

Ministry of the
Attorney General

Legal Services Branch

Ministry of Community Safety and
Correctional Services

655 Bay St, Suite 501
Toronto, ON M7A 0A8

Telephone: (416) 314-3509
Fax: (416) 314-3518

Ministère du
Procureur général

Direction des services juridiques

Ministère de la Sécurité communautaire
et des Services correctionnels

655, rue Bay, bureau 501
Toronto ON M7A 0A8

Téléphone: (416) 314-3509
Télécopieur: (416) 314-3518



Writer's Direct Line : (416) 326-1237

March 20, 2012

Mr. Lloyd Tapp
252 Angeline Street North
Lindsay ON K9V 4R1

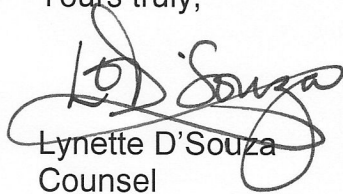
Via Courier

Dear Mr. Tapp;

Re: Michael Jack v. HMQ
Tribunal File Number: 2010-07633-I

Enclosed please find the Respondent's Form 10-Request for a Case Management Conference, Request for a Case Management Conference Schedules and Book of Authorities, served upon you pursuant to the *Rules of Human Rights Tribunal of Ontario*.

Yours truly,


Lynette D'Souza
Counsel

Encl.



Human Rights Tribunal of Ontario

Request for an Order During Proceedings - Rule 19 (Form 10)

(Disponible en français)

www.hrto.ca

At any time after an Application has been filed with the Tribunal, a party may make a Request for an Order during a proceeding by completing this Request for an Order During Proceedings (Form 10).

The Tribunal will determine whether a Request for an Order will be heard in writing, in person or electronically and, where necessary, will set a date for the hearing of the Request. This Request may be heard on the basis of Form 10 alone.

Follow these steps to make your request:

1. Fill out this Form 10.
2. All documents you are relying on must be included with this Form 10.
3. Deliver a copy of Form 10 to all parties and any person or organization who has an interest in this Request.
4. If this is a Request for an Order that a non-party provide a report, statement or oral or affidavit evidence in accordance with Rule 1.7 (q), this Form 10 must be delivered to the non-party in addition to the other parties in the proceeding.
5. Complete a Statement of Delivery (Form 23).
6. File Form 10 and Form 23 with the Tribunal.

Information for all parties and any person or organization who receives a copy of this Request

You may respond to this Request for an Order by completing a Response to a Request for an Order During Proceedings (Form 11).

Follow these steps to respond:

1. Fill out Form 11.
2. All documents you are relying on must be included with Form 11.
3. Deliver a copy of Form 11 to all parties and any other person or organization that has an interest in the Request.
4. Complete a Statement of Delivery (Form 23).
5. File Form 11 and Form 23 with the Tribunal.

You must file your Response to a Request for Order not later than **fourteen (14)** days after the Request for Order was delivered to you.

Download forms from the Tribunal's web site www.hrto.ca. If you need a paper copy or accessible format, contact us.

Human Rights Tribunal of Ontario
655 Bay Street, 14th floor
Toronto, Ontario
M7A 2A3

Phone: 416-326-1312 Toll-free: 1-866-598-0322
Fax: 416-326-2199 Toll-free: 1-866-355-6099
TTY: 416-326-2027 Toll-free: 1-866-607-1240
Email: hrto.registrar@ontario.ca



Human Rights Tribunal of Ontario

Request for an Order During Proceedings - Rule 19 (Form 10)

following orders:

1. an order or direction from the Tribunal clarifying the scope of the hearing;
2. an order or direction from the Tribunal excluding certain documents from the hearing;
3. an order or direction from the Tribunal excluding certain witnesses or part of their anticipated evidence; and
4. an order or direction from the Tribunal excluding certain parts of the will-say of the Applicant Mr. Jack.

3. Please describe the order requested in detail.

Please see Section 2 above and Schedule 1 attached.

4. What are the reasons for the Request, including any facts relied on and submissions in support of the Request.

Please see Schedule 1 attached.

5. Do the other parties consent to your Request?

- Yes
- No
- Don't Know

6. If you are requesting production of a Document(s), please explain if you have already requested the document and any response you have received. You must attach a copy of your written Request for the Document(s) and the Responding Party's Response, if any.

7. If you are relying on any documents in this Request please list below and attach. You must include all the documents you are relying on.

Please see Schedule 1.

8. Please check off how you wish the tribunal to deal with the matter:

- In Writing
- Conference Call
- Don't Know
- In Person Hearing



Human Rights Tribunal of Ontario

Request for an Order During Proceedings - Rule 19 (Form 10)

9. Explain why you wish the Tribunal to deal with the request in the manner indicated above.

To ensure that this request is dealt with in an expeditious matter and for convenience to the parties.

10. Do the other parties agree with your choice for how the Tribunal should deal with your Request?

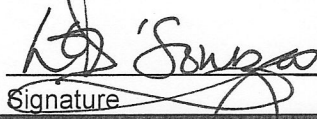
- Yes
- No
- Don't Know

11. Signature

By signing my name, I declare that, to the best of my knowledge, the information that is found in this form is complete and accurate.

Lynette D'Souza

Name



Signature

20/03/2012

Date (dd/mm/yyyy)

Please check this box if you are filing your Request electronically. This represents your signature. You must fill in the date, above.

Freedom of Information and Privacy

The Tribunal may release information about an Application in response to a request made under the *Freedom of Information and Protection of Privacy Act*. Information may also become public at a hearing, in a written decision, or in accordance with Tribunal policies. At the request of the Commission, the Tribunal must provide the Commission with copies of applications and responses filed with the Tribunal and may disclose other documents in its custody or control.

SCHEDULE 1

The Respondent, the Ontario Provincial Police (OPP), is requesting that a case management conference be held by telephone conference in the first week of April, 2012 to address:

- a) Procedural issues in anticipation of the hearing set for May 22-24, 2012; and
- b) Substantive issues relating to the scope of the hearing arising from the Applicant's application and disclosure. The Respondent is seeking amongst other things:
 - i. An order or direction from the Tribunal clarifying the scope of the proceedings;
 - ii. An order or direction from the Tribunal excluding certain documents from the hearing;
 - iii. An order or direction from the Tribunal excluding certain witnesses or parts of their anticipated evidence; and
 - iv. An order or direction excluding certain parts of the will-say of Mr. Jack.

The Respondent asks that the case management conference be held before the disclosure deadline of April 10, 2012 when the parties in accordance with the *Tribunal's Rules* are required to provide each other with: copies of documents to be relied upon, witness lists and witness summaries. The findings of this case management conference may affect disclosure.

If it is not possible to schedule this case management conference prior to this disclosure deadline, then the Respondent asks that it be given an opportunity to make additional disclosure if necessary after the case management conference.

The Tribunal has the powers to do the above pursuant to its rules, including Rules 1.1, 1.7(h), and 1.7(n).

The Respondent's position is that a case management conference will assist in the fair, just and expeditious resolution of this Application.

General Overview

The Applicant, Mr. Jack, has filed an application with the Human Rights Tribunal of Ontario. Attached as Schedule A to this Request for a Case Management Conference ("Request") is a copy of the Application.

The Respondent has filed a Response to the Application. Attached as Schedule B to this Request is a copy of the Response.

The deadline for the disclosure of "Documents to be Relied Upon", the Witness Lists and Witness Summaries is April 10, 2012

The Hearing of this matter is scheduled for May 22, 2012- May 24, 2012.

Orders or directions from the Tribunal on the procedural issues will assist with a, fair, just and expeditious hearing.

Orders or directions on the substantive issues, including defining the scope of the hearing which will in turn define the scope of relevant documents and witnesses, will assist the parties in a fair, just and expeditious hearing and assist the parties in their disclosure obligations.

Facts Relating to Procedural Issues

Document Disclosure

The Applicant has disclosed approximately 100 Exhibits in his Exhibit List. Attached as Schedule C to the Request is the Applicant's Exhibit List. The Respondent has disclosed approximately 7 volumes of documents in its disclosure of Arguably Relevant documents as well as additional documents thus far.

Witnesses

The Applicant has indicated that he will be calling more than 20 witnesses. The Respondent also anticipates calling a number of witnesses.

OPP Documents

As noted, the Applicant has filed a number of exhibits. Some of these OPP documents are OPP documents that are the property of the Respondent and ought to have been returned to the OPP upon Mr. Jack's release from employment. The documents that ought to have been returned to the OPP have been highlighted in yellow in Schedule D to this Request which is the Applicant's Exhibit List and include Exhibit 22, 26C, 28, 34a, 34b, 40, 47, 47a, 47b, 47c, 47d, 63, 64, 65, 66. Notably, Exhibit 47 is not listed in the Applicant's Exhibit List but a copy has been provided in Schedule E. Attached as Schedule E to this Request are copies of those OPP documents that ought to have been returned to the OPP upon the Applicant's release from employment.

The Applicant has also disclosed to the Respondent documents that appear to have been obtained from the OPP after the Applicant was released from employment. The documents that appear to have been obtained from the OPP after the Applicant was released from employment include Exhibits 47, 47a, and 47b which are contained within Schedule E of this Request.

Facts Relating to Substantive Issues

Mr. Jack's Will-say

The will-say of Mr. Jack in the Applicant's List of Exhibits contains allegations relating to:

- a) Malicious prosecution;

- b) Neglect of duty under the *Police Services Act*; and
- c) Neglect.

Breach of Settlement Terms

Lloyd Tapp

Schedule C, the Applicant's List of Exhibits, includes Exhibit 95, which is described as "HRTO Cst. Tapp v OPP-Terms of Settlement".

Harry Allen Chase's Will-say

Schedule C, includes Exhibit 48, a will-say from a Mr. Harry Allen Chase. There are contents within Mr. Chase's will-say that are in breach of his settlement agreement with the OPP. Attached as Schedule F to this Request is a copy of Exhibit 48, the will-say of Mr. Chase.

Correspondence Requesting Applicant's Representative to remove Exhibit 95 and Exhibit 48

Counsel for the Respondent wrote to the Applicant's representative by letter dated February 2, 2012. The Respondent requested that the Applicant remove Exhibit 95 and Exhibit 48 on the basis of relevance and breach of settlement agreement. Attached as Schedule G to this Request is a copy of the Respondent's letter dated February 2, 2012.

The Applicant, by letter dated February 2, 2012, indicated that these documents would not be removed. However, the Applicant did indicate that the financial amount in Exhibit 95, would be masked out. Attached as Schedule H to this Request is a copy of the Applicant's letter dated, February 2, 2012.

Harry Allen's Chase's Will-say - Abuse of Process

In the Respondent's counsel's letter dated February 2, 2012, the Respondent advised that based on Mr. Chase's will-say it appeared that Mr. Chase was attempting to re-litigate a previous human rights complaint and a previous grievance authorized under the *Public Service Act* and Uniform Memorandum of Understanding. The Ontario Human Rights Commission decided not to deal with Mr. Chase's complaint which alleged discrimination on the basis of disability. The Commission exercised its discretion under subsection 34(1)(a) of the Code and provided supporting reasons. The Commission, by decision dated October 24, 2007, upheld its original decision not to deal with the complaint in response to a Request for Reconsideration. Attached as Schedule I to this Request are copies of the Commission's decisions dated April 25, 2007 and October 24, 2007.

In Counsel for the Respondent's letter dated February 2, 2012, the Respondent requested that Exhibits 62 (Mr. Chase's Complaint) and Exhibit 63 (A General Occurrence Report drafted by Mr. Tapp for Mr. Chase) be removed from the Exhibit list. Attached as Schedule J are copies of Exhibit 62 and 63. The Respondent's position was that these documents were not relevant to the Application.

The Applicant's representative's letter dated February 2, 2012, confirmed that the Applicant was not going to remove Exhibit 62 and Exhibit 63.

Issues to be Addressed at Case Management Conference

A. Procedural

Request for Additional Hearing Days

Given the number of witnesses that are anticipated to be called at this hearing, the Respondent requests that the Tribunal consider scheduling additional hearing days.

Request for Anticipated Length of Time of Examination and Cross-Examination

Given the number of witnesses anticipated at this hearing, the volume of disclosure to date, and to ensure that the hearing is just, fair and expeditious, the Respondent asks that the Tribunal consider providing a direction to the parties requesting each party to provide, on a date mutually agreed upon to prior to the hearing, an estimate of :

- (a) The amount of time required in examination-in-chief of their own witnesses; and
- (b) The amount of time required in cross-examination of the other party's witnesses.

OPP documents

It is unclear why the Applicant would still have in his possession OPP documents after his release from employment. It is unclear how the Applicant would have in his possession documents which appear to have been created after his release from employment. These materials are sensitive materials containing third party information and relate to the administration of justice. Unauthorized access and possession of these documents is contrary to OPP orders, the *Freedom of Information and Protection Privacy Act* and the *Police Services Act Regulation 265/98*. Moreover, the Applicant appears to be in possession of documents contrary to the *Youth Criminal Justice Act*. See Casebook, Tab B for relevant portions of the statutes.

The Respondent would like the opportunity to address the Tribunal and Applicant with respect to the Applicant's possession and disclosure of OPP documents.

Third-Party Information

Given the sensitivity of the documents that have been disclosed by both parties, the Respondent asks that any document that is going to be tendered as an exhibit be redacted to exclude third party information to protect the privacy interests of those individuals who are not parties to this proceeding. Pursuant to Rule 3.11 of the Tribunal's *Rules*, the Tribunal has the ability to make such an order.

B. Substantive

No Findings can be made about malicious prosecution, negligence, or negligence under the Police Services Act

The Application and Will-say of Mr. Jack contain allegations of malicious prosecution, negligence and negligence under the *Police Services Act*.

The Tribunal's jurisdiction is defined by the *Ontario Human Rights Code* and is limited to the provisions in that statute. Section 34 of the Human Rights Code provides as follows:

If a person believes that any of his or her rights under Part I have been infringed, the person may apply to the Tribunal under section 45.2....

The Tribunal's jurisprudence supports the statutory scope of the Tribunal's jurisdiction.

The Tribunal does not have the general power to inquire into claims of unfairness or wrongdoing outside the areas or grounds prescribed in the *Code*... The Tribunal's jurisdiction is limited to dealing with disputes that properly fall under the *Code*.

Fulton-Bell v. Kawartha-Haliburton CAS et.al 2009 HRTO 1769 (CanLII), Casebook Tab 1

Troeung v. St. Michael's Hospital 2011 HRTO 1509 (CanLII), Casebook Tab 2

The Respondent seeks confirmation and direction from the Tribunal that those findings cannot be made by the Tribunal.

Scope of the Hearing

The Tribunal pursuant to Rule 1.7(h) can define and narrow the issues in order to decide an application.

The Respondent's position is that the scope of this hearing is the discrimination as allegedly experienced by the Applicant during the course of his term as a probationary constable at the Peterborough Detachment of the OPP.

Allegations of Systemic Discrimination

The Applicant makes bald allegations of systemic discrimination in his Application at paragraphs 58-60.

These paragraphs ought to be struck out.

Evidence Relating to Settlements with Mr. Tapp and Mr. Chase is Irrelevant and Confidential

The Applicant appears to be expanding his human rights Application by: including hearsay in his will-say from his representative Mr. Tapp; a vague reference to officers who sought accommodation with the OPP in paragraph 5 of Rui Pachecho's will-say (See

Schedule P: Exhibit 71 B); and including in his Exhibit List exhibits pertaining to Mr. Tapp and Mr. Chase.

This evidence is not relevant to the central issues alleged in the Application. Moreover, the information pertaining to the settlement agreements with both these individuals is confidential.

Mr. Tapp has indicated in his letter dated February 2, 2012 that the purpose of introducing Exhibit 95, the Minutes of Settlement from his human rights applications, is twofold:

1. To demonstrate that there have been complaints by other officers; and
2. To demonstrate that there were merits to warrant settlement in his case.

In response to the identified purposes of including Exhibit 95, the Respondent's position is as follows:

- a) the fact that there have been human rights complaints by other officers as against the OPP is not relevant to the allegations of discrimination that Mr. Jack claims he experienced while at the Peterborough Detachment; and
- b) the reasons for settlement by the OPP as a corporate respondent cannot be established by the Applicant or the Applicant's representative.

Information pertaining to the two settlement agreements between Mr. Tapp and Mr. Chase, is considered confidential information and ought not be used in litigation for the purposes identified by the Applicant.

The importance of respecting the terms of settlement has been emphasized by the Tribunal in case law.

Respect for terms of settlement is not only a legally binding, contractual obligation, it also promotes essential Code values. A contravention of settlement can undermine the administration of justice by discrediting the human rights system and generating wrong disincentives to negotiation. The uncertainty created by a contravention of settlement potentially undermines the substantive and procedural provisions of the Code.

Weitzmann v. Burns, 2011 HRTO 818 (CanLII), CaseBook Tab 3

Disclosure of the terms of settlement to a non-party in this context undermines the administration of justice and discredits the human right system as a whole.

Mr. Chase's Will-say should be Excluded on the basis of an abuse of process

It appears that Mr. Chase is seeking an opportunity to re-litigate the human rights complaint that the Commission decided in 2007 that it would not deal with. The re-litigation of Mr. Chase's human rights application would amount to an abuse of process.

In *City of Toronto v. Canadian Union of Public Employees*, the Court found that the doctrine of abuse of process in the context of re-litigation could be found

“...where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice.”

In determining whether there is an abuse of process, the Court must ask: whether re-litigation would be detrimental to the adjudicative process?

Toronto (City) v. Canadian Union of Public Employees (C.U.P.E.), Local 79 (CanLII), 2003 SCC 63 Casebook, Tab 4

In the case of Mr. Chase, the Commission had already made a determination on whether the complaint was going to be considered. This determination was made approximately 5 years ago in 2007. The Commission's decision on reconsideration further affirmed that the Commission was not going to deal with this complaint. Moreover, the OPP and Mr. Chase did eventually reach a settlement through the grievance process. The attempt by Mr. Chase to re-litigate his previous complaint despite the settlement reached with the OPP would defeat the principles of judicial economy, consistency, finality and the integrity of the administration of justice.

In addition to the above, the will-say of Mr. Chase is not relevant to the proceedings. Furthermore, Mr. Chase has breached his settlement agreement with the OPP by including information pertaining to his settlement agreement with the OPP within the contents of his will-say.

Documents to be Excluded

The Tribunal pursuant to Rule 1.7(n) can limit evidence or submissions on any issue.

The Respondent seeks an order excluding a number of documents from Schedule C, the Applicant's List of Exhibits, as set out below:

Exhibit 30 “Syntactical and Grammatical analysis of my probationary Performance Evaluation Reports completed by my first coach officers Constable Shaun Filman”

This document identifies a few spelling, syntactical and grammatical errors made in Mr. Jack's Performance Evaluations, Month 1-5. Attached as Schedule K is a copy of Exhibit 30.

This document is not relevant to the proceedings. There is no nexus between this document and any of the Applicant's allegations of discrimination.

Exhibit 34 a- Crown Brief Synopsis- Young's Point Incident - Break and Entry

This crown brief synopsis contains information pertaining to young people.

The *Youth Criminal Justice Act* regulates the authority to hold and disclose information relating to youth in the criminal justice system.

The Applicant's possession of this document appears to be contrary to the provisions of the *Youth Criminal Justice Act*. If the possession of these documents is unauthorized, then the further use of these documents is unauthorized.

If for some reason the Tribunal permits the use of these documents, then any personal information pertaining to youths in this document ought to be redacted as per the requirement of the *Youth Criminal Justice Act*.

Exhibit 34b- Emails with the Crown re Young's Point Incident

The Respondent takes the same position on Exhibit 34b as it does with Exhibit 34a.

Exhibit 48- Will-say of Harry Allen Chase

For the reasons addressed in Scope of the Hearing, this will-say should be excluded. See Schedule F.

Exhibit 49 – Will-say of Steve Ryan

The Will-say of Mr. Ryan explains why Mr. Ryan stated to Mr. Jack "I know Mike you are recording everything, right" on the evening of September 23, 2009 amongst other thing. Attached as Schedule L is a copy of Exhibit 49.

This Exhibit is not relevant. There is no nexus between the evidence provided in the will-say of Mr. Jack and the allegations of discrimination in his application against the OPP.

Exhibit 62- Mr. Chase's Human Rights Complaint

This Exhibit is irrelevant to the Application. The Respondent's position is addressed more generally in Scope of the Hearing.

See Schedule J.

Exhibit 63- General Occurrence Report written by Mr. Tapp for Mr. Chase

This Exhibit is irrelevant to the Application. The Respondent's position is addressed in the section Scope of the Hearing.

Exhibit 64- R. v. Stillman Crown Brief and Mr. Tapp's examination of Stillman

Mr. Tapp has included his assessment of charges laid of this file in this exhibit. Attached as Schedule N is a copy of Exhibit 64.

Mr. Tapp's examination of the Stillman is not relevant to this Application. Mr. Tapp did not have direct involvement in this investigation or case. Moreover, Mr. Tapp is the Applicant's representative. There is a conflict of interest if Mr. Tapp is acting as both the Applicant's representative and a witness providing opinion evidence which is supposed to be independent.

In *City of Toronto v. Canadian Union of Public Employees*, the Court found that the doctrine of abuse of process in the context of re-litigation could be found

“...where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice.”

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If for some reason the Tribunal permits the use of these documents, then any personal information pertaining to youths in this document ought to be redacted as per the requirement of the *Youth Criminal Justice Act*.

Exhibit 34b- Emails with the Crown re Young's Point Incident

The Respondent takes the same position on Exhibit 34b as it does with Exhibit 34a.

Exhibit 48- Will-say of Harry Allen Chase

For the reasons addressed in Scope of the Hearing, this will-say should be excluded. See Schedule F.

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See Schedule J.

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Mr. Tapp's examination of the Stillman is not relevant to this Application. Mr. Tapp did not have direct involvement in this investigation or case. Moreover, Mr. Tapp is the Applicant's representative. There is a conflict of interest if Mr. Tapp is acting as both the Applicant's representative and a witness providing opinion evidence which is supposed to be independent.

Exhibit 65- Telephone Directory of Peterborough Country Detachment

Exhibit 65 contains the personal information of provincial constables employed at the OPP Peterborough Detachment. It is unclear whether the Applicant obtained the consent of each of these individuals to disclose this personal information as would have been required under *FIPPA*.

If the purpose of including this document is to confirm that Mr. Nie and Mr. Flindall were neighbours, this was confirmed in the Response. Given the sensitivity of this personal information in the context of individuals employed in law enforcement, this document should be excluded from evidence.

Exhibit 71 A- Will-say of Mark Greco

Paragraph 5, 6, 7 and 10 of page 2 of the Will-say of Mr. Greco is not evidence but speculation and should be excluded as evidence.

Attached as Schedule O is a copy of Exhibit 71A.

Exhibit 71 B-Will-say of Rui Pachecho

Paragraph 5 of the Will-say of Rui Pachecho is not relevant to the Application and should be excluded. This has been addressed in the section on Scope of the Hearing.

Attached as Schedule P is a copy of Exhibit 71B

Exhibit 92- Article dated April 17, 2008 from the Toronto Sun entitled "Man gets his Mounties"

Attached as Schedule Q is a copy of Exhibit 92.

This article is not relevant to the Application and should be excluded as evidence.

Exhibit 93- Article dated September 3, 2007, MacLean's

Attached as Schedule R is a copy of Exhibit 93.

This article is not relevant to the Application and should be excluded as evidence.

Exhibit 95- Minutes of Settlement of Mr. Tapp

The Respondent's position as outlined in section Scope of the Hearing is that these Minutes should be excluded.

Excluding Portions of Michael Jack's Will-say

The Tribunal pursuant to Rule 1.7(n) can limit evidence or submissions on any issue.

The Respondent seeks to exclude a number of allegations and statements from the Will-say of Michael Jack. Schedule S to this Request includes a chart with the specific allegations and statements that the Respondent seeks to exclude and a copy of Mr. Jack's will-say with the corresponding highlighted allegations and statements.