

ONTARIO  
**SUPERIOR COURT OF JUSTICE**

BETWEEN

MICHAEL JACK

Plaintiff

-and-

ONTARIO PROVINCIAL POLICE AS  
REPRESENTED BY THE MINISTRY OF COMMUNITY  
SAFETY AND CORRECTIONAL SERVICES AND ITS  
EMPLOYEES MARC GRAVELLE, JOHN POLLOCK,  
SHAUN FILMAN, JENNIFER PAYNE, JAMIE BROCKLEY,  
MELYNDA MORAN, MARY D'AMICO, RICHARD NIE,  
BRAD RATHBUN, ROBERT FLINDALL, PETER BUTORAC,  
RONALD CAMPBELL, MIKE JOHNSTON, CHRIS  
NEWTON, COLLEEN KOHEN, HUGH STEVENSON AND  
MIKE ARMSTRONG

ONTARIO PROVINCIAL POLICE ASSOCIATION  
AND ITS REPRESENTATIVES SHAUN FILMAN,  
KAREN GERMAN, JIM STYLES AND MARTY  
MCNAMARA

Defendants

**NOTICE OF MOTION**

The Plaintiff, Michael Jack will make a motion to a judge on **Monday, April 22, 2013**, at **9:30 am** or soon after that time as the motion can be hear, at the **Superior Court of Justice, 393 University Avenue, Toronto, Ontario.**

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. An amendment to the Statement of Claim to reflect the correct name for the Ontario Provincial Police (OPP) as a defendant under the title: Ontario Provincial Police as represented by the Ministry of Community Safety and Correctional Services.
2. An amendment to the Statement of Claim to remove the Government of Ontario as a Defendant as identified in error by the title 'Her Majesty the Queen in Right of Ontario as represented by the Ministry of Community Safety and Correctional Services and operating as the Ontario Provincial Police.'
3. A request for a fee waiver from the court in respect to this Statement of Claim.
4. A request for special representation by his friend, Lloyd Tapp.

**THE GROUNDS FOR ITEMS 1 AND 2 OF THE MOTION ARE:**

5. On December 21, 2012, the Plaintiff filed a Statement of Claim (Claim) via his representative Lloyd Tapp at the Superior Court of Justice in Toronto (**Tab 2 – Claim CV-12-470815**).
6. The Claim was made out against the Ontario Provincial Police (OPP) and its employees as named in the Claim and against the Ontario Provincial Police Association (OPPA) and its representatives as named in the Claim.

7. In the Claim the Plaintiff seeks to be represented by his friend, Lloyd Tapp who is doing so freely and voluntarily.
8. The Plaintiff has indicated in his Claim that neither he nor his representative have had any experience in such an endeavour before the Superior Court of Justice but is prepared to face the challenges since he cannot afford legal counsel and cannot qualify for legal aid.
9. The Plaintiff genuinely believes that he has an action against the Ontario Provincial Police and its named employees and against the Ontario Provincial Police Association and its named representatives as well as against the Government of Ontario (Government).
10. However, in his filed Claim the Plaintiff erroneously identified the OPP as 'Her Majesty the Queen in Right of Ontario as represented by the Ministry of Community Safety and Correctional Services and operating as the Ontario Provincial Police' and in so doing unconsciously bound the Government as a defendant in the Claim.
11. The Plaintiff believed that the address that he used for the OPP was correct since he used the identical address that his counsel used in his application before the Human Rights Tribunal of Ontario (HRTO) before she vacated herself from the application (**Tab 3** – copy of HRTO application).
12. A request to have that application deferred pending a complete withdrawal should his Claim be allowed to proceed has been forwarded to the Tribunal (**Tab 4** – copy of request to differ application).

13. On December 27, 2012, the Plaintiff served notice on the Government of Ontario regarding the Claim against the OPP and the OPPA (**Tab 5** – copy of notice with claim).
14. The notice, which was in the form of a letter stated that sixty days from then an amendment to the Claim would be filed at the Superior Court of Justice in Toronto officially binding and identifying the Government as a Defendant as per section 7 of the *Proceedings Against the Crown Act*.
15. On January 15, 2013, while preparing a reply to a motion from the OPPA Defendants the Plaintiff's representative, received a letter from counsel for the Government of Ontario dated January 14, 2013. The letter pointed out the error on the part of the Plaintiff but indicated that the Government of Ontario was prepared to accept the notice and copy of the Statement of Claim they received as a Notice of Claim under section 7 of the *Proceedings Against the Crown Act* (**Tab 6** – copy of letter from Crown).
16. As per the suggestion of counsel for the Government of Ontario, the Plaintiff is seeking an amendment to the information on file and the title of the proceedings in the filed Claim to reflect the correct identity of the OPP Corporate Defendant only as: Ontario Provincial Police as represented by the Ministry of Community Safety and Correctional Services.
17. The rest of title of the proceedings will remain the same after the wording: and its employees ...

18. In light of the need for the amendment the Plaintiff can indicate he does not believe that there is a need to withdraw the Claim because the identifying of the Government of Ontario was done so in error for he genuinely believed that he wasn't naming the Government and this genuine belief is reflected in item 176 on page 102 of the Claim.
19. Due to the error as mentioned the Plaintiff sees that it is only appropriate that the Crown be afforded the full sixty days as per section 7 of the *Proceedings Against the Crown Act* and will delay the filing of a future amendment that will name and bind the Crown as a Defendant so as to reflect a period of sixty days fairly.
20. The Plaintiff can indicate that this future amendment to the title and information of the filed Claim that will bind the Crown as a Defendant will be forthcoming on or about April the 5, 2013 and will be requesting that the motion for that future amendment be done in writing so as to prevent needless court costs.

**THE GROUNDS FOR ITEM 3 OF THE MOTION ARE:**

21. The Plaintiff is a Canadian citizen in so much that he worked hard to earn it (**Tab 7** – copy of Canadian Passport).
22. The Plaintiff has an application before the Human Rights Tribunal of Ontario (HRTO) that is in the hearings stages having commenced on May 22, 2012 (Tab 2).

23. The Plaintiff has filed a request for an order to differ his application before the HRTO differed pending a complete withdrawal should his Claim be allowed to proceed (Tab 3).
24. The Plaintiff has moved back to Israel being that all attempts at finding suitable employment including employment at other police services in Ontario failed (**Tab 8** – correspondences with various police services).
25. His employment in Israel consists of irregular work but is currently with one employer that affords him the opportunity to save up enough money to purchase a ticket (twice so far) to travel to Toronto for the HRTO hearings.
26. He currently resides with his parents and owns no assets other than his clothing, personal necessities and a lap top computer that can be packed into a suitcase to travel to Toronto.
27. While in Toronto he stays at his representatives' residence.
28. It is his intentions that should his Claim be allowed to proceed he will be filing a request for an order for the complete withdrawal of his application.
29. He has no income from any sources in Canada what so ever.
30. Service Ontario provides exemptions for fees for civil actions and provides a base amount that one with no dependants must be earning in order to meet the requirements for a fee waiver (**Tab 9** – Service Ontario guidelines for Fee Waiver Requests).

31. The Plaintiff does believe he qualifies under the guidelines for a waiver of fees as provided by Service Ontario and as such completed a Fee Waiver Request to Court application (Fee Waiver) and has had the application and all supportive documents sworn to before a commissioner at the Canadian Embassy in Israel (**Tab 10** – Fee Waiver Request to Court).
32. The currency in Israel is ‘shekels’ and its equivalency to Canadian dollars is roughly four shekels to one Canadian dollar.
33. His gross monthly pay is roughly 7,000 shekles which is reflected in the affidavits of his Fee Waiver and is the equivalent of a gross monthly income of 1,625 Canadian.
34. Though there are times he earns up to 10,000 shekels a month as evidenced in his affidavits he is able to state that he earns on average, the equivalent of 1,625 dollars Canadian a month and at times, the equivalent of 2,500 dollars Canadian, gross.
35. He does supplement his income by providing English tutorial lessons which is why he is able to state on page six of his Fee Waiver that he earns the equivalent of a gross monthly income of 2,200 dollars Canadian.
36. His monthly expenses as evidenced on page 7 of the Fee Waiver are 1,250 Canadian which leaves him a balance of 950 dollars Canadian a month.
37. The total net worth of his household’s liquid assets as evidenced on page 8 of his Fee Waiver is 1,000 Canadian and his household net worth is zero dollars Canadian.

38. However, there are other costs that the Plaintiff has with respect to assisting his representative (who is presently on a disability income from his employer) in relation to materials and gasoline for his representative's commutes to Toronto for the purpose of serving and filing of documents.
39. The Plaintiff is extremely limited financially and does not share the liberty of unlimited resources and finances as do the defendants and is thereby seeking the permission of this Honourable Court to grant his request for a Fee Waiver.

**THE GROUNDS FOR ITEM 4 OF THIS MOTION ARE:**

40. The Plaintiff's life was ruined by the actions of the Defendants.
41. To the date of this claim the Plaintiff merely possesses a suitcase full of clothes that he can readily travel with back and forth to Canada for the hearings before the HRTO and ultimately via this claim. This reality places the Plaintiff in a paradox in so much that though he knows that he has to move on with his life and focus on a new career he also knows that what was done to him was wrong and totally reprehensible. He also knows that what was done to him literally robbed him of a career and left him incapable of securing similar employment elsewhere in Ontario and retrospectively elsewhere in Canada. Having to move back and forth between Toronto and Israel to pursue justice is something that he has to do in order for him to move ahead with his life in Israel.



42. The Plaintiff does not have the luxury of having an income that can support the high legal fees that lawyers set for handling such cases.
43. He has sought assistance of many lawyers but has always been advised that he has to provide retainer fees of five to fifteen thousand dollars just to have them look at the case.
44. Under the Policy on Representation with the HRTO, the Plaintiff is able to get his friend, Lloyd Tapp to represent him (**Tab 11** – copy of Policy on Representation).
45. Mr. Tapp, through his years of service as a police officer, especially in Toronto where he was exposed to several specialized units was able to accumulate a vast amount of knowledge regarding the administration of justice at various levels. His knowledge is gleaned from his work experience including and not limited to:
46. Mr. Tapp has been involved as 'Officer in Charge' of numerous cases before Judges at the Provincial Level;
47. Involved in pre-trials;
48. Involved in trials at the Superior Courts of Justice (361 University Avenue, Toronto);
49. Involved in Judicial pre-trial conferences at both levels;
50. Involved in trials before a judge alone and trials before a judge and jury at the Superior Courts of Justice;

51. Mr. Tapp has a thorough working knowledge of the Rules of Evidence and courtroom decorum;
52. Mr. Tapp has a thorough knowledge of the various documentations required for a case going through the judicial system;
53. Though Mr. Tapp is not a licenced lawyer under the Law Society of Upper Canada the Plaintiff believes Mr. Tapp is knowledgeable to locate specific documents as required no matter where or in which level a judicial process is being held. The Plaintiff also believes that though Mr. Tapp did make an error as mentioned in item 216 the error was identified and rectified by Mr. Tapp. Furthermore, Mr. Tapp has been getting more experience with the current judicial process that started at the Tribunal;
54. Though Mr. Tapp has never represented anyone at a civil trial he has had experience having gone through one himself.
55. The Plaintiff believes that it is a Judge's discretion to grant representation of the Plaintiff by a person other than one that is recognized by the Law Society of Upper Canada upon taking the following factors into consideration:
56. That said, the Plaintiff believes that the court, may permit someone to act as an agent and/or representative so long as there is no evidence that the person is dishonest or unethical. This is a discretionary decision by a Judge and so is not being taken by the Plaintiff as an automatic right. In deciding whether to permit someone to act as an agent and/or representative the court must consider a number

of factors, including whether the proposed agent and/or representative: has been shown to be incompetent, would damage the fairness of the hearing or trial, is facing criminal charges involving dishonesty or the administration of justice, has been convicted of crimes of dishonesty, has otherwise demonstrated a lack of good character that would bring the administration of justice into disrepute.

57. Mr. Tapp does meet all of the factors that are to be taken into consideration: he has, by virtue of his experience and his position towards the Plaintiff regarding the Plaintiff's Human Rights Application shown to be competent; his professionalism during his exposure to the judicial system at various levels through his years of being a police officer have never resulted in any criticism regarding any trial and/or hearing; he has never and is not facing any charges involving dishonesty or the administration of justice and in fact never faced any criminal charge whatsoever; he has never been accused of or demonstrated a lack of good character that would bring the administration of justice into disrepute.
58. In *R. v. Dick* dated January 17, 2002, BCCA 27 docket: CA029122 (**Tab 12**), in paragraph 16 the judge states, 'We use the word 'privilege' advisedly, there being clear authority for the proposition that, subject to statutory provisions otherwise, it lies within a court's discretion to permit or not to permit a person who is not a lawyer, to represent a litigant in court. In particular we note the judgment of Lord Denning in *Engineers' and Managers' Association v. Advisory, Conciliation and Arbitration Service et al.* (No. 1), [1979] 3 All E.R. 223 (C.A.) at 225, the decision of the Privy Council in *O'Toole v. Scott et al.*, [1965] 2 All E.R. 240 at 247; the comments of this Court in *Venrose Holdings Ltd. v. Pacific Press Ltd.* 1978 CanLII

378 (BC CA), (1978), 7 B.C.L.R. 298 at 304, where it was said that the discretionary power to grant a privilege of audience to other persons should be exercised 'rarely and with caution'; and the decision of Esson J. (as he then was) in *B.C. Telephone Co. v. Rueben*, 1982 CanLII 588 (BC SC), [1982] 5 W.W.R. 428 (B.C.S.C.), at 434.'

59. The Plaintiff believes that no lawyer could know the minute of details about his case than Mr. Tapp. Furthermore, he believes that Mr. Tapp's knowledge about this claim is predicated upon his experiences with the OPP and because of that belief no lawyer could possibly represent him with a passionate desire to pursue it to the end and hold the defendants accountable for their actions.
60. Mr. Tapp is willing to represent the Plaintiff without any costs whatsoever. As stated in earlier in this claim, the Plaintiff cannot afford the exorbitant fees of any counsel and to not allow him to utilize the knowledge of his friend, Mr. Tapp would only serve to permanently bar him from seeking justice.
61. The Plaintiff believes that the administration of justice would actually be brought into disrepute if he is not allowed to utilize Mr. Tapp as his agent and/or representative who is willing to do so freely and voluntarily.
62. In light of the aforementioned the Plaintiff is seeking authority from this Honourable Court to have Mr. Lloyd Tapp act as his agent and/or representative for this Statement of Claim.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

63. The index as attached.

64. Such further and other material as this Honourable Court deems fit.

**Date:** February 5, 2013

**Michael Jack**

**c/o Lloyd Tapp**

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