

FEDERAL COURT

B E T W E E N:

DANY FORTIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7

APPLICANT'S RECORD

September 3, 2021

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Court File No. T-957-21

FEDERAL COURT

B E T W E E N:

(Court Seal)

DANY FORTIN

Applicant

and

~~MINISTER OF HEALTH, MINISTER OF NATIONAL DEFENCE,
PRIME MINISTER OF CANADA, CLERK OF THE PRIVY
COUNCIL OFFICE~~ ATTORNEY GENERAL OF CANADA

Respondents

APPLICATION UNDER section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7

AMENDED NOTICE OF APPLICATION

TO THE RESPONDENT(S)

A PROCEEDING HAS BEEN COMMENCED by the Applicant. The relief claimed by the Applicant appears on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicant. The Applicant requests that this application be heard at Ottawa, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the Applicant's solicitor or, if the Applicant is self-represented, on the Applicant, WITHIN 10 DAYS after being served with this notice of application.

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

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date _____ Issued by _____
(Registry Officer)

Address of
local office: Thomas D'Arcy McGee Building
90 Sparks Street, 5th floor
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K1A 0H9

TO: ~~Minister of Health~~ Attorney General of Canada
c/o Deputy Attorney General of Canada
Office of the Deputy Attorney General of Canada
284 Wellington Street
Ottawa, Ontario
K1A 0H8

AND TO: ~~Minister of National Defence~~
~~c/o Deputy Attorney General of Canada~~
~~Office of the Deputy Attorney General of Canada~~
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AND TO: ~~Prime Minister of Canada~~
~~c/o Deputy Attorney General of Canada~~
~~Office of the Deputy Attorney General of Canada~~
~~284 Wellington Street~~
~~Ottawa, Ontario~~
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AND TO: ~~Clerk of the Privy Council Office~~
~~c/o Deputy Attorney General of Canada~~
~~Office of the Deputy Attorney General of Canada~~
~~284 Wellington Street~~
~~Ottawa, Ontario~~
~~K1A 0H8~~

APPLICATION

THIS IS AN APPLICATION FOR JUDICIAL REVIEW in respect of the decision dated May 14, 2014 (the Decision) made by the Minister of Health, the Minister of National Defence, the Prime Minister of Canada (Prime Minister) and the Clerk of the Privy Council Office (PCO) (collectively, the decision-makers or decision-maker(s)) to publicly terminate the secondment of Major-General (MGen) Dany Fortin from the Canadian Armed Forces (CAF) to the Public Health Agency of Canada (PHAC), where MGen Fortin was serving as Vice President of Logistics and Operations for the COVID-19 Vaccine Rollout Task Force until October 31, 2021 and to relieve him from the performance of military duty.

THE APPLICANT MAKES APPLICATION FOR:

1. An order in the nature of *certiorari* quashing the Decision to publicly terminate the applicant's secondment and relieve him from the performance of military duty;
2. An order reinstating him to his secondment at PHAC and/or a position commensurate with his rank of Major-General, as the Decision was unreasonable and breached the applicant's right to procedural fairness;
3. In the alternative, an order referring the matter to the Acting Chief of Defence Staff for a forthwith re-determination consistent with the Court's reasons on this application;

4. An order that this application be specially managed pursuant to Rule 384 of the *Federal Courts Rules*, SOR/98-106;
5. Costs of this application; and
6. Such further and other relief as counsel may advise and the Court may permit.

THE GROUNDS FOR THE APPLICATION ARE:

Background

7. MGen Fortin is an officer in the Regular Force component of the Canadian Forces. He is a two-star General. He graduated from the Royal Military College of Canada St-Jean, Québec, and the National Security Program at the Canadian Forces College in Toronto, Ontario in 2013. He also holds a master's degree from the U.S. Army Command and General Staff College, in Fort Leavenworth, Kansas.

8. MGen Fortin was the first Commander of the NATO Mission in Iraq from 2018 to 2019. Throughout his distinguished career, he has held key positions including Deputy Commanding General – Operations of I Corps of the U.S. Army at Joint Base Lewis-McChord, in Washington from 2015 to 2017, Director of Operations of Foreign and Defence Policy at the PCO from 2017 to 2018, and Chief of Staff of the Canadian Joint Operations Command. He is the recipient of many awards, medals, and honours.

9. At all material times, MGen Fortin was, and remains, an officer in the Regular Force component of the CAF.

10. On November 27, 2020, the Minister of Health announced that CAF and the Department of National Defence were seconding MGen Fortin to PHAC and naming him Vice President Logistics and Operations to oversee logistical planning in the Government of Canada's COVID-19 vaccine procurement and distribution program. MGen Fortin's secondment was in response to a Request for Assistance from PHAC to the Canadian Armed Forces made in October 2020.

11. MGen Fortin reported to PHAC on November 23, 2020 to begin his work.

12. On February 24, 2021, Lieutenant-General (LGen) Wayne Eyre was appointed by the Minister of National Defence as Acting Chief of Defence Staff (ACDS).

13. On February 25, 2021, PHAC requested that the secondment be extended to October 31, 2021. This request was approved by the Minister of National Defence on the advice of the ACDS.

14. MGen Fortin's secondment to PHAC was terminated effective May 14, 2021 with a statement from the Department of National Defence and the Minister of National Defence.

15. Since the termination of his secondment, MGen Fortin has been without assignment at the CAF and has, *de facto*, been relieved from performance of military duty.

16. Under MGen Fortin's leadership, Canada procured and distributed over 20 million doses of the COVID-19 vaccine to Canadians. His tenure at PHAC was highly

successful in providing the vaccines necessary to curb the rise of COVID-19 transmission in Canada.

Events Leading up to the Decision

17. On March 17, 2021, MGen Fortin met with ACDS LGen Eyre who informed him that he had learned that the Canadian Forces National Investigation Service (CFNIS) had launched an investigation against MGen Fortin for sexual misconduct. ACDS LGen Eyre indicated he wanted MGen Fortin to hear it from him and not the press.

18. MGen Fortin was not given any information on the allegations at this time. ACDS LGen Eyre asked MGen Fortin if he wanted to take any time off, which he declined. MGen Fortin indicated he wished to continue working on vaccine procurement and distribution.

19. Later that evening, MGen Fortin received a call from ACDS LGen Eyre indicating the PCO had been informed of the investigation. ACDS LGen Eyre stated he would advocate for due process, the presumption of innocence and that MGen be allowed to continue to perform his assigned task.

20. On the morning of March 18, 2021, MGen Fortin spoke to Iain Stewart, President of PHAC, to inform him of the investigation. Mr. Stewart stated this was the first time he was hearing about it.

21. In the afternoon of March 18, 2021, Mr. Stewart met with MGen Fortin. He reassured him that there was no change to his status and that it was business as usual.

He stated that the investigation would run its course and that this would pass. He reiterated that MGen Fortin was entitled to due process and that he was presumed innocent. He stated that the Minister of Health's Office and the Prime Minister's Office (PMO) may change their minds later but that he was "OK for now". However, Mr. Stewart told MGen Fortin to prepare himself "for the moment when they determine that you need to be let go." Mr. Stewart said: "Keep your bags packed".

22. On April 9, 2021, MGen Fortin received a call from his deputy who told him he had received a call from one of his subordinates. That subordinate had learned from a military police Sergeant that MGen Fortin was under investigation. That Sergeant had learned of the investigation from a friend who was an investigator with the CFNIS.

23. MGen Fortin called the Chief of Staff to the Chief of Defence Staff (COS CDS) to express his displeasure that CFNIS was not ensuring the confidentiality of the investigation.

24. COS CDS later confirmed he had reached out the Canadian Forces Provost Marshal (CFPM), Brigadier-General (BGen) Trudeau, who said he would investigate the leak. It is unclear if the leak was ever investigated or if the source of the leak was ever identified.

25. On April 15, 2021, MGen Fortin received a call from ACDS LGen Eyre who indicated that the complainant did not want to make the complaint public.

26. On April 19, 2021, MGen Fortin received a call from a CFNIS investigator who indicated MGen Fortin was being investigated for one instance of sexual misconduct.

The investigator named the complainant and shared that the alleged misconduct was alleged to have occurred more than thirty years ago.

The Decision to Terminate Secondment, Relieve Applicant from the Performance of Military Duty, and Make Investigation Public

27. On May 13, 2021, Mr. Stewart met with MGen Fortin. He told him that the Ministers of Health and National Defence had discussed the issue and that they wanted to remove him. He was told to “take a sick day tomorrow”. MGen Fortin indicated he would take a day off.

28. That evening, ACDS LGen Eyre called MGen Fortin and told him they would work on a transition the next day with PHAC and the PCO. MGen Fortin asked whether the CFNIS had completed their investigation but was not given any information about what had triggered his removal. ACDS LGen Eyre said that the “political calculus” had changed and that the PCO had said he would have to be removed.

29. On May 14, 2021, ACDS LGen Eyre confirmed that he and Mr. Stewart had not been successful in delaying MGen Fortin’s departure. ACDS LGen Eyre stated that a statement would be released to the public regarding his departure; this was not negotiable. MGen Fortin was given two options regarding the wording of the statement. Ultimately, he chose the statement in which it appeared that he had decided to step down and resign his assigned military duty at PHAC.

30. The decision was presented as a *fait accompli*. MGen Fortin was not presented with an opportunity to make representations in respect of a potential decision. MGen Fortin did not at any time receive any written communication of the Decision publicly

terminating his secondment and/or relieving him from the performance of military duty.

31. That same day, the Department of National Defence released the following statement:

Today, Major-General Dany Fortin has left his assignment with the Public Health Agency of Canada, pending the results of a military investigation. Acting Chief of the Defence Staff, Lieutenant-General Eyre will be reviewing next steps with Major-General Fortin. We will have no further comment.

32. However, the Minister of National Defence also issued a statement following the announcement of the investigation, saying:

I am committed to working to build a true culture of inclusion for the Canadian Armed Forces and the Department of National Defence, where everyone is treated with dignity and respect. We are committed to this lasting change – one that sheds toxic and outdated values, practices, and policies.

33. On May 18, 2021, the Minister of National Defence’s spokesperson stated, “The Minister asked that the complainant receive any necessary support and stated that the investigation must take its due course”.

34. The statements together made clear to the public that MGen Fortin was under investigation for improper conduct, and it could easily be surmised that the improper conduct was sexual in nature.

35. It is MGen Fortin’s understanding that the Decision to terminate his secondment and make the reasons public was made by the Ministers of Health and

National Defence in collaboration with the PMO and the PCO. Because he was not informed of his termination personally by any of one of them and because he did not receive any written confirmation of the Decision, the Decision appears to have been made jointly and severally by the Minister of Health, the Minister of National Defence, the Prime Minister and the Clerk of the Privy Council.

36. By virtue of the statutory duties, powers, and functions of the Chief of the Defence Staff, and the regulations pertaining to relief from performance of military duty, ACDS LGen Eyre ought to have made the Decision. However, the above decision-makers circumvented and interfered with ACDS LGen Eyre's powers and functions in making the Decision, and effectively prevented ACDS LGen Eyre from reassigning MGen Fortin to another position commensurate with his rank. As a result, MGen Fortin, has, *de facto*, been relieved from performance of his military duty.

37. On May 18, 2021, the Prime Minister stated publicly that he was informed "a number of weeks ago" that the allegation had been made against MGen Fortin but that he had not received details of the allegation. He also said publicly on or shortly before that date that the PMO "is provided status updates on senior personnel decisions by the Privy Council Office".

38. On May 19, 2021, the CFPM released a statement confirming that the CFNIS investigation involved an allegation of sexual misconduct and that the matter was being referred to the Director of Criminal and Penal Prosecutions of Quebec. MGen Fortin learned about the referral for the first time that day through news media reports.

The Decision was Unreasonable

39. The Decision to terminate MGen Fortin's secondment and relieve him from the performance of military duty was unreasonable, given the following factors:

- (a) the Decision, including both the reasoning process and the outcome of the Decision, was not justified, transparent or intelligible;
- (b) the Decision, including both the reasoning process and the outcome of the Decision, was arbitrary and made without regard to any material before the decision-maker(s), including:
 - (i) the nature of MGen Fortin's work and its importance to public health during an unprecedented global pandemic;
 - (ii) the success of MGen Fortin's efforts at procuring and distributing vaccines to Canadians;
 - (iii) the fact that the investigation appeared to be ongoing;
 - (iv) the historical nature of the allegation under investigation; and
 - (v) the significant reputational harm of a public termination, especially for someone of MGen Fortin's stature and public profile.
- (c) the Decision, including both the reasoning process and the outcome of the Decision, was not internally coherent, it lacked a rational chain of

analysis and was not justified in relation to the facts and law that constrained the decision-maker(s), including:

- (i) the Decision was made jointly and severally by the Minister of National Defence, the Minister of Health, the Prime Minister and the Clerk of the Privy Council, which amounted to improper political interference in the CAF when, in accordance with the proper military chain of command, it should have been made by the ACDS LGen Eyre;
- (ii) the Decision prevented ACDS LGen Eyre from reassigning MGen Fortin to a position commensurate with his rank, *de facto* relieving MGen Fortin of his military duties, which amounted to improper political interference in the CAF when, in accordance with the proper military chain of command, the Decision should have been made by ACDS LGen Eyre;
- (iii) the secondment was for a fixed term ending October 31, 2021, and therefore it could only be terminated for cause; and
- (iv) the facts set out in (b) above.

40. It was also unreasonable to make the fact and substance of the investigation public as part of the Decision to terminate MGen Fortin's secondment, given the following factors:

- (a) the disclosure amounted to a breach of MGen Fortin's right to not have his personal information disclosed without his consent under subsection 8(1) of the *Privacy Act*, RSC 1985, c P-21;
- (b) the complainant's desire for the investigation to be kept confidential;
- (c) the reputational harm of allegations of misconduct, especially of a sexual nature, whether or not they can be disproven or are found to be frivolous or unsubstantiated;
- (d) disclosing that there is an investigation amounts to impermissibly commenting on an ongoing investigation, thereby potentially compromising same; and
- (e) the Decision, in combination with the Minister of National Defence's public comments, allowed the public to surmise the nature of the allegations giving rise to the investigation, but without the appropriate context that it was based on a single allegation dating more than 30 years, fueling speculation and further damaging MGen Fortin's reputation.

41. As a result of the public termination of MGen Fortin's secondment and his relief from the performance of military duty, his reputation has been irreparably harmed.

42. The Ministers of Health and National Defence, the PMO and the PCO improperly interfered with the military chain of command by preventing ACDS LGen

Eyre from reassigning MGen Fortin, thereby causing MGen Fortin's relief from the performance of military duty.

43. MGen Fortin is currently without assignment with the CAF. He expects he will no longer be considered for any promotions, special missions or key positions due to the significant reputational damage that has resulted from the Decision.

44. Given other recent precedents, the Ministers of Health and National Defence, the Prime Minister and the Clerk of the PCO knew or ought to have known that serious reputational harm would follow the public termination of MGen Fortin's secondment.

45. The Ministers of Health and National Defence, the Prime Minister and the Clerk of the PCO unreasonably failed to consider the factors outlined above when they decided to publicly terminate MGen Fortin's secondment to PHAC and relieve MGen Fortin from the performance of military duty.

The Applicant was Denied Procedural Fairness

46. MGen Fortin was denied procedural fairness in the lead-up to the Decision, which the ~~respondents~~ decision-makers knew or ought to have known would have grave consequences on his life, reputation and career, namely:

- (a) the decision-maker(s) failed to give him an opportunity to be heard on why he should not be removed from his position at PHAC and not reassigned;

- (b) the decision-maker(s) failed to give MGen Fortin an opportunity to be heard on why the investigation should not have been referenced in a public announcement regarding his departure and in subsequent public statements;
- (c) it remains unclear precisely who made the Decision to terminate MGen Fortin's secondment publicly and not reassign him, on whose advice and for what reason(s). Despite the public nature of the outcome, the process has been shrouded in secrecy and was arbitrary;
- (d) MGen Fortin did not know who the decision-maker(s) was or were, and was therefore unable to advocate his position;
- (e) MGen Fortin was not given reasons for the Decision to remove him publicly and not reassign him other than second or third hand speculation that the "political calculus" had changed, which was wholly inadequate and, in any event, did not come directly from the decision-maker(s).
- (f) MGen Fortin was not asked whether he consented to his personal information being disclosed under s. 8(1) of the *Privacy Act*, RSC 1985, c P-21;
- (g) MGen Fortin had a legitimate expectation that he would not be terminated from his position absent the requisite procedural fairness;

- (h) MGen Fortin had a legitimate expectation that any relief from the performance of military duty would follow the process established under the *National Defence Act*, RSC 1985, c N-5, *Queen's Regulations and Orders* and the *Defence Administrative Orders and Directives* for the CAF and that he would be afforded the procedural fairness required under same;
- (i) MGen Fortin was not afforded fair and impartial decision-making. The Decision was politically motivated and the outcome was pre-determined, demonstrating the decision-maker(s)'s closed mind(s) and/or a reasonable apprehension of bias;
- (j) the Decision was arbitrary, not in the public interest and made solely for the personal and political gain of the Ministers of Health and National Defence and the Prime Minister;
- (k) the Decision was not made by ACDS LGen Eyre but by the Ministers of Health and Defence, the Prime Minister and the Clerk of the PCO, jointly and severally, improperly interfering in the military chain of command; and
- (l) the Prime Minister and/or the PMO was impermissibly involved in the Decision to terminate MGen Fortin's secondment, despite the Prime Minister's public statements to the contrary.

47. A moderate to high degree of procedural fairness was required in this case given the presence of the following factors:

- (a) the nature of the Decision risked impairing the highly important and urgent work of vaccine procurement and distribution that the ~~respondents~~ decision-makers had appointed MGen Fortin to lead during a global pandemic;
- (b) the Decision was of great importance to MGen Fortin personally, as it was known that it would result in significant damage to his reputation, and significantly impact his future career prospects as a high-ranking military officer;
- (c) the basis of the Decision appears to have been related to the underlying allegation of misconduct and the subsequent investigation, which attracts a higher level of procedural fairness, including the right to be heard and to written reasons; and
- (d) MGen Fortin had a legitimate expectation that he would be afforded the level of procedural fairness established under the *Queen's Regulations and Orders* and the *Defence Administrative Orders and Directives* for the CAF.

48. As a result of the unreasonableness of the Decision, including its lack of justifiability, transparency and intelligibility, as well as the significant breaches of MGen Fortin's right to procedural fairness and privacy, there is no other reasonable

outcome other than to quash the Decision and to reinstate MGen Fortin to his secondment at PHAC and/or a position commensurate with his rank of Major-General.

49. In the alternative, the Decision should be quashed and remitted to the ACDS LGen Eyre, the proper decision-maker, for a re-determination, with an opportunity for MGen Fortin to be heard, and fulsome reasons provided for the new decision.

50. The applicant pleads and relies on:

- (a) section 8 of the *Privacy Act*, RSC 1985 c P-21;
- (b) the *National Defence Act*, RSC 1985, c N-5;
- (c) the *Queen's Regulations and Orders for the Canadian Forces*; and
- (d) the *Defence Administrative Orders and Directives*.

51. The applicant requests that this application be heard on an expedited basis, given the significant and ongoing damage to his reputation resulting from the Decision, and the fact that the term of secondment was set to expire on or about October 31, 2021, less than four months from the date of issuance of this Notice of Application. To that end, the applicant requests that this application be specially managed pursuant to Rule 384 of the *Federal Courts Rules*, SOR/98-106.

THIS APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

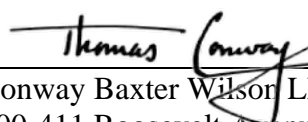
- (a) The affidavit of MGen Dany Fortin to be sworn in support of the within application and the exhibits thereto; and

- (b) Such further and other material as counsel may advise and this Honourable Court may permit.

THIS APPLICANT REQUESTS pursuant to Rule 317 of the *Federal Courts Rules* that each ~~respondent~~ of the decision-makers send a certified copy of the following material that is not in the possession of the applicant but is in the possession of each of the ~~respondents~~ decision-makers to the applicant and to the Registry:

1. The full record of all material which was before each of the ~~respondents~~ decision-makers, or formed part of its, his or her files, at the time of the Decision, including all documents, memoranda, reports, emails, notes and other communications considered, prepared and/or collected in the preparation of the Decision;
2. Without limiting the generality of the foregoing, any documents relevant to the adjudication of the applicant's request.

June 14, 2021
Amended: July 21, 2021



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Lawyers for the applicant

Court File No. T-957-21

FEDERAL COURT

B E T W E E N:

DANY FORTIN

Applicant

and

MINISTER OF HEALTH, MINISTER OF NATIONAL DEFENCE,
PRIME MINISTER OF CANADA and CLERK OF THE PRIVY
COUNCIL OFFICE

Respondents

APPLICATION UNDER section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7**AFFIDAVIT OF DANY FORTIN**

I, Dany Fortin, the applicant in this proceeding, of the City of Gatineau, in the Province of Québec, SWEAR THAT:

Educational and Professional Background

1. I am an officer in the Regular Force component of the Canadian Armed Forces (CAF) and hold the rank of Major-General. I graduated from the Royal Military College of Canada Saint-Jean, Québec in 1991, and the National Security Program at the Canadian Forces College in Toronto, Ontario in 2013. I also hold a master's degree from the U.S. Army Command and General Staff College, in Fort Leavenworth, Kansas.

2. Throughout my career, I have held a number of command appointments and key positions including Deputy Commanding General – Operations of the U.S. Army's I Corps at Joint Base Lewis-McChord, Washington from 2015 to 2017, Director of

Operations of Foreign and Defence Policy at the Privy Council Office (PCO) from 2017 to 2018, and Commander 1st Canadian Division in Kingston from 2018 to 2020, during which time I was the first Commander of the NATO Mission Iraq in Baghdad from 2018 to 2019. My honours and awards include Commander of Military Merit, the Canadian Meritorious Service Cross, the U.S. Legion of Merit, and the NATO Meritorious Service Medal.

3. A short biography outlining my career and awards is attached as **Exhibit A**.
4. My CAF Member's Personnel Record Resume is attached as **Exhibit B**.
5. Prior to my secondment to the Public Health Agency of Canada (PHAC), described below, my official assignment was Chief of Staff of the Canadian Joint Operations Command (CJOC) in Ottawa.
6. My annual Performance Evaluation Reports from 2019, 2020 and 2021 are attached as **Exhibit C**. The 2021 Report was signed on May 11, 2021 by the Acting Chief of Defence Staff (A/CDS) Lieutenant-General (LGen) Wayne Eyre.
7. According to the 2021 Report, my "leadership assessment" is listed at the highest level, "master", for all skills; my "potential at the next higher rank" is listed as "outstanding" for all skills; and my "promotion recommendation" is listed as "immediate". A/CDS LGen Eyre concludes the 2021 Report with the following remarks:

MGen Fortin is an officer of rare quality, who reflects the best the CAF has to offer in terms of institutional leadership. Whether in NATO operations in Iraq,

working across government in PCO, or leading at PHAC, MGen Fortin has proven to be mature, seasoned, experienced, and ready for more significant challenges. MGen Fortin displays the cultural, diversity and inclusion characteristics that are required of a modern leader, able to inspire others and create a 21st-century work environment. Promote now and place in charge of a CAF command.

My Secondment to PHAC and Termination

8. On November 27, 2020, the Minister of Health announced that the CAF and the Department of National Defence were seconding me to PHAC and naming me Vice-President Logistics and Operations to oversee logistical planning in the Government of Canada's COVID-19 vaccine procurement and distribution program. A copy of the news release published by PHAC on that date is attached as **Exhibit D**.

9. My secondment was in response to a Request for Assistance from PHAC to the Canadian Armed Forces made in October 2020. An email exchange which evidences this Request for Assistance, dated October 28, 2020, between a member of the CAF and an official of Public Safety Canada on behalf of PHAC, is attached as **Exhibit E**.

10. I reported to PHAC on November 23, 2020 to begin my work.

11. I understood my work at PHAC was pressing, of national importance and imperative to curb the rise of COVID-19 transmissions and deaths across Canada. Indeed, a Chief of Defence Staff Planning Directive, dated November 27, 2020, describing the CAF's mission to support the federal government's vaccine roll-out, entitled "Operation VECTOR", stated at page 2:

... COVID-19 continues to pose a significant threat to the well-being of Canadians. Thousands of the nation's citizens are being infected daily, health care systems are under significant duress, and the CAF is again being called to support vulnerable populations.

12. That Planning Directive is attached as **Exhibit F**.
13. On February 24, 2021, LGen Eyre was appointed by the Minister of National Defence as the A/CDS.
14. With millions of vaccine doses left to deploy in the months that followed, PHAC requested that CAF support formally extend into the fall of 2021. On February 25, 2021, PHAC requested that the CAF's secondment, including my own, be extended to October 31, 2021. An email from a PHAC official to a Public Safety official evidencing this extension request, dated February 25, 2021, is attached as **Exhibit G**.
15. This request was approved by the Minister of National Defence on the advice of the A/CDS.
16. My secondment to PHAC was terminated effective May 14, 2021 with a statement from the Department of National Defence and the Minister of National Defence (the "Decision"), as I explain below.
17. Since the termination of my secondment, I have been without assignment at the CAF.
18. Under my leadership, Canada procured and distributed over 20 million doses of the COVID-19 vaccines to Canadians. My tenure at PHAC was highly successful in providing the vaccines necessary to curb the rise of COVID-19 transmission in Canada.

Events Leading up to the Decision

19. On March 17, 2021, I met with A/CDS LGen Eyre who informed me that he had learned that the Canadian Forces National Investigation Service (CFNIS) had launched an investigation against me on the basis of an allegation of sexual misconduct. A/CDS LGen Eyre indicated he wanted me to hear it from him and not from the press.

20. I was not given any information on the allegations at this time. A/CDS LGen Eyre asked me if I wanted to take any time off. I declined. I indicated I wished to continue working on vaccine distribution.

21. Later that evening, I received a call from A/CDS LGen Eyre indicating the PCO had been informed of the investigation. A/CDS LGen Eyre stated he would advocate for due process, the presumption of innocence and that I be allowed to continue to perform my assigned task.

22. On the morning of March 18, 2021, I informed Iain Stewart, President of PHAC, of the investigation. He stated this was the first time he was hearing about it.

23. In the afternoon of March 18, 2021, Mr. Stewart met with me. He reassured me that there was no change to my status and that it was business as usual. He stated that the investigation would run its course. He reiterated that I was entitled to due process and that I was presumed innocent. He stated that the Minister of Health's Office and the Prime Minister's Office (PMO) may change their minds later but that I was "OK for now". However, Mr. Stewart told me to prepare myself "for the moment when they determine that you need to be let go." Mr. Stewart said: "Keep your bags packed".

24. On April 9, 2021, I received a call from my deputy who told me he had received a call from one of his subordinates. That subordinate had learned from a military police Sergeant, also part of our team, that I was under investigation. That Sergeant had learned of the investigation from a friend investigator with the CFNIS.

25. I called the Chief of Staff to the Chief of Defence Staff (COS CDS) to express my displeasure that CFNIS was not ensuring the confidentiality of the investigation.

26. The COS CDS later confirmed he contacted the Canadian Forces Provost Marshal (CFPM), Brigadier-General (BGen) Trudeau, who said he would investigate the leak. I do not know if the leak was ever investigated or if the source of the leak was ever identified.

27. On April 15, 2021, I received a call from A/CDS LGen Eyre who indicated that the complainant did not want to make the complaint public.

28. On April 19, 2021, I received a call from a CFNIS investigator who indicated I was being investigated for one instance of sexual misconduct. The investigator named the complainant and shared that the alleged misconduct was alleged to have occurred more than thirty years ago.

The Decision to Terminate my Secondment and Make the Investigation Public

29. On May 13, 2021, Mr. Stewart met with me. He told me that the Ministers of Health and National Defence had discussed the issue and that they wanted to remove me. I was told to “take a sick day tomorrow”. I indicated I would take a day off.

30. That evening, A/CDS LGen Eyre called and told me they would work on a transition the next day with PHAC and the PCO. I asked whether the CFNIS had completed their investigation but was not given any information about what had triggered my removal. A/CDS LGen Eyre said that the “political calculus” had changed and that the PCO had said I would have to be removed.

31. On May 14, 2021, A/CDS LGen Eyre confirmed that he and Mr. Stewart had not been successful in delaying my departure. A/CDS LGen Eyre stated that a statement would be released to the public regarding my departure; this was not negotiable. We discussed two options regarding the wording of the statement. I chose the statement in which it appeared that I had decided to step down and resign my assigned military duty at PHAC. I was not asked whether I consented to the public release of information regarding the existence of an investigation.

32. The decision was presented to me as a *fait accompli*. I was not given an opportunity to make representations about whether I should be removed from PHAC, whether there were other options short of removal or, either way, whether the investigation should be made public. I did not at any time receive any written communication confirming the Decision to publicly terminate my secondment.

33. To this day, I have not been given any information about what triggered my sudden departure from PHAC, almost two months after I was initially told of the investigation. I still do not know the reasons for my removal.

34. On May 14, 2021, the Department of National Defence released the following statement:

Today, Major-General Dany Fortin has left his assignment with the Public Health Agency of Canada, pending the results of a military investigation. Acting Chief of the Defence Staff, Lieutenant-General Eyre will be reviewing next steps with Major-General Fortin. We will have no further comment.

35. This statement was reported by many media outlets, including in an article published by Global News, entitled “Military head of Canada’s COVID-19 vaccine rollout steps aside amid investigation”, dated May 14, 2021, attached as **Exhibit H**.

36. The Minister of National Defence also issued a statement following the announcement of the investigation, saying:

... I am committed to working to build a true culture of inclusion for the Canadian Armed Forces and the Department of National Defence, where everyone is treated with dignity and respect. We are committed to this lasting change – one that sheds toxic and outdated values, practices, and policies.

37. This statement was published by Global News in Exhibit H above.

38. On May 18, 2021, the Minister of National Defence’s spokesperson stated, “The Minister asked that the complainant receive any necessary support and stated that the investigation must take its due course”. That statement was reported by media outlets such as in an article published by CTV News, entitled “Defence Minister Sajjan was aware of investigation into Fortin in March, PM says he learned ‘weeks ago’”, on May 18, 2021, attached as **Exhibit I**.

39. I was only given advanced notice of the statement released by the Department of National Defence on May 14, 2021, reproduced at paragraph 34 above. I was not aware that the Minister of National Defence would be making additional public

statements regarding the investigation, including the fact that there was a “complainant” and that he was working to build a culture of “dignity and respect” that shed “toxic and outdated values, practices, and policies”, statements that hinted at the nature of the investigation. I was not given any opportunity to make representations as to the propriety of these statements. I was not asked whether I consented to these public statements being made.

40. It is my understanding that the Decision to terminate my secondment and make the reasons public was made by the Ministers of Health and National Defence in collaboration with the PMO and the PCO. Because I was not informed of my termination personally by any of one of them and because I did not receive any written confirmation of the Decision, the Decision appears to have been made jointly and severally by the Minister of Health, the Minister of National Defence, the Prime Minister and the Clerk of the Privy Council.

41. On May 18, 2021, the Prime Minister stated publicly that he was informed “a number of weeks ago” that the allegation had been made against me but that he had not received details of the allegation. The Prime Minister’s office also said publicly on or shortly before that date that the PMO “is provided status updates on senior personnel decisions by the Privy Council Office”. This statement was reported by CTV News on May 18, 2021 in Exhibit I above.

42. On May 19, 2021, the CFPM released a statement confirming that the CFNIS investigation involved one allegation of sexual misconduct and that the matter was being referred to the Director of Criminal and Penal Prosecutions of Quebec. I learned

about the referral for the first time that day through news media reports, such as in an article published by CTV News on May 19, 2021, entitled “Military investigators refer allegation involving Maj.-Gen. Dany Fortin to Quebec prosecutor”, attached as **Exhibit J**.

Impact of Decision on my Reputation and Career

43. The impact of the Decision on my reputation and career has been devastating.

44. There is no question that I fulfilled my role at PHAC with skill, diligence, and the highest standards of excellence. At the time I was removed from my position, I was leading a successful team effort to deploy COVID-19 vaccines, in order to curb the transmission of COVID-19 and to drastically reduce the daily death count in Canada.

45. Given my success at PHAC, I was poised for either promotion to LGen or a field of other opportunities, including domestic and international appointments after the completion of my secondment. Indeed, my superiors had strongly recommended me for a promotion for the last three years, including A/CDS LGen Eyre in the 2021 Report. I was at the peak of my career.

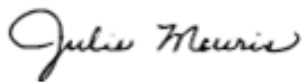
46. Due to the Decision, I have no assignment, although I remain a member of the CAF. As far as I know, I am not being considered for any positions and I appear to have been bypassed for promotion. Currently, my career appears to be over.

47. As a result of the Decision to make the investigation public, media reports across the country have reported on the investigation and my removal. The reputation I have built up over the course of three decades of service to my country has been

irreparably tarnished by the Decision to announce publicly an investigation into my alleged conduct, exacerbated by the fact that the announcement lacked the context that the investigation relates to a single allegation of misconduct dating back over 30 years. Due to the public nature of my secondment to PHAC and therefore of my removal, my reputation has been further irreparably harmed by the Decision to terminate my secondment.

SWORN REMOTELY BEFORE ME

by video-conference from the City of Gatineau, in the Province of Quebec, to the City of Ottawa, in the Province of Ontario on July 13, 2021 in accordance with O. Reg 431/20, Administering Oath or Declaration Remotely.



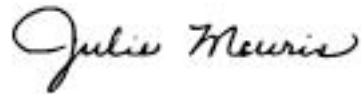
Commissioner for Taking Affidavits
(or as the case may be)

Julie Mouris
LSO# 69707U



DANY FORTIN

This is **Exhibit "A"**
to the affidavit of
Dany Fortin
sworn before me by video-conference this
13th day of July, 2021



A Commissioner for Taking Affidavits

Julie Mouris
LSO#69707U

MAJOR-GENERAL D. FORTIN, CMM, MSC, CD

Seconded to the Public Health Agency of Canada, Vice President of Logistics and Operations for the national COVID-19 vaccine roll out



Photo : The Canadian Press, Justin Tang

Major-General Dany Fortin has been seconded to the Public Health Agency of Canada (PHAC) since November 2020 as the Vice President of Logistics and Operations for the COVID-19 Vaccine Rollout Task Force.

He has a science degree from the Royal Military College of Canada (RMC) St-Jean, he received his masters from the U.S. Army Command and General Staff College, in Fort Leavenworth, Kansas, and he graduated from the National Security Program at the Canadian Forces College in Toronto, ON in 2013.

Throughout his career, he had the privilege of commanding the 5^e Régiment d'artillerie légère du Canada (2007-2009), 5 Canadian Mechanized Brigade Group (2013-2015), 1st Canadian Division (2018-2020) and was the first Commander of NATO Mission Iraq (2018-2019). Key positions held include Deputy Commanding General – Operations of 1st Corps (U.S. Army), at Joint Base Lewis-McChord, Washington (2015-2017), Director of Operations of Foreign and Defence Policy at the Privy Council Office (2017-2018) and Chief of Staff of the Canadian Joint Operations Command.

He is a Commander of the Order of Military Merit, and officer of the U.S. Legion of Merit, a recipient of the Meritorious Service Cross, NATO Meritorious Service Medal and of the Japan Defense Cooperation Medal. He and his wife Madeleine originate from Montmagny, Québec and they have one daughter.

Assignment History

1991 Graduated from Collège militaire royal de Saint-Jean

1991-1996 5e Régiment d'artillerie légère du Canada (5 RALC), Valcartier, QC

1997-2000 Field Artillery School (Instructor-in-Gunnery)

2000 5 RALC – Operations Officer

2001 5e Groupe-brigade mécanisé du Canada (5 GBMC), Valcartier – G3 Operations

2003 5 RALC – Battery Commander

2005 Secteur du Québec (now 2nd Canadian Division) Montréal – G7 (Training)

2006-2007 US Army Command and General Staff College, Ft Leavenworth, Kansas

2007-2009 Commanding Officer, 5 RALC, Valcartier

2010 Executive Assistant to the Chief of Defence Staff, NDHQ Ottawa

2011 G3 of the Canadian Army, Ottawa

2012-2013 National Security Program, Canadian Forces College, Toronto

2013-2015 Commander, 5 GBMC

2015-2017 US Army I (First) Corps, Joint Base Lewis-McChord, WA – Deputy Commanding General – Operations (I Corps is assigned to Indo-Asia Pacific region)

2017 Seconded to Privy Council Office, Foreign and Defense Policy Secretariat - Director of Operations

2018-2020 Commander, 1st Canadian Division, Kingston (responsible for contingencies, non-combatants evacuation and disaster relief operations).

July 2020 Chief of Staff, Canadian Joint Operations Command, Ottawa

Nov 23, 2020 Seconded to PHAC as Vice-President Logistics and Operations for COVID-19 Vaccine rollout until relieved on May 13, 2021

Operational Tours

Nov 1993-May 1994 United Nations Protection Force (UNPROFOR), Bosnia-Herzegovina, Platoon Leader

July 1995-Jan 1996 IFOR, Bosnia, Forward Observer and Forward Air Controller

Jan-July 2004 ISAF's Kabul Multinational Brigade, Kabul, Afghanistan, G3 Ops and G3 (Director of Operations)

Nov 2009-May 2010 JTF-Afghanistan/Task Force Kandahar, Afghanistan, Chief of Staff

Oct 2018-Nov 2019 Commander of NATO Mission Iraq (NMI), Baghdad, Iraq

Honours and Awards

CMM Commandeur, Order of Military Merit (announced Dec 2020)

OMM Officer, Order of Military Merit

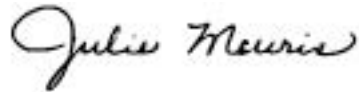
MSC Meritorious Service Cross (announced Dec 2020)

NATO MSM NATO Meritorious Service Medal

US Legion of Merit – Degree of Officer

Other medals include the General Campaign Star (GCS) – Expeditionary with 2 bars, GCS South-West Asia with bar, UNPROFOR Medal, NATO Former-Yugoslavia medal, Canadian Peacekeeping Service Medal, Queen's Golden Jubilee Medal, and Japan Defence Cooperation Medal.

This is **Exhibit "B"**
to the affidavit of
Dany Fortin
sworn before me by video-conference this
13th day of July, 2021



A Commissioner for Taking Affidavits

Julie Mouris
LSO#69707U

*** PROTECTED A ***

REPORT ID : NDPER016 MEMBER'S PERSONNEL RECORD RESUME (MPRR) PAGE : 1
 VERSION : 15 AS OF 05-JUL-2021 RUN DATE : 06-JUL-2021
 EMPLID : 004112 NAME: Fortin, JSSD RUN TIME : 15:06:17z
 SN: [REDACTED] RANK: MGen COMP: Reg F DATA BANK ID: DND/P-PE 806
 OCCUPATION: GOL Sub-Occ: URS: 000002 CFB (O-G) POSITION : 00047332 COS
 UNIT: 006775 CJOC HQ TOUR EXPIRY DATE: 31-JUL-2022 GIVEN NAMES: Dany, [REDACTED]

** PERSONAL DATA **

GENDER : Male CITIZENSHIP : CAN
 BIRTHDATE : [REDACTED] 1968 BIRTHPLACE : MONTMAGNY , QC , CAN
 MARITAL STATUS: Married MARITAL STATUS DATE: 26-JUN-1993

** MILITARY DATA **

ENROLMENT DATE : 21-JUN-1985 ENGAGEMENT TYPE: OCDP-IPS EXPIRY DATE : 09-JUL-2023
 COMM PLAN : ROTP OBLIG SVC DATE : 30-APR-1995 CRA 60 ELECTED DT:
 SECUR CLEARANCE: [REDACTED] CLEARANCE DATE : 07-AUG-2018 WING GRAD DATE : REST REL DATE :
 FITNESS TEST DT: 03-MAR-2020 TEST TYPE : FORCE PHYSICAL FITNESS CD.: Met Silver
 REGIMENT/HPD : UNIFORM : Army

** DEPENDANTS DATA **

DEPENDANTS	BIRTHDATE	CURRENT LOCATION	LANGUAGE OF INSTRUCTION	NAME	GENDER
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

DEPENDANTS DENTAL CARE PLAN : STATUS: PARTICIPANT START: 01-MAY-1992 END:

** LANGUAGES **

FIRST OFFICIAL LANGUAGE: French
 SECOND LANGUAGE : English READING WRITING ORAL INTERACTION
 SECOND LANGUAGE TESTS : E 28-JUL-1988 E 28-JUL-1988 E 28-JUL-1988

FOREIGN LANGUAGES:	LISTENING	SPEAKING	READING

** EDUCATION DATA **

1991,	Militaire royal St-Jean, Col.,	Bachelor of Science,	Science	YEARS COMPLETED
2007,	United States,	Master of Mil Op Art and Scien,	Arts - Général - Autre	GRAD

LICENCES and CERTIFICATES

	ISSUED BY	PROV	EFF. DATE	EXPIRY DATE
PRESIDING OFFR CERT TRG UPDATE			30-AUG-2018	
Summary Trial Presiding Off			10-MAY-2018	
Expenditure Management Course			23-JUN-2013	

** CFMSP **

O-DP2
 Def Org & Estb : 01-SEP-2000 Human, Fin & Mat Resources : 01-SEP-2000
 Military Law : 01-SEP-2000 Natl & International Studies : 01-SEP-2000

OPME
 Introduction to Defence Mgt : 01-APR-2002 Introduction to Military Law : 01-APR-2002
 Cdn Forces and Modern Society : 01-APR-2002 Canadian Military History : 19-JUN-2002
 Leadership and Ethics : 19-JUN-2002 Science and War : 19-JUN-2002

** CD FORECAST **

BASE DATE : 21-JUN-1985	ELIG DATE : 17-DEC-2027	DEFERRED DATE :	DUE CD3 : 42
LWOP/LOP : 179/0	ELIG DATE (YR/DY): 2027/351	FORFEITED DAYS : 0	FORFEITURE AWOL: 0
FORF CIVIL CUST: 0	FORF NOSERV/OTHER: 0	SERVICE IMP/DET: 0	CNCSD TOTAL : 179
ED&T : 0	RESERVE NES : 0	SUPP RES DAYS : 0	COMMONWEALTH YRS/DYS: 0/0

** HONOURS and AWARDS **

UNPROFOR, NATO-FY, CPMS, GCS-SWA, GCS-SWA+1, QDJM, OMM, US-LoMOFF, CD2, GCS-EXP, GCS-EXP+1, GCS-EXP+2, NATO-MSM, MSC, CMM

** MEDICAL CATEGORY **

LAST CHANGE: 30-APR-2018 VISION : 3 COLOUR : 1 HEARING : 2
 GEOGRAPHICAL: 2 OCCUPATIONAL 2 AIR FACTOR: 5

** FEDERAL ELECTORAL DISTRICT **

24027 Gatineau

** ASSIGNMENT HISTORY **

ORG ID	ORG NAME	LOCATION	POSITION	ACT/RSN	CLS SVC	EFF. DATE	END DATE	DAYS
006775	CJOC HQ	OTTAWA, ON	COS OPS	PST/POS		10-JUL-2020		
006858	OP IMPACT	BAGHDAD, IRAQ		ASG/ATT		29-OCT-2018	27-NOV-2019	
006590	1 CDN DIV HQ	KINGSTON, ON	COMD	PST/POS		20-APR-2018		
001400	SECLIST	OTTAWA, ON	MIL ADVSR	PST/POS		03-JUL-2017		
006606	C Army OUTCAN USA	FORT LEWIS, WASHINGTON	COS I CORP	PST/POS		15-JUL-2015		

*** PROTECTED A ***

*** PROTECTED A ***

REPORT ID : NDPER016 MEMBER'S PERSONNEL RECORD RESUME (MPRR) PAGE : 2
 VERSION : 15 AS OF 05-JUL-2021 RUN DATE : 06-JUL-2021
 EMPLID : 004112 NAME: Fortin, JSSD RUN TIME : 15:06:17z
 SN: [REDACTED] RANK: MGen COMP: Reg F DATA BANK ID: DND/P-PE 806
 OCCUPATION: GOL Sub-Occ: URS: 000002 CFB (O-G) POSITION : 00047332 COS
 UNIT: 006775 CJOC HQ TOUR EXPIRY DATE: 31-JUL-2022 GIVEN NAMES: Dany, [REDACTED]

001708	5 CMBG HQ & Sig Sqn	VALCARTIER, QC	BDE COMD	PST/POS	02-JUL-2013	
009932	ATL	OTTAWA, ON		PST/MMO	24-AUG-2012	
009932	ATL	TORONTO, ON	NSP	PST/POS	01-AUG-2012	
003372	CLS	OTTAWA, ON	ARMY G3	PST/POS	01-JUN-2011	
000158	CDS	OTTAWA, ON	EA TO CDS	PST/POS	30-JUN-2010	
006404	JTF Afghanistan NCE	KANDAHAR, AFGHANISTAN	COS JFT A	ASG/ATT	09-NOV-2009	15-MAY-2010
001708	5 CMBG HQ & Sig Sqn	VALCARTIER, QC		PST/MMO	09-MAY-2009	
001708	5 CMBG HQ & Sig Sqn	VALCARTIER, QC	COS JFT A	ASG/ATT	31-MAR-2009	08-NOV-2009
001735	5 RALC	VALCARTIER, QC	CO	PST/POS	18-JUN-2007	
000045	CDLS(W)	WASHINGTON DIST OF CO		PST/ATL	29-MAY-2006	
003010	LFQA HQ	MONTREAL, QC	G7	PST/CNV	11-JUL-2005	
006296	TF Kabul MB HQ	CAMP JULIEN, KABUL, A	CHIEF OPS	ASG/ATT	18-JAN-2004	28-JUL-2004
001735	5 RALC	VALCARTIER, QC	BC	PST/CNV	14-JUL-2003	
001708	5 CMBG HQ & Sig Sqn	VALCARTIER, QC	G3 NBC	PST/CNV	18-JUN-2001	
001735	5e RALC	VALCARTIER, QC	OPS OFFR	PST/CNV	10-JUL-2000	
001760	FD ARTY SCHOOL	BURTON, NB	INSTR	XFR/CNV	15-JUL-1998	
001760	FD ARTY SCHOOL	BURTON, NB		PST/ATL	15-JUL-1997	
003560	.CCIFOR HQ AND SIGS SQN	CORALICI, BOSNIA & HE		ASG/ATT	15-JUL-1995	15-JAN-1997
003127	CANADIAN INFANTRY BATTALION GR	KISELJAK, BOSNIA & HE		ASG/ATT	15-NOV-1993	15-MAY-1994
001735	5E RALC	VALCARTIER, QC		PST/CNP	08-AUG-1991	
001760	FD ARTY SCHOOL	BURTON, NB		PST/BTL	20-MAY-1991	
001760	FD ARTY SCHOOL	BURTON, NB		ASG/ATT	29-MAY-1990	09-AUG-1990
001760	FD ARTY SCHOOL	BURTON, NB		ASG/ATT	31-MAY-1989	10-AUG-1989
000004	COLLEGE MILITAIRE ROYAL DE SAI	ST-JEAN-SUR-RICHELIEU		PST/SUT	29-APR-1989	
000004	COLLEGE MILITAIRE ROYAL DE SAI	ST-JEAN-SUR-RICHELIEU		PST/SUT	22-AUG-1988	
001764	2 RCHA	PETAWAWA, ON		ASG/ATT	06-AUG-1988	08-AUG-1988
000047	ROYAL ROADS MILITARY COLLEGE	VICTORIA, BC		ASG/ATT	24-MAY-1988	29-JUL-1988
001386	CANADIAN FORCES OFFICER CANDID	CHILLIWACK, BC		ASG/ATT	14-MAY-1986	27-JUN-1986
000004	COLLEGE MILITAIRE ROYAL DE SAI	ST-JEAN-SUR-RICHELIEU		PST/SUT	10-AUG-1985	
003633	MND	NOT DEFINED		HIR/CNV	21-JUN-1985	

** RANK HISTORY **

ENTER PROMOTION ZONE: 06-APR-2018

<u>RANK/TYPE</u>	<u>EFFECTIVE DATE</u>	<u>SENIORITY DATE</u>	<u>ENVIRONMENT</u>
MGen/Substantiv	06-APR-2018	06-APR-2018	Land
BGen/Substantiv	01-JUL-2015	01-JUL-2015	Land
Col/Substantiv	18-MAY-2011	01-JAN-2011	Land
LCol/Substantiv	04-JUN-2007	04-JUN-2007	Land
Maj/Substantiv	01-DEC-2002	01-JAN-2002	Land
Capt/Substantiv	01-MAY-1994	01-JAN-1994	Land
Lt/Substantiv	01-MAY-1992	01-MAY-1992	Land
2Lt/Substantiv	01-MAY-1991	01-MAY-1991	Land
Ocdt	21-JUN-1985	10-AUG-1985	Land

** OCCUPATION HISTORY **

<u>OCCUPATION</u>	<u>Sub-Occupation</u>	<u>OCC ENTRY DATE</u>	<u>OL & Date</u>	<u>Prov Ind</u>
GOL		01-JUL-2015	01-JUL-2015	
GOL			06-APR-2018	
ARTY		21-JUN-1985	10-AUG-1985	
ARTY			01-MAY-1992	
ARTY			01-MAY-1994	
ARTY			01-JAN-1998	
ARTY			01-JAN-2006	
ARTY			04-JUN-2010	
ARTY			01-JAN-2014	

** NATIONAL QUALIFICATIONS **

MILITARY OCCUPATIONAL QUALS

<u>QUAL</u>	<u>DESCRIPTION</u>	<u>EFF. DATE</u>	<u>QUAL</u>	<u>DESCRIPTION</u>	<u>EFF. DATE</u>
AFAM	CMR Graduate	01-JAN-1905	AJGM	Senior Officer - CF Common Int	01-JUN-2007
AJPU	ODP4 - NSP	27-JUN-2013	AKWC	DP2 CFJOD Programme	01-MAY-2013

OCCUPATIONAL SPECIALTY SPECIFICATIONS

<u>QUAL</u>	<u>DESCRIPTION</u>	<u>EFF. DATE</u>	<u>QUAL</u>	<u>DESCRIPTION</u>	<u>EFF. DATE</u>
ADHW	Battery Commanders Course	06-MAY-1998	ADHX	Artillery Officer Field IG	08-MAY-1998

*** PROTECTED A ***

*** PROTECTED A ***

REPORT ID : NDPER016 MEMBER'S PERSONNEL RECORD RESUME (MPRR) PAGE : 3
 VERSION : 15 AS OF 05-JUL-2021 RUN DATE : 06-JUL-2021
 EMPLID : 004112 NAME: Fortin, JSSD RUN TIME : 15:06:17z
 SN: [REDACTED] RANK: MGen COMP: Reg F DATA BANK ID: DND/P-PE 806
 OCCUPATION: GOL Sub-Occ: URS: 000002 CFB (O-G) POSITION : 00047332 COS
 UNIT: 006775 CJOQ HQ TOUR EXPIRY DATE: 31-JUL-2022 GIVEN NAMES: Dany, [REDACTED]

ADIB	Artillery Staff Duties	27-FEB-1998	ADIE	Field Troop Commander	04-JUL-1995
AEIM	Parachuting - Basic	01-JAN-1905	AEKR	Combined Team Commander	30-JUN-2006
AEKX	Army Tactical Operations - CA	09-NOV-1994	AEMA	Forward Air Controller	22-MAR-1996
AEWP	Instructional Supervision	14-AUG-1997	AFDA	Observation Post Det 2IC	24-MAR-1995
AGSE	Electronic Warfare - Maritime	19-JUN-1998	AIEC	Presiding Officer	10-MAY-2018
AIEV	LAV III APC CREW COMMANDER	26-NOV-1999	AION	CBRN Defence Advisor	22-NOV-2002
AJHW	LF Unit CO	11-APR-2008	AJNU	Expenditure Management Course	23-JUN-2013

**** TRAINING HISTORY ****

<u>COURSE</u>	<u>DESCRIPTION</u>	<u>EFF. DATE</u>	<u>COURSE</u>	<u>DESCRIPTION</u>	<u>EFF. DATE</u>
G610E	Executive ADT Assessment	27-APR-2018	G140F	Gestion du Rendement- EFPC	17-FEB-2014
C452F3	FDP évaluation EX01	05-MAR-2008	C215 F	NE PAS UTILISER	17-JUL-2013
302953	Payment Card Orientation	30-MAY-2018	302187	Presiding Officer Training	30-JUL-2018
301747	GI pour MDN/FC	26-MAR-2014	301060	Defence Resource Management	04-MAY-2012
301000	Contracting Direct with Trade	11-MAY-2018	300712	ADM (Fin CS) Expend Mgt Online	06-JUL-2007
300545	Protection of Controlled goods	18-NOV-2011	300530	Intro to Controlled Goods	17-NOV-2011
122255	COVID 19 AWARENESS	27-MAY-2020	117957	OBSERVER CONTROLLER TRAINER	18-NOV-2009
117801	NATIONAL SECURITY PROG TERM 3	27-JUN-2013	117800	NATIONAL SECURITY PROG TERM 2	15-MAR-2013
117799	NATIONAL SECURITY PROG TERM 1	19-NOV-2012	117641	NATO SENIOR OFFICER INFO OP	11-JUL-2008
117595	EXPENDITURE MANAGMENT COURSE	08-JUL-2007	117595	EXPENDITURE MANAGMENT COURSE	23-JUN-2013
117460	EXECUTIVE LEADERS' PROG-PART2	18-SEP-2015	116939	LF UNIT CO	11-APR-2008
114810	P RES OP DET COMD - MOD 1	01-MAY-2004	114491	PRESIDING OFFR RE-CERT (PORT)	01-OCT-2007
114491	PRESIDING OFFR RE-CERT (PORT)	31-MAY-2013	112516	PRE-COMMAND - COMMON	17-NOV-2014
112402	SUMMARY TRIAL PRESIDING OFFR	11-JUN-2003	112402	SUMMARY TRIAL PRESIDING OFFR	10-MAY-2018
112230	ADV INSTR TECH	02-OCT-1998	111991	SHARP - SENSITIZATION	20-NOV-1997
111939	CBRN DEFENCE ADVISOR	22-NOV-2002	110190	BOTC PT 1 (SUEP) (FRENCH)	27-JUN-1986
110181	INT TACT CRSE PT 2	09-NOV-1994	109620	INSTRUCTIONAL SUPERVISOR	14-AUG-1997
106530	INTERMEDIATE TACTICS CRSE PT 1	06-JUN-1997	104494	LANG ENG SUEP CDTS	29-JUL-1988
103587	TCSC	03-OCT-2001	103512	CP OPS	27-OCT-2000
103338	LFSC	08-JUN-2000	103060	BTY COMD CRSE	04-MAY-1998
102659	ARTY FD TP CMDR (FOO)	24-MAR-1995	102646	ARTY OFFR TRG PH 4	09-AUG-1991
102645	ARTY OFFR TRG PH 3	09-AUG-1990	102644	ARTILLERY RECCE TECH	10-AUG-1989
102543	PARA - BASIC	16-DEC-1988	102498	FD TP COMD	24-JUN-1995
102497	ARTILLERY STAFF DUTIES	27-FEB-1998			

**** NOTES ****

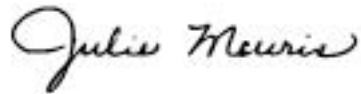
There is no data to report under : SERVICE SPOUSE; NAVAL COMMAND EXAMS; FOE; POSTING PREFERENCE; FLYING TIME; PROJECTED ENGAGEMENTS;

CERTIFIED AS HAVING BEEN REVIEWED

SIGNATURE OF MEMBER: _____

DATE: _____

This is **Exhibit "C"**
to the affidavit of
Dany Fortin
sworn before me by video-conference this
13th day of July, 2021



A Commissioner for Taking Affidavits

Julie Mouris
LSO#69707U

SECTION 1: IDENTIFICATION

SN	SURNAME	INIT	RANK	COMPONENT	MOS	MOS ID	SUB MOS ID
	FORTIN	JSSD	MGEN	Reg F	GOL	00172	01

SECTION 2: GENERAL

TYPE OF REPORT	REPORTING PERIOD	DD/MM/YY FROM	DD/MM/YY TO	TIME IN JOB (MOS)
ANNUAL		01 04 20	31 03 21	9

Reserved: 1 3 A Member's Preferred Language of Completion: English French UNIT/GROUP: CJOC HQ UIC: 6775

SECTION 3: DETAILS OF EMPLOYMENT (OFFICIAL APPOINTMENT/DUTIES)
 CJOC HQ Chief of Staff (COS) (9); Seconded to PHAC, VP (ADM) Vaccine Rollout Task Force (VRTF) (Nov-Mar); Comd 1st Cdn Div HQ (3)

SECTION 4A: LEADERSHIP ASSESSMENT (HOW)

	N	F	C	P	A	M	
	Not Observed	Fundamental	Competent	Proficient	Accomplished	Master	
1. Cognitive Capacity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	As Comd 1 Cdn Div HQ, assumed command of JTF-LASER and expertly coordinated and led the response across Regions, providing critical support, especially to LTCFs/CHSLDs in Ontario and Quebec. First-ever use of 1 Cdn Div HQ for a pan-Canadian domestic response; demonstrated tremendous abilities to organize, align, and assess in an environment that challenged all communications. As CJOC COS, provided the glue that oriented the HQ across multiple lines of activity in the midst of a global pandemic, ensured the prioritization and synchronization of staff and divisional efforts. Whether operational, administrative or programme, crisis or long-term, MGen Fortin easily balanced the demands. An officer of the highest ethical standing, embodies CAF principles and values.
2. Creativity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
3. Visioning	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
4. Action Management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
5. Organizational Awareness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
6. Teamwork	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
7. Networking	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
8. Interpersonal Relations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
9. Communication	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
10. Stamina/Stress Resistance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
11. Ethics and Values	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
12. Personality	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
13. Behavioural Flexibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
14. Self-Confidence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	

SECTION 4B: POTENTIAL AT NEXT HIGHER RANK (Ratings and Narrative)

	L	N	S	O	
	Low	Normal	Superior	Outstanding	
1. Leadership	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	While operating as VP at PHAC (ADM equivalent), MGen Fortin demonstrated national-level leadership and judgement. With considerable institutional dexterity, across different government departments, created a Logistics and Operations Branch at PHAC for national vaccine distribution. Conducted highly effective, continuous coordination with Fed, Prov and Terr DMs/ADMs and conducted vital briefings to PM, Cabinet and committees. Superbly delivered countless compelling national-level media engagements. Ability to operate at the highest levels of the institution has been repeatedly demonstrated through successful interagency engagements and managing competing priorities related to the vaccine delivery program. Promoted diversity and GBA+ principles at CJOC and while leading at PHAC.
2. Judgement	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
3. Courage	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
4. Dedication	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
5. Integrity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
6. Loyalty	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
7. Communication	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
8. Setting Priorities	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
9. Professional Skills	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
10. Administration	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	
11. Human Resource Management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	

FITNESS TEST
 PASS NOT TESTED

PROMOTION RECOMMENDATION

NO DEVELOPING READY IMMEDIATE

SN/PRI, RANK/LEVEL, NAME, MOS, APPT: [Redacted], MGen, W.F. Seymour, GOL 00172, A/Comd CJOC

SIGNATURE: [Signature] Date (DD/MM/YY): 11 May 21

SECTION 5: NEXT LEVEL REVIEW / BOARD REVIEW

MGen Fortin is an officer of rare quality, who reflects the best the CAF has to offer in terms of institutional leadership. Whether in NATO operations in Iraq, working across government in PCO, or leading at PHAC, MGen Fortin has proven to be mature, seasoned, experienced, and ready for more significant challenges. MGen Fortin displays the cultural, diversity and inclusion characteristics that are required of a modern leader, able to inspire others and create a 21st-century work environment. Promote now and place in charge of a CAF command.

SN/PRI, RANK/LEVEL, NAME, MOS, APPT: [Redacted], LGen, W.D. Eyre, GOL, Acting Chief of the Defence Staff

SIGNATURE: [Signature] Date (DD/MM/YY): 11 May 21

SECTION 6: MEMBER'S ACKNOWLEDGEMENT

THIS REPORT HAS BEEN READ AND DISCUSSED

Member's Signature: [Signature] Date (DD/MM/YY): 29/05/21

Reserved

SECTION 1: IDENTIFICATION

SN	SURNAME	INIT	RANK	COMPONENT	MOS	MOS ID	SUB MOS ID
	FORTIN	JSSD	MGEN	Reg F	GOL	00172	01

SECTION 2: GENERAL

TYPE OF REPORT	REPORTING PERIOD	DDMMYY FROM	DDMMYY TO	TIME IN JOB (MOS)		
ANNUAL		01 04 19	31 03 20	12		
Reserved	Member's Preferred Language of Completion	English	French	Either	UNIT/GROUP	UIC
1 3 A		<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	1ST CDN DIV HQ	6590

SECTION 3: DETAILS OF EMPLOYMENT (OFFICIAL APPOINTMENT/DUTIES)

Commander 1st Cdn Div HQ (4)
 Commander NATO Mission Iraq (NMI) (8)

SECTION 4A: LEADERSHIP ASSESSMENT (HOW)

	N	F	C	P	A	M
	Not Observed	Fundamental	Competent	Proficient	Accomplished	Master
1. Cognitive Capacity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
2. Creativity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
3. Visioning	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
4. Action Management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
5. Organizational Awareness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
6. Teamwork	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
7. Networking	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
8. Interpersonal Relations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
9. Communication	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
10. Stamina/Stress Resistance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
11. Ethics and Values	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
12. Personality	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
13. Behavioural Flexibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
14. Self-Confidence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

MGen Fortin's leadership and overall capacities were roundly confirmed as Comd NMI. Displayed vision, suasion, finishing skills and unfailing humility and, as a result, handed a poised machine to NMI's successor and accrued immense political capital for the CAF and Canada in the process. Upon return to 1 Cdn Div HQ, shaped the LCC study TORs with innovative ideas and subsequently launched into COVID 19 management. Assumed tactical leadership of some 24,000 soldiers with characteristic zest and mission focus. Great strength in relationship-building coupled with an exceedingly sharp mind and affable nature all speak to a unique talent. Over-delivered at every turn while remaining true as a person and a leader which is the hallmark of a true professional. Authentically successful year.

SECTION 4B: POTENTIAL AT NEXT HIGHER RANK (Ratings and Narrative)

	L	N	S	O
	Low	Normal	Superior	Outstanding
1. Leadership	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
2. Judgement	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
3. Courage	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
4. Dedication	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
5. Integrity	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
6. Loyalty	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
7. Communication	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
8. Setting Priorities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
9. Professional Skills	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
10. Administration	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
11. Human Resource Management	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

MGen Fortin's potential was confirmed as among the very highest in our 2-star cohort. The accomplishments, the level of officials engaged with (SACEUR, CHODs, NATO SecGen) and how NMI was led are testament to a leader operating daily across the spectrum of issues and pressures in a 3-star environment from the tactical to mil/strat levels including shaping pol/mil concepts. Continues to affirm an uncommon potential here at home under our daily gaze and delivers equally strongly. There is no 3-star L1 position for which he is qualified that I cannot imagine MGen Fortin wrestling to the ground with ease. Has every asset for success at the next level. Few CAF 2-stars have had as much direct command weight placed on them as MGen Fortin; where the performance stakes have strategic implications.

FITNESS TEST

PASS	EXEMPT	MED EXCUSED	FAIL	NOT TESTED
<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

PROMOTION RECOMMENDATION

NO	DEVELOPING	READY	IMMEDIATE
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

SN/PRI, RANK/LEVEL, NAME, MOS, APPT

[Redacted], Lieutenant-General M.N. Rouleau, GOL, Commander CJOC

SIGNATURE

Date (DDMMYY)

22 May 20

SECTION 5: NEXT LEVEL REVIEW / BOARD REVIEW

MGen Fortin continues to confirm, at every position, levels of unassailable competence and poise. Absolutely delivered the template of what I had hoped for NMI roto zero's command performance. MGen Fortin's seamless transition to Op LASER commanding the largest domestic force in recent memory has been world-class. Must be promoted as soon as possible into any 3-star position. The CAF must leverage MGen Fortin's talent at the next level.

SN/PRI, RANK/LEVEL, NAME, MOS, APPT

[Redacted], General J.H. Vance, GOL, Chief of the Defence Staff

SIGNATURE

Date (DDMMYY)

6/5/20

SECTION 6: MEMBER'S ACKNOWLEDGEMENT

THIS REPORT HAS BEEN READ AND DISCUSSED

Members Signature

[Signature]

Date (DDMMYY)

11 June 2020

Reserved

PERFORMANCE EVALUATION REPORT - DND EXECUTIVES / CF SENIOR OFFICERS

SECTION 1: IDENTIFICATION

SN	SURNAME	INIT	RANK	COMPONENT	MOS	MOS ID	SUB MOS ID
	FORTIN	JSSD	MGEN	Reg F	GOL	00172	01

SECTION 2: GENERAL

TYPE OF REPORT	REPORTING PERIOD	DDMMYY FROM	DDMMYY TO	TIME IN JOB (MOS)
ANNUAL		01 04 18	31 03 19	12
Reserved	Member's Preferred Language of Completion	English	French	Either
1 3 A		<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
	UNIT/GROUP	1ST CDN DIV HQ		UIC
				6590

SECTION 3: DETAILS OF EMPLOYMENT (OFFICIAL APPOINTMENT/DUTIES)

Commander NATO Mission Iraq (6)
Commander 1st Cdn Div HQ (6)

SECTION 4A: LEADERSHIP ASSESSMENT (HOW)

	N	F	C	P	A	M
	Not Observed	Fundamental	Competent	Proficient	Accomplished	Master
1. Cognitive Capacity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
2. Creativity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
3. Visioning	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
4. Action Management	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
5. Organizational Awareness	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
6. Teamwork	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
7. Networking	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
8. Interpersonal Relations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
9. Communication	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
10. Stamina/Stress Resistance	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
11. Ethics and Values	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
12. Personality	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
13. Behavioural Flexibility	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
14. Self-Confidence	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

As Commander 1st Cdn Div HQ, brought immediate coherence and focus to the Div HQ's priorities which set the stage for a rapid transition for large segment toward NMI contingency task. He readily pivoted to this no-notice, strategically significant post. His Mission Analysis, NATO coord and back briefs to CDS were insightful and forward-leaning. In an environment fraught with bureaucracy, lag and political undertones, he led NMI Roto 0 with precision and patience, balancing host-nation, multilateral and national objectives superbly. He inspired his nascent formation while overcoming complex difficulties, directing the long run path for NMI to 2020 and beyond. Thrust into a high profile and challenging mission, he has led to the highest standards of Canadian leadership.

SECTION 4B: POTENTIAL AT NEXT HIGHER RANK (Ratings and Narrative)

	L	N	S	O
	Low	Normal	Superior	Outstanding
1. Leadership	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
2. Judgement	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
3. Courage	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
4. Dedication	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
5. Integrity	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
6. Loyalty	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
7. Communication	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
8. Setting Priorities	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
9. Professional Skills	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
10. Administration	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
11. Human Resource Management	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

No position more so than Comd NATO Mission (Iraq), Roto 0, could illuminate MGen Fortin's potential to LGen. His sensible yet driven leadership style superimposed on strong emotional IQ have delivered optimum possible results. The King of Spain personally commented on his effectiveness following a Jan 19 visit. This past year has confirmed levels of character and competence that are precisely what we require at the LGen rank. MGen Fortin's stamina, nuance and finishing skills are among the finest of any two-star leaders I know. Strong communication in either language, he should be given opportunity to shine as an institutional leader at the three-star level.

FITNESS TEST

PASS	EXEMPT	MED EXCUSED	FAIL	NOT TESTED
<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

PROMOTION RECOMMENDATION

NO	DEVELOPING	READY	IMMEDIATE
<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

SN/PRI, RANK/LEVEL, NAME, MOS, APPT

LGen, M.N. Rouleau, GOL, Commander CJOC

SIGNATURE: *[Signature]* Date (DDMMYY): 10 June 19

SECTION 5: NEXT LEVEL REVIEW / BOARD REVIEW

As both Comd 1st Cdn Div HQ and especially as Comd NMI in its inaugural roto, MGen Fortin's performance has exceeded my every expectation. I applaud the finesse he has displayed in balancing competing objectives; this has brought great credit to CAF and Canada. MGen Fortin has unassailably confirmed that he should serve CAF in positions of far greater responsibility. He is ready now for three-star responsibilities either in Canada or abroad.

SN/PRI, RANK/LEVEL, NAME, MOS, APPT

General J.H. Vance, GOL, Chief of the Defence Staff

SIGNATURE: *[Signature]* Date (DDMMYY): 10/06/19

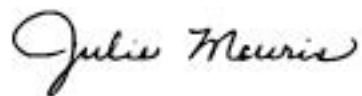
SECTION 6: MEMBER'S ACKNOWLEDGEMENT

THIS REPORT HAS BEEN READ AND DISCUSSED

Member's Signature: *[Signature]* Date (DDMMYY): 10/06/19

Reserved

This is **Exhibit "D"**
to the affidavit of
Dany Fortin
sworn before me by video-conference this
13th day of July, 2021



A Commissioner for Taking Affidavits

Julie Mouris
LSO#69707U



Government
of Canada

Gouvernement
du Canada

Canada.ca > [Public Health Agency of Canada](https://PublicHealthAgencyofCanada)

Major-General Dany Fortin assisting Government of Canada's vaccine distribution planning

From: [Public Health Agency of Canada](https://PublicHealthAgencyofCanada)

News release

November 27, 2020 | Ottawa ON | Government of Canada

Canada is well positioned to obtain COVID-19 vaccines because of ongoing preparation over the last months. This work to provide every Canadian with access to a vaccine continues, and today, the Honourable Patty Hajdu, Minister of Health, and the Honourable Harjit S. Sajjan, Minister of National Defence, announced that Major-General Dany Fortin and other general officers and staff of the Canadian Armed Forces (CAF) and the Department of National Defence (DND) are assisting the government's efforts.

Assigned to oversee logistical planning, Major General Dany Fortin is being named Vice President Logistics and Operations at PHAC, and brings with him extensive experience leading complex operations, including the stand-up of NATO Mission Iraq in 2018.

The CAF has an array of experience and logistical expertise to assist logistics planning and operations. To that end, 27 CAF personnel, with more to follow, are currently seconded to PHAC, including logistics experts, operational planners, pharmacists, health care administrators, engineers, and information technology experts.

The distribution of COVID-19 vaccines is logistically complex given the geography of the country, requirements for ultra cold storage, distribution to remote and isolated communities and coordination between various levels of government. The CAF personnel seconded to PHAC are helping anticipate and address any potential challenges.

Quotes

"As experts and scientists of the Government of Canada are assessing the safety of COVID-19 vaccine candidates, we are working with the provinces and territories to prepare for distribution. Major-General Dany Fortin's proven leadership and unique experience are strong assets to the government's planning efforts. When a vaccine is ready, Canada will be ready."

The Honourable Patty Hajdu
Minister of Health

"Since the beginning of the pandemic, the Department of National Defence and the Canadian Armed Forces (CAF) have been supporting Canadians. During this critical time, MGen Dany Fortin will lead a team of military planners with the Public Health Agency of Canada in support of vaccine distribution. The CAF are poised and ready to respond where we are needed."

The Honourable Harjit S. Sajjan
Minister of National Defence

Quick facts

- In addition to Major-General Dany Fortin, Brigadier-General Simon Bernard and Brigadier-General Krista Brodie will also be assisting the Public Health Agency of Canada with logistical planning and coordination.
- CAF personnel are assisting with tasks that include helping to establish the operations centre that will oversee the vaccine roll-out, synchronizing vaccine delivery efforts and providing constant awareness of the status of vaccine storage, delivery and strategy implementation. These CAF members will strengthen plans by introducing risk mitigation tools and by facilitating a series of exercises in advance of the roll-out.
- CAF members assisted PHAC at the beginning of the pandemic with the movement of critical medical and personal protective equipment, and most recently, supporting the ongoing planning for a life-saving vaccine.
- Similarly, CAF regional joint task forces positioned throughout the country are prepared to provide similar logistical and planning support to provinces and territories. This military-civilian interface is similar to what the CAF does in the planning for CAF response to any domestic emergency, from floods to forest fires, and allows for the early identification of possible future requests for assistance.

Associated links

- Canada.ca/coronavirus
- [Public Health Agency of Canada](https://PublicHealthAgencyofCanada)
- [Military response to COVID-19](https://MilitaryresponsetoCOVID-19)

Contacts

Cole Davidson

Office of the Honourable Patty Hajdu

Minister of Health

613-957-0200

Floriane Bonneville

Press Secretary

Office of the Minister of National Defence

Phone: 613-996-3100

Media Relations

Public Health Agency of Canada

613-957-2983

hc.media.sc@canada.ca

Media Relations

Department of National Defence

Phone: 613-904-3333

Email: mlo-blm@forces.gc.ca

COVID-19 public enquiries:

1-833-784-4397

Social Media

[@GovCanHealth](#)

[Public Health Agency of Canada - Facebook](#)

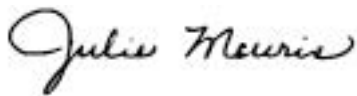
Search for related information by keyword: [Health](#) | [Public Health Agency of Canada](#) | [Health Canada](#) | [Canada](#) | [Coronavirus \(COVID-19\)](#) |

[Immunization and vaccines](#) | [media](#) | [news releases](#) | [Hon. Patricia A. Hajdu](#)

Date modified:

2020-11-27

This is **Exhibit "E"**
to the affidavit of
Dany Fortin
sworn before me by video-conference this
13th day of July, 2021



A Commissioner for Taking Affidavits

Julie Mouris
LSO#69707U

From: PETER.SCOTT3@forces.gc.ca [mailto:PETER.SCOTT3@forces.gc.ca]
Sent: October 28, 2020 4:14 PM
To: deryck.trehearne@canada.ca
Cc: cindy.evans@canada.ca; todd.cain2@canada.ca; karen.foss@canada.ca; jean-francois.duperre@canada.ca; MacGregor Col DS@SJS DCO@Ottawa-Hull <SCOTT.MACGREGOR@forces.gc.ca>; Cadieu MGen TJ@SJS@Ottawa-Hull <TREVOR.CADIEU@forces.gc.ca>
Subject: RE: RFA PHAC NOC

Good Afternoon Deryck,

I acknowledge that you have received the RFA from PHAC and that DND/CAF have signalled previously that we would be able to respond to this request. The CDS and MND have been briefed on this request and are fully supportive of providing assistance to PHAC under the Omnibus RFA. I can confirm that the CAF accepts this request for assistance and that the CDS will be issuing orders today for us to formally respond and embed staff officers within PHAC until February 2021, at which time a review will be undertaken to determine if further assistance is required.

Thanks.

Peter

Brigadier-General P.K. Scott

Director General – Operations, Strategic Joint Staff
 Department of National Defence / Government of Canada
Peter.Scott3@forces.gc.ca
 Tel: (Pearkes) 613.996.8364 (Carling) 613.901.5064 (Cell) 343.549.5779

From: Trehearne, Deryck (PS/SP) [mailto:deryck.trehearne@canada.ca]
Sent: October 28, 2020 3:15 PM
To: Scott BGen PK@SJS DGO@Ottawa-Hull <PETER.SCOTT3@forces.gc.ca>; Cadieu MGen TJ@SJS@Ottawa-Hull <TREVOR.CADIEU@forces.gc.ca>
Cc: Evans, Cindy (PHAC/ASPC) <cindy.evans@canada.ca>; Cain2, Todd (PS/SP) <todd.cain2@canada.ca>; Foss, Karen (PS/SP) <karen.foss@canada.ca>; Duperre, Jean-Francois (PS/SP) <jean-francois.duperre@canada.ca>; MacGregor Col DS@SJS DCO@Ottawa-Hull <SCOTT.MACGREGOR@forces.gc.ca>
Subject: RFA PHAC NOC

Hello BrigGeneral Scott,

As you are aware, we received a **request for Federal Assistance from the Public Health Agency of Canada (PHAC) to help with a National Operations Centre (NOC) for the COVID-19 vaccine roll out.**

Specifically PHAC seeks an initial cadre of approximately 12 CAF leaders to assist their team with two specific functions:

- CAF members will help with the establishment of a National Operations Centre (NOC) that will oversee the vaccine roll-out, that will be responsible to synchronize vaccine delivery efforts and to establish a common operating picture. The NOC will provide situational awareness and reporting on vaccine acquisition, storage, delivery and implementation.
- PHAC is also seeking a CAF logistical planning team drawing on the unique and extensive expertise of CAF in this area.

These two elements will be primarily focused on helping PHAC with the development of a functioning national supply chain for the delivery of a COVID-19 vaccine to the Provinces and Territories.

Federal assistance is requested until February 2021. Following this date, review for possible extensions will be examined.

We assessed with LSU advice that the RFA falls under the provisions of the Omnibus RFA signed by Minister of Public Safety and the Minister of National Defence, providing the necessary ministerial authority for a CAF deployment. **I understand that CAF SJS has already confirmed that this falls under the authority of the Omnibus RFA and that CAF has the capacity to support.**

Therefore, on behalf of Public Safety, I recommend that this request from PHAC be supported as it is deemed to be within the national interest.

I am asking if you can confirm that your organization accepts this recommendation, has the capacity to respond and therefore approves CAF support for the request.

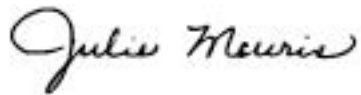
Many thanks again for the continuing strength of our partnership.

Deryck Trehearne
Director General | Directeur général
Government Operations Centre | Centre des opérations du gouvernement
613-991-7728 | BBMe: EF05FF6B | 613-219-2375 c



GOVERNMENT OPERATIONS CENTRE
CENTRE DES OPÉRATIONS DU GOUVERNEMENT

This is **Exhibit "F"**
to the affidavit of
Dany Fortin
sworn before me by video-conference this
13th day of July, 2021



A Commissioner for Taking Affidavits

Julie Mouris
LSO#69707U

Chief of the Defence Staff



Chef d'état-major de la Défense

National Defence
Headquarters
Ottawa, Ontario
K1A 0K2

Quartier général de
la Défense nationale
Ottawa (Ontario)
K1A 0K2

27 November 2020

Distribution List

**CDS PLANNING DIRECTIVE –
OPERATION VECTOR –
CAF SUPPORT TO COVID-19 VACCINE ROLL OUT**

References: A. CDS/DM Directive for Sustained Activities in a COVID-19 Environment (Fall 2020 Posture), 24 September 2020
 B. Letter from Minister of Public Safety (MPS) to the Minister of National Defence (MND) – Request for Assistance (RFA), 30 March 2020
 C. Letter from MND to MPS – RFA Response, 7 April 2020
 D. Letter from MND to CDS – RFA, 7 April 2020 (Direction on Comprehensive RFA)
 E. Standing Operations Order for Domestic Operations (SOODO), 17 November 2017
 F. CF Mil Pers Instruction 20/04 – Administrative Policy of Class A, Class B, and Class C Reserve Service
 G. *National Defence Act* (NDA) section 273.6
 H. Provision of Service Manual
 I. CDS TASKORD 005 - Op LASER 20-01 Force Employment Framework, 9 October 2020
 J. Public Affairs Guidance: Op LASER (COVID-19), 8 May 2020
 K. Defence Administrative Orders and Directive 6001-1 (Record Keeping), 14 March 2013
 L. Ministerial Order - Special Duty Operation Designation - Op LASER, 26 May 2020
 M. CDS Directive for MND and CDS Critical Information Requirements, 31 July 2020

SITUATION

1. (U) **Application.** This directive is an order that applies to all officers and non-commissioned members of the Canadian Armed Forces (CAF). It is intended to initiate detailed planning for the establishment of Operation VECTOR – the CAF support to the COVID-19 vaccine roll-out. This operation will be separate from Op LASER but recognizes that there will be overlap at the tactical level.

2. (U) **General**

- a. Canada has announced agreements with seven leading vaccine manufacturers to procure enough doses to potentially immunize all Canadians against COVID-19 by the end of 2021. Initial expected shipments of two vaccines from January-March 2021 (known as 'Track 1') will likely be sufficient to immunize approximately three million Canadians. As provinces, territories, and Indigenous communities do not have the required infrastructure or experience to handle these Track 1 vaccines, which must be stored at ultra-cold temperatures, they will be delivered through a federally-coordinated strategy led by the Public Health Agency of Canada (PHAC). DND/CAF is already providing significant logistical planning and operational coordination support to this effort;
- b. Following the delivery of Track 1 vaccines, it is anticipated that more typical vaccines involving less supply chain complexity will be introduced. Regional health systems are more accustomed to handling these types of vaccines, suggesting that a decentralized approach is likely for follow-on tracks; and
- c. Meanwhile, COVID-19 continues to pose a significant threat to the well-being of Canadians. Thousands of the nation's citizens are being infected daily, health care systems are under significant duress, and the CAF is again being called to support vulnerable populations.

3. (U) **Problem Definition.** Track 1 vaccines are likely to be delivered to Canadians at the height of the second wave of the pandemic and in the midst of the spring 2021 thaw – a period of heightened flood risk for many communities. The essential challenge to the CAF will be anticipating and posturing personnel, equipment, planning capacity, and logistical expertise to assist with the known demands of this task and other ongoing operations, while preserving adequate capacity to surge in scale to respond to other unforeseen domestic emergencies.

4. (U) **Assumptions**

- a. Initial shipments from vaccine providers in the first quarter of 2021 will only be sufficient for a small percentage of the Canadian population. A sequenced approach to vaccination will therefore be required. Supply chains will be afforded an opportunity to test and adjust before greater quantities of a COVID-19 vaccine are acquired;
- b. Delivery of Track 1 vaccines will occur in the first quarter of 2021 as anticipated. For the supply chain to be set and ready for delivery

before the New Year, the following national-level decisions will be made and communicated by PHAC no later than early-December 2020:

- (1) Apportionment of Track 1 vaccine doses by province/territory and select Canadian populations living outside of Canada;
 - (2) Advice to provinces/territories on priority populations that should receive the Track 1 vaccines;
 - (3) Designation of the points of delivery for the Track 1 vaccines;
 - (4) Exercising vaccine contract options; and
 - (5) Regulatory approvals.
- c. PHAC will procure the services of a logistics service provider (LSP) that will be uniquely experienced with the handling of vaccinations and medical materiel, digital supply chain management, and has access to ultra-cold storage resources;
- d. As Track 1 vaccines are distributed and administered in the first quarter of 2021, the nation could experience the peak of the second wave of COVID-19, resulting in significant stress at different points across the country. This could require CAF assistance. Concurrently, CAF could be called to respond to natural disasters, national security emergencies, and other operational demands. Municipal and provincial emergency management organizations will have reduced capacity to plan for and manage these events;
- e. Multiple requests for CAF assistance to the vaccine roll-out will likely be submitted to the CAF by all echelons of government (federal and provincial/territorial). The Ministerial Direction to the CAF (reference D) provided in response to the Comprehensive RFA (reference B) remains extant and relevant for CAF support under the rubric of Operations including LENTUS, LASER, and VECTOR;
- f. For the purposes of military contingency planning, the following is the assumed general demarcation of federal and provincial/territorial responsibilities related to vaccine procurement, distribution, and administration:
- (1) Federal
 - (a) Procure vaccines;

- (b) Regulatory approvals;
 - (c) Coordinate distribution of vaccines to provincial/territorial points of delivery;
 - (d) National vaccine surveillance; and
 - (e) Develop and promulgate guidance and educational material regarding federal/provincial/territorial responsibilities, handling of vaccines, and the establishment of administration sites and immunization clinics in a COVID environment
- (2) Provincial/Territorial
- (a) Apply lessons learned from provincial influenza immunization programs;
 - (b) Designate priority populations that will receive the Track 1 vaccine;
 - (c) Establish points of delivery regionally, each capable of receiving shipments, securely storing large-scale volumes of the vaccine at required temperatures, managing and tracking of vaccines, and coordinating ordering via PHAC;
 - (d) Establish points of administration regionally, each capable of receiving shipments, securing storing the vaccine at required conditions and temperatures, manage overall use of the vaccine, deliver immunization services and administration clinics, and respond to health events; and
 - (e) Vaccine surveillance and reporting.

MISSION

5. (U) The CAF will support Whole of Government efforts to deliver COVID-19 vaccines to Canadians, while ensuring continued readiness for the COVID-19 response, national security incidents, and other domestic emergencies.

EXECUTION

6. (U) **CDS Intent.** Early and persistent CAF leader engagement and collaboration with federal (SJS) and provincial/territorial (CJOC/RJTFs)

governments will be essential to facilitating logistical and operational support planning, illuminating potential requests for CAF support, and mobilizing timely responses. I expect CJOC through RJTF commanders to offer support to the planning efforts of regional vaccine roll-out task forces, and to identify to the SJS probable requests for CAF assistance. Concurrently, strategic staffs will continue to work with PHAC and OGDs to establish a national-level common operating picture and holistic appreciation of the needs of various jurisdictions, while simultaneously planning for the administration of the vaccine to CAF members. We will deliberately set and posture a domestic ready force against known tasks. The balance of the CAF not committed to operations or critical force generation efforts will be prepared to reconstitute high readiness forces for as-of-yet unforeseen requirements. All CAF members will continue to model resilient mindsets as we surge to support Canadians and this whole of nation effort.

7. (U) **CDS Critical Information Requirements (CCIRs)**

- a. All standing CDS CCIRs (reference M) remain extant;
- b. Rates/incidents of infection amongst force elements that could preclude the conduct of CAF operations and/or critical functions;
- c. Requests for CAF assistance;
- d. Developments in the COVID-19 vaccine roll-out that could impact or influence CAF support:
 - (1) Vaccine(s) removed from the roll-out plan;
 - (2) Criminal, cyber, or other interference with vaccine roll-out;
 - (3) Safety issues related to vaccine roll-out.

8. (U) **Key Planning Tasks**

a. **CJOC (Supported Command)**

- (1) Establish contact with all provinces/territories via RJTFs. Proactively offer logistical planning, liaison, and C2 support to regional vaccine roll-out task forces;
- (2) Based on provincial/territorial interactions, consolidate and submit to the SJS potential requests for assistance;
- (3) Develop contingency plans for the following probable tasks, along with others determined through military planning:

- (a) BPT transport Track 1 vaccines on short notice from Spain, Germany, the United States, and other potential locations to designated points of distribution in Canada;
 - (b) BPT reinforce ground and air lines of communication with CAF vehicles and aircraft to deliver freezers and medical supplies to various regions that cannot be easily accessed by the logistics service provider, including northern, remote and coastal communities;
 - (c) BPT augment health human resource capacity and transport health care professionals to northern, remote, and coastal communities for vaccination related activities;
 - (d) BPT to task CAF members to work at warehousing facilities, as well as set-up and logistically support distribution sites and immunization clinics;
 - (e) BPT assign DND/CAF infrastructure to store vaccines and medical materiel, as ordered; and
 - (f) Concurrently, preserve sufficient capacity to provide life-saving support to vulnerable Canadians across the country as part of the COVID-19 response – all while remaining poised to address as-of-yet unforeseen weather events, domestic emergencies, and mandated domestic and international operations.
- (4) Assign CJOC personnel tasked to PHAC OPCON to SJS, which will maintain liaison with that federal agency;
- (5) Coordinate and deliver an Operation VECTOR plan back-brief informed by the PHAC Vaccine Roll-Out Task Force logistics support plan. The briefing will include proposed composition and posture of the force required for the following:
- (a) Operationally committed forces (i.e., force elements already committed) in support of Operations LASER, VECTOR, and LENTUS;
 - (b) Deliberate stand-by forces (i.e., force elements postured against anticipated tasks as a result of contingency planning, but not yet committed); and

- (c) General support reinforcing forces (i.e., proposed reserve to be prepared to reconstitute domestic ready forces for as-of-yet unforeseen operational requirements).
 - (6) Organize and deliver CAF war-game and rehearsal of concept for the winter/spring 2021 timeframe, focused on the potential intersection of Operations LASER, VECTOR, and LENTUS;
 - (7) Conduct planning for vaccine distribution and administration for all CAF personnel OUTCAN and INCAN informed by MPC advice;
 - (8) Collaborate with SJS, ADM (Mat), and CF H Svcs Gp to replenish stocks of medical PPE and procure ultra-cold and frozen-cold storage appliances that are compatible for travel in CAF sea, land, and air mobility platforms; and
 - (9) OPI tactical and operational lessons learned.
- b. **Force Generators/Level 1s**
- (1) Contribute to CJOC contingency planning;
 - (2) Keep members and families informed of the evolving situation;
 - (3) Generate forces as required for Operations LASER and VECTOR; and
 - (4) Report on key implications to force generation activities.
- c. **SJS**
- (1) Remain primary CAF conduit to PHAC, the Vaccine Roll-Out National Operations Centre (NOC), Public Safety Canada (PS), and other federal OGDs;
 - (2) Coordinate DND/CAF involvement in all PHAC-led war-game and rehearsal of concept events;
 - (3) Via standing SOPG and based on Surgeon General advice, prepare for CDS and DM consideration of proposed vaccine prioritization and apportionment for DND/CAF members, including those deployed/posted abroad and consideration for their dependents;

- (4) In collaboration with ADM (Pol) and JAG, review and refresh (if required) the comprehensive RFA to ensure authorities continue to allow for the dynamic tasking of CJOC in support of the COVID response, vaccine roll-out and domestic emergencies;
 - (5) Collaborate with CJOC, ADM (Mat), and CF H Svcs Gp to replenish stocks of medical PPE and procure ultra-cold and frozen-cold storage appliances that are compatible for travel in CAF sea, land, and air mobility platforms; and
 - (6) OPI strategic lesson learned.
- d. **CFINTCOM.** Analyze and report on COVID-19 threat internationally, potential threats to COVID-19 vaccine roll-out, other public safety and national security threats, and geopolitical developments impacting Canada and our allies.
- e. **MPC**
- (1) Monitor and report on force health;
 - (2) Monitor and report on the readiness of CF H Svcs Gp force elements that could be called on to support ongoing COVID response and vaccine operations;
 - (3) Inform advice on COVID-19 immunization within DND/CAF, to include members deployed or posted outside of Canada, as well as possibly foreign military forces serving in Canada;
 - (4) Report to the CDS and DM any significant concerns or relevant new information with regards to the COVID-19 vaccine that may inform chain of command guidance;
 - (5) Prepare educational material on the COVID-19 vaccine for CAF personnel and collaborate with ADM (HR-Civ) for DND educational material;
 - (6) Ensure CF H Svcs Gp healthcare providers have the required information on COVID-19 vaccine to meet their professional obligations. This includes but is not limited to the provision of informed consent, vaccine reporting obligations and tracking; and

- (7) In collaboration with CJOC, distribute and position medical PPE as required across Canada to enable rapid response operations.
- f. **ADM (Pol)**. The following support is requested:
 - (1) In collaboration with SJS and JAG, ensure the required Ministerial authorities for vaccine roll-out under Op VECTOR are in place;
 - (2) Provide policy advice on requests for CAF assistance in collaboration with SJS and JAG for CDS and Ministerial decision;
 - (3) Inform preparations for DM/Minister-level engagements and all committee appearances.
 - g. **ADM (Fin)**. It is requested that ADM (Fin) cost the CAF response to date and response options being considered.
 - h. **ADM (PA)**. The following support is requested:
 - (1) In conjunction with OGDs, inform Canadians of CAF operations, including Operation VECTOR; and
 - (2) Facilitate internal communications regarding the DND/CAF COVID-19 immunization program once known.
 - i. **ADM (Mat)**. It is requested that ADM (Mat) collaborate with SJS, CJOC, and CF H Svcs Gp to replenish stocks of medical PPE and procure ultra-cold and frozen-cold storage appliances that are compatible for travel in CAF sea, land, and air mobility platforms.
9. **(U) Coordinating Instructions**
- a. **Key Timings**
 - (1) 2 Dec (TBC): PHAC-led Vaccine Roll-Out War-game;
 - (2) 11 Dec (TBC): PHAC Rehearsal of Concept;
 - (3) 13 Dec (TBC) PHAC-led Whole of Government Rehearsal;
 - (4) 15 Dec (TBC): PHAC Vaccine Roll-Out Logistics Support Plan promulgated;

- (5) TBC: CJOC back-brief to CDS; and
- (6) NLT 31 Dec: CJOC-led War-game and Rehearsal of Concept conducted. CAF Op VECTOR response force set.

CONCEPT OF SUPPORT

- 10. **Finance.** No change from ref I.
- 11. **Personnel.** Op VECTOR will be designated an operation and will be effective until the CDS issues operation termination instructions. Employment of Primary Reserve members in support of Op VECTOR is authorized to complete assigned OP VECTOR tasks and training.

COMMAND

- 12. (U) **Supported Commander.** Comd CJOC.
- 13. (U) **Supporting Commanders and Group Principals.** No change from ref I.



J.H. Vance
General

Distribution List (next page)

Distribution List

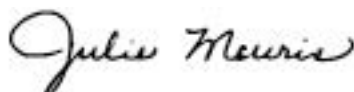
Action

VCDS
SJS DOS
Comd RCN
Comd CA
Comd RCAF
Comd MPC
Comd CJOC
Comd CANSOFCOM
Comd CFINTCOM
ADM (Pol)
ADM (Fin)/CFO
ADM (PA)
JAG

Information

MND
Assoc MND
DM
Senior Assoc DM
Comd CANELEMNORAD
DComd JFC Naples
ADM (Mat)
ADM (IM)
ADM (IE)
ADM (S&T)
ADM HR-Civ
ADM (RS)
ADM (DIA)
CFLA
Corp Sec
ED NSIROCS

This is **Exhibit "G"**
to the affidavit of
Dany Fortin
sworn before me by video-conference this
13th day of July, 2021



A Commissioner for Taking Affidavits

Julie Mouris
LSO#69707U

From: Evans, Cindy (PHAC/ASPC) [mailto:cindy.evans@canada.ca]
Sent: February 25, 2021 7:27 PM
To: Trehearne, Deryck (PS/SP) <deryck.trehearne@ps-sp.gc.ca>
Cc: Cadieu MGen TJ@SJS@Ottawa-Hull <TREVOR.CADIEU@forces.gc.ca>; Bhupsingh, Trevor (PS/SP) <trevor.bhupsingh@ps-sp.gc.ca>
Subject: PHAC request for extension of CAF Support to PHAC Vaccine Roll Out Task Force

Deryck,

As you are aware, PHAC and CAF have collaborated extensively as part of the Government of Canada COVID-19 response. Following the successful assisted return of Canadian travelers from China, Japan, and the US (and the quarantine operations in Trenton), CAF and PHAC worked together to establish a critical national PPE supply chain. Meanwhile, we are operating side-by-side on major initiatives to include the national vaccine roll-out and support to land border testing sites.

Near the end of October 2020, PHAC (via PS) requested CAF assistance to the Government of Canada vaccine roll-out strategy. As that RFA is set to expire at the end of this month, I am writing again on behalf of PHAC to request CAF support with the following functions until the 31st of October, 2021:

- Provision of the PHAC VP of Logistics and Operations, to include requisite executive leader support and enabling staff;
- Provision of CAF members to oversee the operation of the PHAC National Operations Centre (NOC). This team – comprising CAF planners and liaison elements – has been instrumental to establishing a national common operating picture, managing crises, unifying the efforts of all stakeholders regarding vaccine acquisition, storage, delivery and implementation and supporting the security fusion cell; and
- Provision of a CAF logistical planning team. This element will remain primarily focused on helping PHAC with planning for the step-up of vaccine roll-out, contingency planning, and they will provide advice on mitigating strategic risks through table top exercises and rehearsals of concept as needed.
- Provision of CAF support to the National Emergency Strategic Stockpile, with a primary focus on the receipt and delivery of vaccine consumables and related equipment,

Although the original RFA requested 12 CAF staff officers to provide planning support, there are now approximately 50 CAF members currently assisting PHAC. That number will continue to

fluctuate as the situation evolves. I will work with MGen Trevor Cadieu at CAF to calibrate PHAC needs and the CAF response to vaccine roll-out moving forward.

Concurrently, while we request CAF support through to the end of October, we also recognize that some individuals will need to be rotated to accommodate personal and professional requirements. Further, PHAC has started to think about long-term structural changes to the organization, which will eventually result in a replacement of CAF personnel with federal public servants. Thus, it is likely that PHAC will not require the current level of CAF support for the entirety of this timeframe. A plan will be developed in partnership to ensure a seamless transition. Alternatively, if there is a requirement to extend the CAF contribution beyond the October timeframe, I would contact you and CAF leaders to discuss a possible further extension of assistance.

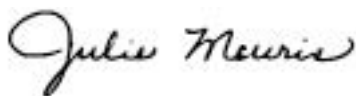
I understand that CAF support to PHAC can continue to be provided under the authority of the Comprehensive RFA, which remains extant following a recent refresh in the Fall between PS and DND/CAF. Especially given the liaison and planning nature of this support, MGen Trevor Cadieu is confident that I can codify this request via this email, which you can in turn pass on to him for action under the existing PS mandate.

We have established a tremendous working relationship with CAF since the start of the pandemic and we remain grateful for this steadfast support. Please let me know if you require anything further to finalize this request for an extension to CAF assistance for the COVID-19 vaccine roll-out in Canada.

Sincerely,
Cindy

Cindy Evans
A/Vice President Emergency Management
Public Health Agency of Canada
(w) 613-941-6084
(cell) 613-859-6508

This is **Exhibit "H"**
to the affidavit of
Dany Fortin
sworn before me by video-conference this
13th day of July, 2021



A Commissioner for Taking Affidavits

Julie Mouris
LSO#69707U

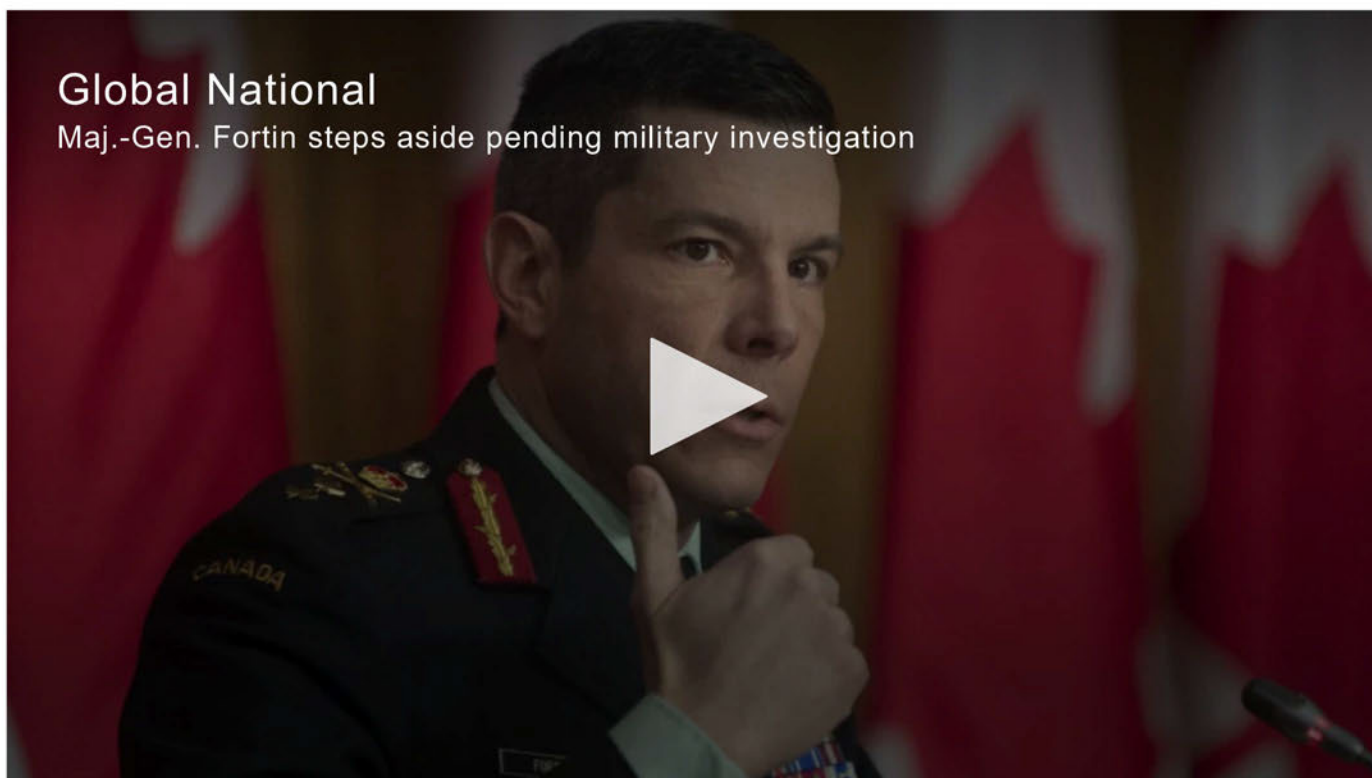
CANADA

Military head of Canada's COVID-19 vaccine rollout steps aside amid investigation



By [Amanda Connolly](#) · Global News

Posted May 14, 2021 7:23 pm ▾



WATCH: The man tasked with leading Canada's COVID-19 vaccine rollout has stepped down. Maj.-Gen. Dany Fortin was suddenly removed from his role on Friday, pending the results of a military police investigation into sexual misconduct. As Abigail Bimman reports, Fortin is the latest high profile military member to be accused – May 15, 2021

Maj.-Gen. [Dany Fortin](#) is stepping aside from his role as the head of Canada's [COVID-19 vaccine](#) rollout amid a [military](#) investigation into him.

Global News can confirm that the investigation is linked to a sexual misconduct allegation dating from before Fortin was a general.

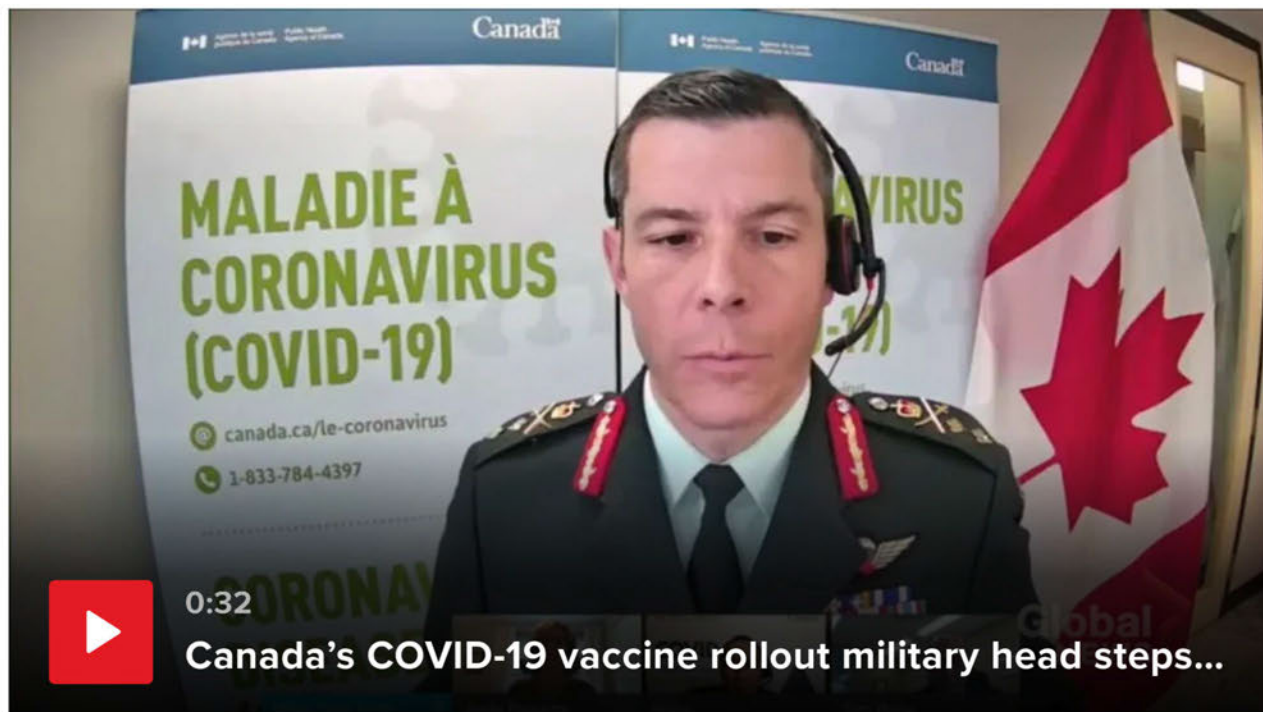
The Department of National Defence announced Fortin's departure in a statement Friday.

"Today, Major-General Dany Fortin has left his assignment with the Public Health Agency of Canada, pending the results of a military investigation," a spokesperson said.

"Acting Chief of the Defence Staff, Lieutenant-General Eyre will be reviewing next steps with Major-General Fortin. We will have no further comment."

Global News has confirmed the investigation is being conducted by the [Canadian Forces National Investigation Unit](#), the specialized unit of military police that handles "[serious and sensitive matters](#)."

STORY CONTINUES BELOW ADVERTISEMENT



Canada's COVID-19 vaccine rollout military head steps aside amid investigation – May 14, 2021

Defence Minister Harjit Sajjan also issued a statement following the announcement of the probe.

“As I have stated previously, I am committed to working to build a true culture of inclusion for the Canadian Armed Forces and the Department of National Defence, where everyone is treated with dignity and respect. We are committed to this lasting change – one that sheds toxic and outdated values,

practices, and policies,” he said.

“The Acting Chief of Defence Staff has advised me that MGen Fortin has stepped aside. As there is an ongoing investigation, I will have no further comment at this time.”

Sajjan added the government remains focused on the vaccine rollout.

Details of the sexual misconduct allegation that sparked the investigation were first reported by the Globe and Mail Friday.

STORY CONTINUES BELOW ADVERTISEMENT

The Canadian military is grappling with what experts call an institutional crisis amid investigations into allegations of sexual misconduct made against multiple current and former senior leaders.

A spokesperson for the Department of National Defence said no details are being released because the investigation is ongoing.

Fortin was named [as vice president of logistics and operations at the Public Health Agency of Canada](#) in November 2020 and tasked with overseeing

logistical planning for the vaccine rollout.

He also runs the National Operations Centre.

Prior to taking on the role, he was chief of staff at the Canadian Joint Operations Command and from November 2018 to the fall of 2019, he [held command of the NATO mission in Iraq](#).

It is unclear who will replace him as military head of the vaccine rollout.

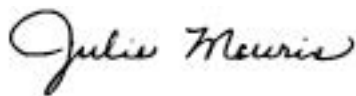
The Public Health Agency of Canada would not comment on what Fortin's departure means for the rollout. The agency referred all questions to the Department of Defence.

In an email Saturday, Health Canada told Global News that questions about the next steps for Canada's vaccine rollout plan, including who will replace Fortin, will be answered on Monday.

STORY CONTINUES BELOW ADVERTISEMENT

—With files from Global's Mercedes Stephenson, Sean Boynton and Hannah Jac

This is **Exhibit "I"**
to the affidavit of
Dany Fortin
sworn before me by video-conference this
13th day of July, 2021



A Commissioner for Taking Affidavits

Julie Mouris
LSO#69707U

POLITICS | News

Defence Minister Sajjan was aware of investigation into Fortin in March, PM says he learned 'weeks ago'



Annie Bergeron-Oliver Parliamentary Bureau Reporter, CTV National News
🐦 [@AnnieClaireBO](#) | [Contact](#)



Kevin Gallagher Parliament Hill Correspondent, CTV National News
🐦 [@KGallagherCTV](#) | [Contact](#)

Rachel Aiello Ottawa News Bureau Online Producer
🐦 [@rachaiello](#) | [Contact](#)

Published Tuesday, May 18, 2021 12:49PM EDT

Last Updated Tuesday, May 18, 2021 6:40PM EDT

[1](#) [2](#) [3](#) [4](#) [5](#) [6](#)

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OTTAWA -- Defence Minister Harjit Sajjan was aware in March that a military investigation was underway involving Maj.-Gen. Dany Fortin, several weeks before Fortin stepped aside from leading Canada's COVID-19 vaccine rollout, CTV News has learned.

In a statement to CTV News, Sajjan's office said the Acting Chief of Defence Staff Lt.-Gen. Wayne Eyre and the Deputy Minister of National Defence Jody Thomas informed minister Sajjan of the ongoing Canadian Forces National Investigation Service (CFNIS) investigation the same month that sources have told CTV News that the allegation that prompted the investigation was brought forward.

"The minister asked that the complainant receive any necessary support and stated that the investigation must take its due course," said Sajjan's press secretary Daniel Minden.

Related Stories

- **Maj.-Gen. Dany Fortin facing historical sexual misconduct allegation: CTV News sources**
 - **PM says new vaccine rollout lead Brodie 'ready and able' as Pfizer confirms 9M doses in July**
 - **Feds face calls to be more transparent about Fortin's departure, as replacement named**
 - **Maj.-Gen. Dany Fortin no longer leading vaccine campaign pending military investigation**
-

This comes after Prime Minister Justin Trudeau told reporters on Tuesday that he was informed “a number of weeks ago” that an allegation had been made against Maj.-Gen. Dany Fortin and that an investigation had been initiated, but he did not receive details about what was alleged.

- [Capital Dispatch: Stay up to date on the latest news from Parliament Hill](#)

The public was first made aware of the investigation on Friday evening, when the Department of National Defence announced in a brief statement that Fortin would be stepping away from his role overseeing the delivery and distribution of COVID-19 vaccine doses across the country, “pending the results of a military investigation.”

[As CTV News exclusively reported on Sunday](#), according to sources, Fortin is facing a sexual misconduct claim against him that dates back more than 30 years. The investigation stems from an allegation brought forward two months ago, sources said. Fortin, through his lawyer Cmdr. Mark Letourneau, says he “completely denies” the allegation.

Trudeau’s public comments Tuesday — his first about the investigation since it was announced — have prompted new questions about how the situation unfolded and the timing of Fortin’s departure, with opposition MPs calling for more transparency and pushing for the matter to become part of an ongoing study into the larger issue of military misconduct.

“In regards to this situation, it is being led and followed up appropriately by appropriate authorities and military leadership. In situations like this, those

authorities can make the determination to inform me and my office, which they did in this case, a number of weeks ago,” Trudeau told reporters on Tuesday. “As is appropriate, I didn't receive details of what is being alleged, what's going on in terms of the investigation.”

When CTV News first broke the story, both Trudeau and Sajjan's offices offered few details about what they knew about the investigation, and when they knew it, with Sajjan's office stating that the minister was advised on Friday that Fortin had stepped aside, and Trudeau's office stating that in certain circumstances the PMO “is provided status updates on senior personnel decisions by the Privy Council Office.”

The investigation stems from an allegation brought forward two months ago, sources said. Sources have told CTV News that military police received a formal complaint against Fortin in March, alleging a “historical sexual assault.” The incident, sources say, allegedly dates back 32 years to early 1989, when Fortin was a student at the Royal Military College in Saint-Jean, Que.

The sources, who are not authorized to speak publicly, said Fortin is under investigation for allegedly exposing himself before a woman.

On Tuesday, Trudeau said that he could not confirm the nature of the investigation because he “wasn't given” those details, adding it is also “not information that has been made public by the military yet.”

“It would not be appropriate for me to be following that closely, an independent investigation like this,” Trudeau said, adding that his office's role is about ensuring that everyone involved knows that the “proper processes” need to be followed.

FORTIN NOT FORMALLY INFORMED OF ALLEGATION: LAWYER

Speaking to CTV News following Trudeau's remarks on Tuesday, Fortin's lawyer clarified that Fortin had known a few weeks prior to Friday that an investigation had been initiated. It remains unclear whether it was the military police that approached Fortin about the investigation, and what led to his departure from his role with the vaccine rollout on Friday.

According to Letourneau— who is with the Defence Counsel Services and provides legal representation within Canada’s military justice system—Fortin has still not been officially informed of what the nature of the investigation is.

As Fortin’s lawyer has previously told CTV News, Fortin was not aware of the specific allegation until CTV News contacted him. The allegation has not been proven or tested in court.

The CFNIS is leading this investigation, but what steps they have taken up until now remain confidential.

In an email to CTV News speaking generally about the military police investigation process, Canadian Forces Provost Marshal Senior Public Affairs Officer Lt.-Cmdr. Jamie Bresolin said that military investigations are conducted “in a fair and impartial manner regardless of the rank or status of the subject.”

In terms of how it works, Bresolin said that upon receiving a complaint, the jurisdiction and “investigative threshold” will be assessed, and either military police or the CFNIS will proceed with the matter.

Sexual misconduct allegations have been handled by CFNIS since 2015, and these investigations can be initiated in several ways, including receiving direct complaints or information from an informant or anonymously.

All complaints are investigated that are within their jurisdiction to determine the facts and lay charges if appropriate, or until the complaint is withdrawn or determined to be unfounded, said Bresolin.

When asked why more information had not been disclosed about why Fortin remained in his job after Trudeau was made aware that an allegation had been made and that there was an investigation into the then-lead of Canada’s vaccine rollout, the prime minister said Tuesday that the matter is being handled by the “appropriate authorities.”

“I understand that people have questions and are hopeful that this process is going to be — as I highlighted my desire for it to be — fair, complete, and rigorous,” Trudeau said.

OPPOSITION WANTS TO STUDY

During a House of Commons National Defence Committee meeting on Tuesday, the Conservatives pushed for the allegation against Fortin to be brought into their study into sexual misconduct issues within the Canadian Armed Forces.

Conservative MP and defence critic James Bezan suggested that the committee invite representatives from the Canadian Armed Forces, the Privy Council Office and the Public Health Agency of Canada to appear “as soon as possible” to discuss the matter, and have the committee report back its findings within the next few weeks.

“There is now concern that government actually knew about this for weeks, as Prime Minister Trudeau said in his presser this morning... and Canadians again need to know how that information flowed? Why did it take so long to have Gen. Fortin step aside while this investigation is ongoing? ... Are we looking at another cover up of sexual misconduct allegations in the Canadian Armed Forces?” asked Bezan.

The motion has yet to come to a vote, with Liberal MPs voicing opposition, stating that there is dwindling time left before Parliament is set to adjourn for the summer and other work that the committee is looking to finalize.

'WE MUST FIX THIS': FORTIN'S REPLACEMENT

The Canadian Armed Forces has been under increased scrutiny over the last few months due to misconduct allegations against several high-ranking commanders.

Asked how many investigations of this nature are ongoing within the military justice system, Trudeau said Tuesday that while in some cases his office is alerted to them, that does not necessarily happen in all cases.

“I can't speak to how many investigations are going on, but what we have seen over these past months, is that there is a pattern, and there is a culture of unacceptable actions in the military that have gone on for far too long,” said Trudeau. “We are seeing an immediate shift, and people are coming forward

with allegations, some of which go back many years, others which are more recent, and that is how the system should be working. It is going to be a difficult process for the military to transform its culture, but we know everyone knows, that it is time.”

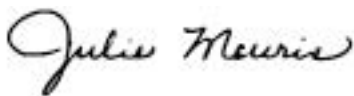
The COVID-19 immunization effort continues in the hands of Brig.-Gen. Krista Brodie, [who was named to take the lead on Monday](#).

While Brodie has yet to appear publicly in her new role, she did [recently take part in an event where she spoke](#) about the ongoing conversation around military sexual misconduct and its impact on the public’s trust in the institution.

“Within the Canadian Armed Forces, the CAF, we are at a strategic inflection point, a tipping point, poised on the eve of uncertain tomorrows. Propelled to this point by successive generations of institutional malaise regarding the spectrum of sexual misconduct that is pervasive in the Canadian military, and nudged by the recent allegations against successive senior leaders,” Brodie said.

“It must be acknowledged that our individual and collective acts of commission, the things we have done, and of omission, the things we have not, have caused our culture to stray from the better valours of the profession of arms, from the core values and ethical principles that we uphold as Canadians. It has undermined our operational effectiveness. It has eroded trust. It has corroded the public trust in a venerated and necessary national institution. We must be bold, we must fix this first.”

This is **Exhibit "J"**
to the affidavit of
Dany Fortin
sworn before me by video-conference this
13th day of July, 2021



A Commissioner for Taking Affidavits

Julie Mouris
LSO#69707U

POLITICS | News

Military investigators refer allegation involving Maj.-Gen. Dany Fortin to Quebec prosecutor

Rachel Aiello Ottawa News Bureau Online Producer

🐦 [@rachaiello](#) | [Contact](#)



Annie Bergeron-Oliver Parliamentary Bureau Reporter, CTV National News

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Kevin Gallagher Parliament Hill Correspondent, CTV National News

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Published Wednesday, May 19, 2021 3:21PM EDT

Last Updated Wednesday, May 19, 2021 5:46PM EDT



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OTTAWA -- Canadian military police say that after conducting an investigation into an allegation of sexual misconduct involving Maj.-Gen. Dany Fortin, the Canadian Forces National Investigation Service (CFNIS) has referred the matter to Quebec's prosecution service.

In a brief statement on Wednesday confirming the sexual misconduct investigation, the Canadian Forces Provost Marshal said that the investigation has been referred to the [director of criminal and penal prosecutions](#). As the charge-laying authority for criminal and penal prosecutions in Quebec, it will be up to that office to determine whether and how to proceed.

According to Audrey Roy Cloutier, a spokesperson for the civilian Quebec prosecutor, their office received the file in the past week.

In a statement issued in French, Cloutier said that as with any other file brought to their attention, the evidence will be assessed in order to determine whether charges will be laid, but will not be commenting further at this point.

It is unclear whether the investigation by CFNIS— a specialized unit within the Canadian Armed Forces military police—is entirely concluded, as the prosecutor may request additional information.

[As CTV News has exclusively reported](#), according to sources, Fortin is facing a sexual misconduct claim against him that dates back more than 30 years. The military investigation stemmed from an allegation brought forward two months ago, sources said.

Sources have told CTV News that military police received a formal complaint against Fortin in March, alleging a “historical sexual assault.” The incident, sources say, allegedly dates back 32 years to early 1989, when Fortin was a student at the Royal Military College in Saint-Jean, Que.

The sources, who are not authorized to speak publicly, said Fortin is under investigation for allegedly exposing himself before a woman.

Fortin, through his lawyer Cmdr. Mark Letourneau, has said he “completely denies” the allegation. The allegation has not been proven or tested in court.

Speaking to CTV News on Tuesday, Fortin’s lawyer said that Fortin had known for a few weeks that an investigation had been initiated. According to Letourneau— who is with the Defence Counsel Services and provides legal representation within Canada’s military justice system—as of Tuesday, Fortin had still not been officially informed of what the nature of the investigation is.

As Fortin's lawyer has previously told CTV News, Fortin was not aware of the specific allegation until CTV News contacted him on Sunday.

The public was first made aware that an investigation was underway last Friday evening, when the Department of National Defence announced in a brief statement that Fortin would be stepping away from his role overseeing the delivery and distribution of COVID-19 vaccine doses across the country, "pending the results of a military investigation."

Defence Minister Harjit Sajjan was aware in March that the military investigation was underway, several weeks before Fortin stepped aside from leading Canada's COVID-19 vaccine rollout. Prime Minister Justin Trudeau said Tuesday that he was also made aware of the investigation "a number of weeks ago" but he did not receive details about what was alleged.

In an interview on CTV News Channel's Power Play on Wednesday, defence parliamentary secretary Anita Vandenbeld suggested that the Acting Chief of Defence Staff Lt.-Gen. Wayne Eyre "at a certain point" in the military investigation, would have made the decision to ask Fortin to step aside.

"It was the acting chief of the defence staff who would have made that call, based on the information that he had from investigators, and based on what the proper processes are in these cases," she said. "My understanding is that that is a process that happened in this case, I can't say that for certain."

Trudeau's public comments Tuesday — his first about the military investigation since it was announced — have prompted new questions about how the situation unfolded and the timing of Fortin's departure.

When asked why more information had not been disclosed about why Fortin remained in his job leading Canada's mass vaccination effort after Trudeau was made aware that an investigation was underway, the prime minister said that the matter is being handled by the "appropriate authorities."

"I understand that people have questions and are hopeful that this process is going to be — as I highlighted my desire for it to be — fair, complete, and

rigorous,” Trudeau said.

On Wednesday on CTV News Channel’s Power Play, Conservative MP and defence critic James Bezan suggested that the federal government has not been transparent enough about the series of events that have occurred between when the allegation had first come to light, the military investigation beginning, when political leaders were informed, and when Fortin left his highly-public role.

“If prime minister Trudeau and minister Sajjan aren't being open and honest, how are we ever going to restore that morale within the Canadian Armed Forces, or regain the trust of Canadians in this great institution?” Bezan said.

Military sexual misconduct allegations have been handled by CFNIS since 2015. These investigations can be initiated in several ways, including receiving direct complaints or information from an informant or anonymously, according to Canadian Forces Provost Marshal senior public affairs officer Lt.-Cmdr. Jamie Bresolin. In a statement on Tuesday, he said that all complaints are investigated that are within their jurisdiction until “there is no further requirement to pursue the investigation...or that charges will be laid.”

Court File No. T-957-21

FEDERAL COURT

B E T W E E N:

DANY FORTIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7**AFFIDAVIT OF DOREEN NAVARRO**

I, Doreen Navarro, of the City of Ottawa, in the Province of Ontario, SWEAR THAT:

1. I am a law clerk at Conway Baxter Wilson LLP/srl, counsel for the applicant in his application for judicial review in the above-noted matter.
2. I have personal knowledge of the evidence sworn to in this affidavit except where otherwise stated to be based on information or belief.
3. I state, in this affidavit, the source of any information that is not based on my own personal knowledge, and I state my belief of the source.
4. On August 20, 2021, I sent a letter to counsel for the respondent on behalf of Thomas Conway, counsel for the applicant.
5. In the letter, Mr. Conway alerted Ms. Richards to an interview given by Minister of Health Patty Hajdu to CTV's Evan Solomon on May 30, 2021, in which she made comments regarding

her and the President of PHAC Iain Stewart's role in the decision to remove the applicant from his position with PHAC.

6. A live link to the interview can be found here: <https://www.ctvnews.ca/video?clipId=2159597&playlistId=1.5448857&binId=1.811561&playlistPageNum=1&binPageNum=1>. The portion of Minister Hajdu's interview relating to Major-General Fortin's removal from PHAC starts at the 19:10 mark of the interview and ends at 21:50.

7. A transcript of the portion of the interview referenced in Mr. Conway's letter is attached as Exhibit "A".

SWORN REMOTELY BEFORE ME
by video-conference from the City of
Ottawa, in the Province of Ontario, to
the City of Ottawa, in the Province of
Ontario on August 30, 2021 in
accordance with O. Reg 431/20,
Administering Oath or Declaration
Remotely.



Commissioner for Taking Affidavits
(or as the case may be)



DOREEN NAVARRO

Debra Ann Burke-Lachaine, a Commissioner, etc.,
Province of Ontario, for Conway Baxter Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

This is **Exhibit "A"**
to the affidavit of
Doreen Navarro
sworn before me by video-conference this
30th day of August, 2021



A Commissioner for Taking Affidavits

Debra Ann Burke-Lachaine, a Commissioner, etc.,
Province of Ontario, for Conway Baxder Wilson LLP/s.r.l.,
Barristers and Solicitors.
Expires March 4, 2024.

DATE-TIME/DATE-HEURE: May 30, 2021, 11:22 AM

SOURCE/LIEU: CTV CFTO - Question Period

PROVIDER/PROVENANCE: J&A Media Services

Health Minister comments on Maj.-Gen. Fortin

EVAN SOLOMON (Host): A couple of more things, Minister. The Prime Minister, the Defence Minister and the head of the Public Agency of Canada all knew that Major-General Dany Fortin, who was leading the vaccine roll out for so long was under investigation by the military. Uh, investigators in March, while he was working as you know as part of the roll out, he was then seconded to the Public Health Agency of Canada. Public Health Agency of Canada reports to you. Could you tell us when you learned about the investigation into Major-General Fortin, did you ever ask what the allegations were about, and did you ever think as, you know I don't know what the results will be but, he, he should step aside while there's an investigation?*

PATTY HAJDU (Health Minister): Well I was made aware of an issue, uh, with Major-General Dany Fortin in March as well, and I was assured that a process was in place to manage allegations and, um, you know, I was alerted to a further development in May and at that time agree with the president that Major-General Dany Fortin should be relieved of his duties with the Public Health Agency.*

SOLOMON: Could you as, because the Public Health Agency reports to you, uh, could you at the time have made a decision and said look, I don't need to know the charges, I don't wanna politically interfere with the investigation, but because he's now reporting directly to me, uh, while there's an investigation, why didn't you say, given what's going on in the military, I don't know what the allegations are, until there's a, an independent investigation and results, he's got to step aside. Why didn't you do that?*

HAJDU: Well it wasn't clear to me, um, Evan, at the beginning what the process was and of course, uh, um, as I found out more about, uh, about the next steps, that's when I asked, uh, President Stewart to look into it more, more closely and President Stewart, um, advised me that, uh, he was asking Major-General Dany Fortin to set, step aside and I agreed with that decision.*

SOLOMON: All right, I gotta leave it there today. Health Minister Patty Hajdu, great to have you on the program.*

HAJDU: Great to be with you Evan.*

Court File Number: T-957-21

FEDERAL COURT | COUR FÉDÉRALE

BETWEEN:

DANY FORTIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

AFFIDAVIT OF BRIGADIER-GENERAL, PAUL PREVOST

I, BRIGADIER-GENERAL PAUL PREVOST of the City of Ottawa, in the Province of Ontario, AFFIRM THAT:

1. I was the Director General of Operations within the Strategic Joint Staff (SJS) from August 13, 2018 to September 14, 2020. The SJS provides military analysis and decision support to the Chief of the Defence Staff (CDS), translating government direction into effective and responsive CAF operations. Currently, I serve as a Special Projects Officer at SJS. As such, I have personal knowledge of the facts deposed to in this affidavit, except where stated to be based on information and belief, and, where so stated, I believe them to be true.
2. I have reviewed the Applicant's Notice of Application issued June 14, 2021, and the Affidavit of Major-General Dany Fortin sworn July 13, 2021. I swear this affidavit to provide general background information that might assist in understanding the issues raised in the Notice of Application.

CAF Authority to Perform Any Duty involving Public Service

3. The *National Defence Act*, RSC 1985, c N-5 sets out the composition and organization of the Canadian Armed Forces (CAF).
4. The *National Defence Act* provides that the CDS is, subject to regulations and under the Direction of the Minister, charged with the control and administration of the Canadian Forces.
5. Subsection 273.6(1) of the *National Defence Act* allows the Governor in Council or the Minister of National Defence to authorize the Canadian Forces to perform any duty involving public service, which includes those activities external to the Defence mandate but requiring CAF capacities or capabilities. In my experience, CAF may be approached as a force of first resort where it is readily apparent that another part of government or a province or territory does not have the capacity or capability to deal with an urgent situation. In such a case it is contemplated that CAF's assistance is temporary and the party in receipt of CAF assistance will transition to their own operations in due course.
6. An example of CAF assistance is Operation LENTUS, the CAF response to natural disasters in Canada. Provinces and territories can submit a request for federal assistance to the federal Minister of Public Safety following which the Minister of National Defence may authorize the CAF to perform any duty involving public service. The Operation LENTUS contingency plan can be adapted to multiple disaster events such as forest fires, floods, snowstorms and hurricanes.
7. The Canadian Joint Operations Command (CJOC) is the operational level command responsible for most CAF operations, including the CAF assistance as provided to the federal Government in response to COVID-19, as detailed below.

CAF Assistance with the Whole-of-Government Response to COVID-19

8. On March 30, 2020, the Minister of Public Safety made a general request of the Minister of National Defence for CAF assistance in support of the whole-of-Government response to COVID-19. Attached to my affidavit as **Exhibit A** is a copy of the request.

9. On April 7, 2020, the Minister of National Defence agreed to authorize the CAF's assistance. Attached as **Exhibit B** is a copy of the Minister of National Defence's reply to the Minister of Public Safety's request. Also on April 7, 2020, the Minister of National Defence directed the CDS to issue the appropriate orders for the CAF to provide logistics and general support, and transportation and infrastructure support, in support of all levels of Government, civil society and the private sector on a case-by-case basis as jointly coordinated by senior department officials. The Minister also directed the CDS to "work with your Public Safety counterparts through a consultative mechanism to give you advice on the prioritization of competing requests for CAF assistance".

10. In addition, pursuant to section 273.6(1) of the *National Defence Act*, the Minister of National Defence authorized the CAF to support the provision of humanitarian relief to Canadians, including support to the Public Health Agency of Canada (PHAC) or Provincial/Territorial health vaccination programs when COVID-19 vaccination became available. Attached to my affidavit as **Exhibit C** is a copy of the direction.

Operations LASER and VECTOR

11. Several requests to the CAF for assistance followed the Minister of National Defence's April 7, 2020 direction. In response, the CAF established two military operations under the command and control of CJOC: Operation LASER stood up on March 2, 2020 upon the issue of CDS Tasking Order—Op LASER 20-01 and Operation VECTOR stood up on December 11, 2020 upon

issue of CDS Tasking Order 001—Operation VECTOR—CAF Support to COVID-19 Vaccine Roll Out.

12. Operation LASER is the CAF response to a worldwide pandemic situation with the strategic objectives of saving lives, assisting federal, provincial and territorial partners and maintaining CAF readiness, effectiveness and resilience. Under Operation LASER, CAF personnel deployed to long-term care facilities in Quebec and Ontario, supported northern and remote communities, assisted PHAC in managing and distributing personal protective equipment, and helped Public Health Ontario with contact-tracing efforts.

13. Closely related, Operation VECTOR is the CAF support to the federal, provincial, and territorial governments for the distribution of COVID-19 vaccines. I have reviewed the relevant documentation and confirmed that Operation VECTOR was established in response to a request for assistance from PHAC in October 2020. In that request, PHAC sought an initial cadre of approximately 12 CAF leaders to assist their team with two specific functions: establishment of a National Operations Centre (NOC) that would oversee the vaccine rollout; and, a CAF logistical planning team drawing on the unique and extensive expertise of CAF in this area. These two elements were to be primarily focused on helping PHAC with the development of a functioning national supply chain for the delivery of a COVID-19 vaccine to the Provinces and Territories and, to some extent, abroad.

14. CAF accepted the request for assistance and confirmed that the CDS would issue orders for the CAF to formally respond and embed staff officers within PHAC until February 2021, at which time a review would be undertaken to determine the need for further assistance. Attached to my affidavit as **Exhibit D** is a copy of an email exchange between Brigadier-General P.K. Scott, Director General, Operations, SJS and Deryck Trehearne, Director General, Government Operations Centre, Public Safety Canada, confirming the request and that CAF accepted it, copying PHAC.

15. On November 27, 2020, the CDS issued a Planning Directive setting out roles and responsibilities in connection with Operation VECTOR. The Planning Directive provides that “Op VECTOR will be designated an operation and will be effective until the CDS issues operation termination instructions”. The stated mission of Operation VECTOR was that CAF support whole-of-government efforts to deliver COVID-19 vaccines to Canadians, while ensuring continued readiness for COVID-19 response, national security incidents and other domestic emergencies. Attached to my affidavit as **Exhibit E** is a copy of the CDS Planning Directive.

16. As part of Operation VECTOR, a team of CAF members has been supporting the PHAC with ongoing planning and coordination for the transport, storage, and distribution of vaccines. These include senior leaders, logistics experts, operational planners, pharmacists, physicians, health care administrators, engineers, and information technology and systems experts.

17. MGen Fortin reported for duty at PHAC on November 23, 2020 to lead the CAF team tasked to assist PHAC under Operation VECTOR. At the time, MGen Fortin acted as Chief of Staff at CJOC (COS CJOC) and was attached-posted to PHAC as VP Logistics and Operations. A CAF attached posting is an assignment from a member’s permanent workplace to a different workplace for more than 30 days and less than 365 days.

18. At all times MGen Fortin remained a member of the CAF under military command, as is customary when CAF members are assigned to organizations outside of the CAF either in Canada or abroad. MGen Fortin’s role included “lead the vaccine rollout task force (VRTF) [in accordance with] the Comprehensive Request for Assistance”, with functions such as “oversee all VRTF personnel, to include their responsibilities and administration”. Attached to my affidavit as **Exhibit F** is a copy of the Task Authority.

19. As a CAF member, MGen Fortin’s service continued at all times to be administered by the CAF. For example, his annual performance evaluation

report for the period 1 April 2020 to 31 March 2021, which included the time with PHAC, was completed by the Acting Commander, CJOC and signed by the Acting Chief of the Defence Staff (A/CDS).

20. On February 25, 2021, PHAC requested an extension of the CAF support to the PHAC vaccine rollout task force through October 2021. The A/CDS informed the Minister of National Defence of the extension of the CAF assistance to PHAC through October 31, 2021. At that time, there were approximately 50 CAF members who had been ordered to work with PHAC. Attached to my affidavit as **Exhibit G** is a copy of the email exchange between the A/CDS and the Minister of National Defence dated February 25, 2021.

21. On March 1, 2021, the Director of Staff, SJS, MGen Cadieu, advised MGen Fortin and CJOC of the A/CDS' intent regarding the extension of assistance to the PHAC and next steps. In particular, MGen Fortin was advised that the A/CDS confirmed the continued provision of assistance until October 31, 2021 and of the following:

“[The A/CDS] noted that, while approximately 50 CAF members remain seconded to PHAC, that number will fluctuate depending on the evolving situation and tasks being conducted. While it is his intent to commit to CAF support until end-October, we recognize that PHAC has started to think about long-term structural changes to the organization, which will eventually result in a replacement of CAF personnel with federal public servants based on agreed-upon transition criteria.

Attached to my affidavit as **Exhibit H** is a copy of the email from MGen Cadieu.

MGen Fortin's current status

22. I am informed by the Acting Commander CJOC, MGen Seymour, that MGen Fortin has not been relieved from the performance of military duty pursuant to article 19.75 or 101.09 of the *Queen's Regulations and Orders for*

the Canadian Forces. I am also informed by MGen Seymour that MGen Fortin remains posted to the COS CJOC position, a position established at the rank of Major-General. Furthermore, MGen Seymour has informed me that there have been discussions with MGen Fortin exploring the possibility that he undertake projects consistent with his experiences during OP LASER, as VP Logistics and Operations PHAC and as Commander of the NATO Training Mission – Iraq. For this reason, the CAF is in the process of creating a temporary position at the rank of Major-General at CJOC, to which MGen Fortin will be posted to act as Senior Advisor to Commander CJOC and undertake the aforementioned projects. He will remain in that position pending resolution of his application for judicial review.

Current CAF support to PHAC

23. I am informed by MGen Cadieu that consistent with the A/CDS directions of March 1, 2021, relayed by MGen Cadieu in **Exhibit H**, the CAF assistance to PHAC is currently reducing as federal public servants have assumed the roles previously performed by CAF members. I am further informed that the duties performed by BGen Brodie, CAF successor to MGen Fortin as VP Logistics and Operations at PHAC, will end on or about August 20, 2021. She will return to her substantive position with CAF and will not be replaced at PHAC by a CAF member. It is likely that her small executive support team will also return to DND/CAF at that time. Additional CAF members will remain in the PHAC National Operations Centre likely until the middle of September, or until they are replaced with federal public servants.

AFFIRMED before me at the City of
Ottawa, in the Province of Ontario, on
August 12, 2021



A Commissioner of Oaths
for Ontario



Paul Prevost, Special Projects, SJS





Department of Justice
Canada

Ministère de la Justice
Canada

Civil Litigation Section
National Litigation Sector
Department of Justice Canada
5th Floor, 50 O'Connor Street
Ottawa, Ontario
K1A 0H8

Email: Elizabeth.richards@justice.gc.ca

July 30, 2021

Our File No: LEX-500057305

BY E-FILING PORTAL

Federal Court
Thomas D'Arcy McGee Building
90 Sparks Street
Ottawa, ON K1A 0H9

Dear Registrar:

Re: Dany Fortin v. Attorney General of Canada
Court File No. T-957-21

The undersigned has carriage of this matter on behalf of the Respondent.

The Notice of Application at page 19, paragraphs 1 and 2, contains a request for certain material. Attached is a certificate of BGen Alan P. Mulawyshyn in response to that request. Also enclosed are the documents referred to in Schedule "A" thereto.

The Respondent objects to the production of additional materials potentially covered by the Applicant's request. The reasons for this objection is that in this respect:

- (a) additional materials were not used by the decision-maker in his deliberations nor do they form part of the record in relation to the alleged decisions. The decision to remove the Applicant from his attached posting was that of the Acting Chief of the Defence Staff who does not have in his possession material specified in paragraph 1 on page 19, that is, documents, memoranda, reports, emails, notes and other communications in the possession of the Ministers of Health and National Defence, the Clerk of the Privy Council and the Prime Minister of Canada.
- (b) to the extent that the request covers such additional materials, it is too broad, vague or general to permit a focused search for records potentially relevant to the decision subject to this Application; and

- (c) the request as a whole and in particular at paragraph 2 on page 19 is in the nature of discovery and improper under Rule 317. The Notice of Application includes several allegations ancillary to the actual decision to terminate the Applicant's attached posting. Accordingly, a request for documents related to these other matters goes beyond the record of decision and is therefore an improper request under Rule 317.

Should it prove necessary for the Court to make a determination of this objection, the Respondent requests an opportunity to make submissions.

A copy of the certification and attached materials is being provided to counsel for the Applicant with a copy of this correspondence.

Thank you for your cooperation.

Yours truly,



Elizabeth Richards
Counsel

cc. Thomas G. Conway
TConway@conwaylitigation.ca

Natalia Rodriguez
NRodriguez@conwaylitigation.ca

Julie Mouris
JMouris@conwaylitigation.ca

Enclosures



Department of Justice Canada

Email: Elizabeth.richards@justice.gc.ca

Ministère de la Justice Canada

Civil Litigation Section
National Litigation Sector
Department of Justice Canada
5th Floor, 50 O'Connor Street
Ottawa, Ontario
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Via Email (chantal.baumberger@cas-satj.gc.ca)

August 6, 2021

Chantal Baumberger
Registry Officer
Federal Court - Ottawa
Thomas D'Arcy McGee Building
90 Sparks Street, 5th Floor
Ottawa, ON K1A 0H9

Dear Ms. Baumberger

Re: Dany Fortin v. Attorney General of Canada, Court File No. T-957-21

Further to the August 5, 2021 Direction of Prothonotary Aylen, please consider this letter as the Respondent's submissions on the appropriate process for consideration of the Rule 318 objections. We ask that you bring this letter to the attention of the Court.

Timing of the request

Given the Applicant's request to expedite the timelines in this proceeding, and the Court's direction that the parties consult and propose a schedule for next steps, the Applicant had an obligation to raise its objections to the content of the Certified Tribunal Record (CTR) as soon as possible. The Applicant did not do so. The Respondent advised Applicant's counsel on July 5 that it disputed the Applicant's characterization of the decision-making process and would be objecting to part of the request for the CTR and raised the issue again during the case conference of July 26. The Applicant was provided with the CTR on July 30. During exchanges between the parties on August 3rd and 4th regarding scheduling, counsel for the Applicant did not advise the Respondent of their concerns with the scope of the CTR or their intention to seek a ruling from the Court on the issue.

Instead, without prior notice to the Respondent, approximately 20 minutes after the Court endorsed the parties' consent schedule, which the Respondent had agreed to in good faith, the Applicant wrote to the Court seeking to bypass regular procedural steps in this proceeding. This conduct should not be condoned by the Court. Counsel for the Applicant should have advised the Respondent of their position on the CTR forthwith, in which case the Respondent would have sought to incorporate flexibility into the schedule to permit determination of issues surrounding the CTR.

The issue should proceed by way of motion

Contrary to the Applicant's submission, the process for dealing with objections to requests under Rule 317 is well established and contemplates submissions and, in some cases, evidence from the parties. The Applicant's assertion that they should be entitled to the documents sought, without adjudication of what they concede is a contested issue, is unprecedented and they can point to no case where such an order has been granted. In essence, the Applicant seeks to bypass all adjudicative steps and have its position treated as the correct one in advance of the hearing.

The Applicant's suggestion that the Respondent was required to include evidence to support an objection under Rule 318 at the time of the objection is entirely without foundation. Evidence to support an objection will only be necessary where the Applicant disputes the sufficiency of the CTR as disclosed, putting in issue the facts underlying the scope of the CTR. That is exactly what happened in both cases referenced by the Applicant in their letter. The Federal Court of Appeal has confirmed the process as follows:

Where the relevant administrative decision-maker, here the Agency, objects under Rule 318(2) to disclosing some or all of the material requested under [Rule 317](#) and the applicant does not dispute the objection, then the material is not transmitted. However, if, as here, the applicant disputes the objection, either the applicant or the administrative decision-maker may ask the Court for directions as to how the objection should be litigated: see Rule 318(3).¹

Furthermore, the Federal Court of Appeal has confirmed that where underlying facts are in dispute in respect of an objection, the matter cannot be disposed of summarily or merely on the basis of the objection letter, as suggested:

Lukács is most relevant here. It tells us that in some cases an objection to disclosure under Rule 318 can indeed be dealt with on the basis of an exchange of letters containing submissions, nothing more. In such cases evidence does not need to be filed: sometimes, for example, the parties agree on the facts relevant to the objection and so there is no need for evidence to be filed; sometimes the facts set out in their submissions letters concerning the Rule 318 objection are not in dispute; sometimes, given the nature of the objection, there is no need for a factual basis other than the [Rule 317](#) request itself.

¹ *Lukács v. Canada (Transportation Agency)*, [2016 FCA 103](#) at para 8.

But *Lukács* also tells us that sometimes the facts are in dispute and so evidence must be filed.²

Applications pursuant to s. 18.1 of the *Federal Courts Act* do not permit for discoveries and requests under Rule 317 are not to be treated as such. Nor is an applicant permitted to engage in a fishing expedition because he has chosen to include allegations ancillary to the decision under review in the Notice of Application. Only the material that was before the decision maker is producible, subject to limited exceptions. In this case, the certification accompanying the CTR confirms that it contains the documents and records of information that were before the Acting Chief of the Defence Staff, LGen Eyre, when he made the decision that is the subject of the Application. The fact that the A/CDS was the legal and factual decision maker is supported by the *National Defence Act*, the *Queens Regulations and Orders* and the CTR. If the Applicant continues to contest the scope of the CTR, it must be determined through a fair process that allows both parties to make submissions.

Where the contested issue is the scope of the CTR and not privileges claimed by the Tribunal, either party can seek directions from the Court and either party can bring the motion. The Respondent's position that only those documents that were before the decision-maker need to be produced is the legally established starting point for all CTRs. In *Maax Bath Inc. v. Almag Aluminum Inc.*, [2009 FCA 204](#), it was noted that:

15 In the words of this Court, the applicant's request "betrays a misunderstanding of the purpose of [section 317](#) ... [S]ection 317 does not serve the same purpose as documentary discovery in an action" (*Access to Information Agency Inc. v. Canada (Attorney General)*, [2007 FCA 224](#) at paragraph [17](#); *Atlantic Prudence Fund Corp.*, *supra* at paragraph 11). It should not be open to the applicant to engage in a fishing expedition. (emphasis added)

[8] Therefore, while additional disclosure is warranted when there are allegations of a reasonable apprehension of bias or a breach of procedural fairness, this does not allow a person to engage in a fishing expedition in the hopes of discovering some documents to establish the claim.

Therefore, the Respondent submits that the appropriate way to proceed is for the Applicant to bring a motion. The Applicant's letter of August 4 should be treated as a request for direction and as it is the Applicant who contests the proper scope of the record and will bear the onus of demonstrating that the general rule limiting the scope of the CTR does not apply, he should be the moving party. To the extent the Applicant alleges reputational harm flowing from the publicity surrounding the misconduct investigation, this is not adjudicable as part of the application and cannot lead to any direct remedy. These ancillary allegations do not give rise to additional production obligations in the context of this application for judicial review of a single decision made by the A/CDS to terminate a CAF member's attached posting.

² *Bernard v. Public Service Alliance of Canada*, [2017 FCA 35](#) (CanLII), at para 11.

This matter must be resolved through a motion on the basis of proper submissions and, if necessary, evidence. Given the truncated timelines that the parties have already agreed to, however, it would not be possible to prepare and argue that motion within the current timelines in a manner that is fair to all parties.

The Court should reconsider the order expediting this matter in light of new circumstances

The circumstances grounding the Court's decision to expedite this proceeding have changed and it is within the discretion of the Case Management Judge to review a scheduling order at any time for good and substantial reasons³. When the request to expedite was made to the Court, the Applicant represented that there would be no prejudice to the Respondent because the already expedited times under the Rules would not be abridged. The Court relied on this fact in deciding to expedite the matter. As the Court confirmed in its decision, a request to expedite a proceeding must be balanced against prejudice to the Responding party and the requirement to ensure that a fair process can still be achieved.

Since the decision was rendered, circumstances have changed. The current timelines are significantly truncated and have significantly reduced the timelines on each step, except service of the Respondent's affidavits, significantly. Furthermore, there is now an additional issue that requires preliminary determination. The current timelines, which only allow for 6 weeks to finish the remaining substantive steps in the proceeding, do not permit for a motion on the content of the CTR to also be heard in manner that is procedurally fair to both parties.

The balance of convenience has now changed, such that the schedule should be amended. With the addition of the Applicant's challenge to the CTR, a fair adjudication of the Applicant's challenge to the CTR and the merits of the judicial review require the timetable be adjusted to allow the AGC sufficient time to prepare. The prejudice to the AGC's right to a fair hearing outweighs the Applicant losing a remote possibility of reappointment for four weeks or less, given that his attached posting was scheduled to end October 31, 2021 in any event.

In addition, the Court directed that the Respondent's Motion to Strike be heard at the hearing on the merits on the basis that a separate hearing would result in delay. That is no longer the case. The Respondent's motion can now be heard at the same time as the motion regarding the scope of the CTR and will not cause any additional delay to the proceedings. This is consistent with practice of the Court to hear such motions together on a preliminary basis.⁴ Indeed, there are overlapping issues in the two motions which make it expeditious to hear them together.

Accordingly, if the Applicant intends to contest the scope of the CTR, the Respondent requests that the Court reconsider the scheduling order in this matter and proposes the following schedule for next steps:

August 13- Respondent to serve affidavit

³ *Janssen Ortho et al v. Apotex et al*, [2009 FC 866](#) (CanLII)

⁴ See for example *Rebel News Network Ltd v. Canada (Leaders' Debates Commission)*, [2020 FC 1181](#) (CanLII), at para 5.

Respondent to serve and file Motion (Strike)
Applicant to serve and file Motion (CTR)

August 20- Applicant to serve and file responding Motion (Strike)
Respondent to serve and file responding Motion (CTR)

Week of August 23- one day hearing for two motions

The remaining steps would be determined following a decision on the motions based on the results.

Yours truly,

A handwritten signature in blue ink, appearing to read 'Elizabeth Richards', with a long horizontal flourish extending to the right.

Elizabeth Richards
Counsel

cc. Natalia Rodriguez
NRodriguez@conwaylitigation.ca

Julie Mouris
JMouris@conwaylitigation.ca

Court File No. T-957-21

FEDERAL COURT

BETWEEN:

DANY FORTIN

Applicant

-and-

ATTORNEY GENERAL OF CANADA

Respondent

CERTIFIED TRIBUNAL RECORD

ATTORNEY GENERAL OF CANADA

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Counsel for the Respondent

Court File No. T-957-21

FEDERAL COURT

BETWEEN:

DANY FORTIN

Applicant

-and-

ATTORNEY GENERAL OF CANADA

Respondent

CERTIFICATE

I, BGen Alan P. Mulawyshyn, Chief of Staff to the Acting Chief of the Defence Staff, hereby certify that the documents and records of information listed in Schedule "A" hereto were before the Acting Chief of the Defence Staff, LGen Eyre when he made the decision subject of the Application.

Signed at Ottawa, Ontario on July 30, 2021

MULAWYSHYN,
ALAN 426

Digitally signed by
MULAWYSHYN, ALAN 426
Date: 2021.07.30 12:01:26 -04'00'

BGen Alan P. Mulawyshyn

Schedule "A" to the Certificate of BGen Mulawyshyn

**CERTIFIED TRIBUNAL RECORD
INDEX**

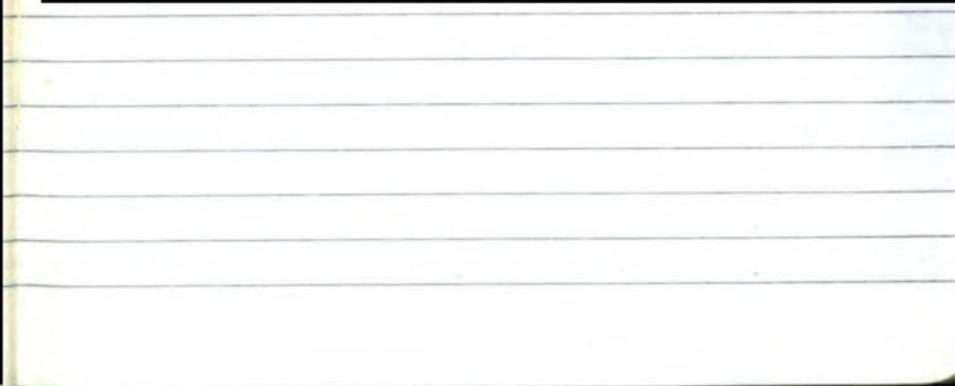
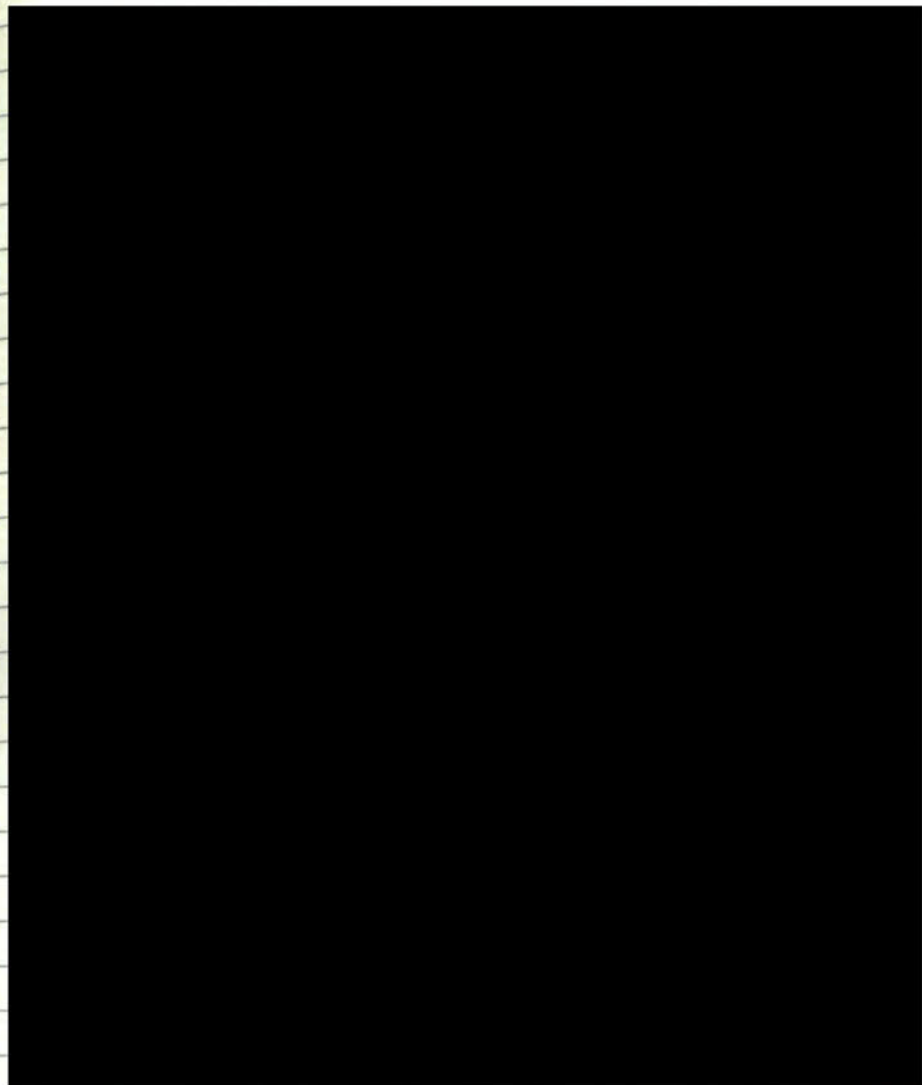
TAB	DATE	DOCUMENT NAME	NOTES
1.	March 16, 2021 – May 15, 2021	Notebook of LGen Eyre	Entries included within the date range. Irrelevant entries and solicitor-client privileged entries redacted.
2.	March 17, 2021 - May 17, 2021	Notebook of BGen Mulawyshyn	Entries included within the date range. Irrelevant entries and solicitor-client privileged entries redacted.
3.	March 18, 2021	Email from BGen Mulawyshyn to MGen Fortin Re: Call with ACDS Today	
4.	April 9, 2021	Email from BGen Mulawyshyn to MGen Fortin Re: Call	
5.	April 12, 2021	Day-Timer entry BGen Mulawyshyn	
6.	April 12, 2021	Email from BGen Mulawyshyn to MGen Fortin Re: Our Telcon	
7.	April 28, 2021	Day-Timer entry BGen Mulawyshyn	
8.	May 11, 2021	Email from BGen Trudeau to BGen Mulawyshyn Re: File Update	
9.	May 14, 2021	Letter from Deirdra Finn, DAIP to Daniel Therrien Re: intention to authorize the disclosure of personal information	
10.	May 14, 2021	Email from Michael Sousa to LGen Eyre et. al. Re: Option	

11.	May 14, 2021	Email from LGen Eyre to Iain Stewart Re: MGEN Fortin	
12.	May 14, 2021	Email from LGen Eyre to BGen Mulawyshyn et. al. Re: MGen Fortin	
13.	May 14, 2021	Email from Laurie Kempton to LGen Eyre et. al. Re: Finals - Eng / Fr encl. Final versions of the statement	
14.	May 14, 2021	DF English 14 May	Enclosed doc from above email (item 13)
15.	May 14, 2021	DF French - 14 May	Enclosed doc from above email (item 13)
16.	May 14, 2021	Email from Laurie Kempton to LGen Eyre Re: Revised final -EN encl. revised version of statement	
17.	May 14, 2021	DF English	Enclosed doc from above email (item 16)
18.	May 14, 2021	Email from J. Thomas to Laurie Kempton et. al. Re: Final Finals	
19.	May 14, 2021	Email from BGen Trudeau to LGen Eyre et. al. Re: Concern	
20.	May 15, 2021	Email from Laurie Kempton to BGen Mulawyshyn et. al. Re: Statement from PHAC – for awareness	
21.	May 15, 2021	Statement from Public Health Agency of Canada	Enclosed doc from above email (item 20)
22.	May 19, 2021	Email from LCol Denvney to BGen Mulawyshyn Re: PM Statement	

16 Mar

CFPM
- Let me know about allegation (no details)
(historic) against SS mbr. Victim
is supported, distanced.

20



17 Mar

DM

- Recommended we go to CIB PEO for advice before going to MND given interdepartmental impact

CIK PCO

- Allegation, historic case
told yesterday
- nature intr
- insufficient grounds
- Considerations - relationships, conf. lines
current ops, rights
- does not know - highly sensitive
- MND - ^{not} briefed yet - Advice
- Asked about Adm Macdonald precedent
 - stepped aside when found out
- Discussed when to brief MND

- discussed how play out with informing MND
 - timely seeing through of process
- ~~or~~ How
- instinct -
- leave in job for now - if goes public - react
-
- Advice - From US - leave in position for now
- assured ourselves no current risk - w/ victim, workplace
- Political
 - could act now + precipitate action
-
- Give indiv opportunity to step aside?
- Movement - Second order
- 1st Steps - call COS MND
 - let's not over- react
- PRECISE - call COS PM
- How we deal with this one will set the approach. Where he's working is the issue.

MND

- What does victim want?
- Due process has to take CSSE
- Not knowing details, doing what
- Steps in posn + something comes out it will be worse
- Now, need to protect the institution. We take everything seriously

CIK PLO

- Not definitive in outcome of 1800 mtg

Meeting - Men Forlin

- Shucked
- No idea what it could be, no reference point
- Adament about continuing to work
- Support at home
- Appreciates notification
- Prepare rep!

PCO CIK

- let's be Real careful where we put the bar
- ~~the~~ continuing to work - best option
- need to think through ~~the other~~ what we do with other cases

MRO

- CFPM - how severe? When know?
- how deal with historic events that are not criminal / USD allegations
- Need a round table w/ experts soonest
- create a process for those who come forward

18 Mar

Telecon - MGR Farin

- Welfare check
- Continue to work, keeps focus
- wife Supportive
- devastated. Still cannot fathom what this is about

19 Mar

DM

- Playbook
 - Principles
- increasingly worried
- removed, steps - lines
- Duty of care to institution

CFRM

- increasing pressure on us to act
- Nature of allegations - ^{what} ^{does this} ^{change?}
- Can't rush investigation
- Push - leads
- would someone phone RCMR Commissioner for details
- Can't divulge nature - needs to protect integrity of investigation - best needs to keep tight MPCC will prob review files could affect integrity
- info divulged could affect integrity - could get countermeasures out
- Police independence there for reason
- Every case - contracts workplace risk assessment

DM

- Govt could fail
- Political pressure
- What say to public?
- What bar are we setting?
- Politically sensitive job
- Risk to people in workplace?
- What do our values lead us to do?
 - rule of law, respect for due process
- does his decision change if he knows the possibility of a leak. control?

- impossible situation
- legal advice - need

options

- | | ADV | Dis |
|---------------------------------|------------------------------------|---|
| 1. Leave in place | - respect rule of law, due process | - Pol risk
- inst risk |
| | - reputation/damage | |
| 2. Remove | - large con of decision | - reputation
- inst damage
- internal - process respect |
| 3. Step aside when it comes out | - preserves decision space | - not reactive |

Legal perspective

- innocent or proven guilty?
- paucity of info on allegations
- Public/Political factors
- Not enough info for relief of duty
- Moving - unless message properly will damage indiv
- MND auth
- Context
- New space

Fartin - call

- explain pressures + options
- My Stand
- Mention before decision forced on me
- Can wait until accusations
- feels guilty w/o trial
- damage goods - feels like we have nothing to go off of
- Can we take note and be appraised of proper accusations
- sure he wouldn't have done anything
- Simone would have steep learning curve - better than most, he's been briefed on why.
- Crushed. Easier to coast in position. prefer to work.

PCO CIK

- anxiety - not pressure
- asked about who appointed him
- DM - we need to follow principles - fundamental issues in democracy
- NOT a solution that facilitates a long bad news story

PCO - narrative - built

- have books of victims + those respondents
- Playbooks - Super important
- note - Workplace safety
- She must be able to ensure public confidence in vaccine rollout
- ~~WFA~~ 'Temperature checks' from MND
- Level of anxiety high
- Will talk to pm within next hour. wait to hear back until contact made
- if it leaks, it's all the same

Thoughts

- Factors to Consider in Retain/Remove
 - Victim Support
 - Workplace Safety
 - Can indiv function effectively (Respondent)
 - Seriousness of allegations (if known)
- IF we can't follow values, at what point do I resign?

22 Mar

DM

- pm - what is alleged victim looking for?
- is they triggered by news CONF, Vance allegation?

CIS PCO - asked for

- Plebbook
- Allies
- what do we do with respondents during investigation?
- does victim drive interim / admin actions against respondents

25 Mar

- Alleged victim reached out
Very historic case - Not safe
wants due process through justice
wants sending me a letter - wants to meet
Does not want a public spectacle
(not Taylor - etc)
 - Not happy with previous Supr -
but no action - Testative
perhaps
 - Wants to use her experience to
make CAF better
 - Trusts me.
- Wag Fund - Consult PM. Discuss w/ DM, CLK?
- Mtg - am with who else?

CFPM

- IF she talks to me about elements of allegations, I become a witness - may have to be interviewed
- how would it be perceived
 - arms length
- do not engage
- where offence occurred is where charge laid - thus moved to Quebec region
- JAW in [redacted] to close loop. formality?

- Want to but cannot engage
 want to hear story - will
 after due process done

- Support - SMRC?

- Still in pain - FBI due
 process - while investigation
 done. CFNIS advise if

- CFNIS will interview him - Witness
 Formality

- Not looking for outcome before due
 process

- Will gently ask about triggering
 - media

Follow-on

- Trigger, but realizes it remains
 because bigger story + ^{press}
 her in. media program. ^{Accepts}
 steps, nothing

* Investigation ongoing - *

- MSG - SP - appreciate

MNO Trial

- Briefed MNO on allegations / victims wishes - discussion on who else needs to know -

Briefing PTS to PLO CIK

- ~~Discovered~~ informed last night through intermediaries that ^{alleged} victim wanted to share their story with me.
- Letter + Meet in person
- From intermediaries disclosed
 - occur as contacts (teenagers)
 - not rape
 - does not want a public spectacle
 - wants justice, through due process, but realizes it will come down to 'he said, she said'

- Wants to use her experience to make CAF better, but not in public manner (failed against Taylor approach)
- Trusts me

I want to meet but, [redacted] + CFAM,

- strong recommendation - No
- become witness - CFMS interview. trial witness
- compromise ability to take admin action

Takes, sent message back through intermediary:

- Support + respect decision to come forward
- want to meet, but after due process run course for seasons above
- Her support is a pri
- delicately ask about respondent status - respect for due process

Response

- Not looking for outcome before due process
- Not thrilled to see on TV, but realizes if removed it becomes the stars + potentially dragging them in. Accepts him staying while investigation ongoing

- happy to share ideas for improvement through intermediary and meet following process
- Getting right ~~and~~ support incl [redacted]

Comment

- right decision - respect victims' ~~decision~~ wishes

Discussion

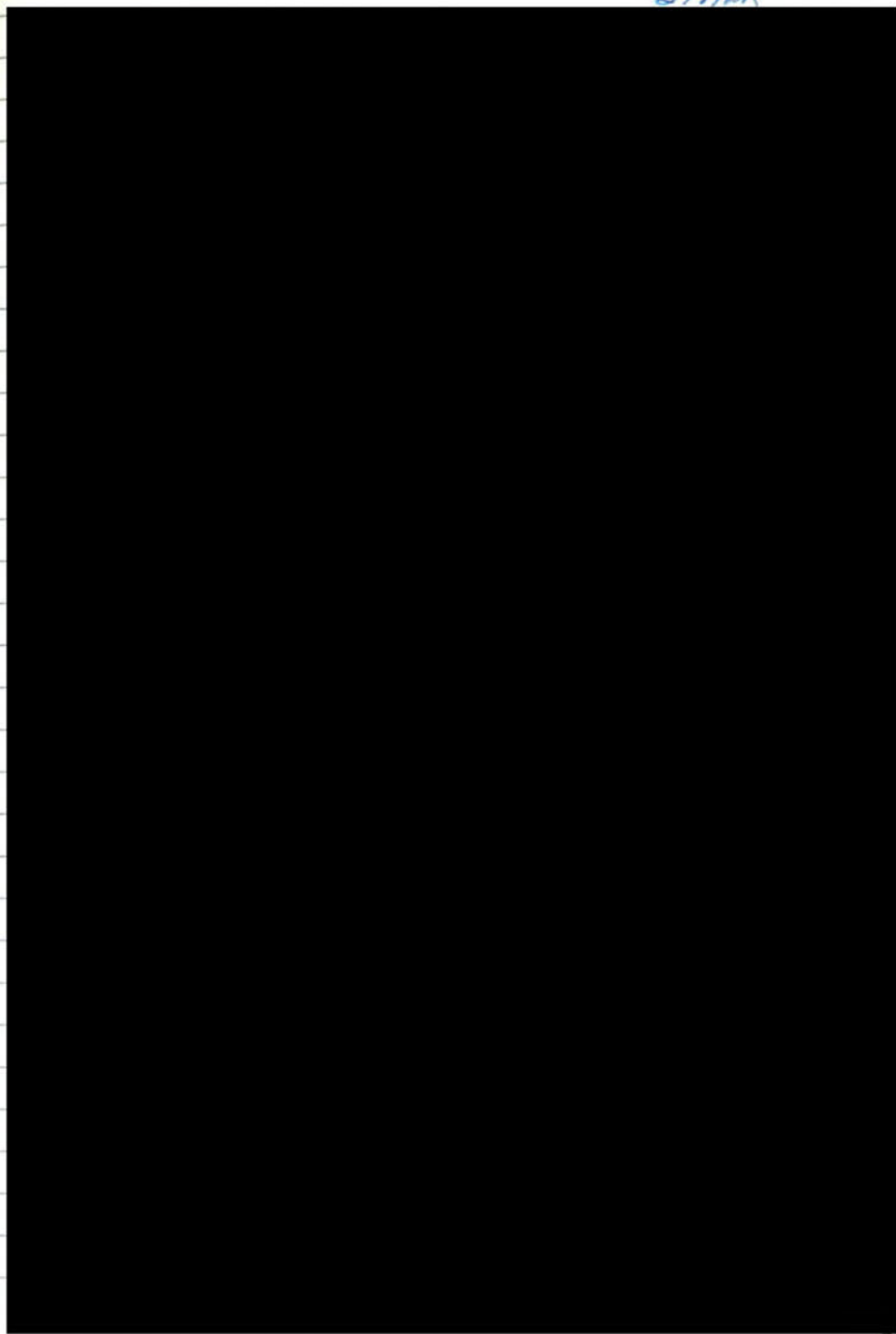
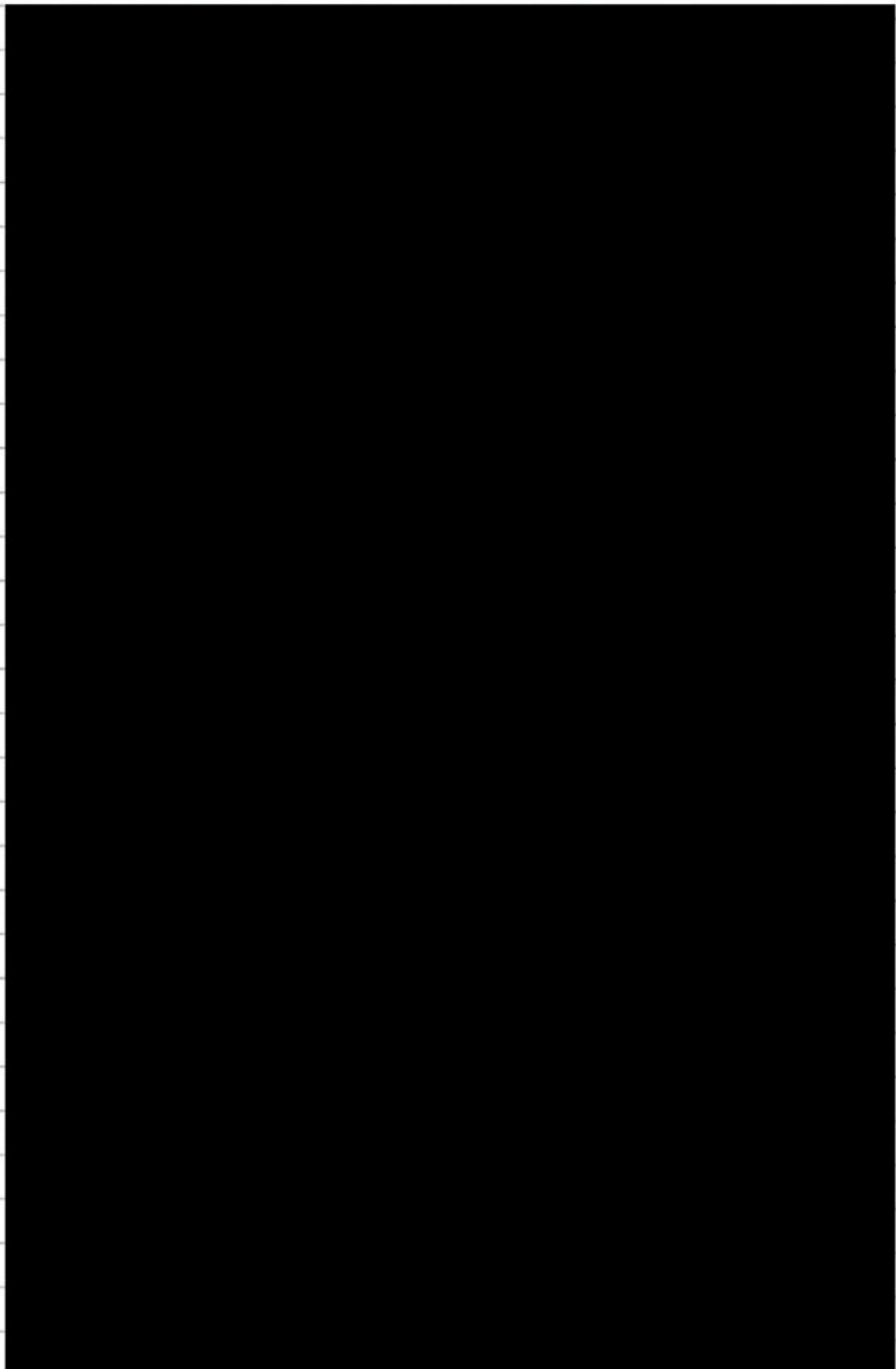
- Call dit not occur - DM briefed PCO CLK

[redacted] 26 Mar

David Morrison

- Role of PCO is not to select
guess all activities, but
communicate. High background
anxiety

21 APR



CFPM

- Quebec
- R- refer to Crown Prosecutor
 present facts of case
 2-3 months - to prosecutor
 only time public - if
 charges laid
 before 1998 - CMs could not
 hear sexual assault cases. ^{Have to} ^{so civil justice}
~~Other~~ Crown prosecutor - lay charge
 reasonable charge ~~prosec~~
 Prosecutor call - reasonable probable
 grounds + conviction
 reasonable probable grounds
 - he cannot be informed / ^{by itself}
 - late summer / early fall - earliest
 charges could be laid
 - CFPM can give MNO more details

[Redacted]

MND

F debrif

[Redacted]

[Redacted]

[Redacted]

[Redacted]

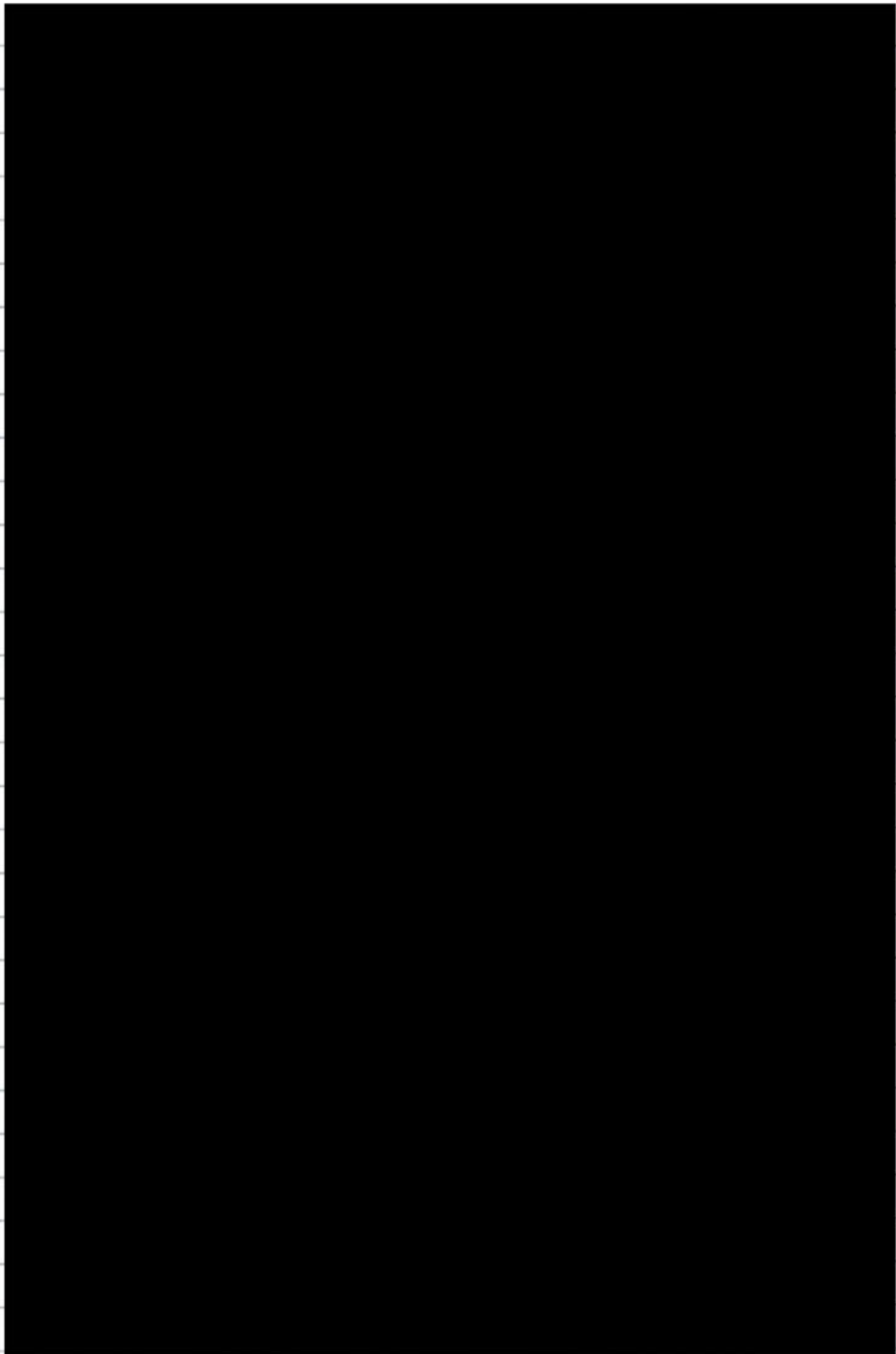
[Redacted]

23 Apr

ETA PCO - ^{Janine + Sergio} ~~Service Charette~~

- F CFPM Leadout, MNO briefed

- Compliment - No change, Update yesterday



4 May



CFM

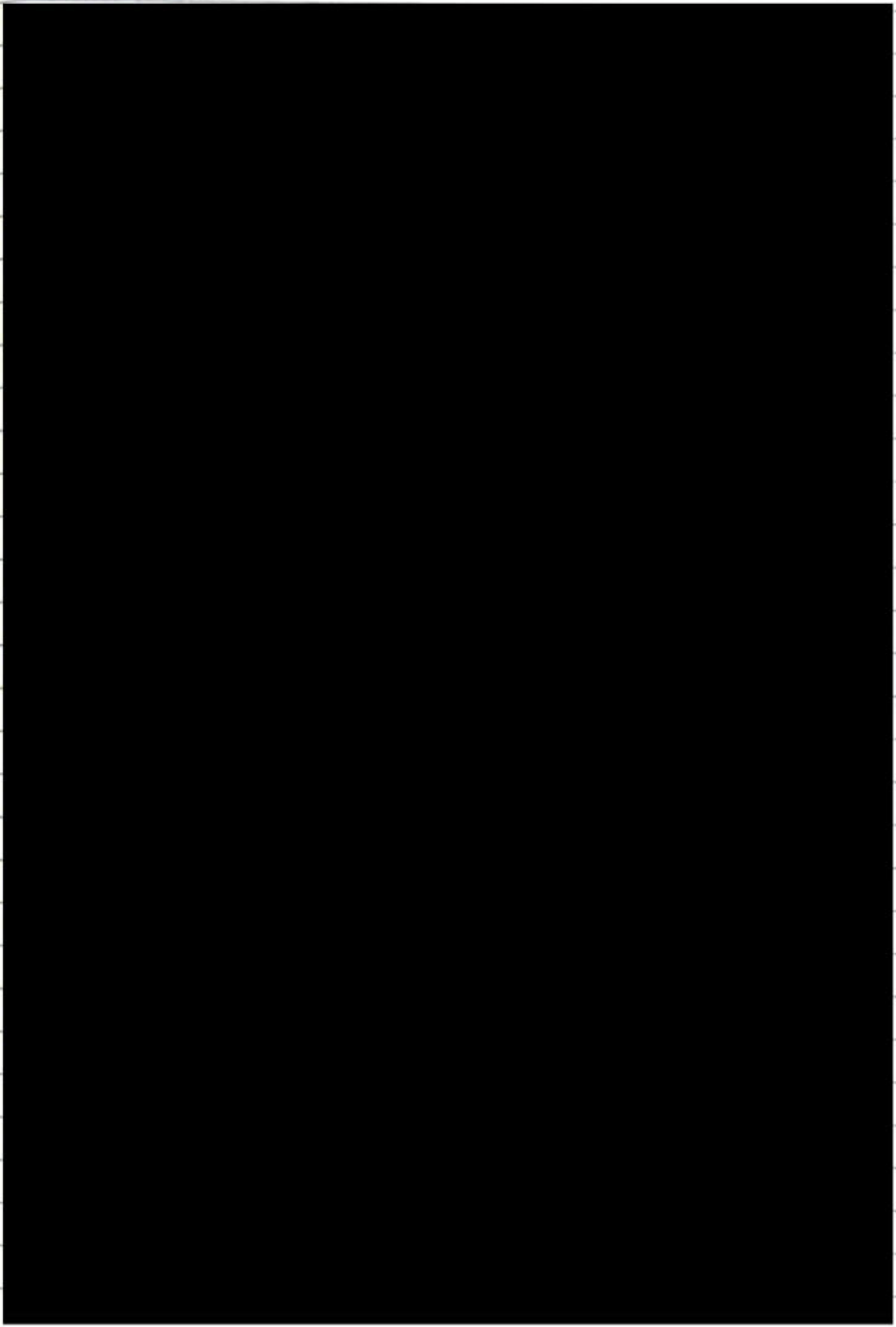
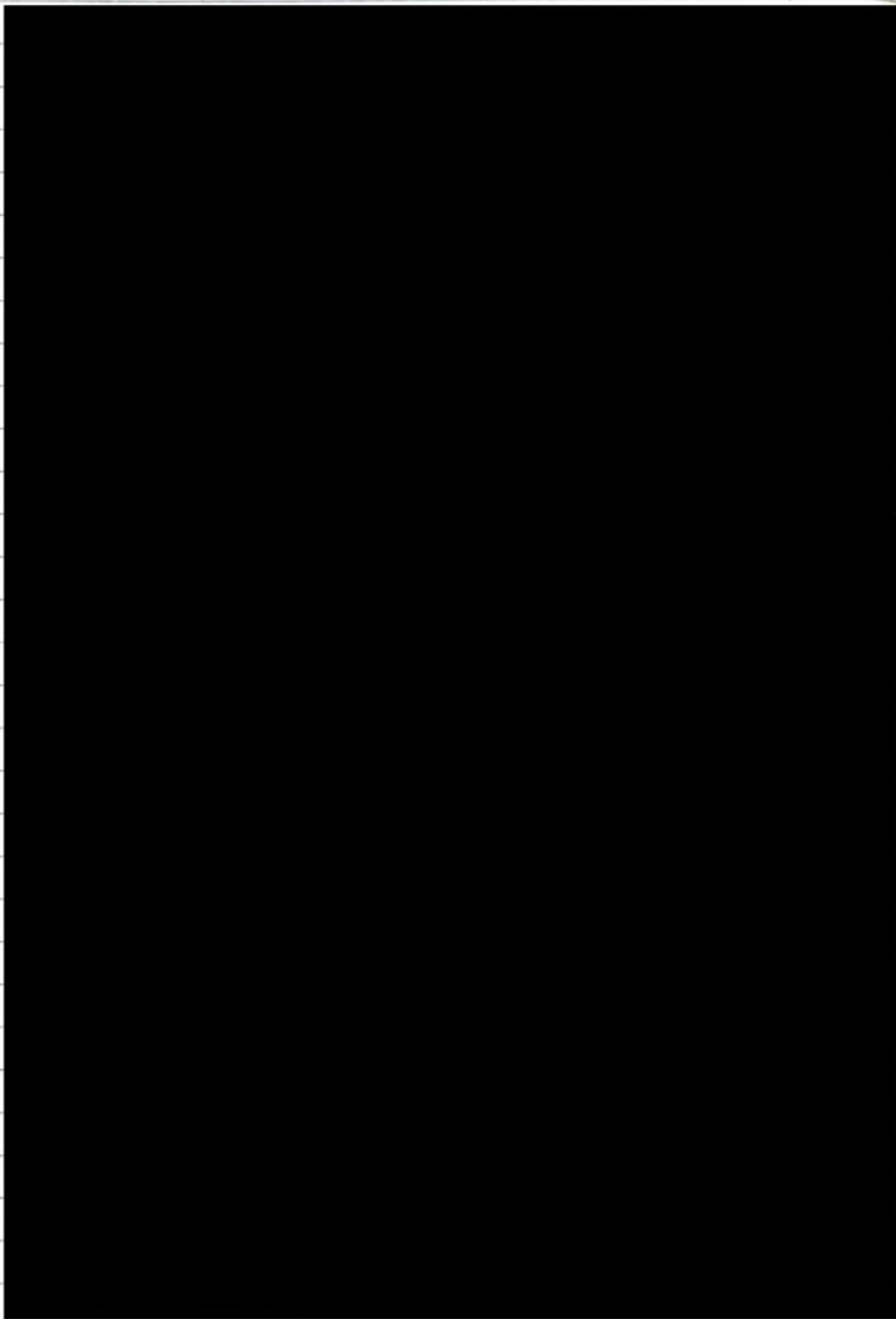
- DF - To Quebec Prosecutor ~ ~~3/10~~
CFM

- Directeur des Poursuites Criminelles et Pénales
- Next week

DM PHAC

- planning + STUFFING
- CIV into sales - on it
- Sept - NOT SELF EVIDENT
- is there another GOFO?

12 мая



Tri-Lat

- DF

- reasonable probable grounds for charge decided by prosecutor
- investigator just present facts
- police have to believe they have enough for prosecutor to decide to lay charges
- Quebec - Court prosecutor public when charge laid
- h. s. s. i. c., no witnesses
- dismissed, back to CFMS, file closed
- info well protected in ~~both~~ PQ prosecutor

- ~~comms~~

- PA - Comms idea - PHAC announces
- " transition, new Civ lead build own capacity

Min H - Reaction - protect herself

- doesn't want to create a narrative
- pull situation back to us
- find balance -
- she will not talk about an investigation -
- Understands victim's perspective
- "talk to CAF"

TRILAT - MND, DM, A/CDS

✓ - DF

CFPM

- PG - prosecutor lays charges
- investigator presents ~~findings~~ findings
- pro 97 - must be referred to Civ. authority

14 Mar

1st Steward

- uniformed Spokes person
- Conversion from land to air op
- In min H - does not want to be part of a narrative
 - She is at risk of making story
- Needs to be for protection of Vaccine Rollout, Miss, Victim, Due process
- OP however VDS smooth

DF

- day of leave
- determine way forward

14 Mar

PCO CLK

- Min H insulating / protect herself
- Spoke to min H 4 times
- Options - leave
 - disclosure - all

Timeline:

- 16 Mar - briefed by CFAM.
 - briefed DM
- 17 Mar - briefed Clerk
 - briefed MND
 - briefed Mbr
 - briefed Clerk
 - briefed MND
- 18 Mar - welfare check mbr
- 19 Mar - options - CFAM, DM,
 - mbr discussion
 - options - Clerk
- 22 Mar - DM, CLK
- 24 Mar - Interview
- 25 Mar - CFAM, Interview
 - MND update
 - DM - CLK
- 26 Mar - Morrison discussion
- 21 Apr - CFAM update - refer
- MND update
- 23 Apr - CLK update

4 May - CFPM
- PHAC - Contingency planning

13 May - MND, CLK, PHAC

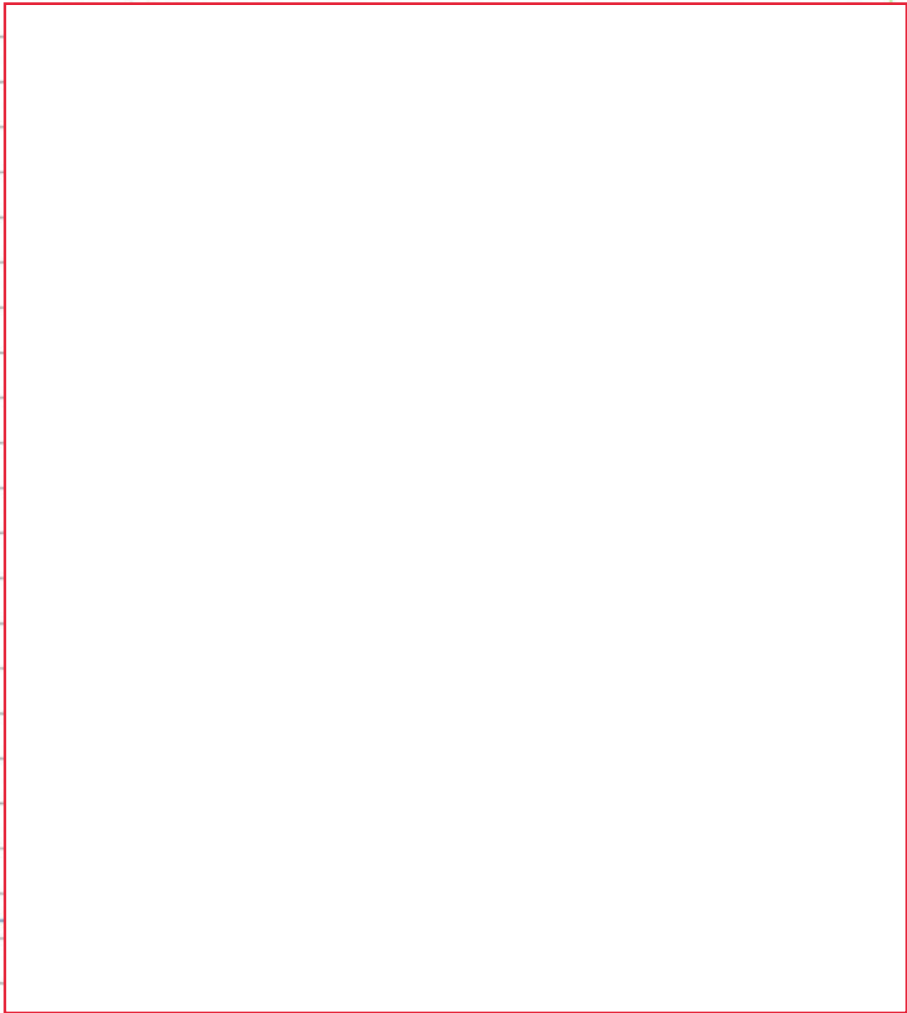
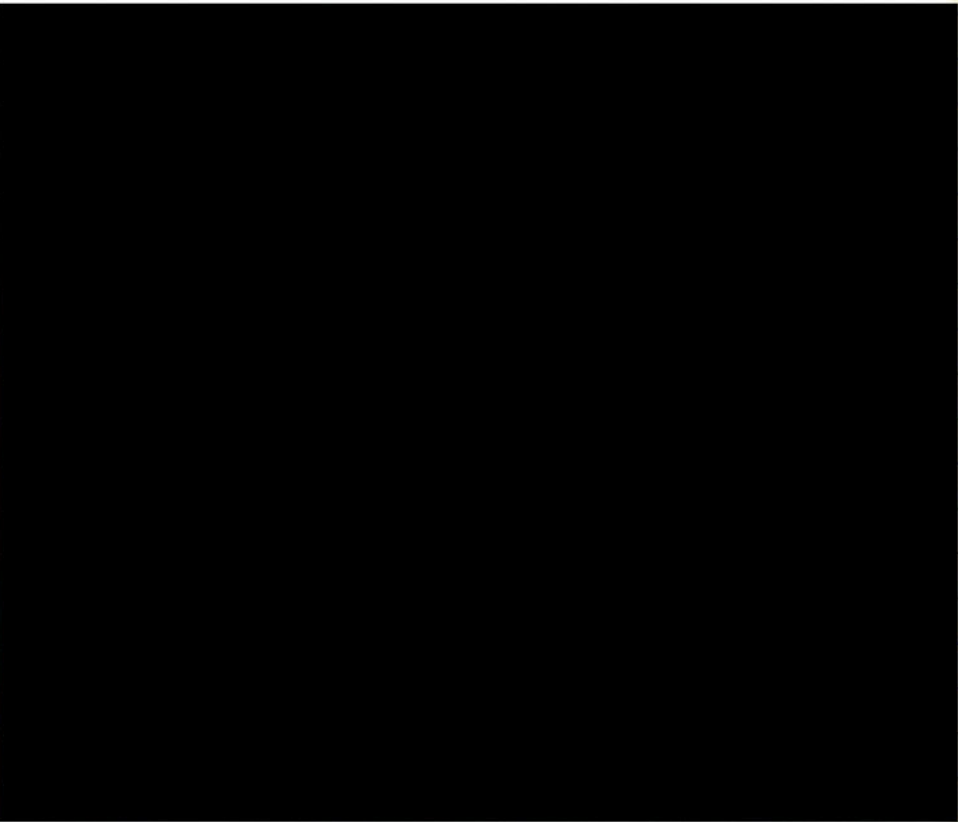
14 May - CLK



DM,



PA



- A/COS is

- Today MG F has left
PHAC pending reviews at an
investigation

- LGN Eye reviewing future
emp options. We will have
no further comment.

- Public interest considerations
Privacy vs Institutional credibility

- Options - 1. ~~Follow~~ proceed on leave
his decision
2 - reviewing future emp options

- Internal comments

Presented a fait accompli
doing damage control here

DF

- Tried all day ^{1 hr} - best
- Fait accompli
- Going public, already some media interest
- 1 - ~~agree to head on leave~~
agree to head on leave
2 - ACOS reviewing emp options

- Feels he is abandoning mission

- No way to frame other than
fired

- appreciates personal connections

- No way to explain it

15 May

Iain STEWART - PHAC

- Bernard - make OG of Mill ops cen
- Cong. lit. CAP under film
- Isallie Levesque -

1. COSO Synch (0800)

- [redacted]
- [redacted]
- ✓ - [redacted] Super M6 L 16?
- ✓ - [redacted]

880 -

- [redacted]
- [redacted]
- [redacted]
- [redacted]
- [redacted]

PA -

- [redacted]
- [redacted]

[redacted box]

[redacted]

Adele -

[redacted]

SA -

[redacted]

2. CDS Staff Sync'n (0830)

[REDACTED] (1)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

SO - [REDACTED]

PA - [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Cps Update (0900)

a. [redacted]
y [redacted]
w [redacted] (CDS) → [redacted]

b. [redacted] D?
[redacted]

c. [redacted]
[redacted]

d. [redacted]

ps e. [redacted]
[redacted]

f. [redacted]

g. [redacted] □
[redacted]

h. [redacted]

i. CDS - [redacted]
ps j. [redacted]

k. [redacted]

CDS - [redacted]
[redacted]

6. COS Trilat (1100) - CX

✓ [redacted] is
 [redacted]
 [redacted]
 [redacted]

7. GC2 (1130)

[redacted] PHAC
 [redacted] PHAC
 [redacted]
 [redacted]
 [redacted] PHAC
 [redacted] PHAC

8. A/COS (1340)

□ mb 1730 4cos - Dany F. → CJOE PHAC
 → Simon Bernard ?
 PA holding line

17NO, GY, DM, PCO, Clerk
 ↓
 PA

□ A/Cosel CJOE
 PA
~~PHAC~~

F2 - dc
 PHAC - Ian Stewart
~~F2~~
 AlConcl Coo
 Simon - 2nd - remain PHAC
 PA - MR6
 DGM C (?) - not needed unless posted to PHAC

9. 

10. AlConcl dc Mbr Fortn (1800)

- NS open investigation - allegation ^{very} _{with historic} ^{minutes}
- no P2 interview yet
- interviewed complainant
- hear from ColC, not media
- invest timelines unknown, due process
- how care for P2

P2 - no ref point, no idea what could be

- next steps? F2 wants to keep working (adamant)
- E3 - impact on focus?
- P2 - when interview will occur?
- write U. supportive, sp network?
 ↳ Coo chap visit

FZ - like to give so much more ...
- Simon not prep to step up ATT
→ start to prep B1

[ended approx 1815]

1. CDSO Synch (0800)

- [redacted]
✓ - [redacted]

SSO - Re [redacted]

PA - [redacted]
- [redacted]

- [redacted]
- [redacted]

[redacted]

AdC - [redacted]
- [redacted]
- [redacted]

CIG - [redacted]
- [redacted]
- [redacted]

2. CDS Staff Sync (0830)

- [Redacted]
- [Redacted]

- 2 [Redacted]
- SO - [Redacted]

- PA - [Redacted] } [Redacted]
- [Redacted] } [Redacted]

- AELC - [Redacted] SO
- [Redacted]
- [Redacted]

[Redacted]

3. Ops Update (0900)

- a. [Redacted]
 - b. [Redacted]
 - c. [Redacted]
 - d. [Redacted]
- Copy to [Redacted]
- e. [Redacted]

MGM FUEM [initials]

4. IRMC

- a. [Redacted]
- > [Redacted]
- > [Redacted]
- > [Redacted]

Call w/
MGen Fortin @ noon.

1200-1230
1600-1700

b. RCAF

- [REDACTED]
- [REDACTED]
- [REDACTED] □

c. MPC

- [REDACTED]
- [REDACTED]
□ - [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

d. SMRG

- [REDACTED]
- [REDACTED] etc
- [REDACTED]
- [REDACTED]

RE - [REDACTED]

19 Mar 21

(. CDSD Synch

[REDACTED]

PA -

AdC -

[REDACTED]

[REDACTED]

2. COS Staff Synch (0830)

✓ [redacted]
[redacted]

[redacted]

- ✓ - [redacted]
- ✓ - [redacted]
- ✓ - [redacted]
- ✓ - [redacted]

- [redacted]

- [redacted]

3. Ops Update (0900)

- a. [redacted]
- b. [redacted]
- c. [redacted]
- d. [redacted]
- e. [redacted]
- f. [redacted]
- j. [redacted]

5. NATO (1000)

[Redacted]

6. Bilat ~~up~~ (CSE) (1100) CX

[Redacted]

7. Parl Prep (1300)

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

D [Redacted]
D [Redacted]

[Redacted]

8. Playbook - [Redacted]

[Redacted]

[Redacted]

9. RCAF (14/15)

- a. [Redacted]
- b. [Redacted]
- c. [Redacted]
- d. [Redacted]
- e. [Redacted]
- f. [Redacted]
- g. [Redacted]

10 UCDS (14/51)

- [Redacted]
- [Redacted]
- [Redacted]
- [Redacted]

11. ^{FCy} FFCP (1455)

a. [REDACTED]

b. [REDACTED]

c. [REDACTED]

d. [REDACTED]

e [REDACTED]

12. CFPM (1546)

- PJ - nature? (rank @ sensitivity)
- time? - can't rush
 - major files
 - can't divulge any details at this point - protect investigation
 - MDC mostly going to be called on to review files
 - by request
 - on complaint
 - public interest

DFG
 ↓
 CJOc Monday
 ML w/ LAK - 0830/0900
 Monday

Leak possible

Duty Counsel

1. Remove
2. Retain
3. Go on leave



Go to empl auth?

14

[REDACTED]

15 A/COS call w/ P2 (1715)

- due process needs to be followed
- innocent until proven guilty
- political lens

P2

- no idea what about, confident that he had do
- not interviewed yet

- getting Simon ready - Simon aware
 - ↳ very steep learning curve
 - ↳ better than most to pick it up

E3 - Leak possible on this

- Duty Counsel

P2 - look to stay on, prefer to work

16. Call w/ PCO - ^{Janice} Sherman
(1745)

- anxiety / emotional angst

MRLs {
 - / early
 - back to CXC
 - on leave } options

A/CDS - Workplace ~~work~~ assessment
- details / timing the /unk

options - F2 wants to remain &
serve the nation

- values - respect of legal due process

- his posn

- be prepared for leak, conduct
duty council

- F2 feels like damaged goods

u - F2

- A/C being prep'd to take on

DM - can MND

PCO - decision to empl F2 - CDS

- MND Pres Rel, PM Presse

- A/CDS decision to leave in Role

↳ F2 agrees

↳ DM agrees

PCO - have backs of accord @ those
who came first

- see draft NR (Plus protected)

- playbook & status ...

~~8.~~ ~~DA/CDSO/CDSO~~ Coord (1500)

1. CDSSO Synch

- ✓ - [REDACTED]
- ✓ - [REDACTED]
- [REDACTED]
- [REDACTED]

SSC -



[REDACTED]

3. Ops Update (0830)

- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]

4. Annane Coord (0900)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

[REDACTED]

DSX
[redacted] [redacted] ID
[redacted]

[redacted] did had to [redacted]

5. DSX (1000)

a. [redacted]

9. [redacted]

[redacted]
[redacted]
[redacted]
[redacted]
[redacted]

b. [redacted]

[redacted]
[redacted]
[redacted]
[redacted]
① [redacted]
[redacted]

D [redacted]
[redacted]

c. [redacted]

[redacted]
[redacted]
[redacted]
[redacted]

6. Call w/ FZ (1330)

- MS interview req - CX
- only pers c PHAC is Simon B
- spoke to Det Counsel
- in Vaccin NUC
- Sgt Richard (MP) → investigation
↓ staff
 - ↳ knew of investigation into FZ
 - ↳ told CCol in NUC
 - Simon Côté → Simon B.

170
21 Apr 21

1. CISO Synch (0800)

[REDACTED]

SSO -

[REDACTED]

PA -

[REDACTED]

SA -

[REDACTED]

3. Ops Update (0830)

a.
b.
c.
d.
e.

[REDACTED]

4. SSA MND (1130)

[REDACTED]

5. OPS

[REDACTED]

4 May 21

1. CDSO Synon

✓ [REDACTED]
✓ [REDACTED]
✓ [REDACTED]

SO -

[REDACTED] □
[REDACTED]
[REDACTED]

PA -

[REDACTED]
-

SA -

[REDACTED]
[REDACTED]

2. CDS Staff (over 08/15)

[REDACTED]

[REDACTED] ?

[REDACTED] ?

- [REDACTED]

- [REDACTED]

- [REDACTED]

LA - [REDACTED]

- [REDACTED]

Directeur
des Poursuites
Criminelles
et Pénales

j. [Redacted]

3. [Redacted] CFPM/NLS Update (0830)

a. [Redacted]
b. [Redacted]

c. [Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

d. [Redacted]
[Redacted]

e. [Redacted]

f. P2- ~~the~~ w/ Prosecutor PQ [Redacted] local/tit

g. [Redacted]

h. [Redacted]
i. [Redacted]

4. DCSAO Mts (1000)

- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

5. Mtg DM/OPS/PA/DCS (FOFBI)

↳ Lebow - media - F2
 - unknown content

- Clerk - today - principle behind
 - Ian Stewart - inform the decision ...

- buy time & space
 - how roll out?

- narrative to fol w/

- how else pull out ZSL Pd

↳ other actions to allegations

13 May 21

1. CDSO Coord (OPCW)

[Redacted]

SSO -

[Redacted]

PA -

[Redacted]

[Redacted]

AELC -

CIG -

[Redacted]

SA -

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. CDS Staff Synch (0830)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. Ops Update (0900)

a. [REDACTED]

b. [REDACTED]

c. [REDACTED]

[REDACTED]

[REDACTED]

d. [REDACTED]

e. [REDACTED]

f. [REDACTED]

4. MND O&I (1130)

a. [REDACTED]

b. [REDACTED]

c. [REDACTED]

d. [REDACTED]

e. [REDACTED]

f. [REDACTED]

5. Call w/CFPM (1700)

cas10m104 - - -

- Crown Pros lay charges in PD, not police
- pre 1997 all mil sexual aslt charges referred to Ciu Justice
- reasonable & probable grounds
- NLS - facts only, no determination
- MPs have to believe that they have enough to possibly meet elements of an offence before hand over for a decision
- could take 3-4 months
- DMP to reach to PD Pros to explain
- Sensitivity - discussion between prosecutors
- case is protected until charge is laid
 - no charge laid, not public
 - historical sexual aslt, no witness
- if no charge laid, CoC notified
- consider wishes of victim

←

6. Pros PHAC (1725)

- A/CDS gave synopsis of sit
- put plan in motion to announce replacement - when? tomorrow?
- get Min Health in same place
- replacement idnt, Kayly Levesque
- CAF spokes person ???
- P2 on leave tomorrow
- Ian will talk to P2, AFPS will fly with him

7. DM/CDS/PA

- PHAC - no talk about incident - protect herself
- victim - balance
- DM on own - narrative?
- transition plan

8. PHAC (1912)

- update
- wants excuse CAF op needs
- who at presser?
- ↳ might get asked to provide CAF pers
- Ian will send sitrep to Min Health outlining plan
- min sys file, proposed rollout, { victims
due process

- Simon - transition?
- let victim know

wed- announce?

d. PJ(2015)

- risk calculation changing
- transition plan - negotiating
- leave tomorrow, let him know plan tomorrow

FA - investigation status?

- did not take MIS interview on advice of lawyer

14 May 21

1. CDSO Synch

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

2. (O8/a) CFLA

- Min A not on board w/ transition plan
- Public Interest Disclosure?
 - DAIP, [REDACTED] to impact? Fed/Prov
- options {
 - investigations?
 - leave personal reasons?
 - back to CDSO?
- timeline - 17 Mar start

[REDACTED]

2. COS Staff Synchron (0.830)

- ✓ - [REDACTED]
- ✓ - [REDACTED]
- ✓ - [REDACTED]
- [REDACTED]

PA - [REDACTED]

CAPCO - [REDACTED]
→ [REDACTED]
- 8 [REDACTED]
[REDACTED]

3. (0830) PCC Clerk

- Min H "no part of it" "ballot"
- choices -- PID ?
- Per Leave ? ✓ pro term option
- lines to clerk
- pro active comms ?

4. Ops Update (0900)

a. [REDACTED] 2

b. [REDACTED]

c. [REDACTED]

4 [REDACTED]

5 [REDACTED]

4 [REDACTED]

d. [REDACTED]

4 [REDACTED]

[REDACTED] e. m. [REDACTED] 15

5. COS Ops CA (1030)

- a. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- b. [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- c. [REDACTED]

6 F2 Huddle (1330)

- privacy (PII)
 - investigation
 - ↳ NIS tfr to PQ, fed statement
 - ↳ Relief from Military Duty process
 - consult PQ PSCB
 - internal comms
 - CAF Tim PHAC
 - PHAC MSG
- } put priv accts at risk

CPDM
7. A/CDS telco ~~1440~~ (1440)

- PHAC decision
- media Rela
- keep generic
- NS will deal w/ any MQs

8. A/CDS telco Fd (1450)

- "Min Heide decision"
- heads up - out today
- anything in the statement? option 1
- leave next week, but let immediate flurry blow or
- sp network
- "UCDS will reach out this weekend"
- "abandoning the mission"
- "seen as this guy who did something"

a. UCDS Bilat (1600)

a. F2 update

b. [REDACTED]

c. [REDACTED] } [REDACTED]

d. [REDACTED] [REDACTED]

e. [REDACTED]

f. [REDACTED]

g. [REDACTED]

h. [REDACTED]

i. [REDACTED]

j. [REDACTED]

k. [REDACTED]

[REDACTED]

10.

~~_____~~

11. Simon B (1720)

- update
- SB engage Monday w/ Team
 - ↳ "leave w/ honour"
 - ↳ engage tm virtually
- transition plan 40 & 33
 - ↳ may go to 20
 - ↳ adapt

17 May 21

1. COSO Synch (0830)

- ✓ a. [REDACTED]
- b. MUA Fertm
- c. [REDACTED]
- ✓ d. [REDACTED]

SSG - [REDACTED]
- [REDACTED]
- [REDACTED]

PA - [REDACTED]
- [REDACTED]
- [REDACTED]

2. Ops Update (0900)

- a. [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED]
- b. [REDACTED] [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED] [REDACTED]
- c. [REDACTED] [REDACTED] [REDACTED]

3. DXDC (0930)

- a. [REDACTED] [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED] [REDACTED]
- b. [REDACTED] [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED] [REDACTED]
 - [REDACTED] [REDACTED] [REDACTED]

- c. [REDACTED]
- a. [REDACTED]
- b. [REDACTED]
- c. [REDACTED]
- d. [REDACTED]
- e. [REDACTED]
- f. [REDACTED]
- g. [REDACTED]
- h. [REDACTED]
- i. [REDACTED]

d. [REDACTED]

4. DMC COU10 (1115)

T&C
Simon
we
deny

Simon
will
do public

v.p.

//
stats only

5. UCDS Call (1240)

DCS, [redacted] CMP, DGMU, PM

- Krista Brody to PHAC

- Vet ldrs thru UCDS - PM

[redacted]
- ICM

- CFA

- DGMU

6. F/U Call (1315)

- Krista B to PHAC

- Simon B to CJO

- vetting - CDSO

- blind to investigation
what sort? process

Len Stewart - GTG

- "no noise" transition

- handover - CJO

- min / no publicity

- announce today PHAC

UCDS + Krista telecon next 30 mins.



Mulawyshyn BGen AP@CDS@Ottawa-Hull

From: Mulawyshyn BGen AP@CDS@Ottawa-Hull
Sent: March 18, 2021 10:57 AM
To: Fortin MGen JSSD@CJOC HQ@Ottawa-Hull
Subject: Re: CALL WITH ACDS TODAY

Ack, Sir. We will try for noon. EA CDS will book it.

Mully

Alan (Mully) Mulawyshyn
BGen
COS CDS
613-852-4347

Sent from my iPhone

> On Mar 18, 2021, at 10:52, Fortin MGen JSSD@CJOC HQ@Ottawa-Hull <DANY.FORTIN@forces.gc.ca> wrote:
>

> Thanks Mully. Presser went well. I am free 1200-1230 and 1600-1700.

>

> Dany

>

>

> MGen D. Fortin

>

>> On Mar 18, 2021, at 10:38 AM, Mulawyshyn BGen AP@CDS@Ottawa-Hull <ALAN.MULAWYSHYN@forces.gc.ca> wrote:

>>

>> Good morning, Sir. I did not get a chance to watch your presser this morning, but hope all went well. A/CDS would like to touch base with you today. Are there any windows in your day that would work better for you?

>>

>> I feel so bad for you getting that shocking info yesterday. Please let me know if there's anything I can do for you.

>>

>> Mully

>>

>> Alan (Mully) Mulawyshyn

>> BGen

>> COS CDS

>> 613-852-4347

>>

>> Sent from my iPhone

Mulawyshyn BGen AP@CDS@Ottawa-Hull

From: Mulawyshyn BGen AP@CDS@Ottawa-Hull
Sent: April 9, 2021 1:00 PM
To: Fortin MGen JSSD@CJOC HQ@Ottawa-Hull
Subject: RE: Call

Of course, Sir. I am in my office for the next hour or so. 613-996-3548

Mully

BGen/Bgén Alan P. (Mully) Mulawyshyn
Chief of Staff to the Chief of the Defence Staff/Chef d'état-major du Chef d'état-major de la défense
Tel/Tél: 613-996-3548 BB: Cell: 613-852-4347 CC VOIP : 613-904-6068

Email/Courriel: Alan.Mulawyshyn@forces.gc.ca

-----Original Message-----

From: Fortin MGen JSSD@CJOC HQ@Ottawa-Hull
Sent: April 9, 2021 12:59 PM
To: Mulawyshyn BGen AP@CDS@Ottawa-Hull <ALAN.MULAWYSHYN@forces.gc.ca>
Subject: Call

Mully would you have 5 min for a call?

MGen D. Fortin

APRIL/AVRIL

12 MONDAY/LUNDI
102/263

196

Mar./Mars							Apr./Avril						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
D	L	M	M	J	V	S	D	L	M	M	J	V	S
1	2	3	4	5	6						1	2	3
7	8	9	10	11	12	13	4	5	6	7	8	9	10
14	15	16	17	18	19	20	11	12	13	14	15	16	17
21	22	23	24	25	26	27	18	19	20	21	22	23	24
28	29	30	31				25	26	27	28	29	30	

Morning/Matin

8:00

1. [Redacted]

9:00

2. (FPM -

10:00

→ [Redacted] investigation of [Redacted]
[Redacted] [Redacted]

11:00

on 16 - [Redacted] [Redacted]

12:00

→ US has launched investigation
→ Professional [Redacted]

1:00

3. [Redacted]

2:00

3:00

4:00

5:00

6:00

Evening/Soir

Mulawyshyn BGen AP@CDS@Ottawa-Hull

From: Mulawyshyn BGen AP@CDS@Ottawa-Hull
Sent: April 12, 2021 4:51 PM
To: Dany Fortin (dany.fortin2@canada.ca); Dany Fortin (DANY.FORTIN@forces.gc.ca)
Subject: OUR TELCON

Sir – I just wanted to follow up with you to let you know Simon is on the issue you have raised and determined where it occurred. He will follow up with a formal investigation and professional standards review. He is very pissed that this has occurred.

Mully

BGen/Bgén Alan P. (Mully) Mulawyshyn
Chief of Staff to the Chief of the Defence Staff/Chef d'état-major du Chef d'état-major de la défense
Tel/Tél: Pearkes 613-996-3548, Cell: 613-852-4347, Carling: 613-904-6068

Email/Courriel: Alan.Mulawyshyn@forces.gc.ca

APRIL/AVRIL

28 WEDNESDAY/MERCREDI
118/247

Mar/Mars							Apr./Avril						
S	M	T	W	T	F	S	S	M	T	W	T	F	S
D	L	M	J	V	S		D	L	M	J	V	S	
1	2	3	4	5	6				1	2	3		
7	8	9	10	11	12	13	4	5	6	7	8	9	10
14	15	16	17	18	19	20	11	12	13	14	15	16	17
21	22	23	24	25	26	27	18	19	20	21	22	23	24
28	29	30	31				25	26	27	28	29	30	

Morning/Matin

8:00 ~~Stds - 7/2/00~~

~~SEAL~~

9:00 ~~UNITED~~

10:00 ~~COB - FB 2/25~~

11:00 Simon -

NLS - almost complete

12:00 Prof Stds - 3 x pers involved

in ch

1:00 → M 2 x MP credentials today

3 x MP in front of Bd

2:00 ↓ review credentials

review Bd

3:00 ~~ST Deliberations~~

4:00 ~~these jointly~~

5:00

6:00

Evening/Soir

Mulawyshyn BGen AP@CDS@Ottawa-Hull

From: Trudeau BGen S@VCDS CF MP Gp HQ@Ottawa-Hull
Sent: May 11, 2021 8:08 AM
To: Mulawyshyn BGen AP@CDS@Ottawa-Hull
Cc: Leblanc LCol EJ@VCDS CFNIS@Ottawa-Hull
Subject: RE: File update

Bonjour Mully,

Please note that the file is now with DPCP. A reminder that the alleged subject is not to be informed of such.

ST

Brigadier-General Simon Trudeau

Canadian Forces Provost Marshal | Commander Canadian Forces Military Police Group
simon.trudeau@forces.gc.ca Office 613-949-1000 | Mobile 613-266-5941

Grand prévôt des Forces canadiennes | commandant du Groupe de la Police militaire des Forces canadiennes
simon.trudeau@forces.gc.ca Bureau 613-949-1000 | Portable 613-266-5941

-----Original Message-----

From: Trudeau BGen S@VCDS CF MP Gp HQ@Ottawa-Hull
Sent: May 4, 2021 1:35 PM
To: Mulawyshyn BGen AP@CDS@Ottawa-Hull <ALAN.MULAWYSHYN@forces.gc.ca>
Cc: Leblanc LCol EJ@VCDS CFNIS@Ottawa-Hull <ERIC.LEBLANC4@forces.gc.ca>
Subject: RE: File update

Mully,

In Quebec, it is called "Directeur des Poursuites Criminelles et Pénales" (DPCP). Will confirm when file has been sent over.

ST

Brigadier-General Simon Trudeau

Canadian Forces Provost Marshal | Commander Canadian Forces Military Police Group
simon.trudeau@forces.gc.ca Office 613-949-1000 | Mobile 613-266-5941

Grand prévôt des Forces canadiennes | commandant du Groupe de la Police militaire des Forces canadiennes
simon.trudeau@forces.gc.ca Bureau 613-949-1000 | Portable 613-266-5941

-----Original Message-----

From: Mulawyshyn BGen AP@CDS@Ottawa-Hull
Sent: May 4, 2021 1:29 PM
To: Trudeau BGen S@VCDS CF MP Gp HQ@Ottawa-Hull <SIMON.TRUDEAU@forces.gc.ca>
Subject: RE: File update

A/CDS briefed, Simon. Two quick asks:

- would you please confirm that name of the agency? I know it is the Quebec prosecutor but I did not fully catch its actual name en français.
- would you be able to let me know when it does get sent over?

Many thanks.

Mully

BGen/Bgén Alan P. (Mully) Mulawyshyn
Chief of Staff to the Chief of the Defence Staff/Chef d'état-major du Chef d'état-major de la défense
Tel/Tél: 613-996-3548 BB: Cell: 613-852-4347 CC VOIP : 613-904-6068

Email/Courriel: Alan.Mulawyshyn@forces.gc.ca

-----Original Message-----

From: Trudeau BGen S@VCDS CF MP Gp HQ@Ottawa-Hull
Sent: May 4, 2021 11:55 AM
To: Mulawyshyn BGen AP@CDS@Ottawa-Hull <ALAN.MULAWYSHYN@forces.gc.ca>
Subject: File update

Mully,

File we discussed this morning will be transmitted to the civilian crown next week.

ST

Sent from my iPhone



National Defence Défense nationale

National Defence Headquarters
Ottawa, Ontario
K1A 0K2

PROTECTED B

14 May, 2021

Mr. Daniel Therrien
Privacy Commissioner of Canada
30 Victoria Street
Gatineau, Québec K1A 1H3

Mr. Therrien,

I am writing in accordance with the institution's legal obligation under subsection 8(5) of the *Privacy Act*, to inform you of my intention to authorize the disclosure of personal information on or about 14 May, 2021 relating to Major-General (MGen) Daniel Fortin

My office has received a request internally from the Assistant Deputy Minister Public Affairs for this authorization in accordance with the public interest discretionary criteria under paragraph 8(2)(m)(i) of the *Act*. The disclosure is part of a proactive media strategy.

To limit the invasion of MGen Fortin's privacy, the information to be disclosed is specifically limited to the following statements:

- Today, Major-General Dany Fortin has left his assignment with the Public Health Agency of Canada, pending the results of a military investigation.
- Acting Chief of the Defence Staff, Lieutenant-General Eyre will be reviewing next steps with Major-General Fortin.

The member is a high ranking official and holds a very high profile public assignment; the fact that that the assignment has ended will be noted by the public. The intention of this disclosure is to provide assurance that the CAF has undertaken appropriate actions in response to allegations of conduct which are under investigation so that the public can retain confidence in the CAF as an institution charged with a public trust.

If further clarification is required, your staff can contact my Policy and Governance Group electronically at ATIPGovernance-GouvernanceAIPRP@forces.gc.ca.

Thank you for your consideration in this matter.

Sincerely,

Deirdra Finn
Executive Director
DAIP

From: Sousa M@DND/CF LA@Ottawa-Hull
Sent: May 14, 2021 3:35 PM
To: Bernatchez RAdm G@JAG@Ottawa-Hull; Kempton LA@ADM(PA)@Ottawa-Hull; Eyre LGen WD@CDS@Ottawa-Hull; Thomas J@DM@Ottawa-Hull
Cc: Kennedy C@DM@Ottawa-Hull; Mulawyshyn BGen AP@CDS@Ottawa-Hull
Subject: RE:

Michael Sousa

Senior General Counsel and Legal Advisor to the Department of National Defence and the Canadian Forces
Department of Justice / Government of Canada
Michael.Sousa@forces.gc.ca / Cel: (613) 796-3130 | Tel.:(613) 995-0828 | Fax.: (613) 995-5111

Avocat général principal et Conseiller juridique auprès du ministère de la Défense nationale et des Forces canadiennes
Ministère de la Justice / Gouvernement du Canada
Michael.Sousa@forces.gc.ca / Cel: (613) 796-3130 | Tél.:(613) 995-0828 | Fax.: (613) 995-5111



Department of Justice
Canada

Ministère de la Justice
Canada

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From: Bernatchez RAdm G@JAG@Ottawa-Hull
Sent: May 14, 2021 3:34 PM
To: Kempton LA@ADM(PA)@Ottawa-Hull <LAURIE-ANNE.KEMPTON@forces.gc.ca>; Eyre LGen WD@CDS@Ottawa-Hull <Wayne.Eyre@forces.gc.ca>; Thomas J@DM@Ottawa-Hull <JODY.THOMAS@forces.gc.ca>; Sousa M@DND/CF LA@Ottawa-Hull <MICHAEL.SOUSA@forces.gc.ca>
Cc: Kennedy C@DM@Ottawa-Hull <CHRISTINE.KENNEDY@forces.gc.ca>; Mulawyshyn BGen AP@CDS@Ottawa-Hull <ALAN.MULAWYSHYN@forces.gc.ca>
Subject: RE:

S/C Privilege

Thanks,

Geneviève

Rear-Admiral / Contre-amiral Geneviève Bernatchez

Judge Advocate General /

Department of National Defence and Canadian Armed Forces / Government of Canada

genevieve.bernatchez@forces.gc.ca / Tel. : 613-992-3019

Juge-avocat général

Ministère de la Défense nationale et Forces armées canadiennes / Gouvernement du Canada

genevieve.bernatchez@forces.gc.ca / Tél. : 613-992-3019

Je vous encourage à me répondre dans la langue officielle de votre choix / Please feel free to respond in the official language of your choice

From: Kempton LA@ADM(PA)@Ottawa-Hull

Sent: May 14, 2021 3:12 PM

To: Eyre LGen WD@CDS@Ottawa-Hull <Wayne.Eyre@forces.gc.ca>; Thomas J@DM@Ottawa-Hull

<JODY.THOMAS@forces.gc.ca>; Bernatchez RAdm G@JAG@Ottawa-Hull

<GENEVIEVE.BERNATCHEZ@forces.gc.ca>; Sousa M@DND/CF LA@Ottawa-Hull

<MICHAEL.SOUSA@forces.gc.ca>

Cc: Kennedy C@DM@Ottawa-Hull <CHRISTINE.KENNEDY@forces.gc.ca>; Mulawyshyn BGen

AP@CDS@Ottawa-Hull <ALAN.MULAWYSHYN@forces.gc.ca>

Subject: RE:

Good afternoon all –

From: Eyre LGen WD@CDS@Ottawa-Hull

Sent: May 14, 2021 3:03 PM

To: Kempton LA@ADM(PA)@Ottawa-Hull <LAURIE-ANNE.KEMPTON@forces.gc.ca>; Thomas J@DM@Ottawa-Hull <JODY.THOMAS@forces.gc.ca>; Bernatchez RAdm G@JAG@Ottawa-Hull <GENEVIEVE.BERNATCHEZ@forces.gc.ca>; Sousa M@DND/CF LA@Ottawa-Hull <MICHAEL.SOUSA@forces.gc.ca>

Cc: Kennedy C@DM@Ottawa-Hull <CHRISTINE.KENNEDY@forces.gc.ca>; Mulawyshyn BGen AP@CDS@Ottawa-Hull <ALAN.MULAWYSHYN@forces.gc.ca>

Subject: RE:

Laurie:

Thanks,

WDE

From: Kempton LA@ADM(PA)@Ottawa-Hull

Sent: May 14, 2021 2:16 PM

To: Eyre LGen WD@CDS@Ottawa-Hull <Wayne.Eyre@forces.gc.ca>; Thomas J@DM@Ottawa-Hull <JODY.THOMAS@forces.gc.ca>; Bernatchez RAdm G@JAG@Ottawa-Hull <GENEVIEVE.BERNATCHEZ@forces.gc.ca>; Sousa M@DND/CF LA@Ottawa-Hull <MICHAEL.SOUSA@forces.gc.ca>

Cc: Kennedy C@DM@Ottawa-Hull <CHRISTINE.KENNEDY@forces.gc.ca>; Mulawyshyn BGen AP@CDS@Ottawa-Hull <ALAN.MULAWYSHYN@forces.gc.ca>

Subject: RE:

Thanks

Laurie

From: Kempton LA@ADM(PA)@Ottawa-Hull

Sent: May 14, 2021 1:05 PM

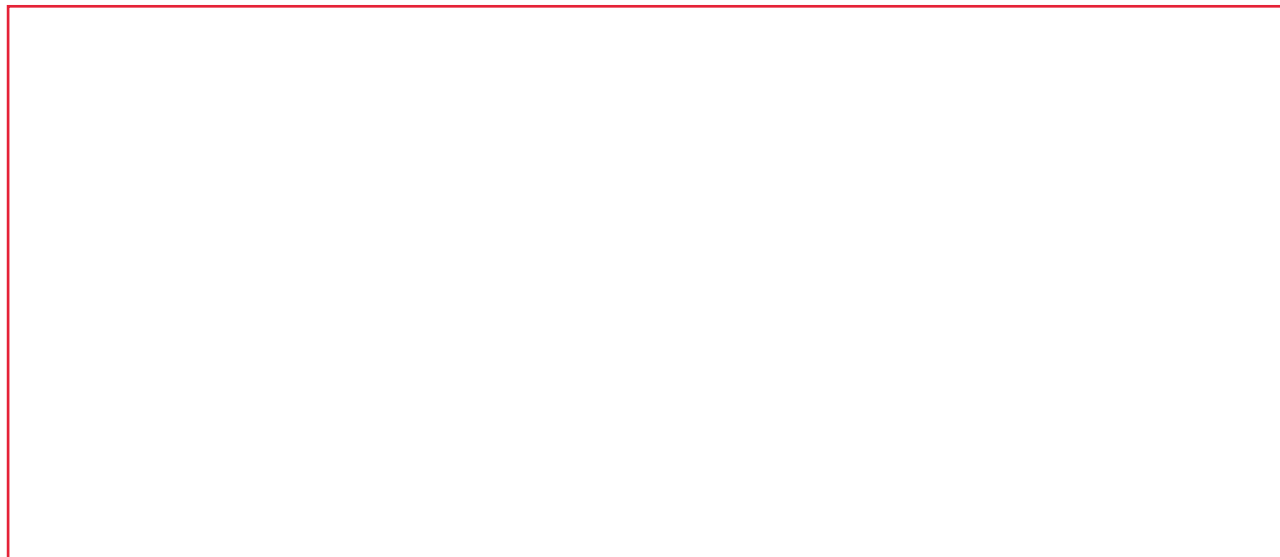
To: Eyre LGen WD@CDS@Ottawa-Hull <Wayne.Eyre@forces.gc.ca>; Thomas J@DM@Ottawa-Hull <JODY.THOMAS@forces.gc.ca>; Bernatchez RAdm G@JAG@Ottawa-Hull <GENEVIEVE.BERNATCHEZ@forces.gc.ca>; Sousa M@DND/CF LA@Ottawa-Hull <MICHAEL.SOUSA@forces.gc.ca>

Cc: Kennedy C@DM@Ottawa-Hull <CHRISTINE.KENNEDY@forces.gc.ca>; Mulawyshyn BGen AP@CDS@Ottawa-Hull <ALAN.MULAWYSHYN@forces.gc.ca>

Subject:

Importance: High

Good afternoon –



Thanks

Laurie

Assistant Deputy Minister (Public Affairs)
Sous-ministre adjointe (affaires publiques)
613.995.1497
343.548.6484

From: Eyre LGen WD@CDS@Ottawa-Hull
Sent: May 14, 2021 6:25 AM
To: Stewart, Iain (PHAC/ASPC)
Cc: Thomas J@DM@Ottawa-Hull; Rendall, Jennifer (PHAC/ASPC)
Subject: Re: MGEN Fortin

Acknowledged

Sent from my iPhone

> On May 13, 2021, at 22:39, Stewart, Iain (PHAC/ASPC) <iain.stewart@canada.ca> wrote:

>

> This is to confirm that as of May 13, 2021, Major General Dany Fortin is no longer Vice President Logistics and Operations at PHAC.

Mulawyshyn BGen AP@CDS@Ottawa-Hull

From: Eyre LGen WD@CDS@Ottawa-Hull
Sent: May 14, 2021 7:25 PM
To: Rouleau LGen MN@VCDS@Ottawa-Hull; Carignan LGen MAJ@CPCC@Ottawa-Hull; Meinzinger LGen AD@C Air Force Exec@Ottawa-Hull; St-Louis MGen MH@C Army Asst C Army@Ottawa-Hull; Baines VAdm CA@C Navy@Ottawa-Hull; Allen LGen FJ@FE Exec@Brussels, BE; Paul LGen JJMJ@FE JFC HQ@Naples, IT; Seymour MGen WF@CJOC HQ@Ottawa-Hull; Whelan LGen SJR@CMP D Mil Pers Svcs@Ottawa-Hull; Pelletier LGen AJP@CANELEMNORAD DCOMD NORAD@Colorado Springs, US; Auchterlonie VAdm JR@MARPAQ HQ@Esquimalt; Lavoie LGen OH@FE JFC HQ@Naples, IT; Bernatchez RAdm G@JAG@Ottawa-Hull; Bishop RAdm SEG@CFINTCOM@Ottawa-Hull; Boivin MGen JMS@CANSOFCOM@Ottawa-Hull; Cadieu MGen TJ@SJS@Ottawa-Hull
Cc: Mulawyshyn BGen AP@CDS@Ottawa-Hull; Gregoire CPO 1 GA@CDS@Ottawa-Hull
Subject: MGen Fortin

Colleagues:

Before you hear it shortly in the media, I want to let you know that MGen Dany Fortin has come back from PHAC due to an ongoing investigation. I cannot share much, but here is the statement released to media:

Today, Major-General Dany Fortin has left his assignment with the Public Health Agency of Canada, pending the results of a military investigation.

Acting Chief of the Defence Staff, Lieutenant General Eyre will be reviewing next steps with MGen Fortin.

We will have no further comment.

C'est une nouvelle plus difficile pour les FAC, et je vous remercie pour votre leadership continu à diriger notre institution à travers ces temps difficiles.

Lieutenant-General/Lieutenant-général Wayne Eyre

Acting Chief of the Defence Staff
 Canadian Armed Forces
wayne.eyre@forces.gc.ca / Tel: 613-992-5054

Chef d'état-major de la Défense par intérim
 Forces armées canadiennes
wayne.eyre@forces.gc.ca / Tél.: 613-992-5054

From: Kempton LA@ADM(PA)@Ottawa-Hull
Sent: May 14, 2021 5:14 PM
To: Eyre LGen WD@CDS@Ottawa-Hull; Thomas J@DM@Ottawa-Hull
Cc: Kennedy C@DM@Ottawa-Hull; Mulawyshyn BGen
AP@CDS@Ottawa-Hull
Subject: Finals - Eng / Fr
Attachments: DF French 14 May.docx; DF English - 14 May.docx

DM and Chief,

Please find attached the final versions of the statement. It is currently with PCO. I have shared with MNDO as well.

I will let you know when we have the green light and then it can also be shared internally.

Thanks

Laurie

Statement

Statement from the Department of National Defence and the Canadian Armed Forces Regarding the Employment of Major-General Dany Fortin

14 May, 2021 – Ottawa – National Defence / Canadian Armed Forces

Today, Major-General Dany Fortin has left his assignment with the Public Health Agency of Canada, pending the results of an investigation.

Acting Chief of the Defence Staff, General Eyre and MGen Fortin will be reviewing future employment options.

We will have no further comment.

Contacts

Media Relations
Department of National Defence
Phone: 613-996-2353
Email: mlo-blm@forces.gc.ca

DRAFT

Déclaration

Déclaration du ministère de la Défense nationale et des Forces armées canadiennes concernant l'emploi de Major-général Dany Fortin

Le 14 mai 2021 – Ottawa – Défense nationale / Forces armées canadiennes

Aujourd'hui, le Major-général Dany Fortin a quitté son poste avec l'Agence de la santé publique du Canada, en attendant les résultats d'une enquête.

Le général Eyre, chef d'état-major de la Défense par intérim, et MGen Fortin examineront les options d'emploi futures.

Nous ne formulerons aucun autre commentaire.

Contacts

Relations médias
Défense nationale
613-996-2353
mlo-blm@forces.gc.ca

From: Kempton LA@ADM(PA)@Ottawa-Hull
Sent: May 14, 2021 5:58 PM
To: Eyre LGen WD@CDS@Ottawa-Hull; Thomas J@DM@Ottawa-Hull;
Janice.Charette@pco-bcp.gc.ca; ken.mackillop@pco-bcp.gc.ca
Cc: Mulawyshyn BGen AP@CDS@Ottawa-Hull; Kennedy
C@DM@Ottawa-Hull
Subject: Revised final -EN
Attachments: DF English - 14 May.docx

Good evening,

Please find attached a revised version of the statement.

Thanks

Laurie

Assistant Deputy Minister (Public Affairs)
Sous-ministre adjointe (affaires publiques)
613.995.1497
343.548.6484

Statement

Statement from the Department of National Defence and the Canadian Armed Forces Regarding the Employment of Major-General Dany Fortin

14 May, 2021 – Ottawa – National Defence / Canadian Armed Forces

Today, Major-General Dany Fortin has left his assignment with the Public Health Agency of Canada, pending the results of a military investigation.

Acting Chief of the Defence Staff, Lieutenant General Eyre will be reviewing next steps with MGen Fortin.

We will have no further comment.

Contacts

Media Relations
Department of National Defence
Phone: 613-996-2353
Email: mlo-blm@forces.gc.ca

From: Thomas J@DM@Ottawa-Hull
Sent: May 14, 2021 7:24 PM
To: Kempton LA@ADM(PA)@Ottawa-Hull
Cc: Eyre LGen WD@CDS@Ottawa-Hull; Kennedy C@DM@Ottawa-Hull; Mulawyshyn BGen AP@CDS@Ottawa-Hull; Bernatchez RAdm G@JAG@Ottawa-Hull; Sousa M@DND/CF LA@Ottawa-Hull
Subject: Re: Final Finals

Thank you everyone for your professionalism today (and every day)

Sent from my iPhone

On May 14, 2021, at 7:22 PM, Kempton LA@ADM(PA)@Ottawa-Hull <LAURIE-ANNE.KEMPTON@forces.gc.ca> wrote:

The statement is out and we have a tweet from a journalist

Green light for internal message

From: Kempton LA@ADM(PA)@Ottawa-Hull
Sent: May 14, 2021 6:47 PM
To: Eyre LGen WD@CDS@Ottawa-Hull <Wayne.Eyre@forces.gc.ca>; Thomas J@DM@Ottawa-Hull <JODY.THOMAS@forces.gc.ca>
Cc: Kennedy C@DM@Ottawa-Hull <CHRISTINE.KENNEDY@forces.gc.ca>; Mulawyshyn BGen AP@CDS@Ottawa-Hull <ALAN.MULAWYSHYN@forces.gc.ca>; Bernatchez RAdm G@JAG@Ottawa-Hull <GENEVIEVE.BERNATCHEZ@forces.gc.ca>; Sousa M@DND/CF LA@Ottawa-Hull <MICHAEL.SOUSA@forces.gc.ca>
Subject: FW: Final Finals

Good evening,

Attached are the final statements.

Please **do not release internally or to partners until 1930**. The statement will hit the wire between 1915-1920

Thanks

Laurie

From: Trudeau BGen S@VCDS CF MP Gp HQ@Ottawa-Hull
Sent: May 14, 2021 9:00 PM
To: Eyre LGen WD@CDS@Ottawa-Hull
Subject: Re: Concern

Sir,

Ack, thank you.

ST

Sent from my iPhone

> On May 14, 2021, at 8:58 PM, Eyre LGen WD@CDS@Ottawa-Hull <Wayne.Eyre@forces.gc.ca> wrote:

>

> Simon:

>

> For SA, I got word that the alleged victim was contacted this evening by a CTV reporter on her personal cell phone.

>

> WDE

>

> Sent from my iPhone

Mulawyshyn BGen AP@CDS@Ottawa-Hull

From: Kempton LA@ADM(PA)@Ottawa-Hull
Sent: May 15, 2021 2:32 PM
To: Eyre LGen WD@CDS@Ottawa-Hull; Thomas J@DM@Ottawa-Hull
Cc: Mulawyshyn BGen AP@CDS@Ottawa-Hull; Kennedy C@DM@Ottawa-Hull; Cadieu MGen TJ@SJS@Ottawa-Hull
Subject: Statement from PHAC - for awareness
Attachments: PHAC_ST_MGen Fortin Departure_2021-05-15_1245.docx

Good afternoon DM and Chief,

ADM Coms at PHAC has shared the statement they will be issuing later today. It is currently with PCO for approval. I have no concerns with the message and it will assist us in managing the media calls asking about how the vaccine logistics will be managed.

Thanks

Laurie

Assistant Deputy Minister (Public Affairs)
Sous-ministre adjointe (affaires publiques)
613.995.1497
343.548.6484



Statement from the Public Health Agency of Canada

May 15, 2021

Ottawa, ON

Public Health Agency of Canada

OTTAWA – Throughout the COVID-19 pandemic, Canadians have looked to the Public Health Agency of Canada (PHAC) to provide public health guidance and leadership. PHAC has never wavered from delivering on this responsibility, encompassing essential activities underway such as the vaccination of Canadians.

This week, Canada reached a significant milestone—the successful delivery of 20 million vaccine doses. This coming week, Canada will deliver another 3.6 million vaccines to the provinces and territories. Moving forward, Canadians can rest assured that the work of the Agency will continue with the same focused attention to achieving our immunization campaign.

On November 27, 2020, PHAC partnered with the Canadian Armed Forces (CAF) to enhance our planning, operations and logistical capacities through the addition of a team of military personnel. This talented group has successfully integrated into PHAC and played a range of key roles in our national vaccination campaign.

On May 14, 2021, the **Department of National Defence and the Canadian Armed Forces** announced that the assignment of Major-General Dany Fortin at PHAC was ending. Our CAF team members will remain and continue their duties alongside their PHAC colleagues, and a new Vice President will be announced shortly and step into the existing strong leadership team.

Iain Stewart
President
Public Health Agency of Canada

- 30 -

Contacts

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Public Health Agency of Canada
613-957-2983
hc.media.sc@canada.ca

Mulawyshyn BGen AP@CDS@Ottawa-Hull

From: Devenney LCol DA@CDS@Ottawa-Hull
Sent: May 19, 2021 5:50 PM
To: Mulawyshyn BGen AP@CDS@Ottawa-Hull
Subject: PM Statement

Sir

Not sure the process but this was delivered to journalists earlier:

Statement from the Canadian Forces Provost Marshal

The CFNIS has conducted an investigation into an allegation of sexual misconduct involving Major-General Dany Fortin.

It has referred the matter to the Director of criminal and penal prosecutions (Directeur des poursuites criminelles et pénales or DPCP), who is the charge laying authority for criminal and penal prosecutions in the province of Quebec.

Déclaration du Grand Prévôt des Forces canadiennes

Le Service national des enquêtes des Forces canadiennes a mené une enquête sur une allégation d'inconduite sexuelle impliquant le major-général Dany Fortin.

Il a renvoyé l'affaire au Directeur des poursuites criminelles et pénales, qui est l'autorité responsable de la mise en accusation pour les poursuites criminelles et pénales dans la province de Québec.

Dave

Devenney

LCol

Senior Public Affairs Officer / Officier supérieur des affaires publiques

Chief of the Defence Staff's Office / Bureau du Chef d'état-major de la Défense

David.devenney@forces.gc.ca

Tel : (101 Col By) 613-995-3639

Transcription of Handwritten Notes in Certified Tribunal Record
Prepared by Conway Baxter Wilson LLP

Note: The Attorney General of Canada indicated that any redactions in black are for irrelevance, and any redactions in white (with red border) are for solicitor-client privilege. These redactions have been noted in square brackets. Additionally, acronyms or abbreviated words have been spelled out in square brackets.

I. Notebook of LGen Eyre

* Pg 110 of the Application Record [AR]:

- [left-hand page fully redacted for irrelevance]
- [right-hand page]
- [redacted for irrelevance]
- 16 Mar [March]
- [redacted for irrelevance]
- CFPM [Canadian Forces Provost Marshal]
 - Let me know about allegation (no details) (historic) against Sr Mbr. Victim is supported, [illegible]

* Pg 111 of the AR:

- [left-hand page]
- [redacted due to solicitor-client privilege]
- [redacted for irrelevance]
- [right-hand page fully redacted for irrelevance]

* Pg 112 of the AR:

- [left-hand page]
- [redacted for irrelevance]
- DM [Deputy Minister]
- [redacted for irrelevance]
 - Recommended we go to Clk PCO [Clerk of the Privy Council Office] for advice before going to MND [Minister of National Defence] given interdepartmental impact
- [right-hand page]
- 17 Mar [March]
- [redacted for irrelevance]

* Pg 113 of the AR:

- [left-hand page fully redacted for irrelevance]
- [right-hand page]
- [redacted due to solicitor-client privilege]
- Clk PCO
 - Allegation, historic case
 - Told yesterday
 - Nature unk [unknown]

- Insufficient grounds
- Considerations - relationships, confidence, current ops. rights
- Does not know - highly sensitive
- MND [Minister of National Defence] - not briefed yet. Advice
- Asked about Adm [Admiral] MacDonald precedent
 - Stepped aside when found out
- Discussed when to brief MND [Minister of National Defence]

* Pg 114 of the AR:

- [left-hand page]
- discussed how play out with informing MND [Minister of National Defence]
 - 1 - Timely seeing through of process
 - [2 – crossed out] How
- Instinct
 - leave in job for now – if goes public – react
 - [blank]
- Advice – from us – leave in position for now
 - assured ourselves no current risk – w/ [with] victim, workplace
- Political
 - could act now + precipitate action
 - [blank]
- Give indiv [individual] opportunity to step aside?
- Movement – second order
- 1st steps
 - call COS MND [Chief of Staff of Minister of National Defence]
 - let's not over-react
 - PC Clk [Privy Council clerk] – call COS PM [Chief of Staff of Prime Minister]
- How we deal with this one will set the approach.
Where he's working is the issue.
- [right-hand page]
- MND [Minister of National Defence]
 - What does victim want?
 - Due process has to take crse [course]
 - Not knowing details, doing what
 - Stays in posn [position] + something comes out it will be worse
 - Now, need to protect the institution. We take everything seriously
- [redacted for irrelevance]

* Pg 115 of the AR:

- [left-hand page]
- [redacted for irrelevance]
- Clk PCO [Clerk of the Privy Council Office]
 - not definitive in outcome of 1800 mtg [meeting]
- [redacted for irrelevance]
- [right-hand page]
- [redacted for irrelevance]

- Meeting - MGen [Major-General] Fortin
 - Shocked
 - No idea what it could be, no reference point
 - Adamant about continuing to work
 - Support at home
 - Appreciates notification
 - Prepare repl [replacement]

- * Pg 116 of the AR:
 - [left-hand page]
 - PCO Clk [Clerk of the Privy Council]
 - let's be real careful where we put the bar
 - continuing to work – best option
 - need to think through what we do with other cases
 - [blank]
 - MND [Minister of National Defence]
 - CFPM [Canadian Forces Provost Marshal] – how severe? When know?
 - [blank]
 - How deal with historic events that are not criminal/CSD [Code of Service Discipline] allegations
 - Need a round table w/ [with] experts soonest
 - Create a process for these who come forward
 - [blank]
 - 18 Mar [March]
 - [redacted for irrelevance]
 - [right-hand page fully redacted for irrelevance]

- * Pg 117 of the AR:
 - [left-hand page]
 - [redacted for irrelevance]
 - [continuance of 18 March notes]
 - Telecon [telephone conversation] - MGen Fortin
 - Welfare check
 - Continue to work, keeps focus
 - Wife supportive
 - devastated. Still cannot fathom what this is about
 - [redacted for irrelevance]
 - [right-hand page]
 - [redacted for irrelevance]
 - 19 Mar [March]
 - [redacted for irrelevance]
 - DM [Deputy Minister]
 - Playbook
 - Principles
 - increasingly worried
 - removed, stays - lines

- Duty of care to institution

* Pg 118 of the AR:

- [left-hand page]
- [Continuance of 19 Mar notes]
- CFPM [Canadian Forces Provost Marshal]
 - increasing pressure on us to act
 - nature of allegations - what does this change?
 - can't rush investigation
 - Push - leaks
 - would someone phone RCMP commissioner for details
 - Can't divulge nature – needs to protect integrity of investigation [crossed out word]
needs to keep right
MPCC [Military Police Complaints Commission] will prob [probably] review files
Could affect integrity
 - info divulged could affect integrity - could get thrown out
 - Police independence there for reason
 - every case – conducts workplace risk assessment
- DM [Deputy Minister]
 - Govt could fall
 - Political pressure
 - What say to public?
 - What bar are we setting?
 - Politically sensitive job
 - [redacted due to solicitor-client privilege]
 - Risk to people in workplace?
 - What do our values lead us to do?
 - Rule of law, respect for due process
 - Does his decision change if he knows the possibility of a leak. Control?
- [right-hand page]
 - impossible situation
 - Legal advice – need
 - Options [chart format with three columns, being one for options, one for advantages and one for disadvantages]
 1. Leave in posn [position]
 - Adv [Advantages]:
 - respect rule of law, due process
 - reputation/damage
 - Dis [Disadvantages]:
 - pol [political] risk
 - inst [institutional] risk
 2. Remove
 - Adv [Advantages]:
 - take con [control] of decision

- Dis [Disadvantages]:
 - reputation
 - inst [institutional] damage
 - internal – process respect
- 3. Step aside if comes out
 - Adv [Advantages]:
 - preserves decision space
 - Dis [Disadvantages]:
 - reactive
- Legal perspective
 - innocent or proven guilty
 - paucity of info on allegations
 - public/political factors
 - not enough info for relief of duty
 - moving – unless messaged properly will damage indiv [individual]
 - MND [Minister of National Defence] auth [authority]
 - Context
 - New space

* Pg 119 of the AR:

- [left-hand page]
- Fortin - call
 - explain pressures + options
 - my stand
 - mention before decision forced on me
 - can wait until accusations
 - feels guilty w/o [without] trial
 - damage goods - Feels like
 - we have nothing to go off of
 - can we take note and be appraised of [crossed out word] accusations
 - sure he wouldn't have done anything
 - Simon [BGen Simon Bernard] would have steep learning curve - better than most. He's Been briefed on why.
 - Crushed. Easier to cont [continue] in position. Prefer to work.
- PCO Clk [Clerk of the Privy Council Office]
 - anxiety - not pressure
 - asked about who appointed him
 - DM [Deputy Minister] - we need to follow principles - fundamental issues in democracy
 - not a solution, that facilitates a long bad news story
- [right-hand page]
- PCO [Privy Council Office]
 - narrative - build
 - have backs of victims and those respondents
 - playbook - super important
 - [crossed out word] - workplace safety

- We must be able to ensure public confidence in vaccine rollout
 - “Temperature check” from MND [Minister of National Defence]
 - Level of anxiety high
 - Will talk to PM [Prime Minister] within next hour. Wait to hear back until contact MND [Minister of National Defence]
 - if it leaks, its [*sic*] all the same
 - [redacted for irrelevance]
- * Pg 120 of the AR:
- [left-hand page]
 - Thoughts
 - Factors to consider in retain/remove
 - Victim support
 - Workplace safety
 - Can indiv [individual] function effectively (respondent)
 - Seriousness of allegations (if known)
 - [blank]
 - If we can't follow values, at what point do I resign?
 - 22 Mar [March] [continues on next page]
 - [redacted for irrelevance]
 - [right-hand page fully redacted for irrelevance]
- * Pg 121 of the AR:
- [left-hand page]
 - [redacted for irrelevance]
 - [continuance of 22 March notes on previous page]
 - DM [Deputy Minister]
 - PM [Prime Minister]
 - what is alledged [*sic*] victim looking for?
 - Is this triggered by news conf [conference], Vance allegation?
 - Clk PCO [Clerk of Privy Council Office] - asked for
 - Playbook
 - Allies
 - What do we do with respondent during investigation?
 - does victim drive interim/admin [administrative] actions against respondent
 - [redacted for irrelevance]
 - [right-hand page fully redacted for irrelevance]
- * Pg 122 of the AR:
- [left-hand page]
 - [redacted for irrelevance]
 - [speaker redacted]
 - Alleged victim reached out
very historic case - not rape
wants due process through justice
sending me a letter - wants to meet

- Does not want a public spectacle
(not Taylor [LCol Eleanor Taylor] - ops)
 - Not happy with previous supr [superior] – but no action - restorative perhaps
 - Wants to use her experience to make CAF [Canadian Armed Forces] better
 - Trusts me.
 - Way fwd [forward] - Consult PM [Prime Minister]. Discuss w/ [with] DM [Deputy Minister], Clk [Clerk]?
 - o Mtg [Meeting] – with who else?
 - [right-hand page]
 - 25 Mar
 - [redacted for irrelevance]
- * Pg 123 of the AR:
 - [left-hand page]
 - [redacted for irrelevance]
 - CFPM [Canadian Forces Provost Marshal]
 - If she talks to me about elements of allegations, I become a witness - may have to be interviewed
 - how would it be perceived
 - arms length
 - Do not engage
 - Where offence occurred [*sic*] is where charge laid - thus moved to Quebec region
 - Talk to [redacted for irrelevance] to close loop. formality [*sic*]
 - [redacted for irrelevance]
 - [right-hand page fully redacted for irrelevance]
- * Pg 124 of the AR:
 - [left-hand page]
 - [redacted for irrelevance]
 - [redacted due to solicitor-client privilege]
 - [redacted for irrelevance]
 - want to but cannot engage
want to hear story - will after due process done
 - support – SMRC [Sexual Misconduct Response Centre]?
 - Still in posn [position] - due process - while investigation done. CFNIS [Canadian Forces National Investigation Service] advise if
 - CFNIS [Canadian Forces National Investigation Service] will interview him - witness formality
 - [blank]
 - Not looking for outcome before due process
 - Will gently ask about triggering
 - Media
 - Follow-on
 - Trigger, but realizes if removed because bigger story, drags her in. Media presence. Accepts steps, noting → [see next side of page]

- [right-hand page]
- [redacted for irrelevance]
 - [continued from previous side of page] → investigation ongoing -
 - Msg [message] – sp [support] – appreciated
- [redacted for irrelevance]

* Pg 125 of the AR:

- [left-hand page fully redacted for irrelevance]
- [right-hand page]
- MND [Minister of National Defence] Trilat [Trilateral]
 - [redacted for irrelevance]
 - Briefed MND on allegations/victims [*sic*] wishes - discussion on who else needs to know -
- [redacted for irrelevance]
- Briefing Pts [points] to PCO Clk [Clerk of the Privy Council Office]
 - [word “discovered” crossed out] informed last night through intermediary that alleged victim wanted to share their story with me
 - Letter + meet in person
 - From intermediary discovered
 - occurred as cadets (teenagers)
 - not rape
 - does not want a public spectacle
 - wants justice, through due process but realizes it will come down to ‘he said, she said’

* Pg 126 of the AR:

- [left-hand page]
- Wants to use her experience to make CAF [Canadian Armed Forces] better, but not in public environ [environment] (railed against Taylor approach)
- Trusts me
- I want to meet but, [redacted due to solicitor-client privilege] + CFPM [Canadian Forces Provost Marshal]
 - strong recommendation – No
 - become witness – CFNIS [Canadian Forces National Investigation Services] interview. Trial witness
 - Compromise ability to take admin [administrative] action
- Today, sent message back through intermediary:
 - Support + respect decision to come forward
 - Want to meet, but after due process run course for reasons above
 - Her support is a pri [priority]
 - Delicately ask about respondent status – respect for due process
- Response
 - Not looking for outcome before due process
 - Not thrilled to see on TV, but realizes if removed it becomes the story + potentially dragging them in. Accepts him staying while investigation ongoing.
- [right-hand page]

- happy to share ideas for improvement through intermediary and meet following process
- Getting right support incl [redacted for irrelevance]
- Comment
 - Right decision – respect victims’ [sic] [word “decision” scratched out] wishes
- Discussion
 - Call did not occur [sic]- DM [Deputy Minister] briefed PCO Clk [Clerk of the Privy Council Office]
- [redacted for irrelevance]
- 26 Mar [March] [continues on next page]
- [redacted for irrelevance]

* Pg 127 of the AR:

- [left-hand page fully redacted for irrelevance]
- [right-hand page]
- [redacted for irrelevance]
- [continuance of 26 March entry from previous page]
- David Morrison [Foreign and Defence Policy Advisor to the PM - DM Rank]
 - [redacted for irrelevance]
 - Role of PCO is not to second guess all activities, but communicate. heightened anxiety.
 - [redacted for irrelevance]

* Pg 128 of the AR:

- [left-hand page fully redacted for irrelevance]
- [right-hand page]
- 21 Apr [April]
- [redacted for irrelevance]

* Pg 129 of the AR:

- [left-hand page]
- [redacted for irrelevance]
- [continuance of 21 April entry from previous page]
- CFPM [Canadian Forces Provost Marshal]
 - F [Fortin] - refer to Crown prosecutor Quebec present facts of case
 - 2-3 months - to prosecutor
 - only time public - if charges laid
 - before 1998 - CMs [Court Martials] could not hear sexual aslt [assault] cases. Have to go civ [civil] justice system
 - Crown prosecutor - lay charge
 - [words “reasonable charge possib” [possible] crossed out]
 - prosecutor call - reasonable probable grounds + conviction
 - reasonable probable grounds
 - he cannot be informed/briefed
 - late summer/early fall - earliest charges could be laid

- CFPM [Canadian Forces Provost Marshal] can give MND [Minister of National Defence] more details
 - [right-hand page fully redacted for irrelevance]
- * Pg 130 of the AR:
- [left-hand page]
 - [redacted for irrelevance]
 - MND [Minister of National Defence]
 - F [Fortin] debrief
 - [redacted for irrelevance]
 - [right-hand page fully redacted for irrelevance]
- * Pg 131 of the AR:
- [left-hand page fully redacted for irrelevance]
 - [right-hand page]
 - [redacted for irrelevance]
 - 23 Apr [April] [continues on next page]
 - [redacted for irrelevance]
- * Pg 132 of the AR:
- [left-hand page]
 - [continuance of 23 April notes on previous page]
 - [word “Clk” [Clerk] is crossed out] PCO [Privy Council Office] Janice [names “Janice Charette crossed out] + [illegible]
 - F [Fortin] - CFPM [Canadian Forces Provost Marshal] readout, MND [Minister of National Defence] briefed
 - [redacted for irrelevance]
 - Complainant – no change, update yesterday
 - [redacted for irrelevance]
 - [right-hand page fully redacted for irrelevance]
- * Pg 133 of the AR:
- [left-hand page fully redacted for irrelevance]
 - [right-hand page]
 - [redacted for irrelevance]
 - 4 May [continues on next page]
 - [redacted for irrelevance]
- * Pg 134 of the AR:
- [left-hand page]
 - [redacted for irrelevance]
 - [continuance of 4 May notes on previous page]
 - CFPM [Canadian Forces Provost Marshal]
 - [redacted for irrelevance]
 - DF [Dany Fortin] - to Quebec prosecutor - CFM
 - [redacted for irrelevance]

- Directeur des poursuites criminelles et pénales
 - Next week
 - [redacted for irrelevance]
 - [right-hand page fully redacted for irrelevance]
- * Pg 135 of the AR:
- [left-hand page fully redacted for irrelevance]
 - [right-hand page]
 - [redacted for irrelevance]
 - DM PHAC [Deputy Minister of Public Health Agency of Canada]
 - Planning + staffing
 - Civ into roles - on it
 - Repl [replacement] - not self evident
 - Is there another GOFO? [General/flag officer]
- * Pg 136 of the AR:
- [left-hand page]
 - 12 May [continues on next page]
 - [redacted for irrelevance]
 - [right-hand page fully redacted for irrelevance]
- * Pg 137 of the AR:
- [left-hand page fully redacted for irrelevance]
 - [right-hand page]
 - [redacted for irrelevance]
 - [continuance of 12 May notes on previous page]
 - Tri-Lat [Tri-Lateral]
 - [redacted for irrelevance]
 - DF [Dany Fortin]
 - [redacted for irrelevance]
- * Page 138 of the AR:
- [left-hand page]
 - [redacted for irrelevance]
 - TRILAT [Trilateral] – MND [Minister of National Defence], DM [Deputy Minister], A/CDS [Acting Chief of Defence Staff]
 - [redacted for irrelevance]
 - [checkmark] DF [Dany Fortin]
 - [redacted for irrelevance]
 - CFPM [Canadian Forces Provost Marshal]
 - PG - prosecutor lays charges
 - investigator presents [word crossed out] findings
 - pre 97 [1997] - must be referred to civil auth [authority]
 - [right-hand page]
 - reasonable probable grounds for charge decided by prosecutor
 - investigator just present [*sic*] facts

- police have to believe they have enough for prosecutor to decide to lay charges
- Quebec – case protected public when charge laid
- historic, no witnesses
- dismissed, back to CFNIS [Canadian Forces National Investigation Service], file closed
- info well protected in PQ [Province of Quebec] [word crossed out] prosecutor
- [word “Comms” crossed out]
- PA [Public Affairs]
 - Comms [communications] idea - PHAC announces transition, new civ [civil] lead build own capacity
- Min H [Minister of Health] - reaction - protect herself
 - doesn't want to create a narrative
 - Pull situation back to us
 - Find balance
 - She will not talk about an investigation
 - Understands victims [*sic*] perspective
 - "talk to CAF"

* Pg 139 of the AR:

- [left-hand page]
- Iain Stewart
 - uniformed spokesperson
 - Conversion from mil [military] to civ [civilian] op [operation]
 - Min H [Minister of Health] - does not want to be part of a narrative
 - She is at risk of making story
 - Needs to be for protection of vaccine rollout, mins [Ministers?], victim, due process
 - Op [operation] handover very smooth
- DF [Dany Fortin]
 - day of leave
 - determine way forward
- 14 May
- [redacted for irrelevance]
- PCO Clk [Clerk of the Privy Council Office]
 - Min H [Minister of Health] insulating/protect herself
 - Spoke to Min H [Minister of Health] 4 times
 - Options
 - leave
 - disclosure - all
- [right-hand page]
- 14 May
- [redacted for irrelevance]
- Timeline:
 - 16 Mar [March]

- briefed by CFPM [Canadian Forces Provost Marshal]. [redacted for solicitor-client privilege]
- briefed DM [Deputy Minister]
- 17 Mar [March]
 - briefed Clerk
 - briefed MND [Minister of National Defence]
 - briefed Mbr [member]
 - briefed Clerk
 - briefed MND [Minister of National Defence]
- 18 Mar [March]
 - welfare check mbr [member]
- 19 Mar [March]
 - options – CFPM [Canadian Forces Provost Marshal], DM [Deputy Minister], [redacted for solicitor-client privilege] mbr [member] discussion
 - options - Clerk
- 22 Mar [March]
 - DM [Deputy Minister], CLK [Clerk]
- 24 Mar [March]
 - interlocutor
- 25 Mar [March]
 - CFPM [Canadian Forces Provost Marshal], [redacted for solicitor-client privilege], interlocutor
 - MND [Minister of National Defence] update
 - DM [Deputy Minister] – Clk [Clerk]
- 26 Mar [March]
 - Morrison discussion
- 21 Apr [April]
 - CFPM update - refer
 - MND update
- 23 Apr [April]
 - CLK [Clerk] update

* Pg 140 of the AR:

- [left-hand page]
- [continuance of timeline]
 - 4 May
 - CFPM [Canadian Forces Provost Marshal]
 - PHAC [Public Health Agency of Canada] - contingency planning
 - 13 May
 - MND [Minister of National Defence], Clk [Clerk], PHAC [Public Health Agency of Canada]
 - 14 May
 - Clk [Clerk]
- [redacted for irrelevance]
- [redacted for solicitor-client privilege]

- [right-hand page]
- [redacted for irrelevance]
- DM [Deputy Minister], [redacted for solicitor-client privilege], PA [Public Affairs]
- [redacted for solicitor-client privilege]

* Pg 141 of the AR:

- [left-hand page]
- A/CDS [Acting Chief of Defence Staff] is [sentence incomplete]
- Today MG F [Major-General Fortin] has left PHAC [Public Health Agency of Canada] pending results of an investigation
- LGen Eyre reviewing future emp [employment] options. We will have no further comment.
- Public interest consideration
Privacy vs institutional credibility
- Options
 - 1 – [word crossed out] proceed on leave
his decision
 - 2 - reviewing future emp [employment] options
- Internal comms [communications]
- Presented as fait accompli
doing damage control here
- DF [Dany Fortin]
 - Tried all day - Iain [Stewart]
 - Dept [Department]
 - Fait accompli
 - going public, already some media interest
 - 1 – [words “agree to head on leave” crossed out]
agree to head on leave
 - 2 – A/CDS [Acting Chief of Defence Staff] reviewing emp [employment] options
 - Feels he is abandoning mission
 - No way to frame other than fired
- [right-hand page]
 - appreciates personal connection
 - no way to explain it
- [redacted for irrelevance]

* Pg 142 of the AR:

- [left-hand page fully redacted for irrelevance]
- [right-hand page]
- 15 May
- Iain Stewart – PHAC [Public Health Agency of Canada]
 - Bernard - make DG [Director General] of Nat Ops Cen [National Operations Centre for Vaccines]
 - Consolidate CAF [Canadian Armed Forces] under him
 - Kallie Levesque -
- [redacted for irrelevance]

II. Notebook of BGen Mulawyshyn

* Pg 143 of the AR:

- [left-hand page blank]
- [right-hand page]
- 17 Mar [March] 21 [2021]
 1. CDSO Synch [Chief of Defence Staff Office Synchronisation Meeting] (0800)
 - [redacted for irrelevance]
 - SSO [Senior Staff Officer] [redacted for irrelevance]
 - PA [Public Affairs] [redacted for irrelevance]
 - [redacted for solicitor-client privilege] [redacted for irrelevance]
 - ADC [Aide-de-camp] [redacted for irrelevance]
 - SA [Situational Awareness] [redacted for irrelevance]

* Pg 144 of the AR:

- [left-hand page blank]
- [right-hand page] [continuance of list on previous page]
 2. CDS Staff Synch [Chief of Defence Staff Staff Synchronisation] (0830)
 - [redacted for irrelevance]
 - SO [Staff Office/Officer] - [redacted for irrelevance]
 - PA [Public Affairs] - [redacted for irrelevance]

* Pg 145 of the AR:

- [left-hand page blank]
- [right-hand page] [continuance of list on previous page]
 3. Ops [operations] Update (0900)
 - a. [redacted for irrelevance]
 - b. [redacted for irrelevance]
 - c. [redacted for irrelevance]
 - d. [redacted for irrelevance]
 - PA [Public Affairs] e. [redacted for irrelevance]
 - f. [redacted for irrelevance]
 - g. [redacted for irrelevance]
 - h. [redacted for irrelevance]
 - i. [redacted for irrelevance]
 - [?] j. [redacted for irrelevance]
 - k. [redacted for irrelevance]
 - CDS [Chief of Defence Staff] [redacted for irrelevance]

* Pg 146 of the AR:

- [left-hand page blank]
- [right-hand page] [continuance of list on previous page]
 4. CCJOC [Commander Canadian Joint Operations Command] (0950) [redacted for irrelevance]
 5. VCDS [Vice Chief of Defence Staff] (1000) [redacted for irrelevance]

* Pg 147 of the AR:

- [left-hand page blank]
- [right-hand page] [continuance of list on previous page]
- 6. CDS Trilat [Chief of Defence Staff Trilateral] (1100) – CX [Cancelled] [redacted for irrelevance]
- 7. GC2 (1130) [redacted for irrelevance]
- 8. A/CDS [Acting Chief of Defence Staff] (1340)
 - [square symbol] 1730 mtg + CDS [Chief of Defence Staff] – Dany F. [Fortin]
 - CJOC → Simon Bernard → PHAC [Public Health Agency of Canada] [flowchart]
 - PA [Public Affairs] holding line
 - MND [Minister of National Defence], GY [George Young, Chief of Staff Minister of National Defence], DM [Deputy Minister] [arrow pointing down from “DM” followed by “PA” [Public Affairs]], PCO [Privy Council Office] Clerk [?]
 - A/Comd CJOC [Acting Commander, Canadian Joint Operations Command]
 - PA [Public Affairs]
 - [term “DGMC” crossed out]

* Pg 148 of the AR:

- [left-hand page blank]
- [right-hand page] [continuance of list on previous page]
- F2 [Dany Fortin]– o/c [Office Call]
- PHAC [Public Health Agency of Canada] – Ian [sic] Stewart
- [terms “F2 [Fortin] → CJOC [Canadian Joint Operations Command]” are crossed out]
- A/Comd CJOC [Acting Commander, Canadian Joint Operations Command]
- Simon – 2[?] – remain PHAC [Public Health Agency of Canada]
- PA [Public Affairs] – MRCS
- DGMC (?) – not needed unless posted to PHAC [Public Health Agency of Canada]
- 9. [redacted for irrelevance]
- 10. A/CDS [Acting Chief of Defence Staff] o/c [office call] MGen [Major-General] Fortin (1800)
 - NIS [National Investigation Service] open investigation – allegation [illegible] mi [illegible]
 - historic
 - no F2 [Dany Fortin] interview you yet
 - interviewed complainant
 - hear from CofC [Chain of command], not media
 - invest [investigation] timeline unknown, due process
 - how care for F2 [Dany Fortin]
 - F2 [Dany Fortin] – no ref point, no idea what could be
 - next steps? F2 [Dany Fortin] wants to keep working (adamant)
 - E3 [A/CDS LGen Eyre] – impact on focus?
 - F2 [Dany Fortin] - when interview will occur?

- Wife v. [very] supportive, sp [support] network? → CJOC [Canadian Joint Operations Command chap [Chaplain] visit

* Pg 149 of the AR:

- [left-hand page blank]
- [right-hand page]
- F2 [Dany Fortin]
 - like to give so much more...
 - Simon not prep to step up ATT [at this time]
 - Start to prep B1 [BGen Krista Brodie]
 - (ended approx. 1815)

* Pg 150 of the AR:

- [left-hand page blank]
- [right-hand page]
- 18 Mar [March] 21 [2021]
 1. CDSO Synch [Chief of Defence Staff Office Synchronisation Meeting] (0800)
 - [redacted for irrelevance]
 - SSO [Senior Staff Officer] [redacted for irrelevance]
 - PA [Public Affairs] [redacted for irrelevance]
 - [redacted for solicitor-client privilege] [redacted for irrelevance]
 - AdC [Aide-de-Camp] [redacted for irrelevance]
 - CIG [Commanders' Initiatives Group] [redacted for irrelevance]

* Pg 151 of the AR:

- [left-hand page blank]
- [right-hand page] [continuance of list on previous page]
 2. CDS Staff Synch [Chief of Defence Staff Synchronisation] (0830) [redacted for irrelevance]
 - [redacted for irrelevance]
 - SO [Staff Office/Officer] [redacted for irrelevance]
 - PA [Public Affairs] [redacted for irrelevance]
 - AdC [Aide-de-Camp] [redacted for irrelevance]

* Pg 152 of the AR:

- [left-hand note fully redacted for irrelevance]
- [right-hand page] [continuance of list on previous page]
 3. Ops [operations] Update (0900)
 - a. [redacted for irrelevance]
 - b. [redacted for irrelevance]
 - c. [redacted for irrelevance]
 - d. [redacted for irrelevance]
 - e. [redacted for irrelevance]
 - [illegible] f. [redacted for irrelevance]
 - g. [redacted for irrelevance]
 - h. [redacted for irrelevance]

- i. [redacted for irrelevance]
 - j. [redacted for irrelevance]
 - M Gen [Major-General] Fortin [box with checkmark]
4. IRMC
- a. [redacted for irrelevance] [list continues next page]
- * Pg 153 of the AR:
- [left-hand page]
 - Call w/ [with] M Gen [Major-General] Fortin @noon
 - 1200-1230
 - 1600-1700
 - [right-hand page]
 - [continuance of list under item 4, on previous page]
 - b. RCAF [Royal Canadian Air Force] [redacted for irrelevance]
 - c. MPC [Military Personnel Command] [redacted for irrelevance]
 - d. SMRC [Sexual Misconduct Response Centre] [redacted for irrelevance]
 - Re → [redacted for irrelevance]
- * Pg 154 of the AR:
- [left-hand page almost entirely blank]
 - [left-hand note redacted for irrelevance]
 - [right-hand page] [continuance of list on previous page]
 - 5. A/CDS [Acting Chief of Defence Staff] call w [with] F2 [Dany Fortin] (1200)
 - Ok but devastated
 - ashamed ← wife supportive
 - continue to work – focus until an interview – may take a while
 - devastating even if not proven
 - A/CDS offer of sp [support] at any time
 - [call ended ~ [approximately] 1205] [original in brackets]
 - 6. Suicide Mortality/SPAP [Suicide Prevention Action Plan] [redacted for irrelevance]
- * Pg 155 of the AR:
- [left-hand page blank]
 - [right-hand page]
 - 19 Mar [March] 21 [2021]
 1. CDSO Synch [Chief of Defence Staff Office Synchronisation Meeting] [redacted for irrelevance]
 - PA [Public Affairs]
 - AdC [Aide-de-Camp] - [redacted for irrelevance]
- * Pg 156 of the AR
- [left-hand page blank]
 - [right-hand page] [continuance of list on previous page]
 2. CDS Staff Synch [Chief of Defence Staff Synchronisation] (0830) [box with checkmark] [redacted for irrelevance]

3. Ops [operations] Update (0900)
 - a. [redacted for irrelevance]
 - b. [redacted for irrelevance]
 - c. [redacted for irrelevance]
 - d. [redacted for irrelevance]
 - e. [redacted for irrelevance]
 - [redacted for irrelevance] f. [redacted for irrelevance]
 - g. [redacted for irrelevance]

* Pg 157 of the AR:

- [left-hand page almost entirely blank]
 - [left-hand note redacted for irrelevance]
 - [right-hand page] [continuance of list on previous page]
4. A/CDS [Acting Chief of Defence Staff]/VCDS [Vice Chief of Defence Staff] Bilat [Bilateral] (0930) [redacted for irrelevance]

* Pg 158 of the AR:

- [left-hand page almost entirely blank]
 - [left-hand notes redacted for irrelevance]
 - [right-hand page] [continuance of list on previous page]
5. NATO [North Atlantic Treaty Organization] (1000) [redacted for irrelevance]
 6. Bilat [word “w” [with] is crossed out] CSE (1100) CX [cancelled]
 7. Parl [Parliamentary] Prep (1300) [redacted for irrelevance]

* Pg 159 of the AR:

- [left-hand page almost entirely blank]
 - [left-hand note redacted for irrelevance]
 - [right-hand page] [continuance of list on previous page]
8. Playbook - [redacted for irrelevance]
 9. RCAF [Royal Canadian Air Force] (1415)
 - a. [redacted for irrelevance]
 - [square symbol] b. [redacted for irrelevance]
 - [redacted for irrelevance] c. [redacted for irrelevance]
 - d. [redacted for irrelevance]
 - e. [redacted for irrelevance]
 - [square symbol] f. [redacted for irrelevance]
 - [square symbol] g. [redacted for irrelevance]
 10. VCDS [Vice Chief of Defence Staff] (1451) [redacted for irrelevance]

* Pg 160 of the AR:

- [left-hand page almost entirely blank]
 - [left-hand note redacted for irrelevance]
 - [right-hand page] [continuance of list on previous page]
11. FCO/FFCP (1455)
 - a. [redacted for irrelevance]
 - b. [redacted for irrelevance]

- c. [redacted for irrelevance]
 - d. [redacted for irrelevance]
 - e. [redacted for irrelevance]
12. CFPM [Canadian Forces Provost Marshal] (1546)
- F2 [Dany Fortin]
 - nature? (rank + sensitivity)
 - time?
 - can't rush
 - major files
 - can't divulge any details
at this point – protect investigation
 - MPCC [Military Police Complaints Commission] mostly going to be called on to review files
 - by request
 - on complaint
 - public interest

* Pg 161 of the AR:

- [left-hand page almost entirely blank]
 - [left-hand notes redacted for irrelevance]
 - [right-hand page] [continuance of list on previous page]
13. DM et al [Deputy Minister et al] (1555)
- how know workplace safe
 - who accountable
 - [box with checkmark] – CFPM [Canadian Forces Provost Marshal] would let him know?
 - Political concerns?
 - ➔ Could bring down govt [government]
 - on leave? if so, how message [arrow pointing down to “political sensitive job”]
 - what bar are we setting
 - political sensitive job [arrow pointing down to “different”] - profile
 - if public safety out weighs [*sic*]
 - would tell/div [divulge]
 - Public Safety, Rule of Law, due process [all contained in first bracket followed by] Political lens [second bracket followed by] impact on VRO [Vaccine rollout]
 - F2 [Dany Fortin] – what if leaked?
 - lawyer- duty counsel
 - MND [Minister of National Defence] role?

* Pg 162 of the AR:

- [left-hand page]
- D&G [Direction and Guidance] [with arrow pointing towards next line]
- [square symbol with checkmark] CJOC [Canadian Joint Operations Command] Monday ML w/ [with] LAK [Laurie-Ann Kempton, Assistant Deputy Minister Public Affairs at Department of National Defence]– 0830/[illegible] Monday
Leak possible
Duty Counsel

- [right-hand page]
- 1. Remove
- 2. Retain
- 3. Go on leave
- [redacted for solicitor-client privilege]
- Gofu [General / Flag Officer] empl [employment] auths [authorities]?
- [continuance of list from previous page]
- 14. [redacted for irrelevance]
- 15. A/CDS [Acting Chief of Defence Staff] Call w/ [with] F2 [Dany Fortin] (1715)
 - due process needs to be followed
 - innocent until proven guilty
 - political lens
 - F2 [Dany Fortin] - no idea what about – confident that he had [?]
 - not interviewed yet
 - [blank]
 - getting Simon ready – Simon aware
 - ➔ very steep learning curve
 - ➔ better than most to pick up
 - E3 [Acting Chief of Defence LGen Eyre] – Leak possible on this
 - Duty counsel
 - F2 [Dany Fortin] - keen to stay on, prefer to work

* Pg 163 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on previous page]
- 16. Call w/ PCO [Privy Council Office] Janice Sherman [Charette] (1745)
 - anxiety/emotional angst
 - MRLs [Media response lines] [open curly brackets]
 - leaked
 - back to CJCC
 - on leave [close curly brackets] options
 - A/CDS [Acting Chief of Defence LGen Eyre]
 - Workplace assessment
 - Details/timing tbc [to be confirmed] /unk [unknown]
 - [the following is crossed out “options”] F2 [Dany Fortin] wants to remain serve the nation
 - values – respect of law/due process
 - his posn [position]
 - be prepared for leak, contact duty council [*sic*]
 - F2 [Dany Fortin] feels like damaged good
 - F2 [Dany Fortin]
 - 2IC [Second in command] being prep’d [prepared] to take on
 - DM [Deputy Minister] – can MND [Minister of National Defence]
 - PCO [Privy Council Office]

- decision is empl [employment] F2 [Dany Fortin] – CDS [Chief of Defence Staff]
- MND [Minister of National Defence] press rel [release], PM [Prime Minister] presser [press conference]
- A/CDS decision to leave in role ← internal msg [message] [arrow pointing to rule]
 - F2 [Dany Fortin] agrees
 - DM [Deputy Minister] agrees
- PCO [Privy Council Office]
 - have backs of accused & those who come fwd [forward]
 - see draft NR [news release] (P/W [password] protected)
 - playbook status...

* Pg 164 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on item 16]
- watch where we are putting the bar
→ [blank]
- Comfort and confidence in VRO [Vaccine rollout] key!
- Where is MND [Minister of National Defence]/GY [George Young, Chief of Staff of Minister of National Defence] on this
 - MND [Minister of National Defence] comfortable – GY [George Young] is not
 - MND [Minister of National Defence] thoughts?
 - PCO [Privy Council Office] → PM [Prime Minister] → DM [Deputy Minister] – MND [Minister of National Defence] [three dashes flowing from MND] CDS [Chief of Defence Staff], DM [Deputy Minister], GY [George Young]
- 17. w/ [with] CDS [Chief of Defence Staff] (1817) [redacted for irrelevance]
 - Call w/ Steve W [Whelan] (1822) [redacted for irrelevance]
 - W2 [Major-General Steve Whelan] [redacted for irrelevance]

* Pg 165 of the AR:

- [left-hand page blank]
- [right-hand page]
- 9 Apr [April] 21 [2021]
- [words “5. DMO/VCDSO [Vice Chief of Defence Staff Office]/CDS Coord [Chief of Defence Staff Coordinator]” are crossed out] 1500
1. CDSO Synch [Chief of Defence Staff Synchronisation Meeting] [two checkmarks] [redacted for irrelevance]
- SSO [Senior Staff Officer] - [redacted for solicitor-client privilege] [redacted for irrelevance]

* Pg 166 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on previous page]

2. CDS Staff Synch [Chief of Defence Staff Staff Synchronisation] (0815) [redacted for irrelevance]

- DSX [Defence Executive Committee] [redacted for irrelevance]
- CAFCWO [CAF Chief Warrant Officer] [redacted for irrelevance]

* Pg 167 of the AR:

- [left-hand page almost entirely blank]
- [left-hand note redacted for irrelevance]
- [right-hand page]
- [continuance of list on previous page]

3. Ops [operations] Update (0830)

- a. [redacted for irrelevance]
- b. [redacted for irrelevance]
- c. [blank]

4. Announce [?] Coord [coordination/coordinator?] (0900) [redacted for irrelevance]

* Pg 168 of the AR:

- [left-hand note fully redacted for irrelevance]
- [right-hand page]
- [continuance of list on previous page]

5. DSX [Defence Executive Committee] (1000) [redacted for irrelevance]

- a. [redacted for irrelevance]
- b. [redacted for irrelevance]
- c. [redacted for irrelevance]

* Pg 169 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on previous page]

6. Call w/ [with] F2 [Dany Fortin] (1330)

- MS interview req [request] – CX [cancelled]
- Only person in PHAC [Public Health Agency of Canada] is Simon B [BGen Bernard]
- Spoke to Def [defence] Counsel
- In Vacc NOC [National Operations Centre at Public Health Agency of Canada]
- Sgt Richard (MP) → investigation

- [arrow pointing from Sgt Richard (MP) to] staff
 - [arrow pointing from staff to] knew of investigation into F2 [Dany Fortin]
 - Told LCol [Lieutenant Colonel Simon Côté] in NOC [National Operations Centre]
 - Simon Côté → Simon B. [Bernard]

* Pg 170 of the AR:

- [left-hand page blank]
- [right-hand page]
- 21 Apr [April] 21

1. CDSO Synch [Chief of Defence Staff Office Synchronisation Meeting] (0800)
[redacted for irrelevance]

- SSO [Senior Staff Officer] [redacted for irrelevance]
- PA [Public Affairs] [redacted for irrelevance]
- SA [Situational Awareness] [redacted for irrelevance]

* Pg 171 of the AR:

- [left-hand page blank]
 - [right-hand page]
 - [continuance of list on previous page]
2. CDS Staff Synch [Chief of Defence Staff Staff Synchronisation] (0850) [redacted for irrelevance]

* Pg 172 of the AR:

- [left-hand page blank]
 - [right-hand page]
 - [continuance of list on previous page]
3. Ops [operations] Update (0830)
- a. [redacted for irrelevance]
 - b. [redacted for irrelevance]
 - c. [redacted for irrelevance]
 - d. [redacted for irrelevance]
 - e. [redacted for irrelevance]
 - f. [redacted for irrelevance]
4. SSA MND [Minister of National Defence] (1130) [redacted for irrelevance]
5. CDS [Chief of Defence Staff] [redacted for irrelevance]

* Pg 173 of the AR:

- [left-hand page]
 - Reasonable Prob [probable] grounds
 - Reasonable Prob [probable] Conviction
 - [right-hand page]
 - [continuance of list on previous page]
6. CFP [Canadian Forces Provost Marshal] (1230)
- a. F2 [Dany Fortin] – finalize investigation
 - pre 1998, CM [Court Martial] not permitted to hear sexual [word “misconduct” is crossed out] aslt [assault]
 - refer to Crown Pros [Prosecutor] in PQ [Province of Quebec]
 - 2-3 months normally w/ [with] a decision to proceed or not
 - only public if charges are laid
 - CP lays the charge
 - vice [?] the police
 - reasonable probable ground that an offence was committed
 - F2 was offered [*sic*] opportunity to talk
 - F2 [Dany Fortin] not informed by
 - NIS [National Investigation Service]

- CDS [Chief of Defence Staff]
[arrow pointing from F2 [Dany Fortin] to] as file open “ongoing [sic] until Crown Pros [Prosecutor]
- Crown Pros [Prosecutor] will advise NIS [National Investigation Service] if they will lay the charge
- subm [submitted] to Crown in a couple week [sic]
- 2-3 months after for decis [decision] (late summer, early fall)
- Can info [inform] MND [Minister of National Defence]

* Pg 174 of the AR:

- [left-hand page blank]
- [right-hand page]
- 4 May 21 [2021]
- 1. CDSO Synch [Chief of Defence Staff Office Synchronisation Meeting] [redacted for irrelevance]
 - SO [Senior Officer ?] [redacted for irrelevance]
 - PA [Public Affairs] [redacted for irrelevance]
 - SA [Situational Awareness] [redacted for irrelevance]

* Pg 175 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on previous page]
- 2. CDS Staff Coord [Chief of Defence Staff Coordinator/Coordination ?] (0815) [redacted for irrelevance]
 - SA [Situational Awareness] [redacted for irrelevance]

* Pg 176 of the AR:

- [left-hand page]
- Directeur des Poursuites Criminelles et Pénales
- [right-hand page]
- 3. CFPM [Canadian Forces Provost Marshal]/NIS [National Investigation Service] Update (0830)
 - a. [redacted for irrelevance]
 - b. [redacted for irrelevance]
 - c. [redacted for irrelevance]
 - d. [redacted for irrelevance]
 - e. [redacted for irrelevance]
 - f. F2 [Dany Fortin]– w/ Prosecutor PQ [Province of Quebec] [box with checkmark] [illegible]
 - g. [redacted for irrelevance]
 - h. [redacted for irrelevance]
 - i. [redacted for irrelevance]

* Pg 177 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on previous page]
- 4. DWAO Mts (1000) [redacted for irrelevance]
- 5. Mtg DM [Deputy Minister]/CDS [Chief of Defence Staff]/PA [Public Affairs]/DGS (0900)
 - Lebou [Dan Leboutillier, deputy for Assistant Deputy Minister Public Affairs and head of media relations] – media
 - F2 [Dany Fortin]
 - unknown context
 - Clerk – today [box with checkmark] – principles behind the decision...
 - Ian [*sic*] Stewart - inform [box with checkmark]
 - buy time and space – narrative to [illegible]
 - how roll out?
 - how else pull out w/ [with?] F2 [Dany Fortin]
 - other actions to allegation

* Pg 178 of the AR:

- [left-hand page blank]
- [right-hand page]
- 13 May 21 [2021]
- 1. CDSO Coord [Chief of Defence Staff Office Coordinator/Coordination?] (0800) [redacted for irrelevance]
 - SSO [Senior Staff Officer] [redacted for irrelevance]
 - PA [Public Affairs] [redacted for irrelevance]
 - [redacted for solicitor-client privilege] [redacted for irrelevance]
 - AdC [Aide-de-Camp] [blank]
 - CIG [Commander's Initiatives Group] [redacted for irrelevance]
 - SA [Situational Awareness] [blank]

* Pg 179: of the AR:

- [left-hand notes fully redacted for irrelevance]
- [right-hand page]
- [continuance of list on previous page]
- 2. CDS Staff Synchron [Chief of Defence Staff Synchronisation] (0830) [redacted for irrelevance]
- 3. Ops [operations] Update (0900)
 - a. [redacted for irrelevance]
 - b. [redacted for irrelevance]
 - c. [redacted for irrelevance]
 - d. [redacted for irrelevance]
 - e. [redacted for irrelevance]
 - f. [redacted for irrelevance]
- 4. MND [Minister of National Defence] O&I [operations and intelligence meeting] (1130)
 - a. [redacted for irrelevance]

- b. [redacted for irrelevance]
- c. [redacted for irrelevance]
- d. [redacted for irrelevance]
- e. [redacted for irrelevance]
- f. [redacted for irrelevance]

* Pg 180 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on previous page]
- 5. Call w/ [with] CFPM [Canadian Forces Provost Marshal] (1700)
 - CDS [Chief of Defence Staff] /DM [Deputy Minister] /PA [Public Affairs]...
 - Crown Pros [Prosecutor] lay charges in PQ [Province of Quebec], not police
 - Pre 1997 all mil [military] sexual aslt [assault] charges referred to Civ [civilian] Justice
 - reasonable and probable grounds
 - NIS [National Investigation Service] – facts only, no determination
 - MPs have to believe that they have enough to possibly meet elements of an offence before hand over for decision
 - could take 3-4 months
 - DMP [Director of Military Prosecution] to reach to PQ Pros [Province of Quebec prosecutors] to explain sensitivities – discussion between prosecutors
 - case is protected until charge is laid
 - no charge laid, not public
 - historical sexual aslt [assault], no witness
 - if no charge laid, CoC [Chain of command] notified
 - consider wishes of victim

* Pg 181 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on previous page]
- 6. Pres [President] PHAC [Public Health Agency of Canada] (1725)
 - A/CDS [Acting Chief of Defence Staff] gave synopsis of [illegible]
 - put plan in motion to announce replacement – when? tomorrow?
 - get Min Health in same place
 - replacement ident [identified], Kayly Levesque
 - CAF [Canadian Armed Forces] spokesperson ???
 - F2 [Dany Fortin] on leave tomorrow
 - Ian [*sic*] [Stewart] will talk to F2 [Dany Fortin], A/CDS [Acting Chief of Defence Staff] will f/u [follow up] with him
- 7. DM [Deputy Minister] / CDS [Chief of Defence Staff] /PA [Public Affairs]
 - PHAC [Public Health Agency of Canada]
 - no talk about invest [investigation] – protect herself
 - victim – balance
 - DND [Department of National Defence] on own – narrative?

- transition plan
- 8. PHAC [Public Health Agency of Canada] (1912)
 - update
 - wants excuse CAF [Canadian Armed Forces] op [operational] needs
 - who at presser [press conference]?
 - Might get asked to provide CAF [Canadian Armed Forces] pers [person]
 - Ian [*sic*] [Stewart] will send sitrep to Min [Minister of] Health outlining plan
 - Min [Minister] Sajjan file, proposed rollout
 - Victim
 - Due process
 - [unchecked box] Simon – transition?
 - [unchecked box] let victim know

* Pg 182 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on previous page]
- Wed [Wednesday] - announce?
- 9. F2 [Dany Fortin] (2015)
 - risk calculation changing
 - transition plan – negotiating
 - leave tomorrow, let him know plan tomorrow
 - F2 [Dany Fortin]
 - investigation status?
 - did not take NIS [National Investigation Service] interview on advice of lawyer

* Pg 183 of the AR:

- [left-hand note fully redacted for irrelevance]
- [right-hand page]
- 14 May 21 [2021]
- 1. CDSO Synch [Chief of Defence Staff Office Synchronisation Meeting] [redacted for irrelevance]
 - SSO [Senior Staff Officer] [redacted for irrelevance]
- 2. (0812) CFLA [Canadian Forces Legal Advisor]
 - Min H [Minister of Health] not on board w/ [with] transition plan
 - Victim [unchecked box] – Public interest disclosure? -> impact? -> fed/prov
 - DAIP [redacted for solicitor-client privilege]
 - Options [in curly brackets]
 - investigations?
 - leave personal reasons?
 - back to CJOC [Canadian Joint Operations Command]?
 - timeline – 17 Mar [March] start

* Pg 184 of the AR:

- [left-hand page blank]
- [right-hand page]
- 2. CDS Staff Synch [Chief of Defence Staff Staff Synchronisation] [time “(0830)” is crossed out] [redacted for irrelevance]
 - PA [Public Affairs] [redacted for irrelevance]
 - CAFCWO [CAF Chief Warrant Officer] [redacted for irrelevance]

* Pg 185 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on previous page]
- 3. (0830) PCO Clerk [Clerk of the Privy Council Office]
 - Min H [Minister of Health] “no part of it” [illegible]
 - choices
 - PID?
 - Pers [personal?] Leave? [checkmark] preferred option
 - lines [talking points] to Clk [Clerk]
 - Pro active comms [communications]?
- 4. Ops [operations] Update (0900)
 - a. [redacted for irrelevance]
 - b. [redacted for irrelevance]
 - c. [redacted for irrelevance]
 - d. [redacted for irrelevance]
 - e. [redacted for irrelevance]

* Pg 186 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on previous page]
- 5. COS [Chief of Staff] Ops [Operations] CA (1030)
 - a. [redacted for irrelevance]
 - b. [redacted for irrelevance]
 - c. [redacted for irrelevance]
- 6. F2 [Dany Fortin] Huddle (1330)
 - privacy (PII)
 - investigation
 - NIS [National Investigation Service] ref [referral] to PQ [Province of Quebec], fed [federal] statement
 - Put prov auth [provincial authority] at risk
 - Relief from military duty process
 - Consult PQ PS [Province of Quebec Prosecutor]
 - [open curly brackets]
 - internal comms [communications]
 - CAF [Canadian Armed Forces] tm [team] PHAC [Public Health Agency of Canada]
 - PHAC [Public Health Agency of Canada] msg [message]

* Pg 187 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on previous page]
- 7. A/CDS [Acting Chief of Defence Staff] telcon [teleconference with] CFPM [Canadian Forces Provost Marshal] [words “w/ F2” [Dany Fortin] crossed out] (1440)
 - PHAC [Public Health Agency of Canada] decision
 - media rela [relations]
 - keep generic
 - NIS will deal w/ [with] any MQs [media queries]
- 8. A/CDS [Acting Chief of Defence Staff] telcon [teleconference with] F2 [Dany Fortin] (1450)
 - Min [Minister] Heidu [*sic*] [Hadju] decision
 - heads up – out today
 - anything in the statement? option 1
 - leave next week, let immediate flurry blow over [?]
 - Sp [support] network
 - VCDS [Vice Chief of Defence Staff] will reach out this weekend
 - “abandoning the mission”
 - “seen as this guy who did something”

* Pg 188 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on previous page]
- 9. VCDS [Vice Chief of Defence Staff] Bilat [bilateral] (1600)
 - a. F2 [Dany Fortin] update
 - b. [redacted for irrelevance]
 - c. [redacted for irrelevance]
 - d. [redacted for irrelevance]
 - e. [redacted for irrelevance]
 - g. [redacted for irrelevance]
 - h. [redacted for irrelevance]
 - i. [redacted for irrelevance]
 - j. [redacted for irrelevance]
 - k. [redacted for irrelevance]
 - [redacted for irrelevance]

* Pg 189 of the AR:

- [left-hand page blank]
- [right-hand page]
- [continuance of list on previous page]
- 10. [redacted for irrelevance]
- 11. Simon B [Bernard] (1720)

- Update
 - SB [Simon Bernard] engage Monday w/ Team
 - “leave w/ honour”
 - engage tm [team] virtually
 - Transition plan 40 → 33
 - may go to 20
 - adapt
- * Pg 190 of the AR:
- [left-hand page blank]
 - [right-hand page]
 - 17 May 21
 1. CDSO Synch [Chief of Defence Staff Office Synchronisation Meeting] (0830 [sic]
 - a. [redacted for irrelevance]
 - b. [redacted for irrelevance]
 - c. [redacted for irrelevance]
 - d. [redacted for irrelevance]
 - SSO [Senior Staff Officer] [redacted for irrelevance]
 - PA [Public Affairs] [redacted for irrelevance]
- * Pg 191 of the AR:
- [left-hand page blank]
 - [right-hand page]
 - [continuance of list on previous page]
 - 2. Ops [operations] Update (0900)
 - a. [redacted for irrelevance]
 - b. [redacted for irrelevance]
 - c. [redacted for irrelevance]
 - 3. DXPC (0930)
 - a. [redacted for irrelevance]
 - b. [redacted for irrelevance]
- * Pg 192 of the AR:
- [left-hand page]

T&C [?]
Simon
[illegible]
Dany
Simon will do public
V.P.
stats only
 - [right-hand page]
 - [continuance of list on previous page]
 - c. [redacted for irrelevance]
 - a. [redacted for irrelevance]
 - b. [redacted for irrelevance]
 - c. [redacted for irrelevance]

- d. [redacted for irrelevance]
 - e. [redacted for irrelevance]
 - f. [redacted for irrelevance]
 - g. [redacted for irrelevance]
 - h. [redacted for irrelevance]
 - i. [redacted for irrelevance]
 - d. [redacted for irrelevance]
4. DMC COVID (1115)

* Pg 193 of the AR:

- [left-hand page blank]
 - [right-hand page]
 - [continuance of list on previous page]
5. VCDS [Vice Chief of Defence Staff] Call (1240)
- DOS, [redacted for solicitor-client privilege], CMP, DGMC, PM
 - Krista Brody to PHAC [Public Health Agency of Canada]
 - Vet ldrs [leaders] thru [through] VCDS [Vice Chief of Defence Staff]
 - PM
 - [redacted for solicitor-client privilege]
 - ICCM
 - CFLA [Canadian Forces Legal Advisor]
 - DGMC
6. F/u [follow-up] Call (1315)
- Krista B [Brodie] to PHAC [Public Health Agency of Canada]
 - Simon B [Bernard] CJOC [Canadian Joint Operations Command]
 - vetting → CDSO [Chief of Defence Staff Office]
 - blind to investigations → how sort? process
 - Ian [*sic*] Stewart
 - GTG [good to go]
 - “no noise” transition
 - handover [illegible] CJOC [Canadian Joint Operations Command]
 - min/no [minimum/no] publicity
 - Announce today PHAC [Public Health Agency of Canada]
 - VCDS [Vice Chief of Defence Staff] → Krista [Brodie] telecon [teleconference] [illegible] 30 mins. [minutes]
 - [redacted for solicitor-client privilege]

* [Pg 194-195 of the AR: typed emails]

* Pg 196 of the AR:

- [Calendar page on date April 12, 2021]
 - [below line 8:00] [redacted for irrelevance]
 - [below line 9:00]
2. CFPM [Canadian Forces Provost Marshal] - [redacted for irrelevance]
- [on line 12:00] F2 [Dany Fortin] – NIS [National Investigation Service] has launched investigation → professional status

- [below line 1:00] [box with checkmark] M3 [redacted for irrelevance]
- [on line 3:00] B
-
- * [Pg 197 of the AR: typed email]

- * Pg 198 of the AR:
 - [Calendar page on date April 28, 2021]
 - [on line 8:00] [redacted for irrelevance]
 - [on line 10:00] [redacted for irrelevance]
 - [on line 11:00] Simon
 - F2 [Dany Fortin] can know [open curly brackets]
 - NIS [National Investigation Service] - almost complete
 - Prof [professional] Stds – 3x pers involved in ch [illegible]
 - [on line 1:00] M 2 x MP credential today
 - 3x MP in front of Bd [board]
 - [arrow pointing down from “3XMP”] to review [open curly brackets]
 - credential
 - review
 - Bd [Credential Review Board]
 - [redacted for irrelevance]

Court File No. T-957-21

FEDERAL COURT

B E T W E E N:

DANY FORTIN

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7

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[...] In the Canadian system of military justice, [institutional independence] refers to the ability of the institution of military justice to make decisions free from any political pressure as well as the public's perception of that institution and of its ability to act freely from such pressure.

– *R v Lauzon*, 1998 CanLII 19169 at para 13 (CMAC)

“L’etat, c’est moi” and “trust us, we got it right” have no place in our democracy. In our system of governance, all holders of public power, even the most powerful of them—the Governor-General, the Prime Minister, Ministers, the Cabinet, Chief Justices and puisne judges, Deputy Ministers, and so on—must obey the law[.]

– *Canada (Citizenship and Immigration) v Tennant*, 2018 FCA 132 at para 23

OVERVIEW

1. It’s a “*fait accompli*.”
2. These were the words the Acting Chief of Defence Staff chose on May 14, 2021 when he communicated to Major-General Dany Fortin the decision to publicly relieve him from his secondment from the Canadian Armed Forces to the Public Health Agency of Canada, where MGen Fortin was serving as Vice-President, Logistics and Operations for the COVID-19 Vaccine Rollout Task Force until October 31, 2021.
3. After 36 years of selfless service to this country, MGen Fortin’s reputation as a highly respected military officer fell victim to the political machinations of ministers of the Crown, more concerned for their own short-term political interests in an election year than for ensuring due process, transparency and accountability for a distinguished member of the Canadian Armed Forces, who had become a recognized and trusted public figure overseeing Canada’s vaccine distribution rollout.
4. The facts in this case are not seriously contested. The affidavit evidence of the Attorney General of Canada does not address the sequence of events set out in MGen Fortin’s affidavit, which stands uncontroverted. In fact, the AGC's affidavits do not mention the Decision at all, let alone explain why or how it was made or by whom. The AGC declined to cross-examine MGen Fortin on his affidavit evidence. The Certified Tribunal Record provided by the AGC only reinforces MGen Fortin’s allegations in the Notice of Application and his affidavit evidence. His evidence is further corroborated by the Minister of Health in public statements she made about the Decision and those involved in making it.

5. MGen Fortin was seconded to PHAC to serve as VP Logistics and Operations, in charge of logistical planning in the Government of Canada's COVID-19 vaccine distribution. He executed his role with exceptional skill and diligence. Under his leadership, Canada distributed over 20 million vaccines to Canadians, curbing the rise of COVID-19 and sharply reducing deaths.

6. Two months after he was informed that one historical allegation of sexual misconduct had surfaced against him and that an investigation into same had been opened, MGen Fortin was unceremoniously and publicly removed from his secondment.

7. The evidence points to the inescapable conclusion that the Decision was made, jointly and severally, by the Minister of Health, the Minister of National Defence, the Prime Minister of Canada and the Clerk of the Privy Council. However, under the military chain of command, the Decision should have been made by the A/CDS LGen Wayne Eyre, and by him alone. The Decision-Makers prevented the A/CDS from making the Decision, which constituted improper political interference in the military chain of command.

8. Regardless of who made the Decision, it is objectively unreasonable and cannot stand. The CTR discloses no discernible reasons for the Decision. The Decision is not justified, transparent or intelligible. It was made on improper considerations – political calculus – as opposed to the material before the Decision-Makers, who also ignored the legal constraints of the Decision in making it.

9. Contrary to military protocol and administrative law principles, MGen Fortin was not afforded any procedural fairness. He was denied the opportunity to advocate for himself, to explore alternatives or to weigh in on what should be his fate. He was not allowed to address the Decision-Makers. He did not have the chance to explain the damage the Decision would have to his reputation. He was not given reasons for the Decision. He has never been given written confirmation of the Decision. Given the importance of the Decision to MGen Fortin, the pivotal role he occupied in the most important public health undertaking in Canada in over a century, the public nature of his position and therefore of any termination, and the damage the Decision would have on his reputation, MGen Fortin was owed a level of procedural fairness that he was not afforded, irrespective of who made the Decision.

10. Therefore, the Decision must be quashed.

STATEMENT OF FACTS

A. BACKGROUND

1. MGen Fortin's secondment to PHAC and termination

11. Major-General (“MGen”) Fortin has led a distinguished career in the Canadian Armed Forces (“CAF”) for the past 36 years. His many prestigious combat roles and awards are detailed in his affidavit.¹ MGen Fortin’s stellar reputation and dedication to serving his country are best encapsulated in his 2021 Performance Evaluation Report, signed on May 11, 2021 by the A/CDS LGen Eyre (the “2021 Performance Report”), just three days before the decision to terminate MGen Fortin was made:

MGen Fortin is an officer of rare quality, who reflects the best the CAF has to offer in terms of institutional leadership. Whether in NATO operations in Iraq, working across government in PCO, or leading at PHAC, MGen Fortin has proven to be mature, seasoned, experienced, and ready for more significant challenges. MGen Fortin displays the cultural, diversity and inclusion characteristics that are required of a modern leader, able to inspire others and create a 21st-century work environment. Promote now and place in charge of a CAF command.²

12. On November 27, 2020, the Minister of Health announced that the CAF and the Department of National Defence (“DND”) were seconding MGen Fortin to the Public Health Agency of Canada (“PHAC”) and naming him Vice President Logistics and Operations to oversee logistical planning in the Government of Canada’s COVID-19 vaccine distribution.³

13. MGen Fortin’s secondment was in response to a Request for Assistance from PHAC to the CAF made in October 2020. Prior to his secondment to the PHAC, his official assignment was Chief of Staff of the Canadian Joint Operations Command (“CJOC”) in Ottawa.

14. MGen Fortin reported to PHAC on November 23, 2020 to begin his work. His work at PHAC was pressing, of national importance and imperative to curb the rise of COVID-19 transmissions and deaths across Canada, as confirmed in a Chief of

¹ Affidavit of Dany Fortin, affirmed July 13, 2021, ¶ 1-2, 7 [Fortin Aff], Applicant Record [AR], Tab 2; see also Fortin Aff, Exhibit [Ex] A, AR, Tab 2A, p 34.

² Fortin Aff, Ex C, AR, Tab 2C, p 40.

³ The facts in this section are set out in the Fortin Aff at ¶ 8-18, AR, Tab 2.

Defence Staff Planning Directive, dated November 27, 2020.⁴

15. On February 24, 2021, LGen Eyre was appointed by the Minister of National Defence as the A/CDS.

16. With millions of vaccine doses left to deploy in the months that followed, PHAC requested that CAF support formally extend into the fall of 2021. On February 25, 2021, PHAC requested that the CAF's secondment, including MGen Fortin's, be extended to October 31, 2021. This request was approved by the Minister of National Defence on the advice of the A/CDS.

17. On May 14, 2021, MGen Fortin's secondment to PHAC was terminated with public statements from DND and the Minister of National Defence (the "Decision"). Public statements from the Minister of Health and the Prime Minister soon followed, as well as further public statements by the Minister of National Defence.

18. Since the termination of his secondment, MGen Fortin has been without assignment at the CAF, *de facto* relieved from the performance of military duty.

19. Under MGen Fortin's leadership, Canada procured and distributed over 20 million doses of the COVID-19 vaccine to Canadians. His tenure at PHAC was highly successful in providing the vaccines necessary to curb the rise of COVID-19 transmission in Canada.

B. THE DECISION AND THE MINISTERS' INVOLVEMENT

1. Events leading up to the Decision

20. On March 17, 2021, MGen Fortin met with A/CDS LGen Eyre who informed him that he had learned that the Canadian Forces National Investigation Service ("CFNIS") had launched an investigation against MGen Fortin for sexual misconduct. The A/CDS indicated he wanted MGen Fortin to hear it from him and not the press.⁵

21. MGen Fortin was not given any information on the allegations at this time. The A/CDS asked MGen Fortin if he wanted to take any time off, which he declined. MGen Fortin indicated he wished to continue working on vaccine distribution.

⁴ Fortin Aff at ¶ 8-11, AR, Tab 2; see also Fortin Aff, Ex F, AR, Tab 2F.

⁵ The facts in this section are set out in the Fortin Aff at ¶ 19-28, AR, Tab 2.

22. Later that evening, MGen Fortin received a call from A/CDS LGen Eyre indicating the Privy Council Office (“PCO”) had been informed of the investigation. The A/CDS stated he would advocate for due process, the presumption of innocence and that MGen be allowed to continue to perform his assigned task.

23. On the morning of March 18, 2021, MGen Fortin informed Iain Stewart, President of PHAC, of the investigation. Mr. Stewart stated this was the first time he was hearing about it.

24. In the afternoon of March 18, 2021, Mr. Stewart met with MGen Fortin. He reassured him that there was no change to his status and that it was business as usual. He stated that the investigation would run its course. He reiterated that MGen Fortin was entitled to due process and that he was presumed innocent. He stated that the Minister of Health’s Office and the Prime Minister’s Office (“PMO”) may change their minds later about keeping him in his position but that he was “OK for now”. However, Mr. Stewart told MGen Fortin to prepare himself “for the moment when they determine that you need to be let go.” Mr. Stewart said: “Keep your bags packed”.

25. On April 9, 2021, MGen Fortin received a call from his deputy who told him he had received a call from one of his subordinates. That subordinate had learned from a military police Sergeant, also part of MGen’s team, that MGen Fortin was under investigation. That Sergeant had learned of the investigation from a friend who was an investigator with the CFNIS.

26. MGen Fortin called the Chief of Staff to the Chief of Defence Staff (“COS CDS”) to express his displeasure that CFNIS was not ensuring the confidentiality of the investigation. The COS CDS later confirmed he contacted the Canadian Forces Provost Marshal (“CFPM”), Brigadier-General (“BGen”) Trudeau, who said he would investigate the leak.

27. On April 15, 2021, MGen Fortin received a call from A/CDS LGen Eyre who indicated that the complainant did not want to make the complaint public.

28. On April 19, 2021, MGen Fortin received a call from a CFNIS investigator who indicated MGen Fortin was being investigated for one instance of sexual misconduct. The investigator named the complainant and shared that the alleged misconduct was alleged to have occurred more than thirty years ago.

29. Three days before the Decision, the A/CDS signed the 2021 Performance Report, recommending MGen Fortin for immediate promotion.

2. The Decision to terminate secondment and make investigation public

30. On May 13, 2021, Mr. Stewart met with MGen Fortin. He told him that the Ministers of Health and National Defence had discussed the issue and that they wanted to remove him. He was told to “take a sick day tomorrow”. MGen Fortin indicated he would take a day off, pending confirmation of the Decision.

31. That evening, A/CDS LGen Eyre called MGen Fortin and told him they would work on a transition the next day with PHAC and the PCO. MGen Fortin asked whether the CFNIS had completed their investigation but did not receive a response to that question. Instead, the A/CDS LGen Eyre said that the “political calculus” had changed and that the PCO had said he would have to be removed.

32. On May 14, 2021, A/CDS LGen Eyre confirmed that he and Mr. Stewart had not been successful in delaying MGen Fortin’s departure. The A/CDS stated that a statement would be released to the public regarding his departure; this was not negotiable. MGen Fortin was given two options regarding the wording of the statement. MGen Fortin chose the statement in which it appeared that he had decided to step down and resign his assigned military duty at PHAC. MGen Fortin was not asked whether he consented to the public release of information regarding the existence of an investigation.

33. The Decision was presented by the A/CDS as a *fait accompli*, using those words. MGen Fortin did not have an opportunity to make representations about whether he should be removed from PHAC, whether there were other options short of removal or, either way, whether the investigation should be made public. MGen Fortin did not receive any written communication about or confirmation of the Decision.

34. To this day, MGen Fortin has not been given any information about what triggered his sudden departure from PHAC, almost two months after he was initially told of the investigation. He still does not know the reasons for his removal.

35. On May 14, 2021, DND released a statement, widely reported by media outlets, that the applicant had “left his assignment” with PHAC “pending the results of a

military investigation.”⁶ The Minister of National Defence also issued a statement in the media following the announcement of the investigation that alluded to the nature of the investigation.⁷

36. On May 18, 2021, the Minister of National Defence’s spokesperson stated publicly, “The Minister asked that the complainant receive any necessary support and stated that the investigation must take its due course”.⁸ That same day, the Prime Minister stated publicly that he had been informed of the investigation, and that the PCO regularly keeps the PMO updated on senior personnel decisions.⁹

37. MGen Fortin was only given advanced notice of the statement released by DND on May 14, 2021, mentioned at paragraph 35 above. He was not aware that the Minister of National Defence would be making additional public statements regarding the investigation, including the fact that there was a “complainant” and that he was working to build a culture of “dignity and respect” that shed “toxic and outdated values, practices, and policies”, statements that hinted at the nature of the investigation. MGen Fortin was not given any opportunity to make representations as to the propriety of these statements. He was not asked whether he consented to these public statements being made.

38. On May 19, 2021, the CFPM released a statement confirming that the CFNIS investigation involved one allegation of sexual misconduct and that the matter was being referred to the Director of Criminal and Penal Prosecutions of Quebec. MGen Fortin learned about the referral for the first time that day through news media reports.

3. Further evidence that the Decision-Makers made the Decision

39. MGen Fortin’s uncontested evidence is that, based on what he was told by Mr. Stewart and by the A/CDS, the Decision was made by the Ministers of Health and National Defence in collaboration with the Prime Minister and the Clerk of the PCO (collectively, the “Decision-Makers”).¹⁰ His evidence has been reinforced by further evidence adduced in this application.

⁶ Fortin Aff at ¶ 34, AR, Tab 2; see also Fortin Aff, Ex H, AR, Tab 2H, p 69.

⁷ Fortin Aff at ¶ 36, AR, Tab 2; see also Fortin Aff, Ex H, AR, Tab 2H, pp 70-71.

⁸ Fortin Aff at ¶ 38, AR, Tab 2; see also Fortin Aff, Ex I, AR, Tab 2I, p 75.

⁹ Fortin Aff at ¶ 41, AR, Tab 2; see also Fortin Aff, Ex I, AR, Tab 2I, pp 76-77.

¹⁰ Fortin Aff at ¶ 40, AR, Tab 2.

40. On May 30, 2021, two weeks after the Decision was made, the Minister of Health appeared on CTV's Question Period with Evan Solomon. Mr. Solomon asked her about the Decision and about when she became aware that there was an investigation into MGen Fortin's alleged conduct. She stated:

Well, I was made aware of an issue with Major-General Dany Fortin in March as well and I was assured that a process was in place to manage allegations. And, you know, I was alerted to a further development in May and at that time agreed with the President [Iain Stewart] that Major-General Dany Fortin should be relieved of his duties with the Public Health Agency.¹¹

41. When asked why she did not ask MGen Fortin to step aside as soon as she learned that there was an investigation into his conduct, the Minister of Health responded:

Well, it wasn't clear to me Evan at the beginning what the process was, and of course as I found out more about the next steps that's when I asked President Stewart to look into it more closely. And President Stewart advised me that he was asking Major-General Dany Fortin to step aside, and I agreed with that decision.¹²

42. The Minister of Health's public statements above, just two weeks after the Decision, are an admission against interest and therefore highly probative. They corroborate MGen's uncontested evidence that the Decision was, at a minimum, made by her. This is further supported by the CTR, in which BGen Mulawyshyn's notes of May 14, 2021 – the date of the Decision – state plainly, “Min. Heidú [*sic*] decision”,¹³ and A/CDS LGen Eyre repeatedly writes that the Minister of Health wanted to “protect herself” and that “she is at risk of making [a] story”.¹⁴

43. The CTR also corroborates MGen Fortin's evidence. It discloses numerous meetings regarding MGen Fortin involving the other Decision-Makers leading up to the Decision.¹⁵ The “timeline” of meetings as set out in the CTR shows eight meetings

¹¹ Affidavit of Doreen Navarro affirmed August 30, 2021 [Navarro Aff], Ex A (emphasis added), AR, Tab 3A.

¹² Navarro Aff, Ex A (emphasis added), AR, Tab 3A.

¹³ Certified Tribunal Record [CTR], AR, Tab 7B, p 187.

¹⁴ CTR, AR, Tab 7A, pp 138, 139 and Tab 7B, p 181.

¹⁵ See e.g.: CTR references to “PCO Clk” or “Clk PCO” at AR, Tab 7A, pp 113, 114, 115, 116, 119, 121, 125, 126, 132, 139, 140 and Tab 7B, pp 147, 163, 179; references

in March, only two in April and three in May: one on May 4, one on May 13 – the day MGen Fortin was told of the Decision – and one on May 14, the day the Decision was publicly announced.¹⁶ It is unclear at what point in this timeline the Decision was made. However, the timeline indicates the participants of the May 13 meeting were the Minister of National Defence, the Clerk of the Privy Council and an unidentified representative of PHAC.¹⁷ As seen throughout the CTR, the Clerk of the PCO and the PCO acted as an intermediary for views and concerns of the PMO and the Minister of Health.¹⁸

44. The CTR notes indicate the Prime Minister was briefed on MGen Fortin’s situation as early as March 19, 2021.¹⁹ The Prime Minister was consulted on the “way forward” on March 22, 2021²⁰ and continued to be briefed throughout.²¹

45. The CTR only presents a partial picture because the AGC has only produced the documents that were purportedly before the A/CDS, who did not even make the Decision under review. Despite MGen Fortin’s request for the documents that were before the Decision-Makers themselves, the AGC has refused to produce them as part of the CTR, taking the position that only the A/CDS made the Decision. However, the A/CDS’ own notes in the CTR suggest otherwise:

- (a) In notes from a call with MGen Fortin on March 18, 2021, the A/CDS’ notes suggest that he would “explain pressures and options” to MGen Fortin and include the phrase “mention before decision forced on me”.²²
- (b) In a section called “Thoughts” on the same date, A/CDS LGen Eyre writes “If we can’t follow values, at what point do I resign?”²³
- (c) In advance of his meeting with MGen Fortin on May 14, 2021, he writes,

to “MND” at Tab 7A, pp 114, 116, 125, 130, 132, 138, 139, 140 and Tab 7B, p 147; references to “PM” at Tab 7A, pp 119, 121, 122 and Tab 7B, pp 147, 193.

¹⁶ CTR, AR, Tab 7A, pp 139-140.

¹⁷ CTR, AR, Tab 7A, p 140.

¹⁸ See e.g. CTR, AR, Tab 7A, pp 114, 119, 127, 139 and Tab 7B, pp 163, 185.

¹⁹ See e.g. CTR, AR, Tab 7A, p 119: “Will talk to PM within the next hour” on May 19, 2021.

²⁰ CTR, AR, Tab 7A, p 122: “way fwd [forward] – Consult PM. Discuss w/ DM, Clk?”.

²¹ See e.g. note 16 references to “PM”.

²² CTR, AR, Tab 7A, p 119.

²³ CTR, AR, Tab 7A, p 120.

“Presented as *fait accompli*; doing damage control here”.²⁴

46. Despite the uncontroverted facts in MGen Fortin’s affidavit, the evidence in the CTR and the Minister of Health’s unambiguous public statements of her involvement in the Decision, the AGC has maintained the untenable position that the A/CDS alone made the Decision.²⁵ The AGC has provided no evidence to support this position, as discussed in the argument section below.

POINTS IN ISSUE

47. This application raises the following questions, as answered by the applicant:
- (a) Does the Attorney General of Canada’s affidavit evidence comply with Rule 81(1) of the *Federal Courts Rules*? No.
 - (b) What is the appropriate standard of review? The standard is reasonableness for question (c), and correctness for question (d).
 - (c) Was the Decision reasonable? No.
 - (d) Was MGen Fortin afforded the appropriate level of procedural fairness? No.
 - (e) What is the appropriate remedy? The Decision should be quashed and MGen Fortin should be reinstated to his secondment or placed in a position commensurate with his rank.

STATEMENT OF SUBMISSIONS

A. PRELIMINARY ISSUE: THE AGC’S IMPROPER EVIDENCE SHOULD BE GIVEN NO WEIGHT

48. Despite maintaining the untenable position that only the A/CDS made the Decision, the AGC has failed to adduce any affidavit evidence to support this position. Instead, the AGC’s affidavit evidence includes improper hearsay evidence contrary to Rule 81(1) of the *Federal Courts Rules*, as well as opinion evidence. This improper evidence should be given no weight.

49. Rule 81(1) provides that, except on motions, “[a]ffidavits shall be confined to

²⁴ CTR, AR, Tab 7A, p 141. In the notes from his meeting with MGen Fortin that same day he writes “Fait accompli”: p 141.

²⁵ In this regard, see paragraph 131 and notes 111-113 below.

facts within the deponent's personal knowledge".²⁶

50. The affidavit of BGen Paul Prevost, Director General of Operations within the Strategic Joint Staff, inexplicably provides hearsay evidence on a key issue in this application. He states that he was "informed by the Acting Commander CJOC, MGen Seymour, that MGen Fortin has not been relieved from the performance of military duty pursuant to article 19.75 or 101.09 of the *Queen's Regulations and Orders for the Canadian Armed Forces*", and that he was "informed by MGen Seymour that MGen Fortin remains posted to the COS CJOC position".²⁷

51. The question of MGen Fortin's relief from the performance of military duty is a conclusion for this Court to draw based on the evidence and the law. In the face of MGen Fortin's allegation in the Notice of Application that he has been *de facto* relieved from military duty, it is improper for the AGC's affiant to be opining on this issue through hearsay evidence. Similarly, to provide hearsay evidence that MGen Fortin still remains in his previous position given MGen Fortin's uncontested evidence that he has been without assignment since the Decision is improper. It cannot meaningfully be tested by cross-examination. The AGC has not explained why it did not include an affidavit from MGen Seymour, the person who purportedly has personal knowledge of those facts.

52. Rule 81(2) provides that "[w]here an affidavit is made on belief, an adverse inference may be drawn from the failure of a party to provide evidence of persons having personal knowledge of material facts". This Court should draw an adverse inference from the AGC's failure to provide evidence of someone with personal knowledge of the Decision and of MGen Fortin's purported status – such as MGen Seymour or the A/CDS. BGen Prevost's hearsay statements on MGen Fortin's status should therefore be rejected.

53. The AGC's failure to put the best evidence forward, including any evidence to support its position that the A/CDS in fact made the Decision, further reinforces that the Decision-Makers, not the A/CDS, made the Decision.

²⁶ [SOR/98-106](#), (emphasis added), Fortin Book of Authorities [Fortin BOA], Tab 5.

²⁷ Affidavit of Paul Prevost, affirmed August 12, 2021 at ¶ 22 [Prevost Aff], AR, Tab 4.

B. THE APPLICABLE STANDARD OF REVIEW

54. In accordance with the presumption of a reasonableness standard for substantive review,²⁸ the applicable standard for the review of the Decision is reasonableness. The standard of review for the issue of procedural fairness is correctness.²⁹

C. THE DECISION WAS UNREASONABLE

55. The Supreme Court of Canada decision in *Vavilov* provides the most current and relevant guidance with respect to what constitutes a reasonable decision. In this case, and contrary to the requirements in *Vavilov*, the reasons for the Decision were not justified, intelligible or transparent.³⁰ Nor was the Decision made with reference to the material before the Decision-Makers. Instead, the Decision was made taking into account an improper purpose – political calculus. It is therefore not justified in relation to the relevant factual and legal constraints that bear on the decision.³¹

56. As stated by the Supreme Court in *Vavilov*, “judicial review functions to maintain the rule of law while giving effect to legislative intent”³² and to “protect ‘the legality, the reasonableness and the fairness of the administrative process and its outcomes’”.³³ Therefore, the purpose of judicial review is to ensure administrative decisions are made within the bounds of the law with the appropriate justification. Decision-makers should be precluded from making decisions that fall outside of the constraints imposed by law or that do not have the appropriate justification.³⁴

57. The facts of this case cry out for a judicial response to the Decision in order to uphold the values invoked by the Supreme Court: the rule of law, respect for legislative intent and cogent and logical justification in administrative decision-making.

²⁸ [*Canada \(Minister of Citizenship and Immigration\) v Vavilov*](#), 2019 SCC 65 at ¶ 16 [*Vavilov*], Fortin BOA, Tab 11.

²⁹ [*Canadian Pacific Railway Company v Canada \(Transportation Agency\)*](#), 2021 FCA 69 at ¶ 46, Fortin BOA, Tab 12.

³⁰ *Vavilov* at ¶ 86, 95, Fortin BOA, Tab 11.

³¹ *Vavilov* at ¶ 99, Fortin BOA, Tab 11.

³² *Vavilov* at ¶ 2, Fortin BOA, Tab 11.

³³ *Vavilov* at ¶ 12, citing [*Dunsmuir v New Brunswick*](#), 2008 SCC 9 at ¶ 28 [*Dunsmuir*], Fortin BOA, Tabs 11 and 14 respectively.

³⁴ *Vavilov* at ¶ 99, Fortin BOA, Tab 11.

1. Reasons for the Decision are not internally coherent, rational or logical

58. The reasons for the Decision in this case are neither internally coherent nor rational or logical. The Decision is therefore unreasonable and should be quashed.

(a) Removal from PHAC position

59. In this case, there are no written reasons for the Decision to remove MGen Fortin from his position. The only justification provided to MGen Fortin was the statement from the A/CDS on May 13, 2021 that “the ‘political calculus’ had changed.”³⁵ This fact is not contradicted by any evidence put forward by the AGC.

60. The only other insights into the reasons for the Decision are the notes of the A/CDS LGen Eyre and BGen Mulawyshyn provided by the AGC in the CTR. These notes at times reflect the thinking of the note-taker – the A/CDS or BGen Mulawyshyn – and, at other times, capture what was said by others in meetings. It is not always clear when a particular note reflects a sentiment expressed by someone else and when it is the note-taker’s own thinking.³⁶

61. That said, there are some inferences that can be drawn from the notes provided by the AGC. First, in March there was, at a minimum, a thought process about three possible outcomes. In the CTR, on March 19, 2021, the A/CDS appears to be recording a discussion with the Deputy Minister. There is a chart of handwritten options laying out the advantages and disadvantages of each option:

1. Leave in posn [position]
 - Adv [advantages]:
 - respect rule of law, due process
 - reputation/damage
 - Dis [disadvantages]:
 - Pol [political] risk
 - Inst [institutional] risk

³⁵ Fortin Aff at ¶ 30, AR, Tab 2.

³⁶ For example, in the CTR, AR, Tab 7A, p 116, there are handwritten notes in the A/CDS LGen Eyre’s notebook under the notation “PCO Clk”. It is evident this is a meeting with the clerk of the Privy Council. The notes under this heading say, “Let’s be real careful where we put the bar”, “Continuing to work – best option”, “Need to think through what we do with other cases”. While it is evident that LGen Eyre is capturing what is being said in a meeting with the clerk of the Privy Council, the identity of the individual making each statement is unknown.

2. Remove
 - Adv [advantages]:
 - Take con [control] of decision
 - Dis [disadvantages]:
 - Reputation
 - Inst [institutional] damage
 - Internal – process respect

3. Step aside if comes out
 - Adv [advantages]:
 - Preserves decision space
 - Dis [disadvantages]:
 - reactive³⁷

62. There was thus an acknowledgement that leaving MGen Fortin in his position would respect the rule of law and due process. Reputational damage would flow from a decision to remove him, as seen in the notes under option 2, “remove”. The disadvantages if MGen Fortin remained in his position were “political risk” and “institutional risk”, while removing him would have the advantage of taking control of the decision.

63. The decision in March was for MGen Fortin to stay in his position. Both the A/CDS and Mr. Stewart reassured him at that time he learned of the investigation that he could continue to perform his assigned task and that there was no change to his status.³⁸ The notes in the CTR do not indicate what were the factors that went into the Decision to ultimately remove MGen Fortin from his position. Why was it determined that he had to be removed in May and what factors were considered in the Decision?

64. Based on the documents provided by the AGC, it appears the investigation by the CFNIS concluded in May and the investigation was referred to the Director of Criminal and Penal Prosecutions of Quebec (“DCPP”). Could the referral be the reason for the Decision?

65. The problem with this theory is that it was contemplated early on that the investigation, once concluded, would be referred to the DCPP. The notes of the A/CDS, dated March 25, 2021, record a meeting he had with the CFPM: “Where offence

³⁷ CTR, AR, Tab 7A, p 118.

³⁸ Fortin Aff at ¶ 21-23, AR, Tab 2.

occurred [*sic*] is where charge laid – thus moved to Quebec region.”³⁹ In other notes of that same day, A/CDS LGen Eyre appears to note advice he received that he may be considered a witness for trial if he meets with the complainant: “I want to meet but [redacted for solicitor-client privilege] + CFPM; strong recommendation – No; Become witness – CFNIS interview. Trial witness.”⁴⁰

66. More specific notes about referring the investigation to the DCPD appear in an entry on April 21, 2021, in which the A/CDS memorializes a meeting with the CFPM:

F [Fortin] – refer to Crown prosecutor Quebec ... 2-3 months to prosecutor; Only time public – if charges laid; Before 1998 – CMs [Court Martials] could not hear sexual aslt [assault] cases; Have to go civ [civil] justice system; Crown prosecutor – lay charge; ... Prosecutor call – reasonable probably grounds + conviction; ... He cannot be informed/briefed; Late summer/early fall – earliest charges could be laid.⁴¹

67. Therefore, it was clear as early as March that it was very likely the investigation would lead to a referral to the DCPD. The CTR notes do not indicate when their authors knew the investigation had been referred nor is there any notation confirming the decision to refer it. Nothing in the notes provided indicates the referral was the reason for the Decision. The notes do not record a moment in time when something changed and the Decision had to be made.

68. In any event, the theory that the referral to the DCPD precipitated the Decision does not assist the Decision-Makers in at least five ways: (1) it is mere speculation; (2) it runs directly counter to what MGen Fortin was told by the A/CDS was the reason for the Decision – an uncontested fact; (3) the CTR, provided as justification for the Decision, does not say that was the reason for MGen Fortin’s removal in May and, in fact, appears to show that the referral was a known entity as early as March; (4) the public statement on May 14, 2021 released by DND as well as the statement by the Minister of National Defence’s statement on May 18, 2021 state that the results of the investigation are “pending” and that “the investigation must take its due course”, implying that the referral had not yet happened;⁴² and (5) the CFPM statement on May

³⁹ CTR, AR, Tab 7A, p 123.

⁴⁰ CTR, AR, Tab 7A, p 126.

⁴¹ CTR, AR, Tab 7A, p 129.

⁴² Fortin Aff at ¶ 38, AR, Tab 2; see also Fortin Aff, Ex H, AR, Tab 2H, p 69 and Fortin Aff, Ex I, AR, Tab 2I, p 75.

19, 2021, almost a week after the Decision, was the first public acknowledgement that the matter had been referred to the DCPD.⁴³

69. As stated in *Vavilov*, judicial review is concerned with both outcome and process. Therefore, it is not open to a reviewing court to “provide reasons that were not given” or to “guess what findings might have been made or to speculate as to what the [decision-maker] was thinking. This is particularly so where the reasons are silent on a critical issue.”⁴⁴ It is therefore not open to this court to find that the reason for the Decision was the referral of the CFNIS investigation to the DCPD.

70. What then do the notes indicate about the reasons for the Decision?

71. The notes memorialize discussions with the PCO, the Clerk of the PCO, the Deputy Minister of PHAC, the Deputy Minister,⁴⁵ the CFPM, the Minister of National Defence, David Morrison (Deputy Minister of Foreign and Defence Policy Advisor to the Prime Minister) and MGen Fortin himself. They also reference meetings with the Prime Minister, the Chief of Staff to the Prime Minister, the complainant, the Minister of Health, the President of PHAC and the Judge Advocate General. It is unclear which notes can be attributed to which parties but cross-referencing the notes of the A/CDS with those of BGen Mulawyshyn do provide some insight. When both make the same note regarding the same meeting, it can be assumed that the third party they were meeting with made the comment, such as notes regarding meetings with the CFPM.⁴⁶

72. The notes of the A/CDS provide some idea as to the timeline of these meetings but the notes of BGen Mulawyshyn are, for the most part, undated. Both are replete with acronyms and short-hands. In all these notes, it is not possible to discern at what point in time the Decision was made, by whom or why. The additional documents provided in the CTR – emails and one letter regarding the public statement released by DND on May 14, 2021 – do not shed light on the reasons for removing MGen Fortin

⁴³ Fortin Aff, Ex J, AR, Tab 2J, p 84.

⁴⁴ *Komolafe v Canada (Minister of Citizenship and Immigration)*, 2013 FC 431 at ¶ 11, Fortin BOA, Tab 16, endorsed in *Vavilov* at ¶ 97, Fortin BOA, Tab 11.

⁴⁵ The notes simply say, “DM” so it is not possible to ascertain which Deputy Minister is being referenced. However, given that CAF falls under DND, it is reasonable to assume that DM refers to the Deputy Minister of DND, Jody Thomas.

⁴⁶ See e.g. in the CTR, AR, Tab 7A, p 129: in which A/CDS writes, “Only time public – if charges laid” and Tab 7B, p 173: in which BGen Mulawyshyn notes, “Only public if charges are laid” both in reference to a meeting with the CFPM.

from his position. They do not even unambiguously identify the Decision-Makers.

73. Ultimately, the CTR is not useful because it is not clear what part or parts of the CTR comprise the reasons for the Decision. Although it provides some insight into individual and institutional thoughts, opinions and considerations, it does not unambiguously identify any reasons at all. It mostly reads like a personal journal.

(b) Disclosure of the investigation and additional public remarks

74. On May 14, 2021, DND released the following statement to the public:

Today, Major-General Dany Fortin has left his assignment with the Public Health Agency of Canada, pending the results of a military investigation. Acting Chief of the Defence Staff, Lieutenant-General Eyre will be reviewing next steps with Major-General Fortin. We will have no further comment.⁴⁷

75. Instead of providing “no further comment” as stated, the Minister of National Defence issued his own statement on May 18, 2021, saying:

I am committed to working to build a true culture of inclusion for the Canadian Armed Forces and the Department of National Defence, where everyone is treated with dignity and respect. We are committed to this lasting change – one that sheds toxic and outdated values, practices, and policies.⁴⁸

76. The Minister of National Defence’s spokesperson stated on May 18, 2021, “The Minister asked that the complainant receive any necessary support and stated that the investigation must take its due course”.⁴⁹

77. With respect to the DND statement making the investigation public, the reasons appear to be indicated in the letter from Deirdra Finn, Executive Director of the Directorate of Access to Information and Privacy of DND to the Privacy Commissioner of Canada dated May 14, 2021.⁵⁰ In that letter, Ms. Finn indicates DND will be disclosing personal information relating to MGen Fortin under s. 8(2)(m)(i) of the *Privacy Act*.⁵¹ That subparagraph permits the disclosure of personal information if “the

⁴⁷ Fortin Aff, Ex H, AR, Tab 2H, p 69.

⁴⁸ Fortin Aff, Ex H, AR, Tab 2H, pp 70-71.

⁴⁹ Fortin Aff, Ex I, AR, Tab 2I, p 75.

⁵⁰ CTR, AR, Tab 7I.

⁵¹ [Privacy Act](#), RSC 1985, c P-21, s 8(2)(m)(i) [*Privacy Act*], Fortin BOA, Tab 4.

public interest in disclosure clearly outweighs any invasion of privacy that could result from the disclosure.”

78. The bar to justify release of personal information under s. 8(2)(m)(i) of the *Privacy Act* is high since the public interest must “clearly” outweigh any breach of privacy concerns.⁵²

79. The justification for weighing the balance in favour of disclosure appears to be the following as stated by Ms. Finn:

The intention of this disclosure is to provide assurance that the CAF has undertaken appropriate actions in response to allegations of conduct which are under investigation so that the public can retain confidence in the CAF as an institution charged with a public trust.⁵³

80. She also notes that “[t]he disclosure is part of a proactive media strategy.”

81. The justification provided is illogical. The statement released by DND was itself the source of the public’s knowledge of the investigation. There would have been no need to “provide assurance that the CAF has undertaken appropriate actions in response to allegations of conduct which are under investigation” if the DND statement had not alerted the public to the investigation in the first place.

82. In addition, maintaining the public confidence in the CAF, the second part of the reason for disclosing MGen Fortin’s personal information, does not provide adequate justification for disclosure under s. 8(2)(m)(i) of the *Privacy Act*.

83. Publicly identifying the subject of an investigation while indicating to the public that the results of said investigation are “pending” i.e., that the investigation is still ongoing, could have the opposite effect of instilling public confidence and trust in the CAF. Indeed, the disclosure signals that an allegation against someone can result in termination, removal from office and public humiliation, without the results of the investigation, without due process and without respecting the presumption of innocence. It could very well result in the loss of public confidence in the CAF. This result appears to have been contemplated. The advantages/disadvantages chart in the

⁵² [*Sutherland v Canada \(Minister of Indian & Northern Affairs\)*](#), 1994 CarswellNat 287 (WL Can) (FC) at ¶ 37, Fortin BOA, Tab 21.

⁵³ CTR (emphasis added), AR, Tab 7I.

CTR lists “institutional damage” as a disadvantage of removing MGen Fortin from his position.⁵⁴

84. Further, the disclosure of the investigation could not reasonably have been a basis for instilling the public’s confidence in the CAF because the disclosure did not provide the proper context for the investigation and was misleading. The statement did not mention that the allegation was from over 30 years ago or that, in his 36 years of service, MGen Fortin has otherwise had an unblemished record free of any allegations. Yet, any reasonable person would be led to believe that MGen Fortin had committed a recent wrongdoing for which he was being investigated and that necessitated his immediate removal from PHAC.

85. Finally, making the investigation public appears to run contrary to the advice given by the CFPM as late as May 12, 2021 according to the notes of the A/CDS: “public when charge laid”⁵⁵ and on April 21, 2021: “Only time public – if charges laid”.⁵⁶ The notes from BGen Mulawyshyn include the entry, “No charge laid, no public”⁵⁷ and “Only public if charges are laid.”⁵⁸

86. Indeed, DND could have made a statement simply saying that MGen Fortin was leaving his assignment with PHAC without more. It appears the Decision-Makers considered several options regarding what to disclose as the reason for MGen Fortin’s departure. The notes of BGen Mulawyshyn reveal three options were considered on May 14: That MGen Fortin was leaving PHAC as a result of (1) the investigation; (2) personal reasons; or (3) a return to CJOC.⁵⁹ A subsequent note says, “Anything in the statement? Option 1”.⁶⁰ Given the option of saying nothing or citing personal reasons, it is unclear why it was decided that the investigation ought to be disclosed, in direct contradiction to the advice received from the CFPM.

87. The more plausible reason for the release of MGen Fortin’s personal information is the statement that the disclosure was “part of a proactive media strategy”, as indicated by Ms. Finn. The implication is that DND wanted to get ahead

⁵⁴ CTR, AR, Tab 7A, p 118.

⁵⁵ CTR, AR, Tab 7A, p 138.

⁵⁶ CTR, AR, Tab 7A, p 129.

⁵⁷ CTR, AR, Tab 7B, p 180.

⁵⁸ CTR, AR, Tab 7B, p 173.

⁵⁹ CTR, AR, Tab 7B, p 183.

⁶⁰ CTR, AR, Tab 7B, p 187.

of the story since there would inevitably be questions about MGen Fortin's departure. The letter states as much: "The member is a high ranking official and holds a very high profile public assignment; the fact that the assignment has ended will be noted by the public."⁶¹

88. Given the grave reputational damage the disclosure of the investigation was sure to inflict, getting ahead of a story or being "proactive" with the media strategy were not cogent reasons justifying the disclosure of MGen Fortin's personal information. This is particularly so since he held "a very high profile public assignment" as stated by Ms. Finn and, therefore, the reputational damage was bound to be severe. The balance weighed heavily in favour of keeping MGen Fortin's personal information private, as required by the *Privacy Act*.

89. The circular reasoning that DND needed to alert the public about the investigation to give the public assurances about that investigation cannot possibly meet the test set out in s. 8(2)(m)(i) of the *Privacy Act*. In addition, it was arguably *not* in the public interest to disclose the information as it could well have the opposite intended effect – to reduce public confidence in the CAF. It was not "clear" that the balance weighed in favour of disclosure, as required by the *Privacy Act*. In fact, disclosure went against the advice of the CFPM, as noted several times in the CTR. That alone makes the Decision to make the investigation public illogical and, therefore, unreasonable.

90. With respect to the additional statements by the Minister of National Defence and his spokesperson, as reported in the media, no reasons have been provided to justify those disclosures, nor has the AGC provided any documentation related to same.

91. In short, the CTR documents provided by the AGC which purported to justify the Decision wholly fail to do so. There are no means by which this Court can conclude that the reasoning to justify the Decision is internally coherent, rational or logical.

92. Furthermore, none of the documents purportedly justifying the Decision were ever provided to MGen Fortin. The sole reason he was given for the Decision was that the "political calculus" had changed. That reason is insufficient and is not coherent, rational or logical. He was given no reason for the disclosure of his personal information. This was presented as a *fait accompli*, as confirmed by the notes in the

⁶¹ CTR, AR, Tab 7I.

CTR.⁶²

93. The shortcomings in the reasons for the Decision are not “superficial or peripheral”⁶³ to the merits of the Decision. They are “sufficiently central or significant to render the decision unreasonable.”⁶⁴ On that basis, the Decision should be quashed.

2. The Decision was arbitrary and failed to account for relevant factors

94. A reasonable decision is one that is justified in light of the facts.⁶⁵ The reasonableness of a decision may be jeopardized where the decision maker has fundamentally misapprehended or failed to account for the evidence before it.⁶⁶

95. In this case, the Decision-Makers made the Decision without regard to the material before them. Given the facts known to the Decision-Makers at the time the Decision was made, whether noted in the CTR or otherwise, it is evident from the outcome that the relevant factors were not appropriately considered: (a) the nature of MGen Fortin’s work at PHAC; (b) the absence of risk of workplace harm; and (c) reputational damage. Therefore, the Decision is unreasonable and should be quashed.

(a) Nature of MGen Fortin’s work

96. The importance of MGen Fortin’s work when he was removed is undeniable. He headed the most important Canadian public health undertaking in more than a century during an unprecedented global pandemic. His tenure at PHAC successfully provided the vaccines necessary to curb the rise of COVID-19 transmission and drastically reduce related deaths in Canada.⁶⁷ But his work had not yet finished when he was removed. MGen Fortin’s tenure was extended on February 25, 2021 to October 31, 2021.⁶⁸

97. The public health interest in keeping MGen Fortin in his position is evident and should have been at the forefront of the Decision-Makers’ deliberations. At a minimum, this salient factor should not have been ignored as it appears it was, based

⁶² Fortin Aff at ¶ 32, AR, Tab 2; see also CTR, AR, Tab 7A, p 141: “Presented as *fait accompli*; doing damage control here” and “*Fait accompli*”.

⁶³ *Vavilov* at ¶ 100, Fortin BOA, Tab 11.

⁶⁴ *Vavilov* at ¶ 100, Fortin BOA, Tab 11.

⁶⁵ *Vavilov* at ¶ 126, Fortin BOA, Tab 11; *Dunsmuir* at ¶ 47, Fortin BOA, Tab 14.

⁶⁶ *Vavilov* at ¶ 126, Fortin BOA, Tab 11.

⁶⁷ Fortin Aff at ¶ 44, AR, Tab 2.

⁶⁸ Fortin Aff at ¶ 14, AR, Tab 2.

on a review of the CTR.

98. In the notes of BGen Mulawyshyn, there is the one notation from a meeting with the Deputy Minister,⁶⁹ “impact on VRO [Vaccine Roll Out]”⁷⁰. This appears to be the only reference to the impact of MGen Fortin’s removal on the vaccine distribution operation.⁷¹

99. There is no evidence that MGen Fortin’s ability to carry out his function was hindered or compromised in any way by reason of the investigation. MGen Fortin noted in March that he wished to continue working⁷² and indeed he did so with no issues until his removal in May.

100. The *Military Administrative Law Manual*, published under the authority of the Judge Advocate General notes that, in deciding whether to relieve a member of his or her military responsibilities, it must first be determined whether to do so would “constitute a course of action that is considered to be ‘in the public interest’”.⁷³ It states that the appropriate authority must decide that “any prejudice to the member is clearly outweighed by the benefits to the public and the [CAF]”.⁷⁴

101. Nothing indicates that the Decision-Makers considered the public interest when they made the Decision to relieve MGen Fortin from his duties or that they weighed it against the prejudice of the Decision to him. The impact of MGen Fortin’s removal on the vaccine roll-out should have been top of mind in making the Decision and it appears to have been almost completely ignored as a factor. This was unreasonable.

(b) No risk of workplace harm

102. Another salient factor that should have weighed heavily towards keeping MGen

⁶⁹ We assume, as above, that when “DM” is used, it is the Deputy Minister of National Defence, Jody Thomas.

⁷⁰ CTR, AR, Tab 7B, p 161.

⁷¹ There are some references in the CTR showing concern for the impact on the public’s perception of the rollout, but not on its actual success; see e.g. CTR, AR, Tab 7A, p 119: “she must be able to ensure public confidence in vaccine rollout” and Tab 7B, p 164: “comfort/confidence in VRO key”.

⁷² Fortin Aff at ¶ 20, AR, Tab 2.

⁷³ Canadian Forces Military Law Centre, *Military Administrative Law Manual* Ch 14, Section 3 at ¶ 29, A-LG-007-000/AF-010 (Kingston: CFMLC, October 1, 2008) [*JAG Manual*], Fortin BOA, Tab 22.

⁷⁴ *JAG Manual*, ch 14, Section 3 at ¶ 29 (emphasis in original), Fortin BOA, Tab 22.

Fortin in his position was the fact that the allegation that sparked the investigation was alleged to have occurred more than 32 years ago; there was therefore no immediate risk of harm to anyone in the workplace if he remained in his position.

103. The CTR indicates the Decision-Makers knew this was a historical allegation dating back decades.⁷⁵ It also appears that the Decision-Makers knew that risk to the current workplace was a factor they should consider in making the Decision.⁷⁶

104. Indeed, as early as March 17, 2021, it appears A/CDS LGen Eyre determined that there was no risk to workplace safety if MGen Fortin remained in his position. He wrote, “Advice – from us – leave in position for now; Assured ourselves no current risk – w/ victim, workplace”.⁷⁷

105. There is no indication that anything changed with respect to that assessment. Further, even the complainant did not see a risk of harm if MGen Fortin continued his work while the investigation was ongoing. As the notes in the CTR state, the complainant “[a]ccepts him staying while investigation ongoing”.⁷⁸

106. The assessment that there was no risk to workplace safety is the only possible conclusion given that the basis for the investigation was a single historical allegation. This was a significant factor for keeping MGen Fortin in his position. It was not adequately considered by the Decision-Makers, rendering the Decision unreasonable.

(c) Reputational Harm

107. The Decision-Makers appear to have acknowledged that removing MGen Fortin from his position risked creating significant reputational harm. The advantages/disadvantages chart cites “reputation” as a disadvantage to removing MGen

⁷⁵ See e.g. CTR, AR, Tab 7A, p 110: “Let me know about allegation (no details) (historic)”; p 113: “Allegation, historic case”; p 116: “How to deal with historic events that are not criminal/CSD allegations”; p 122: “Very historic case”; p 138: “historic, no witnesses”; Tab 7B, p 180: “historical sexual aslt [assault], no witness” and “Pre-1997 all mil [military] sexual aslt [assault] charges referred to Civ [Civil] Justice”.

⁷⁶ See e.g. CTR, AR, Tab 7A, p 118: “Every case – conducts workplace risk assessment” and “Risk to people in workplace?”; p 120: “Factors to consider in retain/remove... workplace safety”.

⁷⁷ CTR, AR, Tab 7A, p 114.

⁷⁸ CTR, AR, Tab 7A, p 126.

Fortin.⁷⁹ There is also a note that “unless messaged properly will damage indiv[idual]”.⁸⁰

108. There is no doubt that publicly removing MGen Fortin from his position and releasing the fact of the investigation along with other details (e.g., that there was a complainant) would have a severe impact on MGen Fortin. The letter from DND to the Privacy Commissioner confirms that MGen Fortin was “a high ranking official and holds a very high profile public assignment; the fact that that the assignment has ended will be noted by the public.”⁸¹

109. In addition, until MGen was removed and the investigation made public, his reputation was stellar. In the 33-year period from the alleged misconduct until May 14, 2021, MGen Fortin had an unblemished and proven record as a strong, effective and fair leader. Notably, on May 11, 2021, just three days before his removal, the A/CDS signed the annual 2021 Performance Report for MGen Fortin, which emphasized his leadership skills, his judgment and lauds him as “[a]n officer of the highest ethical standing [that] embodies CAF principles and values.”⁸² He was a trustworthy, steady hand, leading the country through an unprecedented vaccine roll-out.⁸³

110. It is also a fact that prior to his public removal MGen Fortin was poised for a promotion or a field of other opportunities, including domestic and international appointments, after the completion of his secondment.⁸⁴ Indeed, his superiors had strongly recommended him for a promotion in each of the three years before the Decision, including A/CDS LGen Eyre in the 2021 Performance Report.⁸⁵

111. The CAF considers reputation to be an important factor in the context of relief from the performance of military duty. The *Military Administrative Law Manual*, published under the authority of the Judge Advocate General notes that:

⁷⁹ CTR, AR, Tab 7A, p 118.

⁸⁰ CTR, AR, Tab 7A, p 118.

⁸¹ CTR, AR, Tab 7I.

⁸² Fortin Aff, Ex C, AR, Tab 2C, p 40.

⁸³ Fortin Aff, Ex C, AR, Tab 2C, p 41: “MGen Fortin’s seamless transition to [the Vaccine Roll-out Task Force] commanding the largest domestic force in recent memory has been world-class.”

⁸⁴ Fortin Aff at ¶ 45, AR, Tab 2.

⁸⁵ Fortin Aff at ¶ 45, AR, Tab 2; see also Fortin Aff, Ex C, Tab 2C, p 40.

The ramifications of being relieved of military duty may be substantial or negligible. For a junior CF member, early in their military career and not yet having established a reputation within the military community, the repercussions of being relieved from military duty can be overcome by service rendered in later years. For a senior officer, approaching the end of a career, or who is being considered for higher command, the stigma that could be associated with that officer's abilities or character may be irreparable.⁸⁶

112. The latter scenario aptly describes MGen Fortin's situation: as an officer approaching the end of his career and who is being considered for higher command, the stigma to his character arising from the Decision is irreparable. As noted by MGen Fortin, the impact of the Decision on his reputation and career has been "devastating".⁸⁷

113. This outcome was predictable. Given what was sure to be a devastating blow to MGen Fortin's reputation and career, this factor ought to have been accorded appropriate weight. It was not, thus rendering the Decision unreasonable.

3. The Decision was based on an improper motive: "political calculus"

114. The CTR demonstrates that the Decision-Makers based the Decision on politically motivated factors that were determinative of the outcome.

115. MGen Fortin was told by the A/CDS that he was removed because "the political calculus" had changed.⁸⁸ In fact, it was the only reason for the Decision that MGen Fortin has ever been given. This remarkable fact is uncontested.

116. The CTR confirms that the political implications of keeping MGen Fortin in his position were top of mind for the Decision-Makers. The CTR is replete with notes such as "political concerns", "political lens", "political pressure", "political risk", "politically sensitive job" and "public/political factors".⁸⁹ There are even the

⁸⁶ *JAG Manual*, ch 14, s 3 at ¶ 28 (emphasis added), Fortin BOA, Tab 22.

⁸⁷ Fortin Aff at ¶ 43, AR, Tab 2.

⁸⁸ Fortin Aff at ¶ 30, AR, Tab 2.

⁸⁹ See e.g. CTR, AR, Tab 7B, p 161: "political concerns"; pp 161-162: "political lens"; Tab 7A, p 118: "political pressure"; p 118: "political risk"; p 118: "politically sensitive job"; p 118: "Could bring down govt [government]"; p 118: "Gov't [government] could fall"; p 118: "public/political factors".

following extraordinary notations: “Could bring down govt” and “Gov’t could fall”.⁹⁰

117. MGen Fortin’s situation was clearly causing the Decision-Makers much consternation, as can be seen from the CTR notes “Level of anxiety high”, “heightened anxiety” and “anxiety/emotional angst” made during meetings with the PCO or PMO.⁹¹

118. The CTR hints at why MGen Fortin’s situation appeared to be causing such political anxiety. In a meeting with the Minister of National Defence, the notes reveal, “Stays in posn [position] + something comes out it will be worse; Now, need to protect the institution. We take everything seriously”⁹² and in a meeting with the Deputy Minister, “not a solution that facilitates a long bad news story.”⁹³ In a meeting with the Deputy Minister, she relates a meeting with the Prime Minister in which the Prime Minister asks, “Is this triggered by news conf [conference], Vance allegation?”, referencing General Jonathan Vance. The Minister of Health expressed concerns about becoming publicly implicated, as recounted by Mr. Stewart: “Min H [Minister of Health] does not want to be part of a narrative; she is at risk of making [a] story.”⁹⁴

119. The CTR shows the Decision-Makers were aware that the fact of the investigation could be leaked: “What if leaked?” and “leak possible on this”.⁹⁵

120. The CTR notes, taken as a whole, confirm that the political concern was this: If MGen Fortin remained in his position and the fact of the investigation became public, it would damage the public’s perception of the institution and could expose the Decision-Makers to “political risk”. Instead, the message the Decision-Makers wanted to convey was, “We take everything seriously.”

121. The inescapable conclusion is that the Decision was politically motivated.

122. In *Ottawa-Carleton Dialysis Services v Ontario (Minister of Health)*, the Ontario Divisional Court concluded that the decision of the Minister of Health in that case had been politically motivated and therefore, an abuse of discretion as the Minister

⁹⁰ CTR, AR, Tab 7A, p 118.

⁹¹ See CTR, AR, Tab 7A, pp 119, 127 and Tab 7B, p 163.

⁹² CTR, AR, Tab 7A, p 114.

⁹³ CTR, AR, Tab 7A, p 119.

⁹⁴ CTR, AR, Tab 7A, p 139.

⁹⁵ See CTR, AR, Tab 7A, pp 118, 119, and Tab 7B, pp 161, 162, 163.

had considered irrelevant factors.⁹⁶ The Minister of Health had failed to provide any evidence to establish that the decision had been based on proper considerations.⁹⁷ The court drew the inference that the decision was made for political reasons, which was an extraneous consideration.⁹⁸ The decision was quashed as unreasonable.⁹⁹

123. Likewise, the AGC has not provided any evidence that contradicts or even puts into question MGen Fortin's evidence about the discussion with A/CDS LGen Eyre on May 13, 2021 about the reason for the Decision. As in *Dialysis Services*, this court should draw an adverse inference and make a finding that the reason for MGen Fortin's public removal from his secondment at PHAC was politically motivated and therefore improper. As stated in *Vavilov*, an otherwise reasonable outcome cannot stand if it was reached on an improper basis.¹⁰⁰ In this case, the Decision was made for political expediency to the detriment of MGen Fortin. It is unreasonable and should be quashed.

4. The Decision-Makers ignored the constraints bearing on the Decision

124. A decision-maker does not have unlimited authority to make any decision. Invariably, decision-makers are constrained and restrained by relevant legislation, common law principles and the *Canadian Charter of Rights and Freedoms*,¹⁰¹ as well as by factual and contextual considerations.¹⁰²

125. In this case, the Decision is unreasonable because it was not made according to the legal constraints bearing on the Decision and the Decision-Makers: (a) the Decision-Makers had no legal authority to make the Decision; (b) the presumption of innocence and due process were ignored; and (c) the *Privacy Act* was breached.

(a) The Decision-Makers had no authority to make the Decision

126. Pursuant to the *National Defence Act*, the Chief of Defence Staff (or an Acting

⁹⁶ [1996 CarswellOnt 3111 \(WL Can\) \(Ont Ct J \(Gen Div\)\)](#) [*Dialysis Services*] at ¶ 81-82, Fortin BOA, Tab 18; see also e.g. [GDC Gatineau Development Corporation v Canada \(Public Works and Government Services\)](#), 2009 FC 1295 at ¶ 35, Fortin BOA, Tab 15.

⁹⁷ *Dialysis Services* at ¶ 81, Fortin BOA, Tab 18.

⁹⁸ *Dialysis Services* at ¶ 81, Fortin BOA, Tab 18.

⁹⁹ *Dialysis Services* at ¶ 85, Fortin BOA, Tab 18.

¹⁰⁰ *Vavilov* at ¶ 86, Fortin BOA, Tab 11.

¹⁰¹ [Canadian Charter of Rights and Freedoms](#), Part 1 of the *Constitution Act*, 1982, Schedule B to the *Canada Act 1982 (UK)*, 1982, c 11 [*Charter*], Fortin BOA, Tab 2.

¹⁰² *Vavilov* at ¶ 105-106, Fortin BOA, Tab 11.

Chief of Defence Staff) is “charged with the control and administration of the Canadian Forces”.¹⁰³ Article 19.75 of the *Queen’s Regulations & Orders* states that “the Chief of the Defence Staff and an officer commanding a command are the authorities who may relieve an officer or non-commissioned member from the performance of military duty.”¹⁰⁴ The administration of the CAF, including on issues of secondment and relief from the performance of military duty must be decided by the CDS (or A/CDS, as applicable) – not political actors.

127. The legal authority of the CAF to administer its own affairs flows from “subsection 91(7) of the *Constitution*¹⁰⁵ to the *NDA*, from the *NDA* to its subordinate regulations, as embodied in the *QR&Os* and other regulations, and then finally to orders, instructions and directives that are issued under the overarching legislative authorities”.¹⁰⁶ The *JAG Manual* emphasises that “the rule of law is more than a nebulous abstraction. It governs every aspect of the functioning of the [CAF]”¹⁰⁷ and states that it is “essential that [CAF] authorities be able to identify and rely upon the legal authorities and principles that allow them to make administrative decisions.”¹⁰⁸

128. MGen Fortin has been without assignment and not occupying any position since he was removed from his position as VP Logistics and Operations of PHAC on May 14, 2021. He has, *de facto*, been relieved from the performance of military duty.

129. The authority to relieve MGen Fortin from military duty lay squarely with the A/CDS LGen Eyre or “an officer commanding a command”.¹⁰⁹ The authority to relieve MGen Fortin did not lay with any of the Decision-Makers. In this case, the A/CDS was prevented from ever making the Decision, even though he was the only appropriate decision-maker in these circumstances.

130. The AGC has conceded that decisions about MGen Fortin’s secondment are within the A/CDS’ sole jurisdiction. The affidavit of BGen Prevost, affirmed in support

¹⁰³ [RSC 1985, c N-5](#), s 18(1) [*NDA*], Fortin BOA, Tab 3.

¹⁰⁴ [Queen's Regulations and Orders for the Canadian Forces](#), CRC, v I, c 19 (2019), art 19.75(2) [*QR&O*], Fortin BOA, Tab 6.

¹⁰⁵ [Constitution Act, 1867, \(UK\), 30 & 31 Vict, c 3](#), reprinted in RSC 1985, Appendix II, No 5, Fortin BOA, Tab 1.

¹⁰⁶ *JAG Manual*, ch 1, s 6 at ¶ 70, Fortin BOA, Tab 22.

¹⁰⁷ *JAG Manual*, ch 1, s 6 at ¶ 76, Fortin BOA, Tab 22.

¹⁰⁸ *JAG Manual*, ch 1, s 6 at ¶ 76, Fortin BOA, Tab 22.

¹⁰⁹ See e.g. [Parsons RD \(Corporal\), R v](#), 2006 CM 3001 at ¶ 77, Fortin BOA, Tab 19; see also *JAG Manual*, ch 14, s 3 at ¶ 22, Fortin BOA, Tab 22.

of the AGC's position states, "At all times MGen Fortin remained a member of the CAF under military command, as is customary when CAF members are assigned to organizations outside of the CAF either in Canada or abroad"¹¹⁰ and also, "As a CAF member, MGen Fortin's service continued at all times to be administered by the CAF."¹¹¹ The AGC has also taken the position throughout this application that only the A/CDS made the Decision.¹¹² It appears that the parties agree on this point: The Decision was the A/CDS' alone to make.

131. MGen Fortin's evidence is that the Decision was made jointly and severally by the Minister of Health, the Minister of National Defence, the Prime Minister and the Clerk of the Privy Council. This evidence stands uncontested. The AGC chose not to cross-examine MGen Fortin on his affidavit and has provided no affidavit evidence of its own that would put his evidence on this point into question.

132. Given this uncontested evidence, the only conclusion available is that the Decision was made jointly and severally by the Ministers of Health and National Defence, the Prime Minister of Canada and the Clerk of the PCO. The Decision, which was not theirs to make, *de facto* relieved MGen Fortin of his military duties, which amounted to improper political interference in the CAF when, under the proper military chain of command, the Decision should have been made by A/CDS LGen Eyre.

133. The importance of the independence of the military chain of command cannot be overstated. The Chief of the Defence Staff ("CDS") is the highest authority in the CAF's chain of command. He or she is appointed by an Order in Council and can only be removed by way of same.¹¹³ In contrast, an A/CDS is appointed by the Minister of

¹¹⁰ Prevost Aff at ¶ 18, AR, Tab 4.

¹¹¹ Prevost Aff at ¶ 19, AR, Tab 4.

¹¹² See Letter from Elizabeth Richards to Court re CTR objection, July 30, 2021 (emphasis added), AR, Tab 6, p 101: "The decision to remove the Applicant from his attached posting was that of the Acting Chief of the Defence Staff who does not have in his possession material specified in paragraph 1 on page 19, that is, documents, memoranda, reports, emails, notes and other communications in the possession of the Ministers of Health and National Defence, the Clerk of the Privy Council and the Prime Minister of Canada." See also Letter from Elizabeth Richards to Court re CTR objection, August 6, 2021, AR, Tab 6, p 103: "the A/CDS was the legal and factual decision maker".

¹¹³ *NDA*, s 18(1), Fortin BOA Tab 3.

Defence and is therefore a ministerial appointment.¹¹⁴

134. While it would be within the Decision-Makers' authority to terminate the A/CDS, that is where their authority ends. It was not open to the Decision-Makers to reach further down the chain of command to make a staffing decision affecting a Major-General, bypassing the A/CDS, the very person with authority to make that decision. If the Decision-Makers wanted the A/CDS to take a certain action with respect to MGen Fortin and the A/CDS refused to take that action, the Decision-Makers could remove him and appoint another A/CDS or seek an Order in Council to appoint a new CDS. This is the transparent process prescribed by law. By design, the process subjects the Decision-Makers to public scrutiny and accountability. It acts an important check against insidious attempts by political actors to erode the chain of command and bend it to their will. Instead, the Decision-Makers engaged in private discussions and made a Decision without authority, without a discernible process, without public scrutiny and without accountability. It is telling that not one of them wanted to put their name to the Decision when it was made.

135. As the Decision-Makers had no authority to make the Decision, it is unreasonable and should be quashed.

(b) The Decision is antithetical to the presumption of innocence and due process

136. The presumption of innocence is a constitutional cornerstone of our justice system and is protected by the *Charter*.¹¹⁵ The presumption of innocence is not limited to criminal proceedings but necessarily informs the exercise of discretion by any administrative decision-maker, including in the Decision at hand. As the Supreme Court of Canada has held, “administrative decision-makers must act consistently with the values underlying the grant of discretion, including *Charter* values.”¹¹⁶

137. It is clear the Decision-Makers understood that MGen Fortin was considered innocent of any allegations until proven guilty¹¹⁷ and that he was entitled to due process. There are 17 references in the notes of the A/CDS and of BGen Mulawyshyn

¹¹⁴ *NDA*, s 18.2, Fortin BOA Tab 3.

¹¹⁵ *Charter*, s 11(d), Fortin BOA, Tab 2.

¹¹⁶ *Doré v Barreau du Québec*, 2012 SCC 12 at ¶ 24, Fortin BOA, Tab 13.

¹¹⁷ See e.g. CTR, AR, Tab 7A, p 118: “Legal perspective – Innocent or proven guilty” and Tab 7B, p 162: “Innocent until proven guilty”.

to “due process”¹¹⁸ and four references to “rule of law”¹¹⁹ or “respect of law”.¹²⁰ There is even a note stating, “We need to follow principles – fundamental issues in democracy”.¹²¹ Most of these notes come from meetings with Decision-Makers. It is clear these principles were top of mind.

138. A/CDS LGen Eyre told MGen Fortin that he would advocate for due process, the presumption of innocence and that he be allowed to continue to perform his assigned task.¹²² Mr. Stewart told MGen Fortin there was no change to his status, it was business as usual, he was entitled to due process and he was presumed innocent.¹²³

139. Despite understanding the importance of due process and the presumption of innocence, the Decision-Makers did not implement those principles in arriving at the Decision. No actual process is discernible from the CTR. Before the investigation had concluded or had been referred to the DCP, before any charges had even been considered – let alone laid – the Decision-Makers, following no process at all, removed MGen Fortin from his position based on an unproven, 33-year-old allegation and publicly announced an investigation into his alleged conduct. This is antithetical to the presumption of innocence. It is inconsistent with its underpinning values.

140. This Decision was, objectively, unreasonable.

(c) Disclosure of the investigation was constrained by the Privacy Act

141. In this case, the Decision-Makers were constrained by the *Privacy Act* when they disclosed the existence of the investigation on May 14, 2021, without MGen Fortin’s consent. The Decision-Makers knew they were so constrained because they wrote to the Privacy Commissioner of Canada on that same day to notify him of their intention to release MGen Fortin’s personal information, as required by s. 8(5) of the *Privacy Act*.¹²⁴

142. As noted above, the release of MGen Fortin’s personal information was a

¹¹⁸ CTR, AR, Tab 7A, pp 114, 118, 122, 124, 126, 139 and Tab 7B, pp 148, 161, 162, 163, 76.

¹¹⁹ CTR, AR, Tab 7A, p 118 and Tab 7B, p 161.

¹²⁰ CTR, AR, Tab 7B, p 163.

¹²¹ CTR, AR, Tab 7A, p 119.

¹²² Fortin Aff at ¶ 21, AR, Tab 2.

¹²³ Fortin Aff at ¶ 23, AR, Tab 2.

¹²⁴ *Privacy Act*, s 8(5), Fortin BOA, Tab 4.

violation of the *Privacy Act* and could not be justified under s. 8(2)(m)(i) because the public interest in the investigation’s disclosure – which was, at best, questionable – did not “clearly” outweigh the invasion of privacy, which was severe. The test under s. 8(2)(m)(i) was not met. The AGC has not provided MGen Fortin with the Privacy Commissioner’s response to DND’s letter of May 14, 2021, which could assist in determining whether the Privacy Commissioner thought the test under s. 8(2)(m)(i) had been met based on DND’s purported rationale.

143. The Supreme Court of Canada has held that the *Privacy Act* is: (1) quasi-constitutional; (2) fundamental in the Canadian legal system; and (3) a reminder of the extent to which the protection of privacy is necessary to the preservation of a free and democratic society.¹²⁵ The Decision-Makers disregarded these principles in this case, rendering the Decision unreasonable.

D. THE DECISION-MAKERS FAILED TO AFFORD MGEN FORTIN ANY PROCEDURAL FAIRNESS

1. MGen Fortin was owed a significant degree of procedural fairness

144. The well-known factors from *Baker v Canada (Minister of Citizenship and Immigration)*¹²⁶ militate toward a significant degree of procedural fairness in this case. While the Decision-Makers were aware of these factors in the context of MGen Fortin’s case, they failed to provide him any procedural fairness whatsoever.

145. First, the nature of the Decision and the process followed in making it support a higher level of procedural protections. Since the Decision involved an individual’s employment status, the applicable process ought to have resembled judicial decision-making, which necessitates a higher level of procedural fairness.¹²⁷ In particular, the Decision involved determining whether to publicly terminate MGen Fortin from his leadership role in the highly important and urgent work of vaccine distribution.

146. The process that should have been followed is the military process applicable to the relief from the performance of military duty, discussed further below. As conceded by the AGC, MGen Fortin remained a CAF member under the military chain

¹²⁵ [*Lavigne v Canada \(Office of the Commissioner of Official Languages\)*](#), 2002 SCC 53 at ¶ 24-25, Fortin BOA, Tab 17.

¹²⁶ [\[1999\] 2 SCR 817](#) at ¶ 23-27 [*Baker*], Fortin BOA, Tab 8.

¹²⁷ *Baker* at ¶ 23, Fortin BOA, Tab 8.

of command throughout his secondment to PHAC.¹²⁸ To remove MGen Fortin from his secondment, the A/CDS would have had to relieve him from the performance of military duty, akin to a suspension or a leave of absence, in which the officer remains a member of the CAF but does not have an assignment.¹²⁹ The Decision to terminate MGen Fortin's secondment had the very effect of relieving him from the performance of military duty, even though the appropriate military process was completely bypassed by the Decision-Makers, despite their awareness of same. Indeed, the Minister of Health's public statements on Question Period on May 30, 2021 – in which she said she agreed that MGen Fortin should be “relieved of his duties with the Public Health Agency” – squarely put relief from the performance of military duty into play.

147. The policy reasons underpinning the statutory requirement that relief from the performance of military duty be dealt with solely within the military chain of command are important. As held by the Court Martial Appeal Court, “[i]n the Canadian system of military justice, [institutional independence] refers to the ability of the institution of military justice to make decisions free from any political pressure as well as the public's perception of that institution and of its ability to act free from such pressure”.¹³⁰ While the Court was discussing judicial independence of the military courts, the principle is equally applicable to the independence of the military chain of command in its quasi-judicial decision-making capacity.

148. This leads into the second *Baker* factor which informs the content of procedural fairness: the nature of the statutory scheme under the *NDA* and the *QR&O*. The procedure for a decision on the relief from the performance of military duty is set out in arts 19.75 and 101.09 of the *QR&O*. This process most resembles judicial decision-making on the spectrum of procedures.¹³¹ Specifically, both *QR&O* provisions allow for (a) the member to be given the reason why the decision is being considered, and (b)

¹²⁸ Prevoist Aff at ¶ 18-19, AR, Tab 4.

¹²⁹ The relief from the performance of military duty can be distinguished, for instance, from the release from the military altogether. An officer relieved from military duty is still a member of the CAF, but has no assignment. The effect of a relief is temporary and lasts only while the circumstances giving rise to it are present (*QR&O*, arts 19.75(5), 101.09(4)). A release, on the other hand, is permanent and amounts to an officer no longer being a member of the CAF. Specifically, it is defined in the *QR&O*, art 1.02, Fortin BOA, Tab 6 as: “the termination of the service of an officer or non-commissioned member in any manner”.

¹³⁰ *R v Lauzon*, 1998 CanLII 19169 at ¶ 13 (CMAC), Fortin BOA, Tab 20.

¹³¹ *Baker* at ¶ 23, Fortin BOA, Tab 8.

a reasonable opportunity to make representations.¹³² Significantly, they also provide that “[t]he authority who relieves an officer [...] from the performance of military duty shall, within 24 hours of relieving the member from the performance of military duty, provide the member with written reasons for the decision”.¹³³

149. The *JAG Manual* further reinforces these fundamental principles of fairness. It emphasizes several points that support a high level of procedural fairness when considering relief from the performance of military duty:

- (a) The officer should be provided with “the basis for contemplating the relief from military duty so that [his] representations in response can be relevant and meaningful”.¹³⁴
- (b) “In the absence of an emergency, what will be considered a reasonable opportunity to make representations may require a longer period than would be otherwise reasonable when time is of the essence.”¹³⁵
- (c) As discussed above, the risk of reputational damage – particularly to a senior officer – is a paramount consideration, and thus “the authority that considers relieving a member from military duty must give careful consideration to any representations made by the member”.¹³⁶
- (f) The *JAG Manual* emphasizes that “the public interest includes the maintenance of Canadian societal values and respect for the Rule of Law. Societal values include the importance of protecting individual rights.”¹³⁷

150. The *JAG Manual* makes clear that procedural fairness is a core tenet in any decision-making affecting CAF members.¹³⁸

151. Regarding the third *Baker* factor, the Decision was of great importance to MGen

¹³² *QR&O*, v I, c 19, art 19.75(6)(a), (b), and v II, c 101, art 101.09(5)(a), (b), Fortin BOA, Tab 6; see also generally Canada, Department of National Defence, [Sexual Misconduct Response \(Defence Administrative Orders and Directives\), No 9005-1](#) (Ottawa: DND, 18 November 2020) part 6, Fortin BOA, Tab 7.

¹³³ *QR&O*, v I, c 19, arts 19.75(7) and v II, c 101, arts 101.09(6) (emphasis added), Fortin BOA, Tab 6.

¹³⁴ *JAG Manual*, ch 14, s 3 at ¶ 23, Fortin BOA, Tab 22.

¹³⁵ *JAG Manual*, ch 14, s 3 at ¶ 24, Fortin BOA, Tab 22.

¹³⁶ *JAG Manual*, ch 14, s 3 at ¶ 28, Fortin BOA, Tab 22.

¹³⁷ *JAG Manual*, ch 14, s 3 at ¶ 29, Fortin BOA, Tab 22.

¹³⁸ *JAG Manual*, ch 2, s 4 at ¶ 28-29, Fortin BOA, Tab 22.

Fortin personally. As held by the Supreme Court of Canada, “[a] high standard of justice is required when the right to continue in one’s profession or employment is at stake.”¹³⁹ Repeated mentions of the potential impact that termination would have on MGen Fortin’s reputation in the CTR demonstrate the Decision-Makers knew the significant reputational damage that would result from a termination of his high-profile leadership role.¹⁴⁰ The Decision would also significantly impact his future career prospects as a high-ranking military officer. Nevertheless, the Decision-Makers were reckless as to the impact the Decision would have on MGen Fortin’s reputation. As a result of the Decision, MGen Fortin’s evidence is that his “career appears to be over”.¹⁴¹

152. Fourth, MGen Fortin had a legitimate expectation that the Decision would be made within the military chain of command, free from any political interference. This is a purely procedural expectation that the Decision would be made by the A/CDS in accordance with the *NDA* and the *QR&O*. As has already been canvassed, the A/CDS was prevented from making the Decision, which was instead made by political actors.

153. The fifth *Baker* factor, respect of the choices made by the agency in determining its own procedures, is inapplicable given that the appropriate process for relief from the performance of military duty was not followed. The Decision-Makers’ political interference in the Decision by-passed the codified, independent military process. Thus, there can be no respect for the improper Decision-making procedure used here.

2. MGen Fortin had no opportunity to be heard

(a) No opportunity to be heard regarding termination

154. As set out above, the Decision was a *fait accompli* when MGen Fortin learned of it. The Decision-Makers became aware of the military investigation as early as March 17, 2021.¹⁴² MGen Fortin’s unchallenged evidence is that on March 18, 2021, when discussing the existence of the investigation, Mr. Stewart told MGen Fortin that his status was unchanged and that he was “OK for now”, but that the Minister of

¹³⁹ *Baker* at ¶ 25, Fortin BOA, Tab 8, citing [Kane v Board of Governors of the University of British Columbia](#), [1980] 1 SCR 1105 at ¶ 25. The quote goes on to state that: “A disciplinary suspension can have grave and permanent consequences upon a professional career” – let alone a highly public termination.

¹⁴⁰ CTR, AR, Tab 7A, pp 118, 119 and Tab 7B, p 163.

¹⁴¹ Fortin Aff at ¶ 46, AR, Tab 2.

¹⁴² CTR, AR, Tab 7A, pp 112-113, 139 and Tab 7B, p 143.

Health's Office and the PMO may change their minds later.¹⁴³ To that end, Mr. Stewart told him to "keep [his] bags packed".

155. For the next two months leading up to the Decision, MGen Fortin remained in the dark. At no time did the Decision-Makers give MGen Fortin an opportunity to be heard regarding whether he should be terminated from his secondment, whether there were other options short of termination or, either way, whether the investigation should be made public.¹⁴⁴ In fact, the Decision-Makers never even made themselves known to MGen Fortin, precluding him from having the opportunity to make representations.¹⁴⁵

156. Meanwhile, throughout this two-month period, A/CDS LGen Eyre repeatedly made notes about "respect for due process", "rule of law" and "values".¹⁴⁶ At one point he wrote, "If we can't follow values, at what point do I resign?"¹⁴⁷ These notes suggest that the A/CDS was keenly aware of the need for procedural fairness, and that he felt anxiety that it was not being afforded to MGen Fortin.

157. The Decision-Makers, meanwhile, did nothing more than tell Mr. Stewart to advise MGen Fortin that he could be terminated at any time.

158. The statutory process for the relief from the performance of military duty, which requires a "reasonable opportunity to make representations" with adequate notice to the affected officer, stands in stark contrast to the Kafkaesque situation that led to the Decision. Simply put, MGen Fortin should have had the reasonable opportunity and adequate notice to make representations with respect to the contemplated relief from military duty, to Decision-Makers who should have made themselves known to him.

(b) No opportunity to be heard regarding publicizing investigation

159. Not only was MGen Fortin denied the opportunity to be heard regarding his termination, but the fact that a public statement would be made about his termination was non-negotiable – again presented as a *fait accompli*. MGen Fortin was forced to

¹⁴³ Fortin Aff at ¶ 23, AR, Tab 2.

¹⁴⁴ Fortin Aff at ¶ 32, AR, Tab 2.

¹⁴⁵ Fortin Aff at ¶ 40, AR, Tab 2.

¹⁴⁶ See CTR, AR, Tab 7A, pp 114, 118, 122, 124, 125, 126, 139 and Tab 7B, pp 148, 161, 162, 163, 181, on "respect for due process"; also see Tab 7A, p 118 and Tab 7B, p 161, on "rule of law"; also see Tab 7A, pp 118, 120 and Tab 7B, p 163, on "values".

¹⁴⁷ CTR, AR, Tab 7A, p 120.

choose one of the two options for public statements to be made about his removal. He reluctantly chose the statement in which it appeared that he had decided to step down and resign his assigned military duty at PHAC.¹⁴⁸

160. The failure to provide MGen Fortin an opportunity to make submissions on the publication of such a statement is made all the more egregious by several factors:

- (a) The Decision-Makers recognized that such a public statement would affect his rights under the *Privacy Act*.¹⁴⁹
- (b) DND sent a letter to the Privacy Commissioner on the same day the impugned statement was made public. There was no opportunity for the Privacy Commissioner to weigh in on the propriety or the scope of the statement or for MGen Fortin to be informed of the statement by the Privacy Commissioner pursuant to s. 8(5) of the *Privacy Act*.
- (c) The complainant specifically indicated that she did not want the complaint to be made public. She did “not want a public spectacle”¹⁵⁰ but rather “[w]ant[ed] to use her experience to make CAF better”.¹⁵¹
- (d) The Decision-Makers were fully aware of the reputational damage their Decision could have on MGen Fortin, as demonstrated in the CTR.¹⁵²

161. The failure to afford MGen Fortin an opportunity to be heard on whether to publicize the investigation constitutes yet another breach of procedural fairness.

3. The Decision-Makers failed to give MGen Fortin reasons for the Decision

162. MGen Fortin’s case is a classic example of a situation where written reasons were required. In *Vavilov*, the Supreme Court reiterated this principle from *Baker*:

Cases in which written reasons tend to be required include those in which the decision-making process gives the parties participatory rights, an adverse decision would have a significant impact on an individual or there is a right of appeal.¹⁵³

¹⁴⁸ Fortin Aff at ¶ 31, AR, Tab 2.

¹⁴⁹ *Privacy Act*, Fortin BOA, Tab 4.

¹⁵⁰ CTR, AR, Tab 7A, pp 122, 125.

¹⁵¹ CTR, AR, Tab 7A, p 126.

¹⁵² CTR, AR, Tab 7A, pp 118, 119 and Tab 7B, p 163.

¹⁵³ *Vavilov* at ¶ 77 [citations omitted], Fortin BOA, Tab 11.

163. These criteria are met. As stated, the content of procedural fairness required that MGen Fortin be given an opportunity to be heard in respect of the Decision. The Decision to publicly terminate MGen Fortin, as the Decision-Makers were aware, would have a significant impact on MGen Fortin's reputation and career prospects.

164. The process for relief from the performance of military duty explicitly contemplates that written reasons will be provided within 24 hours of a decision. Not only were written reasons required here *per se*, but reasons are also important because, had the Decision properly been made by the A/CDS, there would have been a "right of appeal": An officer has the right to grieve this type of decision under s. 29 of the *NDA*. Written reasons are an important tool for challenging a decision in a military grievance.

165. The Supreme Court in *Vavilov* emphasized the importance of "develop[ing] and strengthen[ing] a culture of justification in administration decision making".¹⁵⁴ Reasons are important because they "explain how and why a decision was made. They help to show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair and lawful manner. Reasons shield against arbitrariness as well as the perception of arbitrariness in the exercise of public power".¹⁵⁵

166. The absence of reasons has led to an arbitrary exercise of public power by the Decision-Makers, the very danger of which the Supreme Court warned. The Decision-Makers were motivated by self-serving political considerations in making the Decision, interfering with the military chain of command in so doing. They did not consider arguments made by or on behalf of MGen Fortin because they never solicited them. MGen Fortin has never received the reasons for which he was publicly terminated.¹⁵⁶

167. This failure is, in itself, a breach of procedural fairness.

168. Echoing the Supreme Court of Canada's emphasis of the importance of reasons in *Vavilov*, the Federal Court of Appeal has described "[t]he rationale against the complete immunization of administrative conduct from review [...] as [being] as

¹⁵⁴ *Vavilov* at ¶ 2, Fortin BOA, Tab 11; see also ¶ 14: "administrative decision makers must adopt a culture of justification and demonstrate that their exercise of delegated public power can be 'justified to citizens in terms of rationality and fairness'".

¹⁵⁵ *Vavilov* at ¶ 79, Fortin BOA, Tab 11.

¹⁵⁶ Fortin Aff at ¶ 33, AR, Tab 2.

fundamental as it can get”.¹⁵⁷ The Court also observed that “[c]ourts are alert to attempts by public authorities and administrators to immunize their decision-making by withholding documents and information necessary for judicial review or by failing to give explanations and rationales for decision-making”.¹⁵⁸

169. This is precisely what occurred here. The Decision-Makers have attempted to immunize from review a Decision made without authority by withholding documents, reasons and information from MGen Fortin and from this Court by failing to provide a fulsome CTR and relevant, proper affidavit evidence. This improper conduct should not be countenanced, and the Decision-Makers should be held to account.

E. APPROPRIATE REMEDY

170. In *Vavilov*, the Supreme Court confirmed that a court may decline to remit the matter back to the appropriate decision-maker for reconsideration under certain circumstances including when (1) remitting the matter would stymie the timely and effective resolution of matters; (2) where a particular outcome is inevitable and remitting the case would therefore serve no useful purpose; (3) there are concerns about delay, fairness to the parties or the urgency of providing a resolution to the dispute; and/or (4) there are concerns about the costs to the parties and the efficient use of public resources, among other considerations.¹⁵⁹

171. In this case, all these criteria are met, and this court thus should exercise its discretion and decline to remit the matter back to the A/CDS. Specifically, MGen Fortin’s secondment at PHAC is set to expire on October 31, 2021. Any attempt to reconsider the Decision with the appropriate level of procedural fairness will result in an outcome only after the expiry of MGen Fortin’s term, rendering the issue moot.

172. In any event, the unreasonable, inscrutable Decision, tainted with political interference, should never have been made. MGen Fortin should have remained in his post, as that was the only reasonable decision in this case. Given that there is only one reasonable outcome – for MGen Fortin to complete his secondment at PHAC – the outcome is inevitable, and the Decision need not be remitted for reconsideration.

¹⁵⁷ [*Canada \(Citizenship and Immigration\) v Canadian Council for Refugees*](#), 2021

FCA 72 at ¶ 105 [*Council for Refugees*], Fortin BOA, Tab 9.

¹⁵⁸ *Council for Refugees* at ¶ 106, Fortin BOA, Tab 9.

¹⁵⁹ *Vavilov* at ¶ 142, Fortin BOA, Tab 11.

173. Given the urgency of the impending end of his secondment term on October 31, 2021, this court should quash the Decision and reinstate MGen Fortin to his position at PHAC and there should be no reconsideration of the matter.

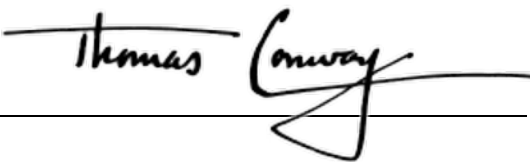
174. MGen Fortin understands it may be more expedient, given the approaching end of his secondment, to simply reassign him to a position commensurate with his rank of Major-General. Therefore, the court should require the AGC to, at a minimum, reinstate him to PHAC or, if more expedient, reassign him to a position commensurate with his rank.

STATEMENT OF THE ORDER SOUGHT

175. The applicant respectfully requests:

- (a) An order in the nature of *certiorari* quashing the Decision to publicly terminate the applicant's secondment and relieve him from the performance of military duty;
- (b) An order reinstating him to his secondment at PHAC and/or a position commensurate with his rank of Major-General, as the Decision was unreasonable and breached the applicant's right to procedural fairness;
- (c) In the alternative, an order referring the matter to the Acting Chief of Defence Staff for a forthwith re-determination consistent with the Court's reasons on this application;
- (d) Costs of this application; and
- (e) Such further and other relief as counsel may advise and the Court may permit.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of September, 2021.



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LIST OF AUTHORITIES

Legislation and Regulations

1. [Constitution Act, 1867](#), (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, Appendix II, No 5
2. [Canadian Charter of Rights and Freedoms](#), Part 1 of the *Constitution Act*, 1982, Schedule B to the *Canada Act 1982* (UK), 1982, c 11
3. [National Defence Act](#), RSC 1985, c N-5
4. [Privacy Act](#), RSC 1985, c P-21
5. [Federal Courts Rules](#), SOR/98-106
6. [Queen's Regulations and Orders for the Canadian Forces](#), CRC, v I and II (2019)
7. Canada, Department of National Defence, [Sexual Misconduct Response \(Defence Administrative Orders and Directives\), No 9005-1](#) (Ottawa: DND, 18 November 2020)

Jurisprudence

8. [Baker v Canada \(Minister of Citizenship and Immigration\)](#), [1999] 2 SCR 817
9. [Canada \(Citizenship and Immigration\) v Canadian Council for Refugees](#), 2021 FCA 723
10. [Canada \(Citizenship and Immigration\) v Tennant](#), 2018 FCA 132
11. [Canada \(Minister of Citizenship and Immigration\) v Vavilov](#), 2019 SCC 65
12. [Canadian Pacific Railway Company v Canada \(Transportation Agency\)](#), 2021 FCA 69
13. [Doré v Barreau du Québec](#), 2012 SCC 12
14. [Dunsmuir v New Brunswick](#), 2008 SCC 9
15. [GDC Gatineau Development Corporation v Canada \(Public Works and Government Services\)](#), 2009 FC 1295
16. [Komolafe v Canada \(Minister of Citizenship and Immigration\)](#), 2013 FC 431
17. [Lavigne v Canada \(Office of the Commissioner of Official Languages\)](#), 2002 SCC 53

18. [*Ottawa-Carleton Dialysis Services v Ontario \(Minister of Health\)*](#), 1996 CarswellOnt 3111 (WL Can) (Ont Ct J (Gen Div))
19. [*Parsons RD \(Corporal\), R v*](#), 2006 CM 3001
20. [*R v Lauzon*](#), 1998 CanLII 19169 (CMAC)
21. [*Sutherland v Canada \(Minister of Indian & Northern Affairs\)*](#), 1994 CarswellNat 287 (WL Can) (FC)

Secondary Sources

22. Canadian Forces Military Law Centre, [*Military Administrative Law Manual*](#), A-LG-007-000/AF-010 (Kingston: CFMLC, October 1, 2008)