

**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 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
For the Motion Heard April 2, 2014**

April 3, 2014.

R. Fredericks for the Crown

C. O'Donnell for the OPPA and the other personal respondents.

This is a motion by the respondents to dismiss the Plaintiff's two consolidated actions for three reasons: the claims are caught by the provision of the *Limitations Act*, the claims are within the exclusive jurisdiction of a Board or Arbitrator under the labour relations regime which governs the OPPA , and that there is no cause of action plead by the plaintiff.

The plaintiff alleges that in his job as a probationary police officer employed by the OPP, his colleagues and supervisors harassed and tormented him so as to coerce him into resigning his job. The plaintiff was in his job, covered by the provisions of a collective agreement between the employer OPP and the union, the OPPA. All of the particular allegations of this conduct relied upon by the plaintiff either took place at work, or related very strongly to events which took place within the workplace. Besides these proceedings, the plaintiff brought a complaint to the Human Rights Tribunal of Ontario. After 8 days of hearing dealing with substantively the same allegations raised in the present matter, the HRT0 stayed their proceeding pending this action.

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The HRTO matter was filed on December 14, 2010. The present claim was filed and served three years after the last alleged [acts] of discrimination and harassment.

In my view, all of the allegations made by the plaintiff and which form the basis of his claim, are clearly arising from the collective agreement between the OPP and the OPPA. The essential character arises from the interpretation, application, administration and alleged violation of the collective agreement. In that, the parties to the agreement have explicitly referred to the provisionary of the *Human Rights Code*. This is notwithstanding the fact that probationary employees are precluded from filing a grievance [contesting] a dismissal. In this case, the plaintiff resigned, but in any event, the parties have agreed under the collective agreement to limit the entitlement of probationary employees and the plaintiff cannot go around the language of the collective agreement in the vehicle of this action. With respect to the *Limitation Act* issue, the plaintiff acknowledges that the claim is beyond the prescribed limits but argues the limitation should be extended so as to until the particulars provided by the respondents and supporting material, through the discovery process before the HRTO. Finally, I accept the submission of the respondents that the claim is rambling and incoherent. The plaintiff does not

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identify any known causes of action.

I conclude that the action is dismissed under Rule 21.01 (3) (a) as to court does not have jurisdiction over this claim, but rather it falls within the jurisdiction of a labour arbitrator, that the actions are barred by the provisions of the *Limitations Act* in that it is plain and obvious that the two year period had expired and finally, that the claims are dismissed under Rule 21.01.(1)(b) on the basis that the claim cannot succeed as it discloses no recognizable course of action. To be clear, we make no directions with respect to the litigation presently stayed before the HRTO. The Respondent's motion is allowed. I heard the parties' submissions as to costs. The Crown and the OPPA are each entitled to costs fixed at \$2,000.00, paid forthwith by the Plaintiff. At the outset of the hearing today, the plaintiff sought leave to be represented by a non-lawyer or non-paralegal. I dismissed his request with oral reasons.

Order accordingly.

The defendants may dispense with the plaintiff's approval of the Order as to form and content.

Justice Whitaker