

**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  
RETIRES MIKE JOHNSTON AND CHRIS NEWTON**

**Moving Party/Defendants**

---

**MOTION RECORD**

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January 17, 2014

**MINISTRY OF THE ATTORNEY GENERAL**  
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Ministry of Government Services  
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Police Association and its representatives  
Shaun Filman, Karen German, Jim Styles and  
Marty McNamara

# INDEX



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**MICHAEL JACK**

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**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO AS REPRESENTED BY THE  
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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**

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**INDEX**

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<b>Description</b>	<b>Tab</b>
<b>Notice of Motion</b>	<b>1</b>
<b>Revised Notice of Motion</b>	<b>2</b>
<b>Affidavit of Jeffrey Bagg sworn on April 29, 2013</b>	<b>3</b>
<b>Michael Jack's Offer of Employment with the OPP</b>	<b>A</b>
<b>Memorandum on 'Performance and Conduct Requirements of a Recruit Constable' signed by Michael Jack</b>	<b>B</b>
<b>Notice of Proposed Release from Employment with the OPP of Michael Jack</b>	<b>C</b>

	<b>Letter of Resignation to the OPP from Michael Jack</b>	<b>D</b>
	<b>Letter of Release from Employment with the OPP to Michael Jack</b>	<b>E</b>
	<b>Excerpts from the OPPA Uniform Collective Agreement between Her Majesty the Queen in Right of Ontario and the Ontario Provincial Police Association (January 1, 2009 to December 31, 2011)</b>	<b>F</b>
	<b>Affidavit of Charles Barnard sworn on January 14, 2014</b>	<b>4</b>
	<b>Statement of Claim for the Action, Court File No. CV-13-476321 filed with the Court on March 15, 2013</b>	<b>5</b>
	<b>Order of the Court re Consolidation dated April 22, 2013 (Court File No. CV-12-470815 / CV-13-476321)</b>	<b>6</b>
	<b>Endorsement of the Court dated April 22, 2013 (Court File No. CV-12-470815 / CV-13-476321)</b>	<b>7</b>
	<b>Order of the Court re Motion Scheduling dated July 5, 2013</b>	<b>8</b>

# **Tab 1**





**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**

**Moving Party/Defendants**

---

**NOTICE OF MOTION OF THE MOVING PARTY, 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 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 named  
employees (except S. Filman and C. Newton) will make a motion to a judge on July 29, 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 striking the Statement of Claims in CV-12-470815 and CV-13-476321 and dismissing the action against the Defendant Employer and its named employees (Except S.Filman and M.Newton);
2. The costs of this action, including the costs of this motion, fixed and payable forthwith by the Plaintiff;
3. Such further and other relief as the Honourable Court deems just.

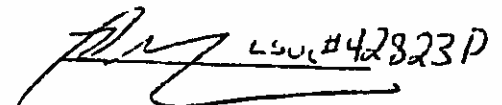
**THE GROUNDS FOR THE MOTION ARE:**

1. Contrary to bold assertion of numerous causes of actions including but not limited to an assertion that the *Criminal Code of Canada*, R.S.C., 1985, c. C-46 has been violated, this claim is one of discrimination and harassment that arises out of incidents that occurred during the Plaintiff's probationary employment with the Defendant Employer.
2. The Plaintiff's probationary employment was governed by the terms and conditions of the collective agreement between the Defendant Employer and Defendant Association. The collective agreement by its terms provides for a workplace free from discrimination and harassment.
3. Pursuant to the collective agreement the Plaintiff was entitled to file a grievance alleging harassment and discrimination during his probationary period of employment, as is alleged in his claim and in his application.
4. Exclusive jurisdiction to hear such a grievance lies with an arbitrator appointed in accordance with the collective agreement. Such arbitration is legally binding on both the Defendant Employer and Defendant Association.
5. With the assistance of legal counsel the Plaintiff filed an application before the Ontario Human Rights Tribunal that has proceeded to several days of hearing.
6. Exclusive jurisdiction over this matter lies with an arbitrator appointed pursuant to the collective agreement between the Defendant Employer and Defendant Association.
7. Alternatively, this matter should be dismissed or stayed as another legal proceeding has been commenced before the Human Rights Tribunal.
8. Alternatively, this matter should be dismissed in its entirety as there is no reasonable cause of action.

9. Alternatively, specific portions of this claim should be dismissed on the grounds that the Plaintiff cannot bring forward an allegation that there has been a violation of the Criminal Code of Canada and/or this Honourable Court has no jurisdiction over such specific allegations.
10. Rule 21.01, 25.11 and 57 of the *Rules of Civil Procedure*, R.R.O. Reg. 194, as amended;
11. *Ontario Provincial Police Collective Bargaining Act, 2006*, S.O. 2006, c. 35 . Schedule B, s. 2;
12. *Police Services Act*, R.S.O. 1990, c.P.15.
13. *Public Service of Ontario Act, 2006*, S.O. 2006, c.35, Schedule A.
14. 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 29, 2013 and the exhibits attached thereto;
2. The Statement 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. Such further and other material as the Honourable Court deems fit.

  
LSUC#42823P  
Lisa Compagnone

April 29, 2013

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Lawyer for the Defendants, Ontario Provincial  
Police Association and its representatives  
Shaun Filman, Karen German, Jim Styles and  
Marty McNamara.

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



# Tab 2





**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  
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PETER BUTORAC, RONALD CAMPBELL, COLLEEN KOHEN, HUGH STEVENSON AND  
MIKE ARMSTRONG AND ITS RETIREES MIKE JOHNSTON AND CHRIS NEWTON**

**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 named employees (except S. Filman) will make a motion to a judge on April 2, 2014, 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 striking the Statements of Claim in Court File No. CV-12-470815 and CV-13-476321 and dismissing the action against the Defendant Employer and its named employees (except S. Filman);

2. The costs of this action, including the costs of this motion, fixed and payable forthwith by the Plaintiff;
3. Such further and other relief as the Honourable Court deems just.


**THE GROUNDS FOR THE MOTION ARE:**

1. The basic limitation period set out in s. 4 of the *Limitations Act, 2002*, S.O. 2002, c. 24, Schedule B, expired prior to the filing of the first Statement of Claim (CV-12-470815), which was filed in December 2012.
2. Contrary to the bald assertion of numerous causes of action, including but not limited to an assertion that the *Criminal Code of Canada*, R.S.C. 1985, c. C-46 has been violated, this claim is one of discrimination and harassment arising out of incidents that occurred during the Plaintiff's probationary employment with the Defendant Employer.
3. The Plaintiff's probationary employment was governed by the terms and conditions of the collective agreement between the Defendant Employer and Defendant Association. The collective agreement by its terms provides for a workplace free from discrimination and harassment.
4. Pursuant to the collective agreement the Plaintiff was entitled to file a grievance alleging harassment and discrimination during his probationary period of employment, as is alleged in his claim and in his application.
5. Exclusive jurisdiction to hear such a grievance lies with an arbitrator appointed in accordance with the collective agreement. Such arbitration is legally binding on both the Defendant Employer and Defendant Association.
6. With the assistance of legal counsel the Plaintiff filed an application before the Ontario Human Rights Tribunal that has proceeded to several days of hearing.
7. Exclusive jurisdiction over this matter lies with an arbitrator appointed pursuant to the collective agreement between the Defendant Employer and Defendant Association.
8. Alternatively, this matter should be dismissed or stayed as another legal proceeding has been commenced before the Human Rights Tribunal.
9. Alternatively, this matter should be dismissed in its entirety as there is no reasonable cause of action.

10. Alternatively, this matter should be dismissed as against the individual named employees of the Ontario Provincial Police as the pleadings disclose no reasonable cause of action as against those named employees in their personal capacity.
11. Alternatively, specific portions of this claim should be dismissed on the grounds that the Plaintiff cannot bring forward an allegation that there has been a violation of the *Criminal Code of Canada* and/or this Honourable Court has no jurisdiction over such specific allegations.
12. Rule 21.01, 25.06, 25.11 and 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
13. *Limitations Act, 2002*, S.O. 2002, c. 24, Schedule B.
14. *Ontario Provincial Police Collective Bargaining Act, 2006*, S.O. 2006, c. 35, Schedule B, s. 2.
15. *Police Services Act*, R.S.O. 1990, c. P-15.
16. *Public Service of Ontario Act, 2006*, S.O. 2006, c. 35, Schedule A.
17. 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 9, 2013 and the exhibits attached thereto;
2. The Supplemental Affidavit of Charles Barnard sworn on January 14, 2014;
3. The Statement of Claim filed with the Court on December 21, 2012 (Court File No. CV-12-470815);
4. The Statement of Claim filed with the Court March 15, 2013 (Court File No. CV-13-476321);
5. Such further and other material as the Honourable Court deems fit.



Lisa Compagnone  
LSUC# 42823P

January 17, 2014

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Counsel for the Crown Defendants.

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Lawyer for the Defendants, Ontario Provincial  
Police Association and its representatives  
Shaun Filman, Karen German, Jim Styles and  
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**MICHAEL JACK**

**and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al.**

**Plaintiff**

**Defendants**

**Court File No. CV-12-470815/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  
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**Counsel for the Defendants Her Majesty the Queen in  
Right of Ontario and its employees.**

# Tab 3





**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N :**

**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**

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**AFFIDAVIT OF JEFFREY BAGG  
(Sworn April 29, 2013)**

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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 ("OPP") and Ontario Provincial Police Association ("OPPA"). 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. I have read the Statement of Claim dated December 21, 2012, Court File No. CV-12-470815 and the Statement of Claim dated March 15, 2013, Court File No. CV- 13-476321. I have

confirmed that at all material times Michael Jack was a member of the bargaining unit represented by the OPPA.

3. Mr. Jack was offered employment as a 5th Class Recruit Constable in July of 2008. Upon completion of his Ontario Police College and Provincial Police Academy training, Mr. Jack was promoted to a 4th Class Recruit Constable and placed at the Peterborough County OPP Detachment. Mr. Jack's probationary period began the day he reported to the Peterborough Detachment and was to continue for a period of one (1) year. Mr. Jack was given a Notice of Proposed Release from Employment on December 9, 2011; he tendered his resignation and was released from his Employment with the OPP on December 15, 2009.

**A copy of Michael Jack's Offer of Employment with the OPP is found at Exhibit "A".**

**A copy of the Memorandum on 'Performance and Conduct Requirements of a Recruit Constable' signed by Michael Jack is found at Exhibit "B".**

**A copy of Michael Jack's Notice of Proposed Release from Employment with the OPP is found at Exhibit "C".**

**A copy of Michael Jack's Resignation Letter to the OPP is found at Exhibit "D".**

**A copy of Michael Jack's Release from Employment with the OPP is found at Exhibit "E".**

4. The OPPA was, and is, the party which bargained the terms and conditions of employment for all employees in their bargaining units, including Michael Jack. In addition, the OPPA was, and is, the party with the exclusive statutory authority to take disputes of its members to arbitration for final and binding resolution.
5. The statutory scheme governing the collective bargaining relationship between the Employer and the OPPA is found in the *Ontario Provincial Police Collective Bargaining Act, 2006*, S.O. 2006, c. 35, Sched. B ("OPPCBA").

6. Section 2(2) of the OPPCBA recognizes the OPPA as the exclusive bargaining agent authorized to represent the employees who are part of a bargaining unit referred to in the Act.
7. Section 4(1) of the OPPCBA provides authority for the parties to establish a binding arbitration procedure to deal with any grievance concerning working conditions or terms of employment, other than exceptions provided for in the legislation.
8. As a member of the OPPA, Michael Jack's terms and conditions of employment were set out in the January 1, 2009 to December 31, 2011 OPPA Uniform Collective Agreement between Her Majesty the Queen in Right of the Province of Ontario (the "Employer") and the OPPA ("the OPPA Collective Agreement").
9. In Article 1.01 of the OPPA Collective Agreement, the Employer recognizes the Association as the exclusive bargaining agent for all employees of the Employer classified as Recruit Constables and/or Probationary Constables.

**Excerpts of the OPPA Collective Agreement is found at Exhibit "F".**

10. Where the OPPA, or affected employees, are of the view that the Employer has violated the terms of the Collective Agreement it can file grievances under the OPPA Collective Agreement.
11. Under Article 4.05(c) of the OPPA Collective Agreement an employee may file a grievance in writing through the Association. There is a detailed grievance procedure set out in the Collective Agreement through which an employee may pursue complaints. The Collective Agreement defines "grievance" broadly in Article 4.01(b) as follows:

**"Grievance"** means a dispute between the parties made in writing, concerning a working condition or term of employment which is applicable to employees covered by this Collective Agreement and which is set out in the Collective Agreement, the Regulations and Directives under the *Public Service of Ontario Act, 2006*, the *Police Services Act*, the *Ontario Human Rights Code* or Management Board of Cabinet or Public Service Commission Directives and Guidelines. Matters that arise pursuant to the *Police Services Act* and the Code of Offences there under, other than a working condition or term of employment, shall not be the subject of a grievance under this Collective Agreement.

12. Individual grievances are processed in accordance with the procedures set out in Articles 4.02 to 4.08 of the OPPA Collective Agreement, unless the Employer and the OPPA agree to an alternative process. Under Article 4.02 specifically, the parties agree that any differences proceeding to mediation/arbitration shall be adjudicated by a single mediator/arbitrator who is jointly appointed and agreed to by the parties. Under Article 4.05(g), where the parties are unable to resolve a grievance, the grievance may be forwarded to mediation/arbitration.
13. Under the OPPA Collective Agreement, there are qualifications to the rights of probationary employees. Although probationers can grieve working conditions, they cannot grieve their dismissal or release from employment under Article 4.01(c). Additionally, Article 28 provides for detailed provisions vis-à-vis new employees, including Recruit and Probationary Constables like Mr. Jack when his dispute arose.
14. Article 38 of the OPPA Collective Agreement includes extensive provisions protecting employees from discrimination and harassment in the workplace. Article 38.01 provides that there shall be no discrimination or harassment on grounds enumerated in the *Human Rights Code*, R.S.O. 1990, c. H.19.
15. I swear this affidavit in support of the defendant Employer's position on the motion to dismiss the above claims and for no improper purpose.

**SWORN BEFORE ME** at the  
City of Toronto,  
in the Province of Ontario  
this 29th day of April, 2013

  
Commissioner for Taking Affidavits  
Lisa Compagnone L.S.O. # 42323D

  
Jeffrey Bagg

**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**

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

**Ministry of the Attorney General  
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**Counsel for the Defendants Her Majesty the Queen in  
Right of Ontario and its employees.**



# Tab A





This is Exhibit A referred to in the affidavit of Jeffrey Biny sworn before me, this Monday day of April 29th 2013



Phone: (705) 329-0663

225 - 080558

COMMISSIONER FOR TAKING AFFIDAVITS

18 July 2008 2:30 PM 426 231P

Mr. Michael Jack

Dear Michael,



Congratulations! On behalf of the Commissioner, I am pleased to inform you that as a successful candidate for appointment to the Ontario Provincial Police, you are invited to report to the OPP Headquarters, Provincial Police Academy, 777 Memorial Avenue, Orillia on Sunday August 24, 2008 between 1700 and 2100 hours.

- You will attend the Provincial Police Academy for Orientation Training from Monday August 25, 2008 until Friday August 29, 2008.
- You will then be required to report to the Ontario Police College at Aylmer, Ontario on Tuesday September 2, 2008 between 1600 and 2200 hours for Level II Recruit Training starting Wednesday September 3, 2008 until Thursday November 27, 2008.
- You will then report to the Provincial Police Academy on Sunday November 30, 2008 between 1600 and 2300 hours to complete Orientation Training from Monday December 1, 2008 to Friday January 2, 2009, after which you will join your assigned detachment which has been identified as Peterborough County located in Central Region.
- Upon commencement of your employment with the OPP, you will be classified as a 5<sup>th</sup> Class Recruit Constable. After successfully completing the requirements of the initial period of training at the Ontario Police College and the Provincial Police Academy, you will be promoted to a 4<sup>th</sup> Class Recruit Constable with a corresponding wage increase unless otherwise affected by a pre-existing OPS contract.
- Your probationary period will begin on the day that you report to your detachment/home location upon successful completion of your training and will last for 1 year from that reporting date.
- All OPP officers must be willing to serve anywhere in the province of Ontario. By accepting this offer you are also accepting this condition as part of your employment.

**JOINING INSTRUCTIONS ARE ENCLOSED AND SHOULD BE READ CAREFULLY.**

Please complete the acknowledgement and immediately return one copy of this invitation in the pre-addressed envelope. Retain the originals for your reference.

*Sandy Thomas*  
Sandy Thomas  
Inspector  
Manager, Uniform Recruitment

Note: This offer of employment is revocable should any information detrimental to your file come to our attention between this date and the end of your probationary period.

Note: A Medical Evaluation received by the Ontario Provincial Police after an offer of employment, that does not support your appointment, will impact on your continued employment.

**ACKNOWLEDGEMENT: Mark the appropriate box with an (X)**

*M. Jack*  
Signature

I agree with the conditions of appointment

Date of Signature: 24-JUL-08  will not report



# Tab B



Ontario  
Provincial  
Police

Police  
provinciale  
de l'Ontario



Career Development Bureau  
Bureau de l'avancement professionnel

777 Memorial Ave.  
Orillia, ON L3V 7V3

777 av. Memorial  
Orillia ON L3V 7V3

Tel: (705) 329-6725  
Fax: (705) 329-6188

Tel: (705) 329-6725  
Télex: (705) 329-6188

Reference No/N de dossier

August 25, 2008

MEMORANDUM TO:

Michael Jack  
Badge #12690

Re: **PERFORMANCE AND CONDUCT REQUIREMENTS  
OF A RECRUIT CONSTABLE**

This is Exhibit B referred to in the  
affidavit of Jeffrey Scup  
sworn before me, this Monday  
day of 29<sup>th</sup> of April 2013.

  
LSUC # 42821P  
A COMMISSIONER FOR TAKING AFFIDAVITS

On behalf of Commissioner Julian Fantino, I welcome you to the Ontario Provincial Police (OPP) as one of our newest Policing Services Constables. It is the intent of the OPP to give our new employees every opportunity to succeed and we feel that clearly stated expectations of performance and conduct are fundamental ingredients in this process.

This memorandum describes the OPP's performance and conduct requirements for all recruit constables. Performance and conduct matters include academic performance, performance in an operational setting, and conduct both on and off duty. A position description for Policing Services Constable is attached for your reference.

As described in your Offer of Employment, you will hold the rank of 5th Class Recruit Constable until you successfully complete the training requirements of the Ontario Police College (OPC) and the Provincial Police Academy (PPA).

Successful completion of all components of the Basic Constable Training Program at the Ontario Police College is a mandatory requirement for every recruit constable. It is important to note that the OPP will be seeking your release from employment should any of the following circumstances arise:

- If you do not achieve a passing grade (75% or higher) in three or more examinations, a recommendation will be made to the Commander, Career Development Bureau, that you be released from employment.
- If you do not achieve a passing grade (75% or higher) in one or two examinations, you will be allowed one opportunity to re-write those examinations to obtain a passing grade of 75% or higher. If you do not achieve a passing grade (75% or higher) on these examination re-writes, a recommendation will be made to the Commander, Career Development Bureau, that you be released from employment.

If you do not achieve the required standard in Police Vehicle Operations (PVO), you will be allowed one additional testing opportunity to achieve this standard. If you do not achieve the required standard in PVO during the re-test, a recommendation will be made to the Commander, Career Development Bureau, that you be released from employment.

If you do not achieve the required standard in Firearms, Defensive Tactics, or the Physical Readiness Evaluation for Police (PREP) test, you will be allowed one additional testing opportunity to achieve this standard. If you do not achieve the required standard during this re-test, a recommendation will be made to the Commander, Career Development Bureau, that you be released from employment.

When you successfully complete all of the requirements of both OPC and PPA training, you will proceed to your assigned detachment. Your one-year probation period will commence and you will be promoted to a 4th Class Recruit Constable status with a corresponding wage increase (unless otherwise affected by a pre-existing OPS contract).

Your performance and conduct will be assessed and documented by a Coach Officer. Performance evaluations will assess your development and performance as a recruit constable. All of these evaluations will be shared with you and any performance rating in the "Does not meet" category will be brought to your attention. You will be given every opportunity to improve any identified performance deficiencies.

In order for your employment with the OPP to be confirmed beyond the probationary period, the evaluation of your work performance and conduct must demonstrate that you meet the requirements of this position. A recommendation to confirm your appointment as a Provincial Constable will be made after the tenth (10) month of your probationary period.

Pursuant to the Public Service of Ontario Act, a recommendation that you be released from employment for failure to meet the requirements of your position, based on unsatisfactory work performance or inappropriate conduct, may be made at any time during your training and probation period.

I extend my very best wishes for a successful and fulfilling career.

*Nora M. Skelding*  
Nora M. Skelding  
Chief Superintendent  
Bureau Commander

ACKNOWLEDGEMENT

I, MICHAEL JALIC have read, understand and accept the contents of this memorandum "PERFORMANCE AND CONDUCT REQUIREMENTS OF A RECRUIT CONSTABLE", Rev: Aug 26

*Michael Jalic*  
Employee

25/06/08  
Date

*John St. Brown*  
Witness

25/08/08  
Date

# Tab C





This is Exhibit C referred to in the affidavit of Jeffrey Deegan sworn before me, this 29th day of April 2013

AM LSC#42823P

COMMISSIONER FOR TAKING AFFIDAVITS  
Ontario Police  
Provincial Police  
Police provinciale  
de l'Ontario



Career Development Bureau  
Bureau de l'avancement professionnel  
777 Memorial Ave  
Ottawa, ON K1V 7Z1  
Tel: (513) 29-9725  
Fax: (705) 29-8198  
Reference No. N 30 11 201

December 09, 2009

MEMORANDUM TO:

PROBATIONARY CONSTABLE JACK  
FERRBOROUGH COUNTY DETACHMENT

Re: Notice of Proposed Release from Employment

This memorandum will serve as notice to you that a recommendation has been made that you be excused from employment from the Ontario Provincial Police. You will be released from employment pursuant to subsection (712) of the Public Service of Ontario Act.

The recommendation for your release from employment is based on your failure to meet the requirements of the position as a Probationary Constable based on unsatisfactory work performance. On August 25, 2008, you acknowledged and signed the attached form, Performance and Conduct Requirements of a Probationary Constable.

You have the opportunity to prepare a written submission or to meet with Chief Superintendent Armstrong at Central Headquarters at 1330 hours on December 15, 2009, before a decision is made. To assist Chief Superintendent Armstrong in his decision relating to your employment status, I will provide him with a copy of this memorandum and attached documentation.

If the recommendation is accepted, you will be released from employment pursuant to subsection (712) of the Public Service of Ontario Act.

You may advise Staff Sergeant Colleen Kohen in writing, by 0900 hours on December 14, 2009, as to which option, if any, you wish to exercise. If you choose not to make a submission, the final decision will be based on the information in this memorandum and the attached documentation.

You have the right to have a representative of the Ontario Provincial Police Association present at the meeting.

*[Handwritten Signature]*

Chief Superintendent  
Mike Armstrong, Regional Commander

On PA  
C. Supt. Mike Armstrong, Regional Commander - Central Region



# Tab D



This is Exhibit D referred to in the affidavit of Jeffrey King sworn before me, this 29th day of April 2013.

[Signature] 2500 # 428231  
Ontario Police  
COMMISSIONER FOR THE PROVINCE OF ONTARIO  
de l'Ontario



Central Region Headquarters  
Région du Centre

777 Memorial Ave. 777 ave Memorial  
Orillia ON L3V 7V3 Orillia ON L3V 7V3  
Tel. (705) 329-7400 Fax: (705) 329-7407  
File Reference: 260

December 15, 2009

WIN 393080

MEMORANDUM TO:

CHIEF SUPERINTENDENT MIKE ARMSTRONG  
REGIONAL COMMANDER  
CENTRAL REGION

Re: Resignation from the Ontario Provincial Police

I wish to inform you that I am resigning from the Ontario Provincial Police effective today's date.  
I had been posted to Peterborough County Detachment, Central Region.  
If you require further information, I can be contacted at (705) 740-5765.

[Signature]

Michael Jack  
Probationary Constable  
Badge #12690

[Signature]

16 Dec 2009  
515 22 1 200

Colleen Kohan  
Staffing Officer  
OPP Human Resources Bureau



# Tab E





This is Exhibit E referred to in the affidavit of J. Gray sworn before me, this 27th day of April 2013

*[Signature]*  
1506 Hwy 2323P  
COMMISSIONER FOR TAKING AFFIDAVITS



Central Region Headquarters  
Région du Centre

777 Memorial Ave. 777, ave Memorial  
Orillia ON L3V 7V3 Orillia ON L3V 7V3  
Tel (705) 329-7400 Fax (705) 329 7407  
File Reference. 290

December 15, 2009

**MEMORANDUM TO:**

Probationary Constable Michael Jack  
Peterborough County Detachment

**RE: RELEASE FROM EMPLOYMENT**

*Further to our meeting today, I have reviewed the circumstances regarding your continued employment with the Ontario Provincial Police. My review has included your submission on the matter.*

After careful consideration, I must inform you that effective December 15, 2009, you shall be released from our employ as a probationary constable. I trust that you understand that such decisions are not taken lightly. I also wish to acknowledge that this decision will obviously come as a great disappointment to you.

I wish you every success in your future career endeavours.

M.F. (Mike) Armstrong  
Chief Superintendent  
Regional Commander

sh

c: Staff Sergeant C.S. Kohen, Career Development Bureau



# Tab F



**OPPA UNIFORM COLLECTIVE AGREEMENT**

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This is Exhibit F referred to in the  
affidavit of Jo Arey, Esq.  
sworn before me, this 27th  
day of April 2013

[Signature] L.SUC 428231  
A COMMISSIONER FOR TAKING AFFIDAVITS

**OPPA  
UNIFORM COLLECTIVE AGREEMENT**

By and Between:

Her Majesty The Queen in Right of the Province of Ontario  
(hereinafter called the "Employer")  
Of The First Part

and

Ontario Provincial Police Association, Incorporated  
(hereinafter called the "Association")  
Of The Second Part

January 1, 2009 to December 31, 2011

## OPPA UNIFORM COLLECTIVE AGREEMENT

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### ARTICLE 1 - RECOGNITION

1.01 The Employer recognizes the Association as the exclusive bargaining agent with respect to matters pursuant to the *Public Service of Ontario Act, 2006* and *Ontario Provincial Police Collective Bargaining Act* or matters arising under this Collective Agreement for all employees of the Employer classified as Cadets, Recruit Constables, Probationary Constables, Constables, Sergeants, Staff Sergeants, and Sergeants Major.

For the purpose of this Collective Agreement, the classification of Sergeant shall include Detective Sergeant; Traffic Sergeant and Identification Sergeant. Staff Sergeant shall include, in addition to the position of Staff Sergeant, the positions of Detective Staff Sergeant, Traffic Staff Sergeant and Identification Staff Sergeant.

It is agreed that there will be no intimidation, discrimination, or coercion exercised or practiced by either of the parties to this Collective Agreement or their representatives because employees are, or are not, members of the Association, or because such employees exercise a right under the Collective Agreement.

#### DEFINITIONS

1.02 The term "employees" whenever herein used shall mean only those employees coming within the bargaining unit as described above.

1.03 The term "Commissioner" whenever herein used shall mean Commissioner of the Ontario Provincial Police.

1.04 Wherever applicable in this Collective Agreement, the singular shall include the plural.

1.05 The term "OPP" whenever herein used shall mean the Ontario Provincial Police.

1.06 "Association" means the Ontario Provincial Police Association.

1.07 The term "regular employee" herein used shall mean a public servant appointed under section 32 of the *Public Service of Ontario Act, 2006* other than for a fixed term.

1.08 The term "regular service" herein used shall mean the part of the public service composed of regular employees.

1.09 The term "fixed term employee" herein used shall mean a public servant appointed under Part III of the *Public Service of Ontario Act, 2006* for a fixed term.

1.10 The term "fixed term service" herein used shall mean the part of the public service composed of fixed term employees.

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## OPPA UNIFORM COLLECTIVE AGREEMENT

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*Collective Bargaining Act*, limited solely to the issue of the wage adjustments and the Employer's contributions in Articles 8 and 9 of the transfer agreement.

### ARTICLE 3 - THE ONTARIO PROVINCIAL POLICE NEGOTIATING AND ARBITRATION BOARD

- 3.01 Negotiations for the amendment or renewal of matters pursuant to the *Public Service of Ontario Act, 2006* and *Ontario Provincial Police Collective Bargaining Act* or matters arising under this Collective Agreement shall continue to be conducted through the Ontario Provincial Police Negotiating Committee pursuant to the *Ontario Provincial Police Collective Bargaining Act*. Any such matters not resolved by negotiation may be submitted to the Arbitration Board.
- 3.02 The decision of the Arbitration Board on all such matters referred to it shall be final and binding upon the parties hereto.

### ARTICLE 4 - GRIEVANCE PROCEDURE

#### DEFINITIONS

- 4.01 (a) "Employee Representative" means a person selected by the Board of Directors of the Association, nominated to act on behalf of that person in respect to a grievance.
- (b) "Grievance" means a dispute between the parties made in writing, concerning a working condition or term of employment which is applicable to employees covered by this Collective Agreement and which is set out in the Collective Agreement, the Regulations and Directives under the *Public Service of Ontario Act, 2006*, the *Police Services Act*, the Ontario *Human Rights Code* or Management Board of Cabinet or Public Service Commission Directives and Guidelines. Matters that arise pursuant to the *Police Services Act* and the Code of Offences there under, other than a working condition or term of employment, shall not be the subject of a grievance under this Collective Agreement.
- (c) "Grievor" means an employee, who has been continuously employed for six (6) months, who has a grievance. Probationary employees cannot grieve their dismissal or release of employment.

#### 4.02 SINGLE MEDIATOR/ARBITRATOR

The parties agree that any disputes proceeding to mediation/arbitration shall be adjudicated by a single mediator/arbitrator who is jointly appointed and agreed to by the parties.

## OPPA UNIFORM COLLECTIVE AGREEMENT

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### PROCEDURE

- 4.03 Questions arising between the OPP and the OPP Association concerning interpretations of the Collective Agreement will be initially referred to the designated representative of the OPP and the President/CEO of the OPP Association or his or her designee, who will attempt to resolve such questions. If the representatives are unable to satisfactorily resolve the matter, it may be dealt with as a grievance pursuant to the provisions of this Article.
- 4.04 A grievor may present a grievance personally or may be represented or assisted by an employee representative.
- 4.05
- (a) An employee who has a complaint shall first discuss the complaint with his/her supervisor within fifteen (15) days of first becoming aware of the complaint.
  - (b) When the complaint cannot be resolved by the employee's supervisor within ten (10) days of the discussion, the complaint shall be discussed with the Detachment Commander or the Section Manager, as applicable.
  - (c) Failing resolution under (b) herein, and within ten (10) further days, the employee may file a grievance in writing through the Association to his/her Regional or Bureau Commander with a copy to his/her Detachment Commander or Section Manager (as applicable).
  - (d) The Regional or Bureau Commander shall hold a meeting with the Association within fifteen (15) days of receipt of the grievance and shall give his/her decision in writing, with a copy to the Detachment or Section Manager (as applicable), within ten (10) days of the meeting.
  - (e) The written grievance shall specify the section or sections of the Collective Agreement, Regulations and Directives under the *Public Service of Ontario Act, 2006*, the *Police Services Act*, the *Ontario Human Rights Code*, or Management Board of Cabinet or Public Service Commission Directives and Guidelines that is alleged to have been violated or misapplied.
  - (f) If the Association is not satisfied with the reply of the individual specified in (d) above, the Association may forward the grievance to the Commissioner or the Commissioner's designee within twenty (20) days of the date of reply in (d) above. The Commissioner or the Commissioner's designee shall give the Association the decision in writing within twenty (20) days of receipt of the grievance.
  - (g) If the matter is still unresolved, the grievance may be forwarded to mediation/arbitration in accordance with this Article.



## OPPA UNIFORM COLLECTIVE AGREEMENT

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### TIME LIMITS

- 4.06 (a) In this Article, days shall include all days exclusive of Saturdays, Sundays and statutory holidays.
- (b) At any stage of the grievance procedure, the time limits imposed upon either party may be extended by mutual agreement.
- 4.07 (a) The provisions of this Section shall apply to a grievance concerning the interpretation, application, administration or alleged violation of this Collective Agreement including whether or not the matter may be entertained by the mediator/arbitrator hereunder.
- (b) If the Association is not satisfied with the decision given pursuant to the provisions of Section 4.05, or if the Association does not receive a decision within the specified time limit, the Association may apply in writing to the mediator/arbitrator within seven (7) days:
- (i) of the date the decision was received or
  - (ii) of the date the time limit expired as the case may be, for a hearing of the grievance.
- (c) Mediation/arbitration shall be conducted as soon as practicable by an agreed upon mediator/arbitrator.
- (i) The mediator/arbitrator shall not be authorized to alter, modify or amend any part of the terms of this Collective Agreement.
  - (ii) The decision of the mediator/arbitrator in respect of the hearing shall be communicated in writing within sixty (60) days of the conclusion of the hearing to the Association representative and the employer representative.
  - (iii) The determination of a grievance by the mediator/arbitrator pursuant to the terms of this Collective Agreement is final.
- 4.08 Each party shall pay one-half the fees and expenses of the arbitrator/mediator.

Except as aforesaid, each party shall bear all expenses incurred by it whether of witnesses, the attendance of witnesses and representatives, exhibits or otherwise.

### POLICY GRIEVANCE

- 4.09 Where any difference between the Employer and the Association arises from the interpretation, application administration or alleged contravention of the Collective Agreement the Association shall be entitled to file a policy grievance
-

## OPPA UNIFORM COLLECTIVE AGREEMENT

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### ARTICLE 27 - PERSONNEL FILE

27.01 Once a year, upon written request, the Commissioner or the Commissioner's designee shall grant a member permission to examine the member's own personnel file 291-00 at the location where it is maintained.

If it is determined, upon the basis of evidence supplied by the member, that any material contained in the file is incorrect, such material shall be corrected accordingly.

An employee shall be permitted to examine his/her file during off duty hours and shall do so at his/her own personal expense.

27.02 The employer agrees to remove from a member's personnel file the following items provided the member's personnel file has been clear of similar documentation/offences/convictions for an equivalent, previous period of time as specifically noted below:

- (a) all negative documentation and admonishments or informal discipline penalties two (2) years after the date of the last noted incident;
- (b) all records of any criminal and/or provincial offence in which there was a withdrawal or dismissal of the charges against the member;
- (c) all records of any provincial offence conviction five (5) years after the date of conviction;
- (d) all records of any criminal offence conviction five (5) years after the date of conviction where there was a conditional or absolute discharge;
- (e) all records of any discipline conviction under the *Police Services Act* five (5) years after the last discipline conviction (after all appeal procedures have been exhausted), provided no other entries have been made with respect to discipline or public complaints and provided the confirmed penalty does not exceed the forfeiture of forty (40) hours pay or leave, or forty (40) hours suspension without pay.

27.03 Notwithstanding 27.02, the Commissioner has the discretion to maintain discipline records for a longer or shorter period of time on an exceptional basis.

### ARTICLE 28 - NEW EMPLOYEES

28.01 The Employer agrees to acquaint all new employees entering the bargaining unit with the fact that this Collective Agreement is in effect, and with the conditions of employment set out in the Articles.

## OPPA UNIFORM COLLECTIVE AGREEMENT

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28.02 The Employer agrees to place a current copy of the Collective Agreement in each Detachment Library, in the Police Orders, and on the OPP intranet.

28.03 Commencing August 1st, 2008 and thereafter, the probationary period for a Probationary Constable shall commence upon reporting to his/her assigned detachment/home location after the successful conclusion of the initial period of training as a Recruit Constable at the Provincial Police Academy and the Ontario Police College, and the Probationary Constable shall be on probation for a period of one year from that date.

If a Probationary Constable is absent for a period greater than three (3) consecutive calendar weeks during the probationary period, the Employer may extend the employee's probationary period by the length of that absence. A Probationary Constable will be considered to be absent when the constable is unable to perform the essential duties of a Probationary Constable.

A Recruit Constable may be subject to discipline for conduct occurring during the course of the initial period of training.

The Employer will apply this provision in a manner consistent with the *Workplace Safety and Insurance Act, 1997* or the *Ontario Human Rights Code, 1990*.

### ARTICLE 29 - LAY OFF AND RECALL

#### ADVANCE NOTICE

29.01 The Employer and the Association agree that qualifications and length of continuous service as defined in Article 13.10, on a province-wide basis, are the primary considerations in the event that a reduction in the work force should become necessary.

29.02 Should a reduction in the work force become necessary, the Employer will give the Association as much advance notice of such reduction as is practicable and will supply, at the earliest opportunity, a list of employees who are to be re-assigned within the OPP or laid off. The Employer agrees to meet with the Association upon request to discuss the manner in which the reduction is to be effected.

#### RE-APPOINTMENT

29.03 Where an employee is released and the released employee's former position, or another position within the OPP for which the released employee is qualified becomes vacant within twenty-four (24) months from the date of release, the Employer shall deliver to the former employee a notice of the vacancy at least fourteen (14) days prior to it being filled and the released employee shall be appointed to the vacancy if:

## **OPPA UNIFORM COLLECTIVE AGREEMENT**

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- (a) the new work location is at least forty (40) kilometres away from the old workplace; and
- (b) the road distance between the new work location and new residence is at least forty (40) kilometres less than the road distance between the new place of employment and old residence.

### **ARTICLE 36 – BROADER PUBLIC SECTOR**

- 36.01 For the purposes of this Article, the Broader Public Sector consists of any Government or other public entity.
- 36.02 While in the workplace, secondees from the Broader Public Sector shall not perform duties normally performed by employees in the bargaining unit if it directly results in the lay-off of a bargaining unit employee.
- 36.03 The Employer's use of secondees from the Broader Public Sector to perform bargaining unit work does not constitute a violation of the Collective Agreement provided that, unless the parties otherwise agree, the Broader Public Sector secondee is not seconded for a period of greater than 3 years.
- 36.04 The Employer shall provide the Association every six (6) months with a data file on secondees who perform OPPA bargaining unit work, which shall include the following information fields: Ministry work location; secondee name; start date; institution seconded from; and anticipated termination date.
- 36.05 The Employer will require basic or enhanced security screening checks from the above noted secondees.
- 36.06 It is understood that the above noted secondees are not represented by the Association.

### **ARTICLE 37 – POLICE ORDERS, RULES AND REGULATIONS**

- 37.01 Confidential disclosure shall be provided to the Association at least 2 weeks before any changes to Police Orders, rules and regulations are announced to employees.

### **ARTICLE 38 – NO DISCRIMINATION / WORKPLACE HARASSMENT**

- 38.01 There shall be no discrimination or harassment by reason of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, age, marital status, family status, or handicap, as defined in section 10(1) of the *Ontario Human Rights Code*.

## **OPPA UNIFORM COLLECTIVE AGREEMENT**

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For the purposes of this Article, harassment means engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome.

- 38.02 The Association and the Employer jointly recognize and affirm the right of employees to work in an environment that is respectful and free from harassment.
- 38.03 All employees share in the responsibility to ensure that their workplace is free from harassment.
- 38.04 All complaints regarding workplace harassment or discrimination shall be eligible to be processed as grievances under this Collective Agreement.
- 38.05 Grievances under Article 38.04 shall be limited solely to instances which occur at the workplace involving the Employer's employees. Grievances shall not include alleged discrimination or harassment by a member of the public or individual not employed by the Employer, unless the Employer was reasonably aware that such harassment/discrimination was occurring in the workplace.
- 38.06 Following the filing of a workplace harassment/discrimination grievance, the Employer, where practical, will consult with and seek the consent of the Association and grievor prior to any decision, if any, to remove the grievor from the work location of the alleged harasser.
- 38.07 Where the alleged harasser is the person who would usually deal with any steps in the grievance procedure, the grievance shall be heard by an alternative designee.
- 38.08 The normal exercise of managerial rights including the day-to-day assignment of tasks, attendance management, training, performance management or discipline does not constitute harassment, provided that the employer does not exercise those rights in an oppressive or tyrannical manner.

### **ARTICLE 39 -- SELF ADMINISTRATION OF BENEFITS**

- 39.01 The Parties agree that the Benefit Plans as contained in the Memorandum of Understanding dated January 1, 2006-December 31, 2008 shall remain in full force and effect up to and including June 30, 2009.
- 39.02 The Parties further agree that effective July 1, 2009 the employee health and welfare benefits as specified below shall be administered through the Association for the benefit of its members and pensioners. The Employer will no longer administer these plans.



# Tab 4





**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**

---

**SUPPLEMENTAL AFFIDAVIT OF CHARLES BARNARD  
(Sworn January 14, 2013)**

---

I, Charles Barnard, of the City of Toronto, in the Province of Ontario,

**MAKE OATH AND SAY AS FOLLOWS:**

1. I am Charles Barnard, 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. The named Employer Defendant, retired OPP Officer Chris Newton, was served with the Statement of Claim in Court File No. CV-13-476321 on August 5, 2013.
3. I swear this affidavit in support of the defendant Employer's position on the motion to strike the Plaintiff's pleadings and dismiss his action and for no other improper purpose.



**MICHAEL JACK**

**and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al.**

**Plaintiff**

**Defendants**

**Court File No. CV-12-470815/CV-13-476321**

<p><b>ONTARIO</b> <b>SUPERIOR COURT OF JUSTICE</b></p> <p><b>Proceeding commenced at Toronto</b></p>	<p><b>NOTICE OF MOTION OF THE MOVING PARTY, HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al.</b></p>	<p><b>Ministry of the Attorney General</b> <b>Legal Services Branch</b> <b>Ministry of Government Services</b> <b>9<sup>th</sup> Floor, Ferguson Block</b> <b>77 Wellesley Street West</b> <b>Toronto, ON M7A 1N3</b></p> <p><b>Lisa Compagnone – LSUC# 42328P</b> <b>Lisa.compagnone@ontario.ca</b> <b>Tel: (416) 327-6916</b> <b>Fax: (416) 325-9404</b></p> <p><b>Counsel for the Defendants Her Majesty the Queen in Right of Ontario and its employees.</b></p>
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# Tab 5



CV-13-476321  
Court file No

ONTARIO  
SUPERIOR COURT OF JUSTICE

Court seal  
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.





# Tab 6



**ONTARIO  
SUPERIOR COURT OF JUSTICE**

*CS.*  
JUSTICE BROWN

) *Mon.*, THE *22d* DAY  
)  
) OF *April*, 2013

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**

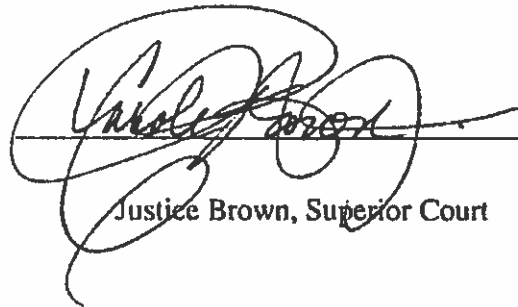
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**THIS MOTION, made by the defendants, Her Majesty The Queen in Right of Ontario as Represented by the Ministry of Community Safety and Correctional Services Operating as The Ontario Provincial Police and Its Employees (except S.Filman And C.Newton), 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.



Justice Brown, Superior Court



**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  
9<sup>th</sup> 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.**





# **Tab 7**



MICHAEL JACK

and HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al.

Plaintiff

Defendants

Court File No. CV-13-476321

02/04/13

*I wrote for the OPPA  
J. Compagnone for the Queen  
Mr. Jack not sign attendance,  
but agent of Jack attending*

*This court orders that this  
action # CV - 13 - 476321 and action  
# CV - 12 - 470815 be consolidated and  
that they proceed as one action.  
No costs are awarded for this  
motion.*



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  
9th Floor, Ferguson Block  
77 Wellesley Street West  
Toronto, ON M7A 1N3

Lisa Compagnone - LSJCV 42823P  
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Fax: (416) 325-9404

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

MICHAEL JACK

ONTARIO PROVINCIAL POLICE ASSOCIATION et. al.

- and -

Plaintiff

Defendants

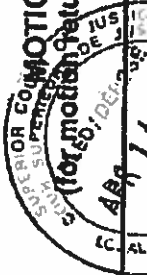
22/04/13

*2. Report for the OPPA  
3. Complaigne for the Crown  
Mr Jack not appearing, but  
agent X-Sipp in attendance*

*This motion, brought by the  $\Delta$ ,  
is a complex, multi-faceted claim,  
alleging defamatory & discriminatory  
statements by the  $\Delta$ . There are 2  
motions by the  $\Delta$ , as well as cross  
motions by the  $\Pi$  before the Court  
today. The  $\Delta$  OPPA brings a motion  
pursuant to R. 21. to strike portions  
of the SOC, which claim members over  
200 paragraphs, and also asks to  
strike the SOC on the basis that  
the limitation period has passed.  
The Crown supports the OPPA motion  
to strike on the basis that the*

ONTARIO  
SUPERIOR COURT OF JUSTICE  
PROCEEDING COMMENCED AT  
TORONTO

ONTARIO SUPERIOR COURT OF JUSTICE  
MOTION RECORD  
(for motion returnable April 22, 2013)



Investigation Counsel  
Professional Corporation  
Barnstans & Investigation Consultants  
350 Bay Street, Suite 1000  
Toronto, Ontario M5H 2S6

Norman Groot  
LSUC No.: 43721V  
Telephone: (416) 637-3141  
Facsimile: (416) 637-3445  
ngroot@investigationcounsel.com

Lawyers for the Defendants, Ontario Provincial  
Police Association, Shaun Filman, Karen  
German, Jim Styles, and Marty McNamara

Page 3

pleading is statute-based. The Crown advises that they will also be bringing a motion to strike the Claim pursuant to R. 21, which motion materials are to be served shortly.

The Tt seeks to have a non-lawyer agent, Mr. Gapp, represent him. However, the Tt failed to appear in person today, although he was advised to do so in writing, by Mr. Frost, Counsel for the OPPA, on Feb. 13, 2013. This was reinforced by Mr. Frost, who e-mailed Mr. Gapp last week to require Mr. Jack's presence in Court today. The Tt also seeks, by cross-motion a waiver of Court fees & amendments to the SCL.

This matter cannot proceed without Mr. Jack present in Court. Further the matter is set down for 50 min which is not sufficient time for all motions.

All motions, including the motion to be brought by the Crown, are to be spoken to on May 7, 2013 at 9:30 am in Courtroom 801 before Madam Justice Fow, to obtain

a date. The motions to strike of the OPPA and the Crown, as well as the <sup>issues</sup> motions of the unrepresented  $\pi$  will, in the estimation of the parties, require 4 hours. I am of the view that that will give sufficient time for all motions to be heard.

The date to be scheduled on May 7 will be peremptory to Mr. Jack, who must be, himself, present in court, preferably with a lawyer.

Mr. Sapp advises that Mr. Jack now resides in Israel. He will provide Mr. Jack's mailing address, telephone number & email address in Israel to the Court & to counsel for the  $\Delta$ s by the end of the business day today. The  $\Delta$ s may serve the  $\pi$  in Israel by <sup>Johnnie</sup>

Costs of today's motion are left to the Motions Judge.

*[Signature]*

**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, 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**

**ENDORSEMENT – Typed  
April 22, 2013**

**CV-13-476321**

**N. Groot for the OPPA  
L. Campagnone for the Crown  
Mr. Jack no in attendance but agent L. Tapp attending**

**This court \_\_\_ that this action CV-13-476321 and action CV-12-470815 be consolidated and that they proceed as one action. No costs are awarded for this motion.**

**CV-12-470815**

**N. Groot for the OPPA  
L. Campagnone for the Crown  
Mr. Jack no in attendance but agent L. Tapp attending**

**This action, brought by the Plaintiff is a complex multimillion dollar claim, alleging defamation and discrimination as against the Defendants. There are 2 motions by the defendants, as well as cross motions by the Plaintiff before the court today. The defendant, OPPA brings a motion**

pursuant to R. 21 to strike portions of the SOC, which claim numbers over 200 paragraphs, and also seeks to strike the SOC on the basis that the Limitation period has passed. The Crown supports the OPPA motion to strike on the basis that the [page 2] pleading is statute-based. The Crown advises that they will also be bringing a motion to strike the Claim pursuant to R. 21, which motion materials are to be served shortly.

The Plaintiff seeks to have a non-lawyer agent, Mr. Tapp represent him. However, the Plaintiff failed to appear in person today. Although he was advised to do so in writing, by Mr. Groot, Counsel for the OPPA on February 13, 2013. This was reinforced by Mr. Groot who re0mailed Mr. Tapp last week to require Mr. Jack's presence in court today. The Plaintiff also seeks, by cross-motion a waiver of court fees and amendments to the SOC.

This matter cannot proceed without Mr. Jack present in Court. Further the matter is set down for 50 Minutes which is not sufficient time for all motions.

All motions, excluding the motion to be brought by the Crown, are to be spoken to on May 7, 2013 at 9:30am in Courtroom 801 before Madam Justice Low, to obtain [page 3] a date. The motions to strike of the OPPA and the Crown, as well as the Cross-motions of the unrepresented Plaintiff will, in the estimation of the parties, require 4 hours. I am of the view that that will give sufficient time for all motions to be heard.

The date to be scheduled on May 7 will be peremptory to Mr. Jack, who must be himself, present in court, preferably with a lawyer.

Mr. Tapp advises that Mr. Jack now resides in Israel. He will provide Mr. Jack's mailing address, telephone number, and e-mail address in Israel to the court and to counsel for the Defendants by the end of the business day today. The Defendants may serve the plaintiff in Israel by courier.

Costs of today's motion are left to the motion's Judge.

Madam Justice Brown



**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**

**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  
9<sup>th</sup> 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.**



# Tab 8



URGENT MOTION/APPLICATION REQUEST

THE HONOURABLE JUSTICE: Frank, J

COURTROOM: 301

DATE: May 7/13

COURT FILE NUMBER: 13-00476321

SHORT TITLE: M Jack vs. OPA

COUNSEL/LAW FIRM: N. Gow + [signature]

TELEPHONE NO: 416-637-3141

HAS REQUESTED AN URGENT MOTION/APPLICATION DATE:  
THE REQUEST IS:

APPROVED  
Return Date: Apr 2, 2014 Estimated Duration: 1 day

NOT APPROVED. Counsel is directed to contact the Scheduling Unit at (416) 327-5292 to arrange the motion/application date based on the courts availability.

Comments:

Schedule - defendants factum & book of authorities Jan 17, 2014.  
plaintiffs factum & book of authorities March 3, 2014.

summary dismissal - limitation argument, [unclear],  
stay, striking cause & Act 2.

Date: [signature]

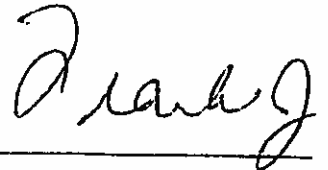
MAY 07 2013

The Honourable Mr. Hon Justice Frank

Note to Court Registrar: Please return this form along with the materials Bosco Mascarenhas (6-0167), Judicial Motions, OR Angela Fajardo (7-9445) 393 University Ave., 10<sup>th</sup> Floor.



1. **THIS COURT ORDERS** that the factums and book of authorities of the Defendants be served on the Plaintiff by Jan 17, 2014.;
2. **THIS COURT FURTHER ORDERS** that the factum and book of authorities of the Plaintiff be served on the Plaintiff by March 3 2014;
3. **THIS COURT FURTHER ORDERS** that the Defendants' Rule 21 motion is scheduled for four hours on one day APR 2, 2014
4. **THIS COURT FURTHER ORDERS** that costs for this attendance are reserved for the motion's judge;



\_\_\_\_\_  
Superior Court of Justice





**MICHAEL JACK**

and

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO et al.**

**Plaintiff**

**Defendants**

**Court File No. CV-12-470815/CV-13-476321**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**Proceeding commenced at Toronto**

**MOTION RECORD**

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

**Lisa Compagnone – LSUC# 42823P  
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**Counsel for the Defendants Her Majesty the Queen in  
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