

**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

NOTICE OF MOTION

The defendants the Ontario Provincial Police Association ("OPPA"), Shaun Filman, Karen German, Jim Styles and Marty McNamara (collectively, the OPPA Defendants) will make a motion to a judge, on **Monday, 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.

THE MOTION IS FOR:

1. an order that the Statement of Claim be struck in its entirety as against the OPPA Defendants as it discloses no reasonable cause of action pursuant to Rule 21.01(1)(b);
2. in the alternative, an order pursuant to Rule 21.01(3)(c) that the Statement of Claim be dismissed or stayed as against the OPPA Defendants as another proceeding is pending

- in Ontario before the Human Rights Tribunal of Ontario between the same parties in respect of the same subject matter;
3. in the further alternative, an order dismissing the action pursuant to Rule 21.01(1)(a) due to expiry of the limitation period;
4. in the alternative, an order staying this action;
5. costs on a substantial indemnity basis, or in the alternative, on a partial indemnity basis.
6. such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. the Plaintiff's claim deals with events that occurred during his employment with the Ontario Provincial Police ("OPP") during the period from January 2009 until the termination of his employment in December 2009;
2. the Plaintiff alleges that various negative financial, emotional and physical consequences of his termination only became evident to him in the months following his termination;
3. therefore on December 14, 2010, the Plaintiff filed an application with the Human Rights Tribunal of Ontario ("HRTO") seeking damages for the various violations of his human rights that he alleges were caused by the Defendants to this action;
4. the hearing at the HRTO commenced on May 22, 2012 and continued until May 24, 2012, at which time it was adjourned until November 1, 2012. When the hearing resumed, the adjudicator recommended that the parties go to mediation;
5. based on this recommendation, as well as other statements made by the adjudicator, the Plaintiff decided to commence the present civil action;
6. on December 21, 2012, three years after his dismissal and more than two years after becoming aware of the alleged consequences of that dismissal, the Plaintiff

commenced this action as against the OPPA Defendants, and served the Statement of Claim on those Defendants on or about December 27, 2012;

7. the Statement of Claim does not disclose a cause of action against the OPPA Defendants and so must be struck in its entirety;
8. in the alternative, the claim against the OPPA Defendants must be stayed or dismissed because the Plaintiff has already commenced an application at the HRTO in December of 2010 against the same parties in respect of the same subject matter. In fact, the HRTO proceeding had advanced to the hearing stage when the Plaintiff commenced the present action;
9. further, by initiating this proceeding the Plaintiff has violated the rule that, as far as possible, multiplicity of legal proceedings shall be avoided. The OPPA Defendants submit that this is an additional factor for the Court to consider in deciding whether to dismiss or stay this action and order that the claims advanced within this action be dealt with by way of the HRTO application;
10. in the further alternative, the action against the OPPA Defendants is statute-barred by reason of being commenced outside the two-year limitation period pursuant to s. 4 of the *Limitations Act*.
11. Rules 21.01, 25.11 and 57 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended;
12. Sections 106 and 138 of the *Courts of Justice Act*, R.S.O. 1990, c.43, as amended;
13. Section 4 of the *Limitations Act*, S.O. 2002, c.24, Sch. B;
14. Such further and other grounds as counsel may advise and as this Honourable Court may permit.

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

1. the Statement of Claim, filed with the court on December 21, 2012;

2. such further and other material as this Honourable Court deems fit.

DATE: January 9, 2013

**Investigation Counsel
Professional Corporation**
350 Bay Street, Suite 1000
Toronto, ON 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

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

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

Self-Represented Plaintiff

AND TO: Ontario Provincial Police
General Headquarters
Lincoln M. Alexander Building
777 Memorial Avenue
Orillia, ON L3V 7V3

Telephone: (705) 329-6111
Facsimile: (705) 329-6600

Employer of Ronald Campbell, Mike Johnston, Chris Newton, Colleen Kohen,
Hugh Stevenson and Mike Armstrong Marc Gravelle, John Pollock, Shaun
Filman, Jennifer Payne, Jamie Brockley, Melynda Moran, Mary D'Amico, Richard
Nie, Brad Rathbun, Robert Flindall and Peter Butorac

CHAEEL JACK
Plaintiff

v.

THE ONTARIO PROVINCIAL POLICE ET AL.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

INVESTIGATION COUNSEL
PROFESSIONAL CORPORATION
Barristers
350 Bay Street, Suite 1000
Toronto, ON 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