ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

Shaun Curtis Davis

Plaintiff

- and -

Attorney General of Canada, *et.*
Dr. Heather Isobel Langille

Defendants

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.

IF YOU PAY THE PLAINTIFF'S CLAIM, and $2,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and $400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

June 21, 2023 Issued by .....

Local registrar
161 Elgin St. Ottawa, ON. K2P 2K1

TO
Attorney General of Canada
Deputy Attorney General
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario. K1A 0H8

Dr. Heather Isobel Langille
932-171 Slater St.
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CLAIM

1. The plaintiff claims:

   a. general and aggravated damages for negligence committed by the defendant Attorney General in the amount of $5,500,000.00

   b. general and aggravated damages for professional negligence and misfeasance in public office committed by the defendant medical doctor Langille in the amount of $5,500,000.00 CDN;

   c. human rights damages for the defendant Attorney General's breach of section 15 of the *Canadian Charter of Rights and Freedoms* and of the *Canadian Human Rights Act* in the amount of $250,000.00;

   d. special damages for the cost of unnecessary medical testing and reporting against the defendants in the amount of $45,000.00 CDN;

   e. aggravated damages from the defendants in the amount of $500,000.00 CDN;

   f. punitive damages from the defendants in the amount of $500,000.00 CDN;

   g. pre- and post-judgment interest;

   h. a declaration that Transport Canada's current administrative procedures for adjudicating aviation medical certificates violate section 15 of the *Canadian Charter of Rights and Freedoms*, for they constitute adverse-effect discrimination against applicants for aviation medical certificates;

   i. a declaration that reviews of the Minister of Transport's decisions to the Transportation Appeal Tribunal of Canada violates section 15 of the *Canadian Charter of Rights and Freedoms*, for they are designed to deprive appellants of an effective appeal from the Minister of Transport's decisions with respect to aviation medical documents;

   j. a declaration that sub-section 6.72(4) and paragraph 7.2(3)(a) of the *Aeronautics Act* are of no force or effect insofar as they apply to proceedings before the Transportation Appeal Tribunal of Canada with respect to Canadian aviation medical documents;

k. an order staying the declarations of invalidity requested in items g and h for one calendar year from the date of decision;

l. costs of the action on a solicitor-client basis; and

m. such other relief as counsel may advise and as this honourable Court may accept.

The Parties

2. Shaun Curtis Davis, the plaintiff, is a fifty-three-year-old professional helicopter and fixed-wing aircraft pilot with a total flight experience of approximately 9,000 hours. Most of his flying experience is with helicopters.

3. Mr. Davis is a safety-conscious pilot with no history of professional discipline or accidents. He has served as a line training pilot and flown in challenging instrument flight conditions requiring a high degree of situational awareness and precision.

4. Mr. Davis was employed as a helicopter pilot with Bristow Group in 2016. He worked in Nigeria. His monthly salary was approximately $15,000.00 USD, with a pension of 14% of his gross earnings. He was 47 years of age in 2016.

5. The defendant Attorney General is impleaded as a representative of the Minister of Transport (hereinafter the “Minister”).

6. The Minister is responsible for regulating civil aviation in Canada. Part of that responsibility includes establishing, by regulation, standards for the obtention of medical certificates issued pursuant to the *Aeronautics Act*. The Minister has delegated this responsibility to medical professionals working in a section of the Department of Transport known collectively as Civil Aviation Medicine.

7. The Minister’s mandate with respect to civil aviation medicine is informed by the *Convention on International Civil Aviation* and the International Civil Aviation Organization’s *Manual of Civil Aviation Medicine*.

8. The defendant Dr. Heather Langille is a family doctor who, at all material times, advised the Minister as a Regional Aviation Medical Officer (RAMO). Dr. Langille does not have any certification or education in the field of aeronautic medicine. Dr. Langille serves as a medical advisor at Health Canada while also continuing to exercise responsibilities as a RAMO.
9. Dr. Langille continues to practice family medicine.

Overview

10. The plaintiff claims damages and *Charter* remedies for persistent conduct that rendered him unemployable as a professional pilot for seven years. This conduct continues even after the plaintiff successfully mitigated his damages by obtaining a medical certificate from the United States of America's Federal Aviation Administration and finding employment in his field.
11. In 2016, the plaintiff was working for Bristow Group as a helicopter pilot. During a routine flight, the plaintiff observed the company's local safety officer taking dangerous actions that put the safety of the flight, its crew, and the eighteen passengers aboard at risk. The plaintiff reported his concern after the incident via the company's safety management system.
12. The plaintiff's report, though supposedly anonymous, was intercepted, and he was readily identified.
13. The plaintiff was subsequently accused of alcoholism by local management after he was involved in an off-duty incident while travelling from Nigeria to London, England. The Canadian Aviation Medical Examiner certified by Transport Canada to conduct medical examinations for Nigeria-based pilots was also employed by Bristow Group. This doctor noted that the plaintiff had a problem with alcohol on a Transport Canada Medical Examination Report.
14. Without further examination, Dr. Langille advised the Minister to revoke the plaintiff's medical certificate. The plaintiff's ability to work was immediately ended pending further review by the Minister.
15. The plaintiff was not offered a meaningful opportunity to know the Dr. Langille's concerns or address them before she made her recommendation.

16. The Minister took the position that the plaintiff was required to prove, at his expense, that he did not suffer from Alcohol Use Disorder.

17. The Minister further took the position that it would not accept evidence from medical professionals who were or who became familiar with the plaintiff. The Minister instead insisted upon reporting from medical professionals who were experienced in the field of alcohol abuse and with aeronautical medical standards.

18. The defendant doctor disputed or rejected the plaintiff's evidence of sustained sobriety, which was requested by the defendant doctor and CAM.

19. At all material times, the Minister was advised by the defendant doctor. The Minister received further advice from the Aviation Medical Review Board (hereinafter "AMRB").

20. All information relating to the plaintiff's file was presented to the AMRB by the defendant doctor. At no time was the plaintiff invited to or allowed to participate in the AMRB's proceedings.

21. The defendant, Dr. Langille, explicitly and repeatedly misstated elements of the plaintiff's medical file when submitting the file to the AMRB. She did not advocate in any way for the plaintiff; she, in fact, sought to limit the plaintiff's chances of success.

22. The advice tendered to the Minister was not supported by medical evidence, nor was it tendered by medical professionals who were educated and experienced with Alcohol Use Disorder.

23. On December 21, 2022, the Minister was ordered to reconsider its decision by the Transportation Appeal Tribunal of Canada. The Transportation Appeal Tribunal of Canada specifically found that "there has been an abject failure on the part of CAM and the AMRB to objectively consider the evidence". The Minister has not corresponded with the plaintiff since that order was issued.

Narrative

24. On or about June 1, 2016, the plaintiff was involved in an incident at a Nigerian airport while he was off-duty and returning from Nigeria to London, England. The incident led to his being denied boarding on a commercial passenger flight.

25. The plaintiff was subjected to a breath alcohol test administered by Dr. Frank Okupa's subordinate on June 2, 2016. Dr. Okupa was a Civil Aviation Medical Examiner (CAME) appointed pursuant to section 404.16 of the *Canadian Aviation Regulations*. He was also directly employed by Bristol Group, the plaintiff's employer. No records of this test were remitted to the plaintiff or to Transport Canada.
26. The plaintiff returned to London on June 2, 2016.
27. As a result of this blood alcohol test, on or about August 6, 2016, the plaintiff's then-employer, Bristow Group, referred the plaintiff for further medical examination. Bristow made this referral because it had concluded, without any medical evidence, that the plaintiff required substance abuse treatment.
28. The plaintiff attended at the Treatment Assessment Screening Center in Phoenix, Arizona, United States of America. On or about August 30, 2016, the center concluded that the plaintiff did not require any form of treatment or monitoring for Alcohol Use Disorder.
29. Despite this assessment, Bristow Group required the plaintiff to obtain a second assessment and attend a treatment program. The plaintiff had no choice but to comply with these requirements if he wanted to remain employed at Bristow.
30. On or about September 12, 2016, Banner Thunderbird Behavioral Health Center diagnosed the plaintiff with Alcohol Use Disorder, Moderate. No diagnostic notes or evidence to support this diagnosis appear in documents received from Banner.
31. As a result of this diagnosis, Bristow required the plaintiff to enrol in a treatment program.
32. Throughout this process, the plaintiff was in contact with Dr. Frank Okupa.
33. On or about November 28, 2016, the plaintiff attended before Dr. Okupa. Dr. Okupa examined the plaintiff, found him fit to hold a category I aviation medical certificate, stamped the requisite form, and delivered that form to Transport Canada.
34. Dr. Okupa made the following notation on the form:

Had alcohol problems. Said to have reported this to Transport Canada and the doctor has sent a separate report to Canada.

35. On or about December 6, 2016, the defendant, Dr. Heather Langille, notified Mr. Davis that CAM suspected that he was suffering from Alcohol Use Disorder. Dr. Langille requested medical information.
36. The plaintiff submitted the required information, all of which indicated that he either did not have Alcohol Use Disorder or that he was fit to return to work.
37. On or about December 15, 2016, the Nigerian Civil Aviation Authority requested follow-up reporting from the plaintiff. This request suggested that the plaintiff “had three previous DWIs (Driving With Influence)”. This request was copied to Dr. Okupa.
38. On or about December 28, 2016, the plaintiff explained his situation to Transport Canada representatives. He pointed up the conflicting evidence in his case and alluded to the fact that his employer required him to submit to treatment despite the lack of medical evidence for such treatment.
39. On or about January 11, 2017, Dr. Langille assessed the plaintiff as “unfit”. Her only reason for this assessment was that she had determined that Mr. Davis suffered from Alcohol Use Disorder. She recommended that the Minister refuse to renew Mr. Davis’s medical certificate.
40. Dr. Langille is not experienced or educated in addictions medicine.
41. Based on Dr. Langille’s assessment, the Minister refused to renew the plaintiff’s medical certificate.
42. The plaintiff responded to the suspension of his medical certificate by requesting an appeal to the Transportation Appeal Tribunal of Canada.
43. The plaintiff provided further details about his experience with Dr. Okupa and the circumstances under which he was required to attend addictions assessments and addictions programs to Dr. Langille on February 1, 2017.

44. On or about March 8, 2017, the plaintiff provided Dr. Langille and CAM with all of the documents that led up to the Minister's refusal to renew his medical certification. These documents show that the plaintiff's employer, Bristow Group, had required the plaintiff to attend addictions assessments. These materials show that the employer prejudged Mr. Davis's health condition, as detailed above.

45. On or about March 13, 2017, the plaintiff disputed the CAME's notation on his medical examination report dated November 28, 2016.

46. Dr. Langille acknowledged receipt of the plaintiff's submissions on March 14. She did not acknowledge or respond to the plaintiff's concerns regarding the CAME's notation or the conflicting evidence in the file.

47. On or about March 27, 2017, Dr. Langille asked the plaintiff for his version of events, notably to explain the Nigerian Civil Aviation Authority's suggestion that the plaintiff had three driving while under the influence convictions in his driving record.

48. The next day, and without receiving the plaintiff's reply, Dr. Langille referred the plaintiff's file to the AMRB. Dr. Langille noted that the plaintiff contested many of the facts that underpinned the Minister's decision to not renew his medical certification. She had not, however, received the plaintiff's full version of events—she had not given the plaintiff a reasonable opportunity to send her his version of events.

49. Dr. Langille went further to inform the AMRB that, although none of the professional assessments that the plaintiff obtained recommended any treatment for Alcohol Use Disorder, Bristow Group had insisted on the plaintiff attending an outpatient program.

50. Dr. Langille did not provide further comment regarding the relative weight of the plaintiff's professional assessments and his employer's anecdotal opinion.

51. On or about March 29, 2017, Dr. Langille advised the plaintiff that his file was referred to the AMRB. She requested further medical evidence. The plaintiff was not invited to attend the AMRB meeting, nor was he given the opportunity to make representations of any kind to the AMRB.

52. The AMRB deferred consideration of the plaintiff's case pending receipt of further information.

53. On or about April 24, 2017, Dr. Langille communicated the results of the AMRB hearing to the plaintiff. Dr. Langille repeated a request for further medical information. She did not provide any details regarding the standards for the requested medical information.

54. Dr. Langille received further evidence that the plaintiff contested the facts underlying her and CAM's decision to not renew his medical certification on May 10, 2017. This evidence suggested that Bristow Group directly employed the plaintiff's CAME, Dr. Frank Okupa. The plaintiff further submitted evidence that he routinely attended Alcoholics Anonymous meetings, pursuant to CAM's directive. Dr. Langille reviewed this evidence on or about May 10, 2017.

55. Evidence of a potential relationship of influence between the CAME and Bristow Group merited further inquiry from the regulator. Dr. Langille was, at that time, the RAMO responsible for overseas medical assessments and CAMEs. Her responsibilities in this regard included monitoring CAME performance.

56. On or about June 12, 2017, then-counsel for the plaintiff advised Dr. Langille that no evidence existed to support Transport Canada's conclusion that plaintiff suffered from Alcohol Use Disorder. Counsel further advised that plaintiff sustained a substantial loss of income and damage to his professional reputation as a result of Dr. Langille's advice and the Minister's decision.

57. The plaintiff further drew CAM's attention to his concerns with impropriety on the part of Bristow Group on June 27. On the same day, Dr. Langille refused to consider the plaintiff's concerns. She instead required the plaintiff's compliance with her request for information dated April 24, 2017.

58. The plaintiff replied to Dr. Langille's re-iterated request by providing test results that demonstrated continued sobriety.

59. On or about July 6, 2017, The plaintiff further indicated that he did not admit to "having any further chemical dependency" and indicated that his case was the result of workplace harassment. He again

referred CAM and Dr. Langille to the initial substance dependence assessment dated August 30, 2016. The plaintiff emphasized his position in correspondence dated July 18, 2017.

60. Dr. Langille refused to consider the plaintiff's position or conduct any investigation into the reasons for the plaintiff's concerns.

61. Dr. Langille again submitted the plaintiff's file to the AMRB on July 19. She noted that the plaintiff had refused to co-operate further with Transport Canada; she did not, however, indicate that the plaintiff's position was based on the assertion that he was not in fact an alcoholic and that the evidence underlying Dr. Langille's position was flawed. Dr. Langille, moreover, further informed the AMRB that the plaintiff had not provided any evidence of routine attendance at Alcoholics Anonymous meetings, despite her having reviewed such evidence on May 10, 2017.

62. By neglecting or choosing not to draw the AMRB's attention to the plaintiff's evidence of sobriety, Dr. Langille prejudiced the plaintiff's position before the AMRB. The plaintiff was not invited to make submissions on his behalf; no other person was able to correct Dr. Langille's omission.

63. On or about July 28, 2017, the plaintiff submitted 30 years' worth of his driving records to CAM. These records demonstrated the falsehood of the Nigerian Civil Aviation Authority's suggestion that the plaintiff had driven under the influence of alcohol.

64. On or about September 6, 2017, the AMRB again deferred the plaintiff's medical assessment pending further evidence. CAM continued to request evidence of an ongoing pattern of contact with an alcohol re-education program and documented evidence of a pattern of attendance at a relapse prevention program, such as Alcoholics Anonymous.

65. The plaintiff's driving records were not brought before the AMRB, despite these records being relevant to the AMRB's deliberations.

66. On or about October 17, 2017, despite taking the position that he was not an alcoholic, the plaintiff submitted the requested evidence.

67. On or about October 23, 2017, the plaintiff attended before Dr. Katherine Helleur, a CAME located in Calgary, for his annual medical. In keeping with his position, the plaintiff represented that he was not an alcoholic or otherwise abusing a substance. On or about November 6, 2017, Dr. Langille assessed this CAME report as “unfit” and referred the matter to Transport Canada’s regional aviation enforcement director.

68. On or about November 15, 2017, the plaintiff further submitted that Dr. Langille was continuously requesting further information, thus prolonging the plaintiff’s period of suspension.

69. Dr. Langille responded on November 28 to indicate, for the first time, that she had underlying concerns regarding the August 24, 2016, report. Dr. Langille did not dispute the report’s conclusion, that the plaintiff did not require treatment for Alcohol Use Disorder. She instead disputed elements of the report and the fact that the plaintiff was noted as being defensive when answering questions on a standardized questionnaire. Dr. Langille instructed the plaintiff to obtain a report from a specialist in addictions medicine.

70. The plaintiff was referred to Dr. Doug McKibbon, a psychologist and workplace consultant with experience evaluating and treating professional pilots for addictions and substance issues.

71. Dr. McKibbon released a detailed report about the plaintiff’s diagnosis. His report included details about the initial August 24, 2016, report, one which the diagnosing clinic, TASC, subsequently admitted that its diagnosis of Alcohol Use Disorder—Moderate was not supported by any DSM-V criteria. Critically, Dr. McKibbon concluded that “while there continues to be some drinking of alcohol, it does not reach the threshold of problematic or abusive alcohol use”. He further concluded that the plaintiff would not meet the criteria of the FAA (Federal Aviation Administration) definition of substance dependence.

72. Dr. Langille read Dr. McKibbon’s report on or about March 18, 2018. She referred this matter back to the AMRB on the same day. Dr. Langille again mis-characterized crucial evidence in Mr. Davis’s file by framing Mr. McKibbon’s report as follows:

> He underwent evaluation with Dr. Doug McKibbon, Psychologist, from 8 December 2017 until 26 February 2018. He reports "moderate drinking". Dr. McKibbon's diagnosis is of Alcohol Intoxication without Use Disorder and Adjustment Disorder with Mixed Anxiety and Depressed Mood. While the report is lengthy and it appears that much documentation was reviewed, there does not appear to be any collateral history.

This description undermines the evidence submitted in Dr. McKibbon's report such that the AMRB's view of the report was biased against the plaintiff. Dr. Langille asserted that Dr. McKibbon did not take a collateral history—a diagnostic tool only necessary if the patient is unable to provide a reasonably objective account of his symptoms. Dr. McKibbon's conclusions indicated that he did not find a collateral history necessary because the plaintiff provided a cogent account.

73. The AMRB considered the case on April 4, 2018, only to recommend that it again defer further evaluation. At this meeting, members of the AMRB engaged in rank speculation about the nature of the plaintiff's condition, which departed from the evaluation of the plaintiff's medical fitness to work as a professional pilot. The AMRB re-stated its requirements for proof of ongoing sobriety and participation in a relapse prevention program.

74. The plaintiff was not invited to attend the AMRB's deliberations.

75. The plaintiff fulfilled the AMRB's additional requirements by the end of June, 2018.

76. Dr. Langille submitted these details to the AMRB on June 29, 2018. The AMRB continued to defer the plaintiff's application because it continued to believe that the plaintiff, despite having submitted evidence of not having an Alcohol Use Disorder, indeed had an Alcohol Use Disorder.

77. The plaintiff again complied with the AMRB's demands, and the matter went back to the AMRB on June 29, 2019. The AMRB psychiatrist declined to bring the matter before the full AMRB because he required an updated re-assessment of the plaintiff's condition, which had remained utterly unchanged in the intervening year.

78. The plaintiff provided an updated re-assessment that repeated Dr. McKibbon's conclusions and recommended no further treatment on or about November 15, 2019.
79. On February 19, 2020, the AMRB approved Mr. Davis for a category 1 restricted medical certificate. The plaintiff could only pilot with or as co-pilot.
80. The plaintiff, unfortunately, could not find employment after such a prolonged absence from the workforce on dual-pilot aircraft. He did find employment on single-pilot aircraft in entry-level positions based at remote locations. He accordingly requested an amendment to his restricted medical certification that would allow him to fly solo, with monitoring from his peers and employer.
81. In other words, the plaintiff requested a reasonable accommodation, if one assumes that he had any type of substance use problems (which was disproved at the very latest by the end of 2018).
82. CAM denied this request on May 15, 2020.
83. The plaintiff filed an appeal to the Transportation Appeal Tribunal of Canada on or about May 22, 2020.
84. Over the next two years, the plaintiff diligently submitted blood alcohol level reports to CAM. CAM did not dispute the validity of these reports.
85. The plaintiff further submitted biochemistry and hematology tests along with urinary drug screens. CAM did not dispute the validity of these tests or screens.
86. On or about June 23, 2022, Dr. Tyler Duncan Poth Brooks reviewed the plaintiff's entire file only to reject most of the plaintiff's medical evidence of sustained sobriety, including the blood alcohol level tests and urinary drug screens. Dr. Brooks' review accepted that the plaintiff indeed suffered from Alcohol Use Disorder, despite multiple opinions rejecting this conclusion.
87. By dismissing all of the plaintiff's medical evidence of sustained sobriety, Dr. Brooks effectively set the plaintiff's medical certification back by a further two years.
88. The manner in which Dr. Brooks dismissed the plaintiff's claim was to move the goalposts: in the two years between the plaintiff's first filing an appeal and 2022, CAM created a new Substance Use

Disorder Staff Instruction, which was retroactively applied to the plaintiff's case. In so doing, the plaintiff was penalized for CAM's and Dr. Langille's persistent diagnosis of Alcohol Use Disorder, despite medical and circumstantial evidence to the contrary, and the attendant delays placed on processing his medical certification.

89. The plaintiff still remains without a valid Canadian aviation medical certification.

PRIVATE LAW

The Minister's liability

90. The Crown is liable for the negligent implementation of policy.

91. In this case, the Minister was required to implement policy using an evidence-based approach that assessed the plaintiff's medical fitness at the time of the medical assessment. By not using this approach, the Minister caused damage to the plaintiff in the form of lost income, loss of property, stress as a result from systemic gaslighting, and reputational damage in the aviation community.

92. The Minister publicly committed itself to work with the plaintiff to explain the reasons for refusing to renew the plaintiffi's medical certification.

93. The Minister publicly committed itself to consider every possible accommodation for the plaintiff's supposed condition before refusing to renew his medical certification, and the Minister made this commitment without reference to the *Canadian Charter of Rights and Freedoms* or to the *Canadian Human Rights Act*.

94. The Minister owed the plaintiff a private duty of care based on these public commitments, which were made and continue to be made to the aviation community. The plaintiff was entitled to expect that the Minister's officials would be diligent and competent in the performance of their commitments and duties.

95. The Minister delegates evaluation for medical certification to CAM and the AMRB. In effect, however, the Minsiter delegates its responsibility to CAM and the AMRB. CAM provides medical

doctors' advice to the Minister. The AMRB is composed of medical health professionals of different specialties.

96. The standard of care incumbent upon CAM and the AMRB is to implement the applicable regulations and policies to the standards of a reasonably prudent medical doctor. A reasonably prudent doctor, when confronted with an illness for which she or he is not a specialist, consults with a specialist.

97. The CAM and the AMRB failed to assess the plaintiff's evidence in a reasonable way.

98. This failure occurred because the Minister's agents, the defendant doctor and the AMRB, fixated on discrete parts of the plaintiff's medical file without considering the totality of the evidence. In so doing, the Minister and its agents became the proximate cause of the plaintiff's damages: but for the Minister and its agents' conduct, the plaintiff would have remained gainfully employed.

99. The defendant doctors and members of the AMRB were not, moreover, educated and experienced in the field of addictions medicine. The defendant doctors and members of the AMRB nevertheless offered medical advice to the Minister, which the Minister accepted and acted upon.

100. This medical advice was based on a misapprehension of the facts and medical evidence. This advice was also motivated by unconscious bias, fostered by the Minister's policies, against mental health and substance abuse conditions.

The defendant doctor's personal liability

101. The defendant doctor is liable for providing deficient independent medical advice to the Crown. By not providing accurate medical advice, the defendant doctor fell below the standard of care required of medical professionals providing medical services—to wit, the advice must be that of a reasonably prudent medical doctor.

102. Medical doctors practising in Ontario are, moreover, subject to professional standards independent of their responsibilities to employers and / or authorities with which doctors may

contract. These standards require doctors to provide their opinion to third parties, like government agencies, and enjoins them from making substantive decisions on behalf of the third party.

103. Medical doctors' professional standards also require doctors to provide independent medical advice and / or testimony that is:

a. within their scope of practice and area of expertise;

b. comprehensive and relevant;

c. fair, objective, and non-partisan;

d. transparent, accurate, and clear; and

e. timely.

104. The relevant professional standards elaborate on each of these criteria.

105. These criteria inform the defendant doctors' duty and standard of care.

106. The defendant doctor was in a relationship of proximity to the plaintiff, for she was responsible for recommending a course of action to the Minister based on her medical opinion. This opinion required her to independently review the plaintiff's private medical information. It also gave her control over the plaintiff's livelihood.

107. The Minister has structured CAM such that it provides recommendations to the Minister. These recommendations are implemented by the Civil Aviation Standards Branch. The opinions provided to the Minister are therefore not final decisions, but they carry great weight because the Minister and its agents outside of CAM do not possess sufficient medical expertise to question medical opinion.

108. The resulting power dynamic effectively provides CAM and the doctors that individually review pilot medical files with control over the medical certification process.

Dr. Heather Langille's conduct

109. The defendant doctor's conduct fell below the standard of care.

110. Doctor Langille's conduct fell below the standard of care because she did not have the requisite expertise to evaluate substance abuse disorders. Her specialties are family medicine and public health.

111. Dr. Langille's conduct fell below the standard of care because she did not provide a medical opinion to the Minister or to her colleagues at the AMRB that could be characterized as "comprehensive" or "relevant". A comprehensive opinion would have reviewed all of the relevant clinical information. Such an opinion would also give due weight to clinical information and opinions provided by other professionals. Such an opinion would not provide any irrelevant or unnecessary comments that could influence a decision-maker's perception.

112. Dr. Langille ignored professional opinions, clinical information, and the context provided by the plaintiff in each year for which this matter was entrusted to her care.

113. Dr. Langille's opinion was not fair, objective, or non-partisan. Her bias appears in correspondence with her fellow regional aviation medical officers, notably in correspondence with Dr. Pfaff. In November of 2017, Dr. Pfaff raised his concerns with the gaps in the evidence that led to Dr. Langille's opinion that the plaintiff should be denied his medical certification. Dr. Langille did not respond to these concerns. She instead disclosed a preoccupation with the legitimacy of her opinion and the established CAM process for dealing with substance abuse.

114. Dr. Langille's opinion was not transparent, accurate, or clear. She notably failed to explain the standards for medical information required of the plaintiff. In so doing, she needlessly delayed the plaintiff's efforts to obtain medical information that she would have deemed acceptable.

115. Given the length of time taken to process the plaintiff's application, it seems obvious that Dr. Langille did not provide her opinion in a timely fashion.

Misfeasance in public office

116. The defendant doctor at all material times served as a RAMO, thus exercising the functions of a public office.

117. Her functions as a RAMO were to supervise the CAMEs that fell within her assigned geographic region. She was also required to review applications for medical certification and advise the Minister regarding these applications. Her functions were defined by regulations made pursuant to the *Aeronautics Act*.

118. Dr. Langille intentionally engaged in discriminatory acts that were beyond the scope of her office. All public office holders in Canada are bound by the *Canadian Charter of Rights and Freedoms*, which defines the scope of their offices in connection with statute and common law.

119. Dr. Langille was required to adequately review CAMEs' decisions with respect to aviation medical certification.

120. Dr. Langille was required to engage with pilots to evaluate their files based on medical evidence. She was required to provide an opinion regarding that evidence that accounted for domestic and international aviation medical standards.

121. Dr. Langille conducted herself with knowledge that her conduct was not evidence-based or with such recklessness that she did not pause to re-consider her conclusions when new evidence was provided.

122. In so doing, Dr. Langille intentionally engaged in acts that were *ultra vires* the scope of her office.

123. Dr. Langille did not carry out her statutory duty with a rational appreciation of the intent and purpose of the statute—to wit, the fair evaluation of a pilot's present medical condition to ensure that he was fit to exercise the privileges of a commercial pilot's license. As a result, she behaved in bad faith.

124. The plaintiff repeatedly informed Dr. Langille of the harm that he was suffering.

125. The harm that the plaintiff suffered was reasonably foreseeable, for it included devastating his career as a pilot as a result of Dr. Langille's actions. Transport Canada's materials allude to these kinds of serious consequences for pilots as a result of adverse medical decisions.

126. The plaintiff suffered substantial professional, emotional, familial, and financial consequences as a result of Dr. Langille's conduct.

Damages

127. The plaintiff asks the Court to apportion damages equally against the Minister and defendant doctor. In the alternative, the plaintiff asks the Court to apportion damages against the defendants jointly and solidarily.

128. The plaintiff's career prospects have been irreparably altered as a result of the above-described conduct. The plaintiff's monthly salary while working for Bristow Group was $15,000.00 USD each month. He was deprived of this generous sum by the defendants' actions. After seven years without flying and bearing the stigma of alleged alcohol use disorder, the plaintiff can only find employment in entry-level positions. He has suffered a gross reduction in income—on the order of $10,000.00 USD each month.

129. The plaintiff's pensionable earnings have also been substantially reduced.

130. The defendants' conduct further required the plaintiff to liquidate his real property investments. In so doing, he lost substantial sums in potential increase in value. At the time of filing, these losses are approximately $500,000.00 USD.

131. The plaintiff was also put to the significant expense of providing medical test results to the Minister for six years. This expense rose to approximately $40,000.00 USD.

132. Aggravated and punitive damages are warranted in this case because the defendants were aware of the plaintiff's hardship and had in their possession the evidence required to grant the plaintiff his medical certification. The Court ought to denounce such lassitude in the strongest possible terms.

PUBLIC LAW

The *Charter* and human rights issues

133. CAM's implementation of Canadian and international aviation medical policy in 2016 to the present day causes adverse-effect discrimination against professional pilots who disclose medical conditions. Adverse-effect discrimination manifests as:

a. increased delays accessing or continuing in the profession;

b. increased, oftentimes prohibitive, cost of entry or cost of continued access to the profession;

c. changing administrative evaluation standards based on changing CAM leadership;

d. peremptory de-certification after a medical issue is disclosed; and

e. failure to provide reasonable accommodation tailored to individual circumstances.

134. The effects of discrimination are violations of section 15 of the *Canadian Charter of Rights and Freedoms*.

135. These violations are typically saved by section 1 of the *Charter* on the grounds that aviation safety would be compromised if Transport Canada allowed medically unfit pilots to fly.

136. Section 1 does not, however, save all violations of section 15: the *Charter* and section 1 requires Transport Canada to assess medical conditions such that pilots, especially professional pilots, are allowed the privilege of piloting aircraft despite a medical condition.

137. Sections 1 and 15 also demand an evidence-based approach to aeromedical certification for each applicant with a view to minimizing *Charter* violations' effects on pilots.

138. Transport Canada has created an aeromedical certification system in which standards laid out pursuant to the *Aeronautics Act* and *Canadian Aviation Regulations* are applied in a one-size-fits-all model. This model fails to account for individual circumstances and individual presentations of a host of medical conditions.

139. In the present case, we are concerned with a blanket approach to alleged Substance Use Disorder. This approach assumes that all pilots accused of substance abuse disorder are medically unfit to pilot aircraft.

140. This assumption is borne out of unconscious and/or conscious bias.

141. When a pilot is not medically unfit, but is presumed to be unfit because an allegation of Substance Use Disorder exists, Transport Canada discriminates on the basis of disability.

142. If Transport Canada does not have sufficient evidence to show that there is a threat to aviation safety, it cannot save its breach of the *Charter* as a reasonable limit.

143. The effects of discrimination borne from assumptions rather than evidence-based decision making are also violations of the *Canadian Human Rights Act* for which no *bona fide* justification exists.

Relief

144. If the Court does not award damages for negligence against the Minister of Transport, as detailed in the foregoing, the plaintiff requests an equivalent amount of damages awarded against the Minister pursuant to section 52 of the *Charter* and the *Canadian Human Rights Act*.

145. The plaintiff further requests

a. a declaration that CAM's medical certification process and policies with respect to Substance Use Disorder are incompatible with section 15 of the *Charter*;

b. an order that requires CAM to revise its medical certification process and policies to comply with *Charter* values and international standards; and

c. an order staying the declaration of invalidity for one calendar year from the date of decision.

Relief from the Transportation Appeal Tribunal of Canada

146. The remedy provided to pilots under the *Aeronautics Act* and the *Transportation Appeal Tribunal of Canada Act* is inadequate because it subjects pilots to the same administrative standards and actors that led to the adverse-effect discrimination detailed above.

147. The remedy thus provided is a contravention of the *Canadian Charter of Rights and Freedoms* because it perpetuates a discriminatory practice contrary to section 15.

148. The remedy thus provided also does not address the significant damage occasioned to pilots if their medical certification applications are not processed with diligence and care. These damages are not abstract or indeterminate: they are clear and predictable effects caused by the loss of employment.

149. The Minister is, in the main, justified in refusing to grant a pilot medical certification or renewed medical certification when the administrative process is fairly conducted and results in evidence-based medical conclusions.

150. When, however, the Minister's process is attained by a lack of fairness or unreasonable conclusions, or conclusions drawn from an unreasonable interpretation of medical evidence, the TATC review process does not provide sufficient redress because the TATC is only authorized to submit the matter for reconsideration by the Minister.

151. The Minister's target time for reconsideration is six to nine months.

152. This target for reconsideration unduly extends an applicant's absence from the workforce. This absence engenders financial loss, emotional strain, and skills atrophy.

153. These effects stem from Transport Canada's adverse effect discrimination. The statutory scheme for reviews of aviation medical certification decisions perpetuates the adverse effects of Transport Canada's discrimination, even if the pilot is successful before the TATC.

Relief

154. The plaintiff requests

a. a declaration that sub-section 6.72(4) and paragraph 7.2(3)(a) of the *Aeronautics Act* are of no force or effect insofar as they apply to proceedings before the Transportation Appeal Tribunal of Canada with respect to Canadian aviation medical documents; and

b. an order staying the declaration of invalidity for one calendar year from the date of decision.

Law

155. The plaintiff pleads and relies on the

a. *Aeronautics Act*, RSC 1985, c A-2;

b. *Canadian Aviation Regulations*, SOR/96-443;

c. *Crown Liability and Proceedings Act*, RSC 1985, c C-50;

d. *Transportation Appeal Tribunal of Canada Act*, SC 2001, c 29;

e. *Department of Transport Act*, RSC 1985, c T-18;

f. *Canadian Human Rights Act*, RSC 1985, c H-6;

g. *Constitution Act, 1982*, being schedule B to the *Canada Act 1982*, 1982, c 11 (UK);

h. *Medicine Act, 1991*, SO 1991, c 30;

i. *Registration*, O Reg 865/93; and

j. *Professional Misconduct*, O Reg 856/93.

Forum

156. The plaintiff proposes that this action, along with the public law remedies requested above, be tried in Ottawa, Ontario.

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Davis and Canada *et al*

Superior Court of Ontario

PROCEEDING COMMENCED AT OTTAWA

Statement of Claim

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