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April 11, 2013

VIA COURIER

Michael Jack
c/o Lloyd Tapp
252 Angeline Street North
Lindsay, Ontario
K9V 4R1

Dear Mr. Tapp:

**Re: Her Majesty the Queen in Right of Ontario as represented by the Ministry of
Community Safety and Correctional Services et al. ats Michael Jack
Court File No. CV-13-476321
Our File No. 250-11741**

Please find enclosed our Motion Record, Factum and Book of Authorities in the above noted matter, served upon you pursuant to the *Rules of Civil Procedure*.

Yours very truly,

for
Lisa Compagnone
Senior Counsel

Encls.

LC/ap

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MICHAEL JACK

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE
MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES
OPERATING AS THE ONTARIO PROVINCIAL POLICE AND ITS EMPLOYEES
MARC GRAVELLE, JOHN POLLOCK, SHAUN FILMAN, JENNIFER PAYNE, JAMIE
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COLLEEN KOHEN, HUGH STEVENSON AND MIKE ARMSTRONG AND ITS
RETIREES MIKE JOHNSTON AND CHRIS NEWTON**

Moving Party/Defendants

FACTUM OF THE MOVING PARTY

April 10, 2013

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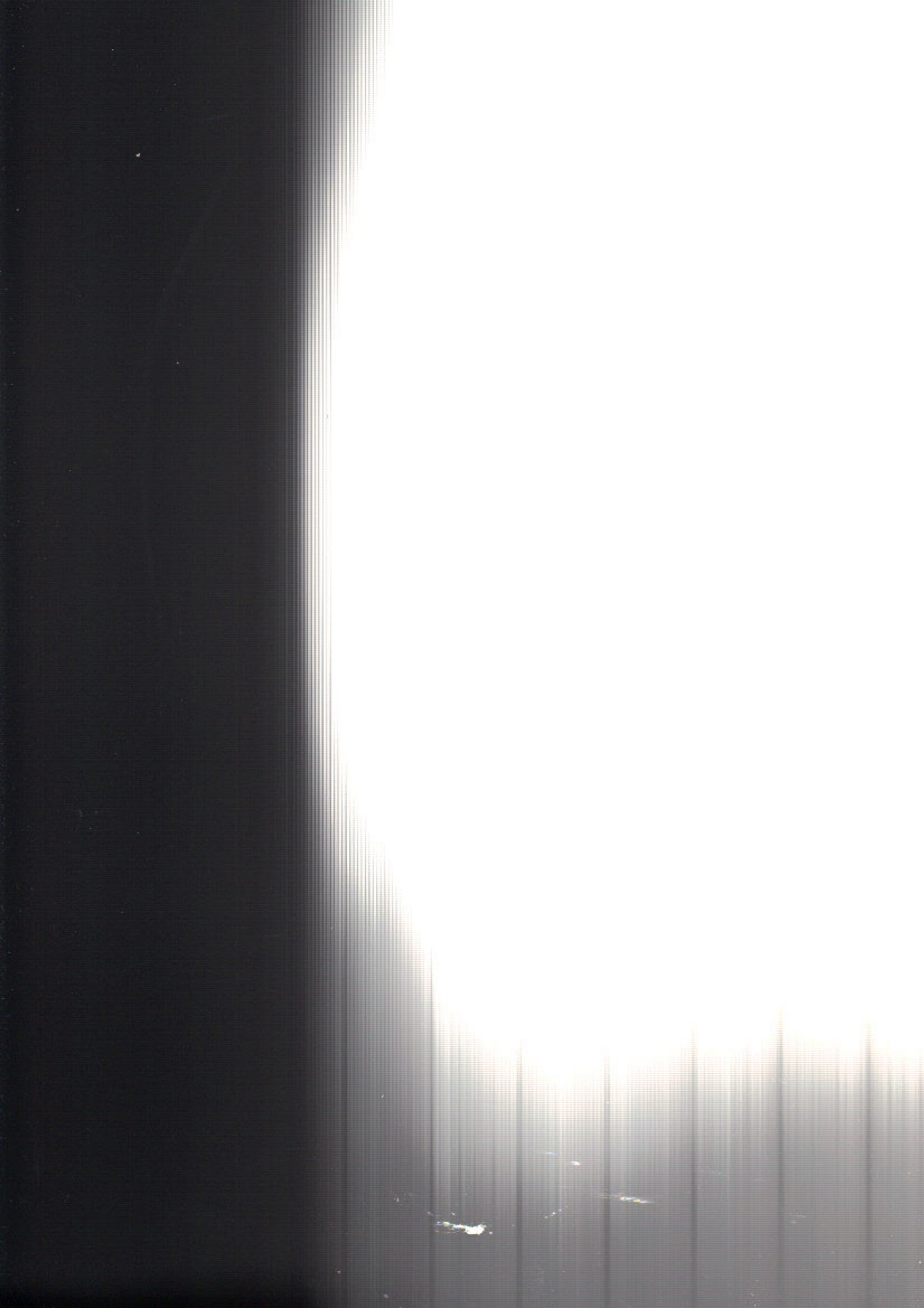
Self- Represented Plaintiff

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Police Association and its representatives
Shaun Filman, Karen German, Jim Styles and
Marty McNamara.



ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAEL JACK

Plaintiff/Responding Party

- and -

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE
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Defendants/Moving Party

FACTUM OF THE MOVING PARTY, THE DEFENDANT
HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE
MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES
OPERATING AS THE ONTARIO PROVINCIAL POLICE AND ITS EMPLOYEES

PART I: NATURE OF THE MOTION

1. This factum is filed in support of the motion brought by the Defendant Crown and its named employees (except for Mr. Filman and Mr. Newton) (Defendant "Employer") to consolidate the two separate claims filed in the Jack v. Ontario Provincial Police Association et al., Court File No. CV-12-470815 and Court File No. CV-13-476321.

2. The Parties have consented to the consolidation of these proceedings. These proceedings are between the same parties, arise out of the same facts and raise the same overarching claim of harassment and discrimination during the Plaintiff's probationary employment with the Ontario Provincial Police in 2009. As well, these claims rely on the same alleged workplace incidents. Finally, the same relief is claimed in both proceedings.

PART II – FACTS

3. In December a Statement of Claim, Court File No. CV-12-470815, was filed. The claim named as defendants the Ontario Provincial Police Association ("OPPA"), the Crown and individual association representatives and employees. This Statement of Claim was a nullity as against the Crown for lack of notice as prescribed by s. 7 (1) of *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27. As well, it was not properly served on the named employees.

4. After the expiry of the prescribed notice period, the Plaintiff filed a new Statement of Claim (Court File No. CV-13-476321) on March 15, 2013 naming the same defendants. This claim was properly served on the named employees (with the exception of Mr. Filman and Mr. Newton).

5. Both of these proceedings are at the same stage (i.e. filed and served with the court). There have been no statements of defence filed, no pre-trial disclosures or dates, and no trial dates.

6. Both proceedings arise out of the same set of occurrences and raise the same overarching claim. More specifically, the claim of discrimination and harassment during the Plaintiff's probationary period of employment with the Defendant Employer. Both proceedings rely on the same alleged workplace events. The parties have consented to the consolidation.

Affidavit of Jeffrey Bagg, Defendant Employer's Motion Record Tab 1

PART III: ISSUES

7. This Honourable Court should consolidate the proceedings in the actions Court File No. CV-12-470815 and Court File No. CV-13-476321.

PART IV: LAW

a. **This Honorable Court should consolidate the two actions**

8. This Honourable Court has the discretion to consolidate two proceedings if one or more of the following criteria are satisfied:

- there is a question of law or fact in common,
- the relief claimed in both proceedings arise out of the same transaction or occurrence or series of transactions or occurrences,
- for any other reason.

Rule 6 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

9. Prior to exercising its discretion to consolidate courts consider "such factors as expediency, convenience and prejudice to the parties."

Logtenberg v. ING Insurance Co., [2008] O.J. No. 3394 at para. 10.

10. Consolidation is appropriate in this matter for the following reasons:

- the parties in both proceedings have consented to consolidation so there is no prejudice,
- the parties in both proceedings are the same,
- the relief claimed in both proceedings is the same,
- the matters/relief claim in both proceedings arise out of the same set of facts/occurrences,
- there are common questions of fact and law, and the claims for relief arise out of the same factual matrix.

Affidavit of Jeffrey Bagg at paras. 3-9.

11. In addition, in this matter, there are the following common questions of fact/law:

- whether the Plaintiff was discriminated against or defamed,
- whether harm was caused to the Plaintiff,
- whether the actions are out of time,
- whether an arbitrator appointed pursuant to a collective agreement has exclusive jurisdiction,
- whether the matters should be dismissed or stayed due to ongoing proceedings before Human Rights Tribunal.

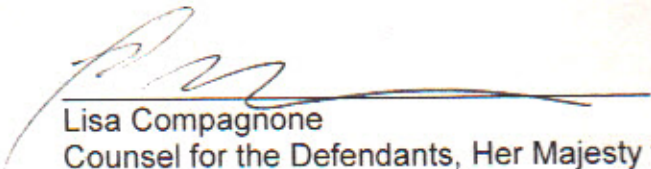
12. Given the above, judicial economy is best served by hearing the two proceedings together. Consolidation of the two proceedings will inevitably result in real pre-trial and trial costs for the parties, substantial reduction in trial dates and judicial resources. As well, both proceedings have just been filed with the Court and thus, there is no risk that an order would impact and/or delay one proceeding. Finally, there is real prejudice that in absence of an order issues will be re-litigated and thus, run the risk of contradictory rulings on the same issue in the same set of facts. In short, on balance, the facts weigh substantially in favour of consolidating the two actions.

PART IV – ORDER SOUGHT

13. The Defendant therefore respectfully requests that this Honourable Court make an Order consolidating the actions Court File No. CV-12-470815 and Court File No. CV-13-476321, with no costs to be paid on this motion to consolidate.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

This 10th day of April 2013.



Lisa Compagnone
Counsel for the Defendants, Her Majesty the
Queen in Right of Ontario as represented by
the Ministry Of Community Safety and
Correctional Services operating as the Ontario
Provincial Police and its Employees

A

B

Schedule "A"
List of Authorities

1. *Logtenberg v. ING Insurance Co.*, [2008] O.J. No. 3394.

Schedule "B"
Relevant Statutory Provisions

Rules of Civil Procedure, R.R.O. 1990, Reg. 194

Rule 6: Consolidation or Hearing Together

Where Order May Be Made

6.01 (1) Where two or more proceedings are pending in the court and it appears to the court that,

- (a) they have a question of law or fact in common;
- (b) the relief claimed in them arises out of the same transaction or occurrence or series of transactions or occurrences; or
- (c) for any other reason an order ought to be made under this rule,

the court may order that,

- (d) the proceedings be consolidated, or heard at the same time or one immediately after the other; or
- (e) any of the proceedings be,
 - (i) stayed until after the determination of any other of them, or
 - (ii) asserted by way of counterclaim in any other of them. R.R.O. 1990, Reg. 194, r. 6.01 (1).

(2) In the order, the court may give such directions as are just to avoid unnecessary costs or delay and, for that purpose, the court may dispense with service of a notice of listing for trial and abridge the time for placing an action on the trial list. R.R.O. 1990, Reg. 194, r. 6.01 (2).

Discretion of Presiding Judge

6.02 Where the court has made an order that proceedings be heard either at the same time or one immediately after the other, the judge presiding at the hearing nevertheless has discretion to order otherwise. R.R.O. 1990, Reg. 194, r. 6.02.

Proceedings Against the Crown Act, R.S.O. 1990, c. P.27

Notice of claim

7. (1) Subject to subsection (3), except in the case of a counterclaim or claim by way of set-off, no action for a claim shall be commenced against the Crown unless the claimant has, at least sixty days before the commencement of the action, served on the Crown a notice of the claim containing sufficient particulars to identify the occasion out of which the claim arose, and the Attorney General may require such additional particulars as in his or her opinion are necessary to enable the claim to be investigated.

MICHAEL JACK

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al.

Defendants

Court File No. CV-13-476321

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

FACTUM OF THE MOVING PARTY

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Counsel for the Defendants Her Majesty the Queen in
Right of Ontario and its employees.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MICHAEL JACK

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE
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Moving Party/Defendants

BOOK OF AUTHORITIES

April 10, 2013

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Marty McNamara.

Motion by defendant insurance company for an order the action (the bad faith claim) and another proceeding (the tort claim) be tried together or one immediately after the other. The plaintiff was involved in a motor vehicle accident. The tort claim was brought by the plaintiff and her immediate family against the driver of the other vehicle and the defendant. The plaintiffs in the tort claim were represented by a solicitor, discovery of the defendants was complete, discovery of the plaintiff was to continue in the fall and productions were complete. The bad faith claim was an action issued by the plaintiff against the defendant and Acclaim Management Inc., alleging, amongst other things, breach of contract and bad faith. There was evidence the plaintiff, who was self-represented in the bad faith claim action, was unable to function effectively for more than short periods of time due to her injuries and disability.

HELD: Motion dismissed. There was no evidence there would be a savings in pre-trial procedures or a reduction in the number of trial days and there was little evidence there would be any real savings in experts' time and witness fees. It was hard to imagine the tort action was not more advanced than the bad faith action, and the plaintiff would suffer prejudice if the tort action was delayed. Although the two proceedings had some common elements, there were many that were completely different, such as damages claimed in the bad faith action that were not related to the plaintiff's injuries.

Statutes, Regulations and Rules Cited:

Rules of Civil Procedure, Rule 6

Counsel:

Patrick Wymes, for the Plaintiff.

Kadey Schultz, for the Defendants.

1 R.D. GORDON J.:-- This decision pertains to a motion brought by the defendant ING Insurance Company (hereinafter referred to as "ING") asking that this action and the proceedings in Court File No. C-8534/04 be tried together or one immediately after the other.

2 The Plaintiff was involved in a motor vehicle accident on December 3, 2002 and alleges that she sustained injuries in this accident. She and the members of her immediate family began an action (Court File No. C-8534/04) against the driver and owner of the other vehicle involved in the accident alleging his responsibility for the accident and claiming various heads of damages, including non-pecuniary damages for pain and suffering, pecuniary damages for out-of-pocket expenses incurred as a result of the accident, damages for past and future cost of care, damages for

costs of household and home maintenance chores, and damages for loss of income, loss of competitive advantage and loss of earning capacity. Her immediate family has advanced what are commonly known as Family Law Act claims. Mr. Wymes is solicitor of record in this action. The claim was issued on November 30, 2004. Discovery of the Defendants is complete. Discovery of the Plaintiff is to continue this fall. Productions are complete. From the Plaintiff's perspective, the matter is ready to be set down for trial. I will refer to this action hereafter as the "tort claim".

3 The Plaintiff has also issued the action against ING and Acclaim Ability Management Inc. under which this motion is brought. Lynn Logtenberg is the sole Plaintiff in this action and she is self-represented. For the purposes of this motion, Mr. Wymes attended and made argument on her behalf. This claim was issued January 25, 2008 and claims accident benefits, damages for breach of contract, negligence, misrepresentation, breach of fiduciary duty, bad faith, mental anguish and distress and intentional infliction of mental anguish and distress. It also claims aggravated, exemplary and/or punitive damages and a declaration that the Defendants acted in bad faith. Discovery of the Plaintiff has yet to take place in this action. Discovery of a representative of ING has yet to be undertaken. There is little doubt that there will be motions brought by the Plaintiff to discover more than one representative of ING and to have certain production issues addressed. I rather suspect that ING will also have a motion relative to production. I will refer to this action hereafter as the "bad faith claim".

4 The grounds advanced by ING in support of its motion are that:

1. Both actions relate to damages arising from the same motor vehicle accident;
2. Both actions involve common questions of fact and law; and
3. The issues of apportionment of damages between the defendants are contingent on findings of fact as against each of the defendants in both proceedings.

5 It is the contention of ING that the trial of these actions together or one following the other would result in the most expeditious and least expensive determination of the civil proceedings and would avoid duplicitous and possibly inconsistent rulings given by separate courts.

6 I am advised that the remaining defendants in each action consent to the relief sought by ING. The Plaintiff does not. The Plaintiff contests the motion on the following bases:

1. That ING has not met the onus required for the order requested;
2. That the actions are at very different stages and considerable delay and prejudice would result to the Plaintiff if the order were granted;
3. The nature of the two claims are very different;
4. There are different parties in the two claims;
5. There is no prejudice to ING if its request is denied;
6. There are few, if any, witnesses who are common to each action;

7. The Plaintiff's disabilities would make it extremely difficult for her to prepare and attend at two trials within a short period of time.

7 I believe that it is now commonly accepted that the underlying policy of Rule 6 is to avoid a multiplicity of proceedings, to promote expeditious and inexpensive determination of disputes and to avoid inconsistent judicial findings.

8 In order for a moving party to be successful in having the court consider its request to have two actions tried together or one immediately following the other, it has the onus of meeting one of the criteria set out in Rule 6, namely that:

- (a) the separate proceedings have a question of law or fact in common;
- (b) the relief claimed in them arises out of the same transaction or occurrence or series of transactions or occurrences; or
- (c) for any other reason an order ought to be made under this rule.

9 I am satisfied that the two proceedings have a question of fact in common. Indeed, the Plaintiff as much as admits the same in paragraph 14 of her factum. The nature of the Plaintiff's injuries, the extent of her disability, and whether or not such disability arose as a result of the motor vehicle accident in question are issues that will figure to one extent or another in both actions.

10 As ING has satisfied one of the criteria set out in Rule 6, it becomes necessary to consider other factors that might lead a court to consider whether or not the requested order ought to be granted. This involves a balancing of such factors as expediency, convenience and prejudice to the parties. A useful list of criteria has been developed in the cases of *Webster v Webster* (1979) 12 B.C.L.R. 172 and *Shah v Bakken* [1996] B.C.J. No. 2836:

- Will the order sought create a savings in pretrial procedures?
- Will there be a real reduction in the number of trial days taken up by the trials being heard at the same time?
- What is the potential for a party to be seriously inconvenienced by being required to attend a trial in which that party may only have a marginal interest?
- Will there be real savings in experts' time and witness fees?
- Is one of the actions at a more advanced stage than the other?
- Will the order result in a delay on one of the actions?
- Are any of the actions proceedings in a different fashion?

11 When I consider these issues, it is my opinion that the order requested by ING is not appropriate in the circumstances of this case for the following reasons.

12 There is no evidence before me upon which I could find that there would be a savings in pre-trial procedures.

13 There is no evidence before me upon which I am able to find that there will be a real reduction in the number of trial days taken up by the trials being heard at the same time or one immediately following the other. On the contrary, given the evidence of the Plaintiff's inability to function effectively for anything more than short periods of time, and given that she is represented in only one of the actions, it is likely that trial time would be increased by having the actions heard together.

14 There is little evidence before me by which I can find that there would be any real savings in experts' time and witness fees. The Plaintiff has provided evidence that in fact the witnesses will largely be different at the two trials. ING has not provided a list of witnesses. Furthermore, in the event a combined trial lasts longer than the two trials heard individually, it is likely that there would be no such savings.

15 On the evidence before me, it is hard to imagine that the tort action is not far more advanced than the bad faith action. In the tort action discoveries are nearly complete. In the bad faith action they have not yet begun. In the tort action, document production is complete. In the bad faith action, not only is document production not complete, but there are motions contemplated with regard to it. Given the history of the first six months of the bad faith action, and the number of motions already brought within it, it is very unlikely that it will be ready for trial within any reasonable time frame. I recognize that it is the position of ING that any delay in the bad faith action has been the fault of the Plaintiff. However, I do not have sufficient evidence before me to make that determination and in any event, that has little bearing on what amount of time it will take to get the action ready to proceed to trial in the future. In my view, the order sought by ING will almost certainly result in a delay in getting the tort action to trial.

16 I will add that although there are some common elements to the two actions, there are many elements that are completely different. For example, in the bad faith action, some damages are claimed which are not related to the injuries suffered in the motor vehicle accident, but are alleged to be the result of the poor treatment of the insured by the insurer. This issue exists completely independently of the tort action and is based upon an entirely different set of allegations.

17 Lastly, it is apparent from the evidence before me that the Plaintiff stands to suffer substantial prejudice if the tort action is delayed both in regards to her financial situation and her health. There is no evidence before me to support the notion that ING would be prejudiced by having the two actions tried independently.

18 When one balances all of these considerations, it is apparent that this is not a situation where it is appropriate to order that the actions be tried together or one immediately following the other notwithstanding that there are some common factual issues.

19 Given that the Plaintiff has been successful in defending ING's motion, it is appropriate that it have its costs on a partial indemnity basis. Considering the costs outline provided by Mr. Wymes and the various factors set out in Rule 57.01 the sum of \$3,500.00, all inclusive, is a reasonable and

appropriate costs award in all of the circumstances. Such amount is payable forthwith.

20 Counsel for the Defendant in the tort action appeared on this motion and made argument in support thereof. It does not seem appropriate that there be an award of costs in favour of or against this party.

R.D. GORDON J.

cp/e/qlaxs/qlpxm/qlaxw/qlaxr/qlaxw/qljyw

MICHAEL JACK

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al.

Plaintiff

Defendants

Court File No. CV-13-476321

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

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Counsel for the Defendants Her Majesty the Queen in
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**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MICHAEL JACK

Plaintiff

- and -

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Moving Party/Defendants

MOTION RECORD
(for April 22, 2013)

April 10, 2013

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**ONTARIO
SUPERIOR COURT OF JUSTICE**

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Moving Party/Defendants

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1

2

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAEL JACK

Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE
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Moving Party/Defendants

NOTICE OF MOTION OF THE MOVING PARTY, THE DEFENDANTS

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE
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PETER BUTORAC, RONALD CAMPBELL, COLLEEN KOHEN, HUGH STEVENSON AND
MIKE ARMSTRONG AND ITS RETIREES MIKE JOHNSTON AND CHRIS NEWTON**

The Defendants, Her Majesty the Queen in Right of Ontario as Represented by the Ministry Of Community Safety and Correctional Services operating as The Ontario Provincial Police and its employees Marc Gravelle, John Pollock, Jennifer Payne, Jamie Brockley, Melynda Moran, Mary D'amico, Richard Nie, Brad Rathburn, Robert Flindall, Peter Butorac, Ronald Campbell, Colleen Kohen, Hugh Stevenson, Mike Armstrong and retired employee Mike Johnston (collectively, the Crown Defendants), will make a motion to a judge on **April 22, 2013**, at the **Superior Court of Justice, 393 University Avenue, Toronto, Ontario**.

PROPOSED METHOD OF HEARING: The motion is to be heard orally by a judge.

THE MOTION IS FOR:

1. An order pursuant to Rule 6.01 to consolidate this action (*Jack v. Her Majesty the Queen in Right of Ontario et al.* (Court File No. CV-13-476321) with the Superior Court action *Jack v. OPPA et al.* (Court File No. CV-12-470815) commenced at Superior Court of Justice, 393 University Avenue, Toronto, Ontario;
2. Such further and other relief as the Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. The parties from both actions consent to the consolidation of the two actions;
2. There are common questions of fact and law between the two actions;
3. The relief that the Plaintiff claims arises out of the same series of occurrences, namely the Plaintiff's employment and subsequent termination from employment with the Ontario Provincial Police and his alleged discrimination and harassment during that period;
4. The Statements of Claim are nearly identical except for: (1) the addition of a section on "background", (2) additional information regarding disclosure at the Human Rights Tribunal of Ontario, (3) the addition of a section on "Abuse of Process" and (4) a clarification regarding the Plaintiff's arguments on the limitations period. The underlying claims remain identical;
5. The actions are proceeding separately due to the fact that the original claim was a nullity as against the Crown. Notice was not provided as required by the *Proceedings Against the Crown Act*. The more recent Statement of Claim is a re-filing of the previous action in accordance with the provisions of that Act;
6. There will be unnecessary duplication in court proceedings if the proceedings proceed separately because it is anticipated that similar motions will be brought by the defendants in both actions;
7. Judicial economy will be best served by consolidating the actions;
8. Rule 6.01(1)(d) of the *Rules of Civil Procedure*, R.R.O. Reg. 194, as amended;
9. Such further and other grounds as counsel may advise and as this Honourable Court may admit.

THE FOLLOWING MATERIAL will be relied on at the hearing of the motion:

1. The Affidavit of Jeffrey Bagg sworn on April 10, 2013 and the exhibits attached thereto;

2. The Statements of Claim, filed with the Court on December 21, 2012 (Court File No. CV-12-470815);
3. The Statement of Claim filed with the Court March 15, 2013 (Court File No. CV-13-476321);
4. The Draft Order to consolidate the proceedings;
5. Such further and other material as the Honourable Court deems fit.



Lisa Compagnone

April 10, 2012

MINISTRY OF THE ATTORNEY GENERAL

Legal Services Branch
Ministry of Government Services
9th Floor, Ferguson Block
77 Wellesley Street West
Toronto, ON M7A 1N3

Lisa Compagnone, LSUC#: 42823P

Lisa.compagnone@ontario.ca
Tel: (416) 327-6916
Fax: (416) 325-9404

Counsel for the Crown Defendants.

TO Michael Jack
c/o Lloyd Tapp
252 Angeline Street North
Lindsay, ON, K9V 4R1

Telephone: (705) 878-4240
Email: dmclaugh@bell.net

Self- Represented Plaintiff

MICHAEL JACK

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al.

Plaintiff

Defendants

Court File No. CV-13-476321

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION OF THE MOVING PARTY,
HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO et al.**

Ministry of the Attorney General
Legal Services Branch
Ministry of Government Services
9th Floor, Ferguson Block
77 Wellesley Street West
Toronto, ON M7A 1N3

Lisa Compagnone – LSUC# 42823P
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Tel: (416) 327-6916
Fax: (416) 325-9404

Counsel for the Defendants Her Majesty the Queen in
Right of Ontario and its employees.

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

MICHAEL JACK

Plaintiff

- and -

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

Defendants

AFFIDAVIT OF JEFFREY BAGG
(Sworn April 10, 2013)

I, Jeffrey Bagg, of the City of Toronto, in the Province of Ontario,

MAKE OATH AND SAY:

1. I am Jeffrey Bagg, a student-at-law with the Ministry of Government Services, Legal Services Branch acting for Her Majesty the Queen in Right of Ontario, the Defendant Employer and its employees. I have worked with Crown Counsel who has carriage of the file related to Mr. Michael Jack's action against the Ontario Provincial Police. As such, I have knowledge of the matters hereinafter deposed to, except where I have been advised of such matters, in which case I believe such information to be true.
2. Statements of claim have been filed in two separate actions instituted by the Plaintiff Michael Jack. These are substantially the same, arise out of the same factual matrix and involve common questions of law and fact. Attached as Exhibit "A" to my affidavit is the Statement of Claim Court File No. CV-12-470815. Attached as Exhibit "B" to my affidavit is the Statement of Claim Court File No. CV-13-476321.


3. These actions are between the same plaintiff, Michael Jack, and the same defendants. For both actions, the defendants are Michael Jack's former Employer the Ontario Provincial Police and named employees, and Michael Jack's former Association and named representatives.
4. Both of these proceedings are at the same stage (i.e. filed and served with the court). There have been no statements of defence filed, no pre-trial disclosures or dates, and no trial dates.
5. Both actions arise out of the same circumstances and occurrences, namely the alleged harassment and discrimination of the Plaintiff, Michael Jack, when he was a Probationary Constable with the Ontario Provincial Police and member of the bargaining unit in 2009.
6. The statements of claim in both actions are identical except for some minor changes. The following changes have been made in the more recent Statement of Claim (Exhibit B):
 - i) The paragraph numbering has changed;
 - ii) References to the Ontario Provincial Police Association (defendant in the action, Exhibit A) have been deleted throughout;
 - iii) References to disclosures made at the Human Rights Tribunal of Ontario have been added in several sections, for example, in paras. 135, 151(ii), 155, and 159;
 - iv) Additional information has been provided in several paragraphs, for example, in paras. 70, 111, and 150;
 - v) A "Background" section has been added at paras. 7-11;
 - vi) A section on "Abuse of Process" has been added at paras. 161-165; and
 - vii) Other stylistic and explanatory modifications.

However, the underlying claims in both statements of claim are the same.

7. Originally, the Crown was named in the first action (Exhibit A). However, proper notice was not provided pursuant to s. 7(1) of the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, making that Statement of Claim a nullity as against the Crown. The current Statement of Claim (Exhibit B) is essentially a re-filing of the original Statement of Claim (Exhibit A) after the required notice had been given. Service of the first Statement of Claim and the lapse of sixty days fulfilled the notice requirements of the Act. As well, the first action was not served on the named employees. The second action has been served on the named employees, with the exception of Mr. Filman and Mr. Newton.

8. It is expected that the same motions on the same grounds will be made in both proceedings.
9. The parties have consented to the consolidation. Attached as Exhibit "C" to my affidavit is the correspondence confirming the consent of the Plaintiff, Michael Jack and the OPPA and its representatives.
10. I swear this affidavit in support of the defendant Employer's position on the motion to consolidate the above claims and for no improper purpose.

SWORN BEFORE ME at the
City of Toronto,
in the Province of Ontario
this 10th day of April, 2013


Commissioner for Taking Affidavits
Lisa Compagnone LSUC #42823P

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Jeffrey Bagg

MICHAEL JACK

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al.

Defendants

Court File No. CV-13-476321

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

AFFIDAVIT OF JEFFREY BAGG

Ministry of the Attorney General
Legal Services Branch
Ministry of Government Services
9th Floor, Ferguson Block
77 Wellesley Street West
Toronto, ON M7A 1N3

Lisa Compagnone – LSUC# 42823P .
Lisa.compagnone@ontario.ca
Tel: (416) 327-6916
Fax: (416) 325-9404

Counsel for the Defendants Her Majesty the Queen in
Right of Ontario and its employees.

A



(Court seal)

CV-12-470815

(Court file No.)

STATEMENT OF CLAIM (GENERAL)

Michael Jack

Plaintiff

BETWEEN

- and -

Her Majesty the Queen in Right of Ontario
as represented by the Ministry of Community
Safety and Correctional Services operating as the
Ontario Provincial Police 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

THIS IS EXHIBIT "A"
referred to in the affidavit of
Jeffrey Beoff
SWORN before me this 10th
day of April, 2013
LSU 42823P
A Commissioner for Taking Affidavits

STATEMENT OF CLAIM

TO THE DEFENDANT

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

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

228. Further details about the case are available on the following websites:
www.racisminopp.org and www.discriminationopp.org

Dated: Friday, December 21, 2012

Michael Jack
c/o Lloyd Tapp
252 Angeline Street North
Lindsay, ON K9V-4R1
Tel: 705-878-4240
E-Mail: dmclaugh@bell.net



THIS IS EXHIBIT # 8
referred to in the affidavit of
Jeffrey Bagg
SWORN before me this 15th
day of April, 2013
[Signature] LSUC #42823P
A Commissioner for Taking Affidavit
(Court seal)

Court file No.: CV-13476321

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN

Michael Jack

Plaintiff

- and -

**Her Majesty the Queen in Right of Ontario
as represented by the Ministry of Community Safety and
Correctional Services operating as the Ontario Provincial Police
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, Colleen Kohen, Hugh Stevenson and Mike Armstrong
and its retirees Mike Johnston and Chris Newton**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT

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

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for
you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil
Procedure, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a
lawyer, serve it on the Plaintiff, and file it, with proof of service in this court office,

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.

245. 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.
246. 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.
247. Further details about the case are available on the following websites:
www.racisminopp.org and www.discriminationopp.org

Dated: Friday, March 15, 2013

Michael Jack
c/o Lloyd Tapp
252 Angeline Street North
Lindsay, ON K9V-4R1
Tel: 705-878-4240
E-mail: dmclaugh@bell.net

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

MICHAEL JACK

Plaintiff

- and -

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

Defendants

ORDER

THIS MOTION, made by the defendant herein for an order consolidating this action with Superior Court of Justice Action, Court File No. CV-12-470815 commenced at **Superior Court of Justice, 393 University Avenue, Toronto, Ontario** was heard this day at **Superior Court of Justice, 393 University Avenue, Toronto, Ontario**.

ON READING the affidavit of Jeffrey Bagg sworn on April 9, 2013, filed, and the pleadings herein and the pleadings in Superior Court of Justice Action No. CV-12-470815 commenced **Superior Court of Justice, 393 University Avenue, Toronto, Ontario**, and on hearing the submissions of lawyers for the parties in the aforementioned actions,

1. **THIS COURT ORDERS** that this action, Superior Court of Justice Action No. CV-13-476321, and Superior Court of Justice Action No. CV-12-470815 commenced at **Superior Court of Justice, 393 University Avenue, Toronto, Ontario** be consolidated and that they proceed as one action.
2. **THIS COURT ORDERS** that no costs be awarded for this motion.

MICHAEL JACK

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al.

Plaintiff

Defendants

Court File No. CV-13-476321

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

ORDER

Ministry of the Attorney General
Legal Services Branch
Ministry of Government Services
9th Floor, Ferguson Block
77 Wellesley Street West
Toronto, ON M7A 1N3

Lisa Compagnone – LSUC# 42823P
Lisa.compagnone@ontario.ca
Tel: (416) 327-6916
Fax: (416) 325-9404

Counsel for the Defendants Her Majesty the Queen in
Right of Ontario and its employees.

Compagnone, Lisa (MGS)

From: Norman Groot <ngroot@investigationcounsel.com>
Sent: April-07-13 1:25 PM
To: Compagnone, Lisa (MGS)
Cc: Erin Stoik
Subject: OPPA ats Jack / motion to consolidate the two Jack actions
Attachments: DRAFT - MJ.doc; Draft Factum JM.doc

Lisa - we consent to this consolidation - Norm


From: Compagnone, Lisa (MGS) [mailto:Lisa.Compagnone@ontario.ca]
Sent: Friday, April 05, 2013 4:26 PM
To: Lloyd Tapp
Cc: Norman Groot; Erin Stoik
Subject: RE: Statement of Claim

Mr. Tapp, given there are two separate statement of claims in this matter I am proposing that the two matters be consolidated as they are identical. Mr. Groot on behalf of his clients has consented to consolidating both statement of claims (the original claim that was served against the OPPA without providing required notice to the Crown, and the second most recent claim served after the expiry of the notice). Please confirm whether you consent to having both claims consolidated? I would appreciate a response by Wednesday.

If you are unable to provide consent to consolidate I will finalize the attached draft documents next week and have them filed and served so a motion to consolidate can be brought on April 22, 2013 along with the other motions being part on that day.

Sincerely,

Lisa Compagnone
Senior Counsel

THIS IS EXHIBIT " <u>C</u> "
referred to in the affidavit of <u>Jeffrey Berg</u>
SWORN before me this <u>10th</u>
day of <u>April</u> , 20 <u>13</u>
 <u>Lswc #42823P</u>
Commissioner for Taking Affidavit

Compagnone, Lisa (MGS)

From: Lloyd Tapp <dmclaugh@bell.net>
Sent: April-09-13 9:44 AM
To: Compagnone, Lisa (MGS)
Cc: ngroot@investigationcounsel.com
Subject: FW: Statement of Claim
Attachments: DRAFT - MJ.doc; Draft Factum JM.doc

Dear Mrs. Compagnone:

I thank you for the copies of the attached drafts. I have reviewed them and so has Michael Jack. As such Mr. Jack consents to the consolidation of both claims.

Sincerely,
Lloyd Tapp for
Michael Jack

From: Compagnone, Lisa (MGS) [mailto:Lisa.Compagnone@ontario.ca]
Sent: April 5, 2013 4:26 PM
To: Lloyd Tapp
Cc: Norman Groot (ngroot@investigationcounsel.com); Erin Stoik <estoik@investigationcounsel.com> (estoik@investigationcounsel.com)
Subject: RE: Statement of Claim

Mr. Tapp, given there are two separate statement of claims in this matter I am proposing that the two matters be consolidated as they are identical. Mr. Groot on behalf of his clients has consented to consolidating both statement of claims (the original claim that was served against the OPPA without providing required notice to the Crown, and the second most recent claim served after the expiry of the notice). Please confirm whether you consent to having both claims consolidated? I would appreciate a response by Wednesday.

If you are unable to provide consent to consolidate I will finalize the attached draft documents next week and have them filed and served so a motion to consolidate can be brought on April 22, 2013 along with the other motions being part on that day.

Sincerely,

Lisa Compagnone
Senior Counsel

Compagnone, Lisa (MGS)

From: Norman Groot <ngroot@investigationcounsel.com>
Sent: April-09-13 7:47 PM
To: Compagnone, Lisa (MGS)
Cc: Erin Stoik
Subject: OPPA ats Jack / OPP materials re Motion to Consolidate
Attachments: Factum JACK (consolidation) - version April 9 2013 (2).doc; OPPA v. Jack (Consolidate) - Notice of motion and backpage Apr 9 (2).doc; OPPA v Jack (Consolidate) - Affidavit (2).doc; OPPA v Jack (Consolidate) - Order Apr 9(2).docx; (consolidate) req'n form shortmotion (2).doc; (consolidate) req'n form shortmotion.doc

Thanks Lisa. Agreed.

From: Compagnone, Lisa (MGS) [mailto:Lisa.Compagnone@ontario.ca]
Sent: Tuesday, April 09, 2013 4:32 PM
To: Norman Groot; LLOYD TAPP (dmclaugh@bell.net)
Cc: Bagg, Jeffrey (MGS)
Subject: FW: Material re Motion to Consolidate

The registrar has confirmed that we will be unable to obtain consolidation by way of written consent/material before April 22nd. So, the remaining option is to bring the motion on April 22, 2013. As I understand the OPPA is agreeable to allow the OPP to use some of its time to bring the motion. Given the consent from all parties and how simple the matter is I suspect the court will not ask any questions on the motion to consolidate. Attached are the materials I will arrange to have file and served on all parties likely tomorrow. The attached materials highlight the fact that all parties have consented to the consolidation. As well, in keeping with the OPPA's agreement to provide the OPP with some time I will advise the court that the Crown expects to use if necessary only 5 minutes of the time allocated to the OPPA's motion. Again, I'm trying to keep this simple, that is why I opted to file a factum and provide a draft order, in the hopes that this motion will take no time.

Regards,

Lisa Compagnone
Senior Counsel

From: Bagg, Jeffrey (MGS)
Sent: April-09-13 3:46 PM
To: Compagnone, Lisa (MGS)
Subject: Material re Motion to Consolidate

Please find attached the materials regarding the motion to consolidate.

Factum

Notice of Motion

Affidavit of Jeffrey Bagg

Draft Order

Motion Requisition forms

Jeffrey Bagg, Articling Student
Ministry of Government Services
Legal Services Branch

MICHAEL JACK

Plaintiff

and

HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al.

Defendants

Court File No. CV-13-476321

ONTARIO
SUPERIOR COURT OF JUSTICE
Proceeding commenced at Toronto

**MOTION RECORD OF THE MOVING PARTY,
HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO et al.**

Ministry of the Attorney General
Legal Services Branch
Ministry of Government Services
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Fax: (416) 325-9404

Counsel for the Defendants Her Majesty the Queen in
Right of Ontario and its employees.