

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

**REPLY TO NOTICE OF MOTION
(FOR APRIL 22, 2013)**

REPLY TO NOTICE OF MOTION

1. The Plaintiff, Michael Jack does not consent to the dismissal or discontinuance of his Statement of Claim (**Tab 2** - Claim) filed against the defendants: the Ontario Provincial Police Association (OPPA) and its representatives Shaun Filman, Karen German, Jim Styles and Marty McNamara (collectively, the OPPA Defendants) as presented via a notice of motion set to be heard before a judge on **Monday, April 22, 2013**, at the **Superior Court of Justice, 393 University Avenue, Toronto, Ontario**.
2. The Plaintiff is committed to seeing his Claim through to the end of a trial should he be afforded one.
3. He is in favor of the proposed method of motion hearing but wishes to have his presence represented by his friend and or representative, Lloyd Tapp via a Request for Special Representation that is itemized below and also referenced in pages 115 to 120 of his Claim.

Request for Special Representation

4. The Plaintiff's life was ruined by the actions of the Defendants.
5. 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 Human Rights Tribunal of Ontario (HRTO) and ultimately via this claim. He maintains odd jobs just to gather enough money for his next air fare. That is why he cannot get meaningful and long term employment.

6. The Plaintiff cannot afford the high legal fees that lawyers set for handling such cases.
7. The Plaintiff has sought assistance of many lawyers but has always been advised that he had to provide retainer fees of five to fifteen thousand dollars just to have them look at the case.
8. Under the Rules of Representation with the HRTO, the Plaintiff was able to get his friend, Lloyd Tapp to represent him freely and voluntarily.
9. 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:
 - (a) Mr. Tapp has been involved as 'Officer in Charge' of numerous cases before Judges at the Provincial Level;
 - (b) Involved in pre-trials;
 - (c) Involved in trials at the Superior Courts of Justice (361 University Avenue, Toronto);
 - (d) Involved in Judicial pre-trial conferences at both levels;

- (e) Involved in trials before a judge alone and trials before a judge and jury at the Superior Courts of Justice;
- (f) Mr. Tapp has a thorough working knowledge of the Rules of Evidence and courtroom decorum;
- (g) Mr. Tapp has a thorough knowledge of the various documentations required for a case going through the judicial system;
- (h) 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;
- (i) Though Mr. Tapp has never represented anyone at a civil trial he has had experience having gone through one himself.

10. 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:

- (a) 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.
- (b) 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 (**Tab 3** – copy of HRTO 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 faced nor has is he currently 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.

(c) In *R. v. Dick* dated January 17, 2002, BCCA 27 docket: CA029122 (**Tab 4**), 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.'

11. 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.
12. Mr. Tapp is willing to represent the Plaintiff without any costs whatsoever. As stated 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.

13. 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.
14. In light of the aforementioned the Plaintiff is seeking authority from a Judge to have Mr. Lloyd Tapp act as his agent and/or representative for this Statement of Claim.
15. The Plaintiff only has the equivalent of \$7,200.00 Canadian, as can be referenced in exhibit 'A' of the copy of his Fee Waiver Request to Court, the affidavits of which have been sworn before a commissioner at the Canadian Embassy in Tel Aviv, Israel on December 17, 2012 (**Tab 5** – copy of Fee Waiver to Court).
16. The Plaintiff has come to learn that it is truly a shame that only people with money can afford the high fees of lawyers and though various judicial processes advertise the availability of legal aid the reality is realized when contacts lawyers that no lawyer is willing to retain a client on a pro bono basis, contingency basis or the case is too large for legal aid.

Reply to Motion

17. The OPPA Defendants seek:

“an order that the Statement of Claim be struck in its entirety as against the OPPA Defendants as it discloses no reasonable cause of action pursuant to Rule 21.01(1)(b);”

18. However, as referenced in his Claim, the Plaintiff contacted the OPPA and OPPA representative Karen German did an investigation and determined that he was being targeted.

19. The Plaintiff contacted Karen German regarding how wrong and embarrassing such an internal complaint alleging that he was associating with undesirables was and the OPPA did not respond but she showed up during his Professional Standards Bureau (PSB) interview.

20. The OPPA failed to provide a copy of the interview even though the Plaintiff contacted Karen German on three separate occasions via email requesting a copy and even though she acknowledged his requests (**Tab 6** – copies of email correspondences with Karen German).

21. The Plaintiff faxed to the OPPA his fraudulent Month 6 & 7 and Month 8 Performance Evaluation Reports (PERs) but never heard back from the OPPA at all (**Tab 7** – copies of face pages of three fax transmissions).

22. The OPPA has demonstrated by its past actions that it does not support minorities who exert their rights in challenging the OPP by filing applications before the HRTO, as elaborated in greater detail on pages 41 to 44 under the heading 'Similar Fact Evidence'.

23. One such officer was Harry Allen Chase who was also from the Peterborough Detachment of the OPP, was terminated towards the end of his probation because of a perceived disability. He filed an application before the HRTO for the human rights violations that were committed against him and a grievance with the OPPA due to the failure by the OPP to accommodate him because of a perceived disability wherein he believed he should have been accommodated. The OPPA corresponded with the HRTO who in turn advised Mr. Chase that since the OPPA was handling his grievance they can handle his application as well and as such the HRTO would not be proceeding any further with his application. After a year had lapsed the OPPA advised him that there were no grounds to go any further with his application and grievance and refunded his tuition that he incurred from attending the Ontario Police College (**Tab 8** – copy of his HRTO application with a letter of consent for its use).

24. After being terminated from employment the Plaintiff tried to get suitable employment including employment at other police services in Ontario but all attempts at securing suitable employment were to no avail. It was not until the end of July, 2010, that he realized he had been blackballed (**Tab 9** – copies of correspondences with various police services).

25. After the termination of employment the Plaintiff was also trying to find a lawyer.
26. Should the Plaintiff have found suitable employment he would most likely not have had initiated a legal proceeding and would have moved on with his life.
27. Some of the information pertaining to Defamation was only obtained through the Respondent's disclosure in the spring of 2012.
28. It was not until the conference call in the spring of 2012 that he learned that the Tribunal was not going to make any findings with respect to the Malicious Prosecution, Defamation, Similar Fact Evidence and Systemic Discrimination (**Tab 10** – copy of Case Assessment Direction).
29. It was not until November 1, 2012, that he, via the presiding Vice Chair, learned that he was wrong in his belief that he would have to wait until the disposition of of the Application to launch a Statement of Claim for damages in Tort. As pointed out by the Vice Chair he should have filed his Claim at which time his Application would have been 'frozen'.
30. It was during that mediation session on November 1, 2012, that the Plaintiff learned that the Tribunal did not want this case as 'it is too heavy for them' as per the sentiments of the presiding Vice Chair.

31. It was that very day, November 1, 2012, that the Plaintiff learned that the appropriate avenue to pursue a just remedy was via a Statement of Claim at which time his representative began drafting the Claim.
32. The Claim was initiated as an action of last resort.
33. It was during the preparation of the Claim that the Plaintiff realized that the more serious Criminal Code violations of Defamation by Libel and Slander existed and was something that his previous counsel ought to have canvassed with him but failed to do so and hence ought to be pursued since they formed the foundation from which the OPP Defendants and the OPPA Defendants found it easy to commit the variety of allegations contrary to the Ontario Human Rights Code (Code) as contained in the Claim and elaborated upon in greater detail in his statement (**Tab 11** – copy of Plaintiff's statement completed January, 2012).
34. The Plaintiff also realized during the preparation of his Claim that he would now be able to pursue an action against the OPPA Defendants for Failure to Accommodate pursuant to the *Labour Relations Act*, something that also ought to have been pursued by his previous counsel but never done. The Plaintiff believes that the OPPA Defendants have acted in a manner contrary to section 12 of the *Labour Relations Act* and in so doing have also met the elements of the offence of section 107 of the *Labour Relations Act*.

35. Marty McNamara and Karen German, as representatives of the OPPA Defendant, were present during the Plaintiff's termination of employment and said absolutely nothing in his defense. In fact not a word was spoken by either of them during the meeting with Chief Superintendent Mike Armstrong that took place on December 15, 2009.

36. For all of the aforementioned the Plaintiff believes that there is a cause of action pursuant to Rule 21.01(1)(b) of the *Rules of Civil Procedure* in the *Courts of Justice Act*.

37. The Motion seeks to have:

“in the alternative, an order pursuant to Rule 21.01(3)(c) that the Statement of Claim be dismissed or stayed as against the OPPA Defendants as another proceeding is pending in Ontario before the Human Rights Tribunal of Ontario between the same parties in respect of the same subject matter”

38. There was never an application against the OPPA as evidenced by the email below from counsel for the OPPA, Brian Lawson when communicated to in error by the Plaintiff in 2011, prior to the commencement of the hearing before the Tribunal.

From: blawson@oppa.ca
To: dmclaugh@bell.net
Date: Fri, 13 May 2011 13:54:01 -0400
Subject: RE: Michael Jack vs HMQ (HRTO file 2010-07633-I) --- Email #11

Mr. Tapp
Emails received though I note we are not a party to this proceeding.

From: LLOYD TAPP [mailto:dmclaugh@bell.net]
Sent: Friday, May 13, 2011 8:08 AM
To: marnie corbold; Brian Lawson
Subject: FW: Michael Jack vs HMQ (HRTO file 2010-07633-I) --- Email #11

39. Furthermore, the application deals entirely with violations under the Human Rights Code whereas the Claim entirely deals with Defamation by Slander and Libel that helped pave the way for acts contrary to the Human Rights Code (Tab 2).

40. This Claim is formerly identifying the Failure of the OPPA to intervene to prevent the acts contrary to the Code from continuing once having become aware of its existence via Karen German's semi-investigation, on behalf of the OPPA, of the Plaintiff's complaint to the OPPA in mid-2009. Furthermore, her refusal to put into writing what she verbally advised the Plaintiff of, that being that her investigation did reveal that the Plaintiff was being targeted by his supervisor, Sergeant Robert Flindall and that he had instructed many officers at the detachment to keep him under surveillance is reflective of the OPPA Defendants failure to intervene and prevent such acts from continuing. The Plaintiff firmly believes that the reason the OPPA representative was not willing to put her findings in writing was because of a relationship between the OPP and the OPPA that is contrary to providing fair and impartial representation of its members. To have put her findings into writing would have caused the OPPA to create a record that could serve as holding them accountable for Failure to Accommodate.

41. The actions of the OPPA Defendants as mentioned are contrary to sections 12 and 107 of the *Labour Relations Act*.

42. The Plaintiff has also indicated in the Claim under the heading 'Addressing the Concern of Double Jeopardy' (Claim - page 112) that he will be filing a request for an order from the Tribunal to have his Application deferred until a determination is made as to whether or not his Claim is allowed to proceed. The Plaintiff also mentioned that should his Claim be allowed to proceed a request for an order dismissing his Application would be sent to the Tribunal forthwith.

43. The Motion seeks:

“in the further alternative, an order dismissing the action pursuant to Rule 21.01(1)(1) due to expiry of the limitation period;”

44. As mentioned in the Claim under the heading 'Reasons for Delay' (Claim – page 104), where the Plaintiff addresses the *Statute of Limitations* and subject to what is already mentioned under that heading, he adds that the psychological trauma he incurred as a result of the actions of the Defendants left him in a vulnerable and suicidal state of mind. It was this state of mind that caused him to genuinely believe that the judicial process, the Human Rights Tribunal of Ontario that was chosen by a learned counsel was his only recourse. When his previous counsel vacated herself from the Application, his feelings of vulnerability were exacerbated and it was not until November 1, 2012, that he was made aware that a Claim would have been the appropriate place to seek a remedy.

45. The Motion seeks:

“in the alternative, an order staying this action;”

46. The Plaintiff's position here is that the corporate defendant (OPPA) has a duty imposed by law (*Labour Relations Act*) to defend the rights of its subjects but is failing to do so as evidenced by Harry Allen Chase's matter.
47. The OPPA's failure to defend the rights of the Plaintiff is further evidenced by their refusal to put into writing the findings of the semi-investigation conducted by their representative, Karen German.
48. With respect to items 5 and 6 of the Motion relating to costs on a substantial or partial indemnity basis and other relief the Plaintiff can only state that what happened to him and as alleged in his Claim is the truth. He does not have the luxury of having high priced lawyers at his disposal for he is extremely limited in his funds. He does not qualify for Legal Aid since it is a civil claim and more so because he has now moved back to Israel.
49. The fees for counsel for the Ontario Provincial Police and the individual defendants are not coming out of their pockets. Consequently the defendants can afford to deny, deny, deny until faced with the inevitable truth that will be revealed through a trial.
50. Since the pursuit of his Application before the Tribunal and now this Claim the Plaintiff has come to learn that the average Canadian seems to be systemically barred from pursuing justice through a system that seems to cater to those with money and or unlimited funds at their disposal (as in the case of this claim where the fees of counsel are paid for by the Government of Ontario). Such as it appears, Plaintiffs have to resort

to pursuing a claim in their limited capacity and try to pursue it to the best of their abilities.

51. The Plaintiff will be submitting a motion seeking an order from a judge respecting a Fee Waiver. He has already had a Fee Waiver Request completed and sworn to before a Commissioner at the Canadian Embassy in Israel shortly after his Claim was filed (Tab 4).
52. With respect to the **grounds for the motion** the Plaintiff states that the OPPA Defendants are not entirely correct. He addresses each of the numerical points in this section of the Motion with the next consecutive numerical value beginning with item 52.
53. It is the Plaintiff's deferred Application Request (**Tab 12** – Form 10 Request for Order to Differ Application) that is presently before the Tribunal and presently pending a complete withdrawal should this Claim be allowed to proceed, that deals with events that occurred between January, 2009, to the termination of his employment in December, 2009. The Claim however, deals with events that occurred between August, 2008, and November 1, 2012.
54. The OPPA Defendants are somewhat correct in stating that various negative financial, emotional and physical consequences of his termination only became evident to him in the months following his termination. Though it took him more than a month to just regain his physical health his emotional and psychological health however, is still far

from being healed due to Post Traumatic Stress Disorder ('PTSD' - pages 45 and 46 of Claim) he developed as a result of his time at the Peterborough Detachment of the OPP. The effects of PTSD still have him breaking down emotionally whenever he has to testify to his time at that Detachment. Furthermore, he is still on antidepressant medication to this date.

55. On December 14, 2010, the Plaintiff did file an application via his counsel (at that time) with the Human Rights Tribunal of Ontario. It was the Plaintiff's counsel at that time that placed a monetary amount for damages for the various violations of his human rights for he never gave her any direction as to what amount to state. He was just relieved to have someone take his case for he would now have an opportunity to confront those that caused him so much damage. He was never interested in money which is why attempts at mediation failed every time. To hold the Defendants accountable was of paramount concern. However, since taking on the application through the assistance of his friend, Mr. Tapp, he learned that there was much more that ought to have pursued by his former counsel. For instance, she actually failed to bring the OPPA Defendants into the application. He also came to learn that the monetary amount that was placed on his application by his counsel was based on past cases before the HRTTO. He also came to learn that there were criminal allegations that ought to have been pursued for they appeared to form the basis for the violations of his Human Rights by the defendants. Due to his ignorance of the law and trust that his previous counsel had placed his case before, what she felt was the appropriate place for justice, he genuinely believed that he would have to be successful at the HRTTO level in order to launch a Claim for damages in Tort. It was not until November

the 1st, 2012, that he realized otherwise. It is through this civil proceeding that he hopes to realize a true monetary remedy for a career that he was literally robbed of.

56. The OPP Defendants are correct here. However, the recommendation was extremely forceful for the Vice Chair stated that the case was one that was too large for the Tribunal and that he hasn't even read through all of the material as of yet even (even though it was day four of the hearing).

57. The other statements referred to in this section of the OPPA Defendants Motion are: that a Claim via the Superior Courts would have been that appropriate place for his application and that he could still file one and have his Application frozen since he cannot have two judicial proceedings open progressing simultaneously. Prior to November 1, 2012, the Plaintiff genuinely believed that his since his previous counsel chose a judicial process at the Tribunal it had to be the only place for his case and that he would have to have success there in order to launch his Claim. This mistaken belief of his was based on his vulnerability at the time namely: his lack of knowledge of the Canadian laws (he did not grow up in Canada but came here as a young adult and encourage to pursue a career in policing and foregoing everything else he did so), his strong Russian accent and heritage that brought about his demise, being turned down at every other place he sought employment from after his termination, realizing that he was black-balled in Canada because he was viewed as one that had never passed his probation with the OPP, his thoughts of suicide to just end the grip of depression that he felt himself in and then ultimately having his only hope of pursuing justice appear to have been snuffed out like a flame (his former counsel vacating herself from his

application). Hence, aside from not knowing about a judicial process by way of a Claim, in light of the aforementioned, the Plaintiff was simply not well physically or emotionally and neither was he psychologically prepared to file such a Claim anytime earlier.

58. On December 21, 2012, three years after his dismissal and more than two years after becoming aware of the alleged consequences of that dismissal, the Plaintiff commenced that action as against the OPPA Defendants, and served the Statement of Claim on those Defendants on or about December 27, 2012. The facts about the times are correct. However, what is missing is the explanation of the perceived time delay which is already elaborated on in item 53.

59. Based on the information thus far and what is contained in the Claim under the heading 'failure to accommodate' (pages 70 to 72 of Claim) the Plaintiff believes that his Claim does disclose a cause for action. Furthermore, the Plaintiff points out that, on December the 13th, 2009, he was served a Notice of Proposed Release from Employment (**Tab 13** – 'Notice') and advised by the serving officer that he would have until December the 15th to make any submissions before the decision to release him from employment was finalized. This was also stated in the Notice that was served on him. However, even though representatives from the OPPA, namely Marty McNamara and Karen German, were present at the OPP headquarters on December the 15, 2009, no intercession was made by the OPPA when the Plaintiff was ushered into the presence of the Chief Superintendent of the OPP and advised that he either sign the pre-printed letter of resignation or be fired. He was not even given the opportunity to

make any submissions contrary to the direction he was given in the Notice. That Notice, in essence gave him a false sense of hope, an action by the OPP Defendants that showed he was not worth wasting time on, yet the OPPA did nothing to intervene.

60. As mentioned in items 36 to 39 of this Reply there was never any Application against the OPPA Defendants because the Plaintiff's previous counsel failed to identify them as Respondents in the Application.

61. There is no multiplicity of proceedings anywhere.

62. Subject to what the Plaintiff has already mentioned in this reply regarding the Statute of Limitations he adds that the Claim is about indictable offences contrary to section 300, 301 and 319(2) of the *Criminal Code of Canada* that paved the way for the many Human Rights violations that were committed by a Ministry of the Government of Ontario.

Rules of Civil Procedure

Rule 21.01

63.1 As the Plaintiff has already indicated he does believe:

- a. that there is a cause for action and as such, should the OPPA Defendants wish to mediate such an action on their part would shorted the trial and save on costs,
- b. this court does have jurisdiction over the subject matter of the action and in fact sole jurisdiction based on the criminal allegations,
- c. that, should the court allow his friend, Mr. Tapp to act as his representative (especially considering that he is now living in Israel and is prepared to return for a trial should there be a need) he will have a reasonable capacity to continue with the action,
- d. there is currently no other proceeding pending between the same OPPA Defendants and the Plaintiff in respect of the same subject matter or any subject matter,
- e. the allegations as contained in the action are not frivolous, vexatious or otherwise an abuse of the process of the court.

Rule 25.11

63.2 The Plaintiff contends that:

- a. the action bears no prejudice towards a fair trial nor does it delay fair trial of the action. Rather, motions such as these in the presence of such overwhelming evidence does delay fair trial,
- b. the actions is not scandalous, frivolous or vexatious but one that is vastly supported by viva voce evidence and documentary evidence much of which are from the Defendants in whole,
- c. the action is not an abuse of the process of the court but rather the only means by which a minority Canadian is fighting for justice against a provincial organization that is supposed to be abiding by the *Human Rights Code*, the *Labour Relations Act* and the *Criminal Code of Canada*.

Rule 57

63.3 In exercising its discretion under section 131 of the *Courts of Justice Act* to award costs, the Plaintiff asks the court to consider his financial status as mentioned in his affidavits (Tab 9) and also adds;

- a. With respect to the principle of indemnity: it is the OPPA Defendants that know they are in violation of sections 12 and 107 of the *Labour Relations Act*; it is the OPPA Defendants that failed in their duty while witnessing violations under the *Human Rights Code* (item 39), the *Labour Relations Act* (item 58) and the *Criminal Code of Canada* (Claim – pages 72 to 89) being committed against

the Plaintiff and did nothing to intervene; the OPPA Defendants have the luxury of being able to afford legal representation whatever the cost whereas the Plaintiff does not.

- b. It is the Plaintiff's belief that the OPPA Defendants know that they are liable for damages in Tort to the degree of their failure to accommodate him.
- c. The Plaintiff's Claim is also about much more than what was done to him. It is about the continued violations of an association (OPPA) that collects dues regularly from all its members yet fails to carry out the duty that is imposed on them by the law or otherwise advises a member that they will be investigating the member's application that is before the HRTO, advises the HRTO that they will be looking into it thereby causing the HRTO to close its involvement with the application and then after a year goes by sends the member a letter indicating that they are closing their investigation since there is no grounds to go any further but the OPP will be reimbursing him for his police college fees (Claim – pages 41 to 43).
- d. It is the OPPA Defendants that are denying and refusing to admit that they did wrong towards the Plaintiff in failing to accommodate him and in failing to carry out their duties under law towards its members.
- e. The Plaintiff believes that this rule does give the court authority under section 131 of the *Courts of Justice Act* to refuse costs to the OPPA defendants, grant

indemnity towards the Plaintiff and to awards costs to the Plaintiff for the preparation of this reply.

Courts of Justice Act

Section 106

64.1 The Plaintiff believes that he has a strong argument as to why a motion for dismissal of this action against the OPPA Defendants should not be allowed namely because and not limited to: that where his application before the HRTO was erroneously devoid of the OPPA as a respondent he is now hoping to hold them accountable through this Claim; that where the OPPA Defendants have a duty imposed on them by law (*Labour Relations Act*) to uphold the rights of the Plaintiff and ensure he was not discriminated against, defamed by slander and libel and not treated like a leper because of his heritage and thick Russian accent they failed to do so and this Claim is his last hope to hold them accountable for their inactions towards him. He also asks the courts to consider:

- Is it just for a Ministry of the Government (OPP) to accuse an employee in such a derogatory manner that is in itself filled with prejudice as referenced on page 82 and 83 of the Claim that he is associating with ‘**undesirables**’ thereby labeling him as an undesirable?

- Is it just for the OPPA to not do anything when the OPP label Canadian Albanians who happen to have criminal records and or criminal involvement as **undesirables**?
- Is it just for the OPPA Defendant to sit back and literally do nothing while present when the Plaintiff was being formerly interviewed under the accusation of 'associating with undesirables?'
- Is it just for the OPPA Defendant to sit back and literally do nothing while present when the Plaintiff was being forced to resign based on the fabricated documentation?'

Section 138

64.2 As mentioned earlier, this Claim is the only action against the OPPA Defendants. The Plaintiff assures this court that should his Claim be allowed to proceed a Request for an Order to the HRTO to have his Application withdrawn will be made. As an assurance the courts can dismiss the Plaintiff's Claim against all the defendants should he not withdraw his Application. Hence there is no multiplicity of proceedings anywhere. In the event that the courts should deem that the mere existence of his Application before the Tribunal in whatever state it is in does constitute a contravention of this rule then the Plaintiff adds that he has **accordingly** and **as far as possible** avoided multiplicity of proceedings by requesting his Application be deferred pending a complete withdrawal should this Claim be allowed to proceed.

Limitations Act (S.O. 2002, c.24, Sch. B)

Section 4

65. With respect to the OPPA Defendant's exertion of this section of the *Limitations Act* in their motion the Plaintiff submits what he has already mentioned in item 44 of this reply and on pages 104 to 110 of his Claim.
66. Subject to anything further that this Honourable Court deems appropriate the Plaintiff rests this reply at the mercy of the court.

Date: February 5, 2013

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