs in particular continue to suffer without any support or treatment.

HARMS SUFFERED BY THE PLAINTIFFS

100. As a result of the incidents, the Plaintiffs have suffered the following injuries:

- a. neurological symptoms resembling brain injuries, including but not limited to: cognitive, vestibular and oculomotor dysfunction;

- b. headaches and migraines;
- c. dizziness;
- d. nausea;
- e. sleep disturbance, sleep abnormalities and fatigue;
- f. cognitive difficulties, including memory and concentration issues;
- g. emotional disturbances, including irritability, anger, sadness, anxiety, nervousness, depression, worry;
- h. light sensitivity and vision problems, including significant decline in eyesight;
- i. auditory symptoms, ear pain, tinnitus;
- j. nosebleeds; and,
- k. loss of consciousness.

CAUSES OF ACTION

101. Pursuant to s. 3 of the *Crown Liability and Proceedings Act*, RSC 1985, c C-50, Canada is directly and vicariously liable for any wrongs committed by Global Affairs or any of its employees and agents.

Negligence

102. Canada owed a duty of care to its diplomatic staff and their families to ensure their health and safety while posted to a foreign mission. Canada knew or ought to have known that if it carried out its duties negligently, it could reasonably cause the kind of harm that was in fact suffered by the Plaintiffs.

103. Canada breached that duty of care by:

- a. failing to take reasonable care to ensure the health and safety of the Plaintiffs while posted to a foreign mission;
- b. failing to provide a safe work environment for diplomatic staff while posted to a foreign mission;

- c. sending the Plaintiffs to, and requiring them to stay at, a foreign mission where there was a specific danger to health and safety;
- d. failing to protect the health and safety of diplomatic staff and their families from specific risks to health and safety by removing them from the Havana mission;
- e. requiring Plaintiffs to live in housing that posed a danger to health and safety;
- f. failing to protect the health and safety of the Plaintiffs by removing the Plaintiffs from specific houses or properties where there was a specific risk to health and safety;
- g. failing to adequately warn and provide information to the Plaintiffs regarding specific risks or dangers to health and safety while posted to a foreign mission;
- h. prohibiting diplomatic staff from sharing information regarding Havana Syndrome with their families, other diplomatic staff and health care professionals;
- i. failing to provide, facilitate and/or support access to adequate medical care for the Plaintiffs, including by refusing to provide all necessary information to healthcare providers to enable proper diagnosis and treatment; and
- j. such further and other particulars as may become apparent and Counsel may advise.

104. As a result of Canada's breach of its duty of care, the Plaintiffs suffered damages as set out below.

Occupiers' Liability

105. Havana Syndrome was suffered by the Plaintiffs as a result of being at particular properties in Havana (the "Havana Properties"). Canada was at all material times the lessor of the Havana Properties, and was responsible for the management, maintenance, improvement, operation, control and use of the Havana Properties.

106. The Plaintiffs injuries were the result of Canada's negligence and breach of duty as set out in the *Occupiers' Liability Act*, RSO 1990, c O.2, specifically:

- a. failing to take reasonable care to ensure that the Plaintiffs would be reasonably safe at the Havana Properties;

- b. failing to take reasonable measures to prevent injury to the Plaintiffs from hazards or dangers of the Havana Properties which Canada knew or ought to have known were present;
- c. failing to give the Plaintiffs any or adequate warning of the danger posed by being at the Havana Properties;
- d. requiring the Plaintiffs to stay at the Havana Properties in spite of the danger posed by being at the Havana Properties;
- e. such further and other particulars as may become apparent and Counsel may advise.

Negligent Misrepresentation

107. The Plaintiffs were highly dependent on information provided by Canada regarding the potential causes of Havana Syndrome, and how best to protect themselves from risks to health and safety. Canada knew that the Plaintiffs would rely on information provided by Global Affairs to the Plaintiffs in order to make decisions regarding risks to their health and safety.

108. Throughout the growing crisis, Canada repeatedly made representations regarding the potential risks to the health and safety of the Plaintiffs that were inaccurate, incomplete, false, deceptive and/or misleading, and that specifically downplayed or denied the risks associated with Havana Syndrome (the “Representations”). These Representations included:

- a. Global Affairs failed to provide accurate information to the Plaintiffs as to the seriousness of the danger;
- b. Global Affairs failed to accurately describe the weapon that was used in the attacks;
- c. Global Affairs failed to advise of the proper precautions to take in order to protect oneself;
- d. Global Affairs minimized the seriousness of the health problems of the Plaintiffs and attempted to set out a narrative that the Plaintiffs were suffering from mass hysteria;
- e. Global Affairs failed to provide accurate information to doctors who were treating the Plaintiffs;

109. Canada knew or ought to have known that many of the Representations made by Global Affairs were inaccurate, incomplete, false, deceptive and/or misleading.

110. The Plaintiffs state that the Canada owed a duty of care to the Plaintiffs and is liable in deceit and/or negligent misrepresentation for the Representations that were inaccurate, incomplete, false, deceptive and/or misleading and as a result of which the Plaintiffs' suffered damages as set out below.

Breach of Fiduciary Duty

111. Canada owed the Plaintiffs a fiduciary duty. While at a foreign mission, the Canadian government had extraordinary and unilateral powers over the lives of both its diplomatic staff and their families. The Plaintiffs were in a position of particular vulnerability and dependence on Canada, and were at Canada's mercy regarding how they could respond to risks faced by them while posted to the Havana mission. Canada breached its fiduciary duties by:

- a. failing to properly identify, assess and manage the health and safety risks to the Plaintiffs posted to the Havana mission;
- b. failing to protect the Plaintiffs from Havana Syndrome;
- c. failing to adequately warn the Plaintiffs of the risks of Havana Syndrome;
- d. putting its own interests ahead of the interest of the Plaintiffs by ignoring and remaining wilfully blind to the risks of Havana Syndrome; and
- e. putting the interest of other foreign powers ahead of their own diplomats and their families.

Charter claim (breach of s. 7)

112. Canada breached the Plaintiffs rights as enshrined in s. 7 of the *Charter* (the right to life liberty and security of the person) by:

- a. sending the Plaintiffs to, and requiring them to stay at, a foreign mission where there was a specific danger to health and safety;
- b. requiring Plaintiffs to live in housing that posed a danger to health and safety; and
- c. failing to permit the Plaintiffs to seek out the best medical care possible for their symptoms.

113. The breaches of the Plaintiffs' *Charter* rights are not demonstrably justified in a free and democratic society.

114. The Plaintiffs are entitled to a declaration that their *Charter* rights were infringed.

115. The Plaintiffs are also entitled to a monetary remedy pursuant to section 24(1) of the *Charter* against Canada in order to:

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

Breach of Contract

116. Diplomat Allen, Diplomat Baker, Diplomat Cooper, Diplomat Davies, Ms Davies and Diplomat Evans (collectively the "Diplomatic Employees") have a contract of employment with Canada. This employment agreement contains the following express and/or implied terms:

- a. Canada and its agents had and continue to have an obligation of good faith and fair dealing towards the Diplomatic Employees;
- b. Canada will adhere to the principles of due process, fairness and natural justice in all dealings with the Diplomatic Employees; and
- c. Canada will fully and properly carry out Canada's duties.

117. Canada breached its obligations to the Diplomatic Employees owing under their employment agreement by:

- a. sending the Diplomatic Employees, and requiring them to stay at, a foreign mission where there was a specific danger to health and safety;
- b. requiring the Diplomatic employees to live in housing that posed a danger to health and safety;
- c. failing adequately warn and provide information to the Diplomatic Employees of any specific risks or dangers to health and safety while posted to a foreign mission;

- d. prohibiting the Diplomatic Employees from sharing information regarding Havana Syndrome with their families, other diplomatic staff and health care professionals;
- e. failing to provide, facilitate and/or support access to adequate healthcare, including by refusing to providing all necessary information to healthcare providers to enable proper diagnosis and treatment; and
- f. such further and other particulars as may become apparent and Counsel may advise.

DAMAGES

118. The Plaintiffs have suffered at the hands of Global Affairs, and are entitled to damages, including pecuniary and non-pecuniary general damages, special damages and aggravated, exemplary and punitive damages.

119. As a result of their injuries, the Plaintiffs have sustained, and will continue to sustain, pain and suffering, a loss of enjoyment of life and a loss of amenities.

120. As a further result of the incident, the Plaintiffs are unable to participate in recreational, school, social, household, athletic, and employment activities to the extent to which they participated in such activities prior to the aforementioned incident.

121. As a further result of the incident, the Plaintiffs have sustained and will continue to sustain, a loss of income, a loss of competitive advantage in the employment field and a diminution of income earning capacity.

122. As a further result of the incident, the Plaintiffs are further unable to perform household chores for themselves to the extent that they were able to do so before the incident and resulting injuries and will require assistance in the future to complete such chores.

123. As a further result of the incident, the Plaintiffs are unable to perform certain daily tasks to the extent that they were able to do so before the incident and resulting injuries and will require assistance in the future to complete such tasks.

124. As a further result of the incident, the Plaintiffs have undergone and will continue to undergo in the future: hospitalization, therapy, rehabilitation, and other forms of medical treatment

and in addition, have received and will continue to receive prescription and over the counter medication.

125. As a further result of the incident, the Plaintiffs have incurred, and will continue to incur expenses, including expenses for: hospitalization, medication, therapy, rehabilitation, medical treatment, and other forms of care and other out-of-pocket expenses, the full particulars of which are not within the Plaintiffs' knowledge at this time.

Grounds for Punitive, Aggravated and Exemplary Damages

126. Canada's wrongful conduct is of such a reprehensible nature as to warrant an award of aggravated, exemplary and/or punitive damages in order to deter Canada from taking such wrongful acts in the future. The particulars are as follows:

- a. Global Affairs put the interests of foreign powers ahead of their own diplomats and their families;
- b. Global Affairs failed to attend to the medical needs of the Plaintiffs in a timely fashion as Global Affairs tried to minimize the situation;
- c. Global Affairs restricted the Plaintiffs' ability to get the best medical care;
- d. Global Affairs advised the Plaintiffs not to discuss Havana Syndrome with anyone else;
- e. Global Affairs perpetuated and endorsed narratives such as mass hysteria and that crickets were responsible for Havana Syndrome which belittled the diplomats and their families;
- f. Global Affairs failed to remove the Plaintiffs from Havana as quickly as possible in order to protect foreign powers; and,
- g. Global Affairs continued to send diplomats and their families to Havana without fully informing them of the danger posed.

Family Law Act Claims

127. Diplomat Allen brings a claim pursuant to the *Family Law Act*, R.S.O. 1900 ("Family Law Act") with regard to the injuries suffered by Ms Allen, Allen Child 1, and Allen Child 2 consisting of a claim for:

- a. reasonable expenses incurred for the benefit of the person injured;
- b. loss of guidance, care and companionship; and
- c. reasonable allowance for the value of or the loss of income related to providing nursing, housekeeping and other services to the person injured.

128. Ms Allen brings a claim pursuant to the *Family Law Act* with regard to the injuries suffered by Diplomat Allen, Allen Child 1, and Allen Child 2 consisting of a claim for:

- a. reasonable expenses incurred for the benefit of the person injured;
- b. loss of guidance, care and companionship; and
- c. reasonable allowance for the value of or the loss of income related to providing nursing, housekeeping and other services to the person injured.

129. Allen Child 1 brings a claim pursuant to the *Family Law Act* with regard to the injuries suffered by Diplomat Allen, Ms Allen and Allen Child 2 consisting of a claim for loss of guidance, care and companionship.

130. Allen Child 2 brings a claim pursuant to the *Family Law Act* with regard to the injuries suffered by Diplomat Allen, Ms Allen and Allen Child 1 consisting of a claim for loss of guidance, care and companionship.

131. Diplomat Baker brings a claim pursuant to the *Family Law Act* with regard to the injuries suffered by Baker Child 1, and Baker Child 2 consisting of a claim for:

- a. reasonable expenses incurred for the benefit of the person injured;
- b. loss of guidance, care and companionship; and
- c. reasonable allowance for the value of or the loss of income related to providing nursing, housekeeping and other services to the person injured.

132. Baker Child 1 brings a claim pursuant to the *Family Law Act* with regard to the injuries suffered by Diplomat Baker and Baker Child 2 consisting of a claim for loss of guidance, care and companionship.

133. Baker Child 2 brings a claim pursuant to the *Family Law Act* with regard to the injuries suffered by Diplomat Baker and Baker Child 1 consisting of a claim for loss of guidance, care and companionship.

134. Jane Doe 5 brings a claim pursuant to the *Family Law Act* with regard to the injuries suffered by Diplomat Cooper consisting of a claim for loss of guidance, care and companionship.

135. Diplomat Davies brings a claim pursuant to the *Family Law Act*, R.S.O. 1900 (“*Family Law Act*”) with regard to the injuries suffered by Ms Davies, Davies Child 1, and Davies Child 2 consisting of a claim for:

- a. reasonable expenses incurred for the benefit of the person injured;
- b. loss of guidance, care and companionship; and
- c. reasonable allowance for the value of or the loss of income related to providing nursing, housekeeping and other services to the person injured.

136. Ms Davies brings a claim pursuant to the *Family Law Act* with regard to the injuries suffered by Diplomat Davies, Davies Child 1, and Davies Child 2 consisting of a claim for:

- a. reasonable expenses incurred for the benefit of the person injured;
- b. loss of guidance, care and companionship; and
- c. reasonable allowance for the value of or the loss of income related to providing nursing, housekeeping and other services to the person injured.

137. Davies Child 1 brings a claim pursuant to the *Family Law Act* with regard to the injuries suffered by Diplomat Davies, Ms Davies and Davies Child 2 consisting of a claim for loss of guidance, care and companionship.

138. Davies Child 2 brings a claim pursuant to the *Family Law Act* with regard to the injuries suffered by Diplomat Davies, Ms Davies and Davies Child 1 consisting of a claim for loss of guidance, care and companionship.

139. Diplomat Evans brings a claim pursuant to the *Family Law Act* with regard to the injuries suffered by Evans Child 1 consisting of a claim for:

- a. reasonable expenses incurred for the benefit of the person injured;
- b. loss of guidance, care and companionship; and
- c. reasonable allowance for the value of or the loss of income related to providing nursing, housekeeping and other services to the person injured.

140. Evans Child 1 brings a claim pursuant to the *Family Law Act* with regard to the injuries suffered by Diplomat Evans consisting of a claim for loss of guidance, care and companionship.

Provincial Health Insurers

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

APPLICABLE LEGISLATION

142. The Plaintiffs plead and rely upon the following:

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

Federal Courts Rules, (SOR/98-106)

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

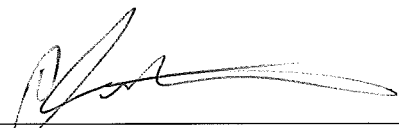
Canadian Charter of Rights and Freedoms, ss. 7 and 24;

Occupiers' Liability Act, R.S.O. 1990, c. O.2; and

Family Law Act, RSO 1990, c F.3, ss. 61-63.

143. The plaintiffs propose that this action be tried at Ottawa, Ontario.

February 6, 2019



John Kingman Phillips, on behalf of the Plaintiffs
Waddell Phillips PC, Barristers
LSUC: 46206E
john@waddellphillips.ca
Suite 1120 – 36 Toronto Street
Toronto, ON M5C 2C5
Tel: (647) 220-7420
Fax: (416) 477-1657

Paul Miller, on behalf of the Plaintiffs
Howie, Sacks and Henry LLP
LSUC: 39202A
pmiller@hshlawyers.com
Suite 3500 – 20 Queen Street West
Toronto, ON M5H 3R3
Tel: (416) 361-5990
Fax: (416) 361-0083