

**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

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MINISTRY OF COMMUNITY SAFETY AND CORRECTIONAL SERVICES OPERATING AS
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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
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January 17, 2014

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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-12-470815/CV-13-476321

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**NOTICE OF MOTION OF THE MOVING PARTY,
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