

Court File No. *CN- 19-00631*
259-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

**BRADLEY W. BLAIR, DANIELLE BLAIR, NATHANIEL BLAIR,
and ASHLEY BLAIR**

Applicants

- and -



**THE HON. PREMIER DOUGLAS ROBERT FORD, DEAN
FRENCH, DEPUTY SOLICITOR GENERAL (COMMUNITY
SAFETY) MARIO DI TOMMASO, DEPUTY ATTORNEY
GENERAL PAUL BONIFERRO, STEVE ORSINI, JANE
DOE(S), and JOHN DOE(S), and HER MAJESTY THE
QUEEN IN RIGHT OF ONTARIO**

Respondents

NOTICE OF APPLICATION

(Pursuant to Rules 14.05 and 38 of the *Rules of Civil Procedure*)

TO THE RESPONDENTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicants. The claim made by the applicants appears on the following pages.


THIS APPLICATION will come on for a hearing on a date and time to be determined by the Registrar of the Superior Court at 393 University Avenue, Toronto, Ontario M5G 1E6.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicants, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it with proof of service, in the court office where the application is to be heard as soon as possible, but at least two days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

DATE: Nov 18th, 2019

ISSUED BY: 
Court Registrar
Ontario Court of Justice
393 University Avenue
Toronto, Ontario
M5G 1E6

TO: The Honourable Premier Douglas Robert Ford (via Legal Counsel)
Legislative Building, Queens Park
Toronto, ON M7A 1A1

c/o the Ministry of the Attorney General for Ontario
Crown Law Office – Civil
720 Bay Street, 8th floor
Toronto, Ontario M5G 2K1

AND TO: Dean French
Personal Address Unknown
c/o Ministry of the Attorney General
Crown Law Office – Civil
720 Bay Street, 8th floor
Toronto, Ontario M5G 2K1

AND TO: Deputy Solicitor General (Community Safety) Mario Di Tommaso
(Ministry of the Solicitor General)
18th Floor, 25 Grosvenor Street
Toronto, ON M7A 1Y6

AND TO: Deputy Attorney General Paul Boniferno
(Ministry of the Attorney General)
McMurtry-Scott Building
720 Bay Street
Toronto, ON M7A 2S9

AND TO: Steve Orsini
Personal Address Unknown
c/o Ministry of the Attorney General
Crown Law Office – Civil
720 Bay Street, 8th floor
Toronto, Ontario M5G 2K1

AND TO: Jane and John Doe(s)

AND TO: Her Majesty the Queen in Right of Ontario
(Ministry of the Attorney General)
c/o Crown Law Office – Civil
720 Bay Street, 8th floor
Toronto, Ontario M5G 2K1

AND TO: THIS HONOURABLE COURT

APPLICATION

The Applicant, Bradley W. Blair (“Mr. Blair”) was employed as a Deputy Commissioner with the Ontario Provincial Police (“OPP”), and also held the rank of interim Commissioner. The Applicant served the OPP honourably for thirty-two years. On March 4, 2019, twenty days shy of his 33rd anniversary of service, Mr. Blair was terminated from his position. Mr. Blair was fired as a reprisal for his efforts to shed light on suspected political interference in the functioning of the OPP, particularly by trying to engage the Ontario Ombudsman in a review of the 2018 OPP Commissioner hiring process.

Mr. Blair seeks to commence a civil claim against the Respondents asserting bad faith and misfeasance in public office by the Crown and its relevant officers, employees, and agents, but requires leave of this court to do so pursuant to section 17 of the newly enacted *Crown Liability and Proceedings Act, 2019*, S.O. 2019, c. 7, Sched. 17. In order to be granted leave, the Applicants must comply with a process defined in section 17, which includes the submission of affidavits, all relevant documents in the Applicants’ possession, and the potential to undergo cross-examination, all at the Applicants’ own cost. The Crown is not required to provide any relevant documents, nor are they required to undergo any form of discovery, pursuant to section 17. Further, the Applicant has been stripped of the right to make a claim of negligence against any government actor who was acting in good faith within their governmental function, pursuant to section 11 of the *Act*, regardless of the harm caused by their action.

THE APPLICANT MAKES APPLICATION FOR:

1. This Honourable Court’s guidance pursuant to Rule 14.05(3)(g), (g.1) and (h) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, in respect of the following:

- (A) A Declaration as to the constitutional validity of sections 11 and 17 of the *Crown Liability and Proceedings Act*, specifically regarding:
- (i) The inherent jurisdiction of the Superior Court of Justice enshrined in section 96 of the *Constitution Act, 1982*; and,
 - (ii) The right to life, liberty and security of the person enshrined in section 7 of the *Canadian Charter of Rights and Freedoms* (“*Charter*”);
- (B) An Order under section 52 of the *Charter* declaring sections 11 and 17 of the *Crown Liability and Proceedings Act* to be of no force and effect.
- (C) An Order pursuant to section 24(1) of the *Charter* relieving the Applicant from compliance with section 17 of the *Crown Liability and Proceedings Act* in pursuit of its claim against the Respondents;
2. In the alternative, an Order granting leave to the Applicant to commence a lawsuit against the Respondents for misfeasance in public office;
 3. The costs of this application; and
 4. Such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE APPLICATION ARE:

Overview

1. Mr. Blair and his family seek an interpretation of section 17 of the *Crown Liability and Proceedings Act* (“*CLPA*”), which affects their right to bring an action against the Crown for the acts of bad faith and misfeasance in public office in respect of Mr. Blair’s wrongful termination from his employment of almost 33 years. The Applicants also seek an interpretation of section 11 of the *CLPA*, which extinguishes any cause of action respecting negligent actions taken by Crown officers, employees or agents in the performance of their governmental functions.

2. On March 4, 2019, Mr. Blair was terminated from his position as Deputy Commissioner with the OPP. Mr. Blair was fired as a reprisal for his efforts to shed light on suspected political interference in the functioning of the OPP, particularly by trying to engage the Ontario Ombudsman in a review of the 2018 OPP Commissioner hiring process. This termination was done in bad faith, and Mr. Blair now seeks damages for the loss and distress his wrongful termination has caused him and his family.
3. On July 1, 2019, the *CLPA* came into force in Ontario. The *CLPA* replaced the *Proceedings Against the Crown Act*, R.S.O. 1990, c. P.27, and introduced new limitations and barriers to plaintiffs seeking to bring civil claims against the Crown, its officers, employees or agents that did not exist in the *Proceedings Against the Crown Act*. Among those is section 17 of the *CLPA*, which appears under the heading: “No proceedings for misfeasance, bad faith without leave”.
4. Section 17 of the *CLPA* creates an entirely new and distinct procedure for claims brought against the Crown in respect of the tort of misfeasance in a public office, or any tort based on bad faith “respecting anything done in the exercise or intended exercise of the officer or employee’s powers or the performance or intended performance of the officer or employee’s duties or functions.” In order to bring such a claim, plaintiffs must now seek leave of this Honourable Court. Seeking leave requires the plaintiff to produce an affidavit, disclose all relevant documents in their control, and potentially undergo cross-examination (ss. 17(1)-(4)). The Crown is not subject to any of these obligations during this proceeding (s. 17(3) and (5)). To be able to grant leave, the Court must be satisfied that the proceeding is being brought in good faith, and that a reasonable possibility exists that the proceedings

will be resolved in the plaintiff's favour (s. 17(6)). Costs, which will be almost non-existent for the Crown and heavy for the plaintiff, are to be borne by each party respectively (s. 17(7)).

5. By introducing a requirement to seek leave to bring actions regarding intentional torts committed by government actors, s. 17 of the *CLPA* has created a barrier to justice that will deter, and in many cases block, such claims from coming forward. This is contrary to s. 96 of the *Constitution Act*, which safeguards the rights of all people to access the Superior Courts to seek legal redress for wrongs committed against them. Further, it violates a prospective plaintiff's section 7 *Charter* rights. Finally, by barring individuals from bringing forward misfeasance in public office claims, it impermissibly overturns existing common law precedent affirmed by the Supreme Court defining the terms and limitations of this tort.
6. In addition, section 11 of the *CLPA* purports to extinguish any cause of action respecting negligent actions taken by Crown officers, employees or agents in good faith in the performance of their governmental functions that causes harm or loss, which includes but is not limited to:
 - a) a regulatory decision in respect of meeting the requirements of an Act; contravening duties or obligations set out in an Act; issuing licenses, permissions, certificates or authorizations under an Act; imposing conditions or limitations on a license, permission, certificate of authorizations under an Act; conducting an investigation, inspection, or other assessment under an Act; carrying out and the manner of

enforcement action under an Act; and any other matter that may be prescribed (ss. 11(2) and (6));

b) failure to make a regulatory decision, as listed above (s. 11(3)); and

c) a policy decision in respect of the creation, design, establishment, redesign or modification of a program, project or other initiative; the funding of a program, project, or other initiative; the manner in which a program, project or other initiative is carried out; the termination of a program, project, or other initiative; the making of such regulatory decisions as may be prescribed; and any other policy matter that may be prescribed (ss. 11(4)-(5)).

7. Any negligent act taken by the Crown in respect of any of the functions listed above has been rendered immune by s. 11(7), which bars any proceeding from being brought or maintained against the Crown on any such action. This restriction fundamentally infringes upon the s. 96 core jurisdiction of the Superior Courts in an egregious manner by eliminating the common law right of individuals to seek redress where wrongs are committed against them by the Crown in negligence.

8. While the provincial government has the power to control procedure in civil matters under s. 92(14) of the *Constitution Act, 1867*, that power is not absolute. The exercise of the s. 92(14) head of power must be harmonious with the Constitution as a whole, and in particular, with s. 96 of the *Constitution Act, 1867*, and s. 7 of the *Canadian Charter of Rights and Freedoms*. Sections 11 and 17 of the *CLPA* cannot exist in harmony with those provisions.

The Blair Claim

9. Throughout late October and November 2018, the Government of Ontario undertook a recruitment and hiring process in order to select and appoint the next OPP Commissioner. Mr. Blair was a candidate and finalist in the OPP hiring process but was not ultimately selected. During the hiring process, it became clear to Mr. Blair that there were irregularities with the process that appeared to favour Premier Ford's close family friend, and candidate for the position of OPP Commissioner, Superintendent Ron Taverner. On November 29, 2018, Superintendent Taverner was announced as the next Commissioner of the OPP.
10. Mr. Blair raised concerns about the OPP Commissioner hiring process by filing a complaint on December 11, 2018, before the Provincial Ombudsman, Mr. Paul Dubé ("the Ombudsman"). The complaint ("the Ombudsman Complaint") alleges that Deputy Solicitor General Mario Di Tommaso ("Di Tommaso"), Premier Ford's Chief of Staff, Dean French ("French"), Deputy Attorney General Paul Boniferro ("Boniferro"), and Secretary of Cabinet Steve Orsini ("Orsini") all participated in "rigging" the hiring process to ensure that Premier Ford's close personal friend would be installed as OPP Commissioner.
11. On both December 12, 2018, and December 13, 2018, the Ombudsman informed Mr. Blair that he, the Ombudsman, would not review the OPP Commissioner hiring process, claiming that the matter fell outside his jurisdiction and/or that he would decline to exercise his jurisdiction. On December 14, 2018, Mr. Blair commenced an application before the Divisional Court seeking the determination of the Ombudsman's jurisdiction.

12. On February 15, 2019, as part of the Divisional Court application, Mr. Blair filed an affidavit detailing the suspected political interference in the operation of the OPP by Premier Ford and several public servants, including, Di Tommaso, Boniferro, French and Orsini. Mr. Blair's affidavit was served on the Attorney General for Ontario. The Attorney General did not raise any concern with the material filed by Mr. Blair, nor were any steps taken to try to seal the material on the basis that any of the documents in the affidavit breached any oath of office oath by Mr. Blair.
13. On March 4, 2019, twenty days shy of his 33rd anniversary of service, Mr. Blair was terminated from his position. Mr. Blair was fired as a reprisal for his efforts to shed light on suspected political interference in the functioning of the OPP, particularly by trying to engage the Ontario Ombudsman in a review of the 2018 OPP Commissioner hiring process.
14. The March 4, 2019, termination letter cites the Divisional Court filings as a contravention of Mr. Blair's obligations under the Conflict of Interest regulation pursuant to the Public Service of Ontario Act ("PSOA") and a violation of his oath of office.
15. Mr. Blair pleads that these actions by the respondent civil servants are a reprisal and an attempt to muzzle Mr. Blair, and that this reprisal is directly connected to Mr. Blair's good faith efforts to seek redress before the Divisional Court and the Provincial Ombudsman.
16. Mr. Blair pleads that the Respondents committed misfeasance in public office in respect of the following acts:

- a. improperly using their public authority to rig the OPP hiring process in favour of one candidate, Supt. Taverner, a friend of the Premier's;
- b. unlawfully terminating Mr. Blair without legal justification under the *PSOA* and without any due process owed to all sworn police officers under the *PSA*;
- c. conducting an unlawful termination, while engaged in significant and serious conflicts of interest as subjects of Mr. Blair's Ombudsman Complaint and Divisional Court Application and participants in Mr. Blair's termination;
- d. concurrently failing to recuse themselves from all deliberations concerning Mr. Blair's employment as a consequence of the aforementioned conflicts of interest;
- e. conducting an unlawful termination with improper intent and as a form of reprisal against Mr. Blair. The improper intent was to dissuade and/or punish Mr. Blair for raising good faith concerns about the independence and integrity of the OPP and/or raising concerns about the particular conduct of the defendant civil servants and/or the defendant Premier Ford in the OPP Commissioner hiring process; and
- f. in conducting themselves as pled aforesaid, acting outside of any valid legal authority which they may possess.

17. On July 1, 2019, the *Crown Liability and Proceedings Act*, came into effect, substantively eliminating the right to sue the Crown in negligence, and requiring anyone seeking accountability from government actors for misfeasance in public office and/or exercising bad faith in the discharge of their duties to seek leave of the court to bring such an action. The requirements associated with an application for leave are so onerous for a prospective

plaintiff that they, in effect, block access to the court. Mr. Blair seeks leave of this Honourable Court to proceed with his claim.

Sections 11 and 17 of the CLPA infringe upon the Right to Access the Superior Courts

18. Sections 11 & 17 of the *CLPA* fail to strike a proportionate balance between the goals of the legislature and the constitutional rights of individuals such as Mr. Blair, who suffer injury due to the negligence, misfeasance or bad faith of government officials, and seek redress for those wrongs before the Superior Court. While the provincial government has the power to control procedure in civil matters pursuant to s. 92(14) of the *Constitution Act, 1867*, that power is not absolute. The exercise of s. 92(14) powers must be harmonious with the Constitution as a whole, and in particular, with s. 96 of the *Constitution Act, 1867*.

i. Section 11

19. Section 11 fundamentally infringes upon s. 96 by directly and overtly extinguishing a cause of action that previously existed under the core jurisdiction of the Superior Courts. Not simply creating a barrier, s. 11 strips individuals of any right to seek redress for negligent acts taken by government officials in the conduct of their governmental function, so long as that act is taken in good faith. This includes a wide range of actions that impact every level of the personal, social, and economic aspects of the lives and wellbeing of people living in Ontario, and leaves individuals with no means of seeking redress where they have been wronged, no matter the negative impact of the Crown's negligent conduct.

20. By abolishing the duty of care owed by Ontario government actors to people living under their governance and subject to their authority, s. 11 of the *CLPA* has gutted the jurisdiction of the Superior Courts. It has rendered Superior Courts powerless, and access to them meaningless to individuals who have suffered injury or loss at the hands of negligent government actors. This is fundamentally incompatible with the rule of law, access to justice, a democratic society, the unwritten principles of s. 96 and indeed, our Constitution as a whole.

ii. Section 17

21. Far from simply shielding the Crown from frivolous or vexatious claims, the new s. 17 procedure to seek leave to pursue claims for misfeasance in a public office creates a barrier to justice in the form of inevitably high costs and lengthier proceedings that will effectively bar individuals from bringing claims for conduct in bad faith against the Crown. It will be the rare individual who will have the means and time to bear the costs of a motion for leave that requires putting together the entirety of the plaintiff's case – costs that would normally be paid at least in part by the losing party in the course of a civil action. When civil claims against state actors are blocked from coming through the courts due to procedural barriers, rule of law and access to justice considerations arise under s. 96 which limit the scope of the provincial government's authority under s. 92(14).
22. No government may enact legislation that bars litigants with legitimate claims from accessing the Superior Courts. Sections 11 and 17 of the newly enacted *CLPA* both do exactly that, and as such exceed the provincial government's power under s. 92(14) in contravention of s. 96 of the *Constitution Act, 1867*.

Sections 11 & 17 of the CLPA violate Section 7 of the Charter

23. Rule of law and access to justice considerations are particularly important in cases involving the torts committed by government actors, such as negligence, misfeasance in public office, and other intentional torts involving bad faith, such as the tort of intentional infliction of mental suffering, which necessarily engage considerations regarding s. 7 of the *Canadian Charter of Rights and Freedoms*. The right to life, liberty, and security of the person requires that individuals who have suffered injury caused by state actors have meaningful and accessible means of seeking redress for that conduct through the Superior Court. Sections 11 & 17 of the *CLPA* fundamentally infringe upon that right.

i. Section 11

24. By extinguishing any cause of action in negligence against government actors acting in good faith within their governmental function, s. 11 has abolished any protection available to individuals who suffer harm as a result of a wide range of negligent state behavior. The significant potential of harm to life, liberty, and security of the person that could arise due to the failure of government actors to conduct investigations, issue licenses, ensure that legislated requirements and obligations are met, and that programs are carried out and structured in a manner that does not cause harm, in a non-negligent fashion is frankly incalculable. The Ontario government owes a duty of care to those affected by the actions of its employees, officers and agents, and it is contrary to the principles of fundamental justice for government actors to abdicate that duty so entirely as s. 11 allows.

25. In denying persons who have been harmed by negligent state conduct access to the court, s. 11 violates the personal autonomy of individuals who will be left with no means of seeking redress for the wrongs committed against them. Rendered helpless to assert their right to be free from state-imposed harm, such individuals will suffer further psychological and emotional distress as a result of their inability to pursue a cause of action to right the wrong committed against them. This will further compound the breach of s. 7 of the *Charter*.

ii. Section 17

26. The tort of misfeasance in public office is an intentional tort whose distinguishing elements are twofold: (i) deliberate unlawful conduct in the exercise of public functions; and (ii) awareness that the conduct is unlawful and likely to injure the plaintiff. Intentional abuse of statutory power, and acts and omissions made by public officials in the purported performance of the function of their office, are serious torts that can endanger the lives, liberties, and security of the person of every citizen subject to the authority of the public official(s) in question. Indeed, the underlying purpose of the tort of misfeasance in public office is to protect each citizen's reasonable expectation that a public officer will not intentionally injure a member of the public through deliberate and unlawful conduct in the exercise of public functions. A tort that addresses intentional harm caused by state actors will, in most cases, engage the *Charter*, and in particular, s. 7 considerations.
27. Section 17 of the *CLPA* creates a procedural barrier to individuals who seek access to the court to address intentionally committed governmental wrongs, and in so doing effectively violates the s. 7 *Charter* rights of individuals who have suffered injury as a result of such

wrongs. The state-imposed mental distress caused to plaintiffs who would be rendered incapable of seeking redress for such torts due to their inability to pay the costs associated with the leave procedure would amount to a violation of s. 7.

28. In addition to the procedural barriers contained in s. 17, the provision also turns the substantive focus away from the defendants and onto the plaintiffs, forcing the plaintiff who has undergone injury to prove that their claim is brought in good faith. This substantive reversal places an additional onus on the plaintiffs that may further deter plaintiffs from bringing forward *bona fide* claims against government officials who have intentionally caused them harm.
29. The rights enshrined in section 7 of the *Charter* are fundamentally incompatible with the procedural and substantive impacts of ss. 11 & 17 of the *CLPA*.

Section 17 of the CLPA unlawfully abolishes the Common Law Tort of Misfeasance in a Public Office

30. The tort of misfeasance in public office is a common law tort that was affirmed by the Supreme Court as recently as 2003, in *Odhavji Estate v. Woodhouse*, 2003 SCC 69, and can be traced back to UK jurisprudence beginning in 1703. This tort has expanded in its time, and has grown to encompass any act of a public official, either within or outside their statutory power, undertaken in their role as a public official, that is intended to injure a person or class of persons. It is limited under the common law in order to ensure that it is not directed at public officers who inadvertently or negligently fail to adequately discharge their role, or public officers who are constrained from doing so due to factors outside of

their control. The scope of the tort is also limited by the public officer's own statutory obligations and constitutionally protected rights.

31. The Supreme Court stated in *Odhavji* that no further restrictions are necessary to limit the ambit of this tort. However, s. 17 of the *CLPA* creates a significant new limitation on the tort by requiring that litigants prove their "good faith" before bringing a claim. This limitation fundamentally alters the tort and will serve to deprive plaintiffs of their common law right to commence a claim for misfeasance in public office due to the significant procedural weight imposed by s. 17. The provincial legislature has effectively overturned the common law doctrine of misfeasance in public office, introducing new limitations not conceived of by the Supreme Court that effectively annihilate this tort for the majority of litigants, thereby stripping plaintiffs of a previously existing common law right.
32. It is established law that common law rights are not to be held or taken away by statute without manifestly clear language and intent, which may then be subject to constitutional challenge and review. In enacting s. 17 of the *CLPA*, the provincial government has covertly undertaken to effectively eliminate this common law right by establishing procedural boundaries that, while not explicitly abolishing the tort of misfeasance in a public office, will have the impact of doing so in Ontario. This shielded intent conflicts directly with Supreme Court jurisprudence and a longstanding common law right to bring forth claims seeking redress for the tort of misfeasance in public office.

Rules, Statutes and Regulations Relied Upon

1. The Applicant relies on Section 96 of the *Constitution Act, 1982*;

2. The Applicant relies on Section 7 of the *Canadian Charter of Rights and Freedoms*; and,
3. The Applicant relies on Rules 14.05(3)(g), (g.1) and (h) and 5.03 of the *Ontario Rules of Civil Procedure*.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE
HEARING OF THE APPLICATION:**

- i) The statement of claim of the Applicant (Schedule "A")
- ii) Such further and other material as counsel may advise and this Honourable Court permit.

DATE: November 18, 2019

FALCONERS LLP

Barristers-at-Law
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Toronto, Ontario M4V 3A9
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Julian N. Falconer (LSO #29465R)
Asha James (LSO #56817K)

Counsel for the Applicant/Plaintiff

Schedule "A"

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**BRADLEY W. BLAIR, DANIELLE BLAIR, NATHANIEL BLAIR,
and ASHLEY BLAIR**

Plaintiffs

- and -

**THE HON. PREMIER DOUGLAS ROBERT FORD, DEAN
FRENCH, DEPUTY SOLICITOR GENERAL (COMMUNITY
SAFETY) MARIO DI TOMMASO, DEPUTY ATTORNEY
GENERAL PAUL BONIFERRO, STEVE ORSINI, JANE
DOE(S), and JOHN DOE(S), and HER MAJESTY THE
QUEEN IN RIGHT OF ONTARIO**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs.
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 plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States or America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. If you wish to defend this proceeding but are unable to pay legal fees, legal aid may be available to you by contacting a local Legal Aid office.

IF YOU PAY THE PLAINTIFFS' CLAIM, and \$85,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: September 13th, 2019

Issued by
Local registrar

Address of court office: Ontario Superior Court of Justice
393 University Avenue
Toronto, Ontario
M5G 1E6

TO: The Honourable Premier Douglas Robert Ford (via Legal Counsel)
Legislative Building, Queens Park
Toronto, ON M7A 1A1

c/o the Ministry of the Attorney General for Ontario
Crown Law Office – Civil
720 Bay Street, 8th floor
Toronto, Ontario M5G 2K1

AND TO: Dean French
Personal Address Unknown
c/o Ministry of the Attorney General
Crown Law Office – Civil

720 Bay Street, 8th floor
Toronto, Ontario M5G 2K1

AND TO: Deputy Solicitor General (Community Safety) Mario Di Tommaso
(Ministry of the Solicitor General)
18th Floor, 25 Grosvenor Street
Toronto, ON M7A 1Y6

AND TO: Deputy Attorney General Paul Boniferro
(Ministry of the Attorney General)
McMurtry-Scott Building
720 Bay Street
Toronto, ON M7A 2S9

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AND TO: Jane and John Doe(s)

AND TO: Her Majesty the Queen in Right of Ontario
(Ministry of the Attorney General)
c/o Crown Law Office – Civil
720 Bay Street, 8th floor
Toronto, Ontario M5G 2K1

AND TO: THIS HONOURABLE COURT

CLAIM

4. The plaintiff Bradley Blair (“Mr. Blair”) claims:
 - a) Damages in the amount of \$7,000,000.00 (SEVEN MILLION DOLLARS) for wrongful termination, misfeasance in public office, negligence, negligent misrepresentation, intentional infliction of mental suffering, and breaches of section 2 of the *Canadian Charter of Rights and Freedoms* (“the Charter”);
 - b) Special damages in an amount to be determined with particulars provided prior to trial;
 - c) Punitive damages in the amount of \$4,000,000.00 (FOUR MILLION DOLLARS);
 - d) Exemplary and/or aggravated damages in the amount of \$2,000,000.00 (TWO MILLION DOLLARS);
 - e) Pre and post judgment interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43;
 - f) Costs of this action on a substantial indemnity basis; and
 - g) Such further and other relief as this Honourable Court deems just.
5. The plaintiffs Danielle Blair, Nathaniel Blair, and Ashley Blair claim:
 - a) Damages pursuant to the *Family Law Act*, RSO 90, c. F. 3 (“*Family Law Act*”) in the amount of \$2,000,000.00 (TWO MILLION DOLLARS);
 - b) Pre and post judgment interest pursuant to ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.C.43;
 - c) Their costs of this action on a solicitor and client basis, with HST payable pursuant to the *Excise Act*, R.S.C., c. E.15; and
 - d) Such further and other relief as this Honourable Court deems just.

OVERVIEW

“There seemed to be tacit acknowledgment by the Secretary [Orsini] that Mr. French was rooting for Mr. Taverner’s success. Anyone examining these messages [texts between Orsini/French] would have serious doubts as to the fairness of the process to the other candidates.”

(Wake Report at para 241, p. 63)

6. Brad Blair blew the whistle on a process rigged to install the Premier’s loyal and unqualified friend as the new Commissioner for the Ontario Provincial Police. The resulting public outcry served to ensure that the Premier’s efforts were unsuccessful, but Brad Blair has suffered the ultimate professional price for doing the right thing: Brad Blair was professionally ruined.
7. The plaintiff, Mr. Blair, was employed as a Deputy Commissioner with the Ontario Provincial Police (“OPP”) including holding the rank of interim Commissioner. The plaintiff served the OPP honourably for thirty-two years. On March 4, 2019, twenty days shy of his 33rd anniversary of service, Mr. Blair was terminated from his position. Mr. Blair was fired as a reprisal for his efforts to shed light on suspected political interference in the functioning of the OPP, particularly by trying to engage the Ontario Ombudsman in a review of the 2018 OPP Commissioner hiring process (as more particularly described below).
8. At all material times the plaintiff’s actions were driven out of a reasonably held belief that Premier Ford and his Chief of Staff (assisted by the other named individual defendants) were attempting to install, as leader of the Ontario Provincial Police, a person who lacked the qualifications and competence to perform the duties of Commissioner for the improper purpose of co-opting the country’s second largest police service for political and/or personal advantage to the Premier. The passage of time and circumstances since Brad Blair’s firing, including the Integrity Commissioner’s Report and subsequent revelations about other tainted Government appointments

by the Premier and his Chief of Staff, simply reinforces the sad reality that Blair's concerns were completely justified.

9. The actions of the defendants in effecting Brad Blair's termination are connected in both time and circumstance to their abandonment of their efforts to install Ron Taverner as Commissioner of the OPP. Not only did they occur within days of each other, but the firing of Mr. Blair occurred amidst numerous groundless public attacks by the Premier on the character of Mr. Blair. Civil servants sworn to be loyal to the Premier (including those personally involved in Taverner's hiring) participated in an unprecedented summary process to terminate Mr. Blair that remains completely opaque.
10. The official reason given for Mr. Blair's retaliatory termination was that he had disclosed allegedly confidential material through his Divisional Court filings. All of Mr. Blair's actions occurred while he was a serving police officer, yet at no time was any investigation under the governing *Police Services Act* ever commenced against him nor was he afforded any due process by way of hearing into his alleged transgressions. This firing stands as an absolute first in Ontario history in that no police officer has ever been stripped of his status as a peace officer without resort to the discipline and termination procedures in the legislation that governs the actions of police officers.
11. That the termination of Brad Blair was driven out of political retribution is borne out by the very thin nature of the rationale that the defendants offer for his firing: the inclusion of confidential materials in his Court filings with the Divisional Court. Despite being served with the materials in question on the day of their filing, February 15, 2019 (long before the materials were accessed by the media in the courts on February 25, 2019), the Attorney General has never taken a single step

to raise their alleged sensitive confidentiality with the Court or taken any other step to seal the documents.

12. Mr. Blair served notice of this claim on Her Majesty the Queen in Right of Ontario, under the *Proceedings Against the Crown Act* on March 28, 2019.
13. The plaintiffs state that the actions of the defendants give rise to claims for wrongful termination, misfeasance in public office, negligence, negligent misrepresentation, intentional infliction of mental suffering, *Family Law Act* damages, and breaches under s. 2(b) of the *Canadian Charter of Rights and Freedoms*.

THE PARTIES

The Plaintiffs

14. The plaintiff Bradley Blair (“Mr. Blair”) is a resident of Ontario. He was employed by the OPP for close to 33 years. In 2014, by way of Order-in-Council, Mr. Blair was appointed Deputy Commissioner of the OPP. Also, by way of Order-in-Council, Mr. Blair was appointed and served, beginning on November 3, 2018, as the Commissioner (interim) of the OPP, upon the retirement of former Commissioner Hawkes. By way of a further Order-in-Council dated December 15, 2018, Mr. Blair was removed from his role as interim Commissioner effective December 17, 2018. On that date, he returned to his former rank of Deputy Commissioner and remained in that role until his termination on March 4, 2019.
15. Danielle Blair (“Mrs. Blair”) is a resident of Ontario and is the spouse of Mr. Blair. Mrs. Blair enjoys a close and loving relationship with Mr. Blair and has suffered the loss of Mr. Blair’s

guidance, care and companionship as a result of Mr. Blair's wrongful termination. Mrs. Blair claims damages pursuant to the *Family Law Act*.

16. Nathaniel Blair ("Nathaniel") and Ashley Blair ("Ashley") are residents of Ontario and are the adult children of Mr. and Mrs. Blair. Nathaniel and Ashley enjoy a close and loving relationship with their father, Mr. Blair, and have suffered the loss of Mr. Blair's guidance, care and companionship as a result of his wrongful termination. Nathaniel and Ashley each claim damages pursuant to the *Family Law Act*.

The Defendants

17. The defendants Douglas Robert Ford, Mario Di Tommaso, Paul Boniferro, Steve Orsini, Dean French and Jane/John Doe(s), acting individually and/or collectively, committed the torts of wrongful termination, misfeasance in public office, negligence, negligent misrepresentation, intentional infliction of mental suffering, *Family Law Act* damages and breaches under section 2(b) of the *Canadian Charter of Rights and Freedoms*.
18. The defendant the Honourable Premier Douglas Robert Ford ("Premier Ford") is, and at all relevant times was, the Premier of Ontario and a resident of Ontario.
19. The defendant Dean French ("French") was at all relevant times the Chief of Staff for Premier Ford and is a resident of Ontario.
20. The wrongful actions of the Premier and/or the wrongful actions of his Chief of Staff as plead herein, were at all material times committed both individually and/or in concert with the knowledge and approval (implied and/or express) of each in respect of the other.

21. The defendant Deputy Solicitor General (Community Safety) Mario Di Tommaso (“Di Tommaso” or “Deputy Minister Di Tommaso”) is a resident of Ontario. Since October 22, 2018, he has served as Deputy Minister of Community Safety, now under a different title. In this role, Di Tommaso is responsible for supervising and/or overseeing the OPP. Di Tommaso works in the Ministry of the Solicitor General, which until around April 2019 was the Ministry of Community Safety and Correctional Services (“MCSCS”). By way of Order-in-Council dated April 11, 2019, Mr. Di Tommaso was named Deputy Solicitor General, Community Safety, Ministry of the Solicitor General and was appointed Deputy Solicitor General. Prior to becoming Deputy Minister of Community Safety, Di Tommaso was a Staff Superintendent with the Toronto Police Service.
22. The defendant Deputy Attorney General Paul Boniferno (“Boniferno” or “Deputy Attorney General Boniferno”) is the current Deputy Attorney General of Ontario and a resident of Ontario.
23. The defendant Steve Orsini (“Orsini”) is the former Secretary of Cabinet and a resident of Ontario. On December 14, 2018, Mr. Orsini announced his resignation, which took effect in early 2019.
24. The defendants Jane Does (“Jane Doe(s)”) and John Does (“John Doe(s)”) (collectively, “Jane/John Doe(s)”) are residents of Ontario and were at all material times individuals involved with Mr. Blair’s March 4, 2019, termination. Jane/John Doe(s) are placeholders for agents of the Crown whose identities are currently unknown to the plaintiffs.
25. The plaintiffs may refer to the defendants Di Tommaso, French, Boniferno, Orsini, and Jane/John Doe(s) as civil servants and/or bureaucrats.

THE FACTS

A.General Overview

26. Mr. Blair served the OPP honourably for thirty-two years, until his termination on March 4, 2019. Immediately prior to his termination, Mr. Blair was employed by the OPP, last serving as a Deputy Commissioner.
27. Mr. Blair was fired as a reprisal for his efforts to engage the Ontario Ombudsman in a review of the 2018 OPP Commissioner hiring process. Throughout late October and November 2018, the Government of Ontario undertook a recruitment and hiring process in order to select and appoint the next OPP Commissioner (“the OPP Commissioner hiring process”). Mr. Blair, who held the rank of Commissioner (interim) at the time, was a candidate and finalist in the OPP hiring process but was not ultimately selected.
28. On November 29, 2018, the Government of Ontario announced that Superintendent Ron Taverner (“Supt. Taverner”) of the Toronto Police Service would be the next OPP Commissioner and would be assuming command on Monday, December 17, 2018. Supt. Taverner’s installment was subsequently delayed beyond December 17, 2018. Ultimately, the Premier’s office abandoned its efforts to install Supt. Taverner as Commissioner and he withdrew his name from consideration on March 6, 2019. On March 11, 2019, it was announced that Deputy Chief Thomas Carrique of the York Regional Police would be the new OPP Commissioner.
29. The manner in which the OPP Commissioner hiring process was conducted raised concerns about perceived and/or real political interference in the process. This reality, coupled with the fact that Supt. Taverner is a close personal friend of Premier Ford, created a cloud of suspicion concerning political interference and cronyism in the OPP Commissioner hiring process. Various media reports dating from November 2018 raised the same concerns about the OPP Commissioner hiring process.

30. Mr. Blair raised concerns about the OPP Commissioner hiring process by filing a complaint on December 11, 2018, before the Provincial Ombudsman, Mr. Paul Dubé (“the Ombudsman”). The complaint (“the Ombudsman Complaint”) stated that permitting Supt. Taverner to assume command as Commissioner, without addressing the perceived political interference, would cause dysfunction in the service and undermine the command of the OPP. Mr. Blair was motivated out of concern for the independence and effectiveness of the OPP, and not out of a belief that filing the complaint would open the door to him being selected as Commissioner.
31. On both December 12, 2018, and December 13, 2018, the Ombudsman informed Mr. Blair that he, the Ombudsman, would not review the OPP Commissioner hiring process, claiming that the matter fell outside his jurisdiction and/or that he would decline to exercise his jurisdiction. On December 14, 2018, Mr. Blair commenced an application before the Divisional Court seeking the determination of the Ombudsman’s jurisdiction. This application is still before the Divisional Court.
32. The defendants Di Tommaso, French, Boniferno, and Orsini all participated in the OPP hiring process and were therefore identified in Mr. Blair’s December 11, 2018, complaint to the Provincial Ombudsman. Deputy Minister Di Tommaso also served as Supt. Taverner’s direct supervisor with the Toronto Police Service for a number of years.
33. Shortly after Mr. Blair filed the Ombudsman Complaint, Premier Ford made several public comments alleging that Mr. Blair had, on numerous occasions, breached the *Police Services Act*, RSO 1990, c P15, (“PSA”). Mr. Blair has not received notice under the *PSA* of any complaint and/or investigation.

34. To date, Premier Ford has not issued a full and final retraction of his public allegations which accused Mr. Blair of breaching the *PSA* on numerous occasions. These matters are the subject of a separate libel action, commenced by Mr. Blair against the defendant Premier Ford.
35. On March 4, 2019, Mr. Blair was terminated from employment with the OPP by Di Tommaso, who authored and personally served the March 4, 2019, termination letter on Mr. Blair at OPP headquarters in Orillia, Ontario.
36. This extraordinary step was taken by Deputy Minister Di Tommaso notwithstanding the fact that Di Tommaso is a key subject of Mr. Blair's December 11, 2018, complaint to the Ombudsman for Di Tommaso's involvement in the OPP Commissioner hiring process, raising at a bare minimum a perceived conflict of interest.
37. Deputy Minister Di Tommaso's March 4, 2019, termination letter indicates that the termination was done with the permission of the Public Service Commission.
38. Boniferro was at all material times a member of the Public Service Commission. Boniferro did not recuse himself from any deliberations and/or decisions by the Public Service Commission concerning Mr. Blair's termination.
39. The decision to terminate Mr. Blair was retaliation for shedding light on the deep rooted and systemic practice of cronyism carried out by Premier Ford and/or his Chief Staff, Dean French. Premier Ford and/or Dean French orchestrated the firing of Mr. Blair and relied on Di Tommaso and Boniferro to carry out the firing.
40. Mr. Blair contests the legal validity of his termination. Mr. Blair provided notice of this position via correspondence of March 6, 2019, addressed to Deputy Minister Di Tommaso. Mr. Blair

pleads that the defendants acted outside the scope of their authority in firing Mr. Blair in the manner in which they did.

41. On March 20, 2019, Mr. Blair's concerns regarding the OPP Commissioner hiring process were confirmed in a report issued by the Provincial Integrity Commissioner, the Honourable David J. Wake ("Commissioner Wake"). In response to complaints by Members of Provincial Parliament in December 2018, Commissioner Wake conducted an investigation into whether Premier Ford breached the *Members' Integrity Act* in appointing Supt. Taverner as OPP Commissioner. The Office of the Integrity Commissioner issued a press release on December 18, 2019, confirming that Commissioner Wake was conducting an investigation. While Commissioner Wake ultimately dismissed the allegations against the Premier, Commissioner Wake made many critical findings regarding this province's most senior bureaucrats and confirmed that the OPP Commissioner hiring process was rigged by senior bureaucrats.
42. Commissioner Wake's report provides a detailed account of these bureaucrats' significant problematic involvement in the OPP Commissioner hiring process, including the following findings: the OPP Commissioner hiring process was "flawed" (para. 242, pg. 63); "[i]n fact, the process was not independent" (para. 239, pg. 62); there existed "a preference [...] given to one candidate" (para. 240, pg. 62); and "[a]nyone examining these messages [between Secretary of Cabinet Orsini and the Premier's Chief of Staff, Dean French] would have serious doubts as to the fairness of the process to the other candidates", meaning candidates other than Supt. Taverner (para 241, pg. 63).
43. It is a gross injustice that Mr. Blair, a person who has dedicated close to 33 years to the OPP, has been fired for raising concerns about the OPP Commissioner hiring process that were subsequently confirmed in Commissioner Wake's March 20, 2019, report. While the Wake Report is replete

with key inculpatory information of government corruption, absolutely no consequences of any kind have been directed by the Integrity Commissioner in respect of any public official.

44. Mr. Blair pleads that his termination was unlawful, deliberate, and conducted in bad faith. Mr. Blair did not receive a modicum of due process in his termination. Mr. Blair was summarily fired without notice, without an opportunity to know the case against him, without an opportunity to reply, and without a hearing, all of which were required under the *PSA*. Further, Mr. Blair pleads that his termination was reprisal for his raising of concerns about the OPP Commissioner hiring process before the Ombudsman. Mr. Blair further pleads that the termination was an attempt to silence him in violation of his s. 2(b) *Charter* rights.
45. Premier Ford has made numerous false public allegations that Mr. Blair has breached the *PSA*. These allegations have no basis in fact and were promulgated with the intention of discrediting Mr. Blair and providing a basis for Mr. Blair's termination, in bad faith.
46. Deputy Minister Di Tommaso and Deputy Attorney General Boniferro have engaged in significant conflicts of interest by their simultaneous involvement in the OPP Commissioner hiring process, which was a subject of Mr. Blair's December 11, 2018, complaint to the Provincial Ombudsman, and their participation in the firing of Mr. Blair. The conduct of these senior civil servants was unlawful, deliberate, and conducted in bad faith.

B. Overview of OPP Commissioner Hiring Process

47. In early September 2018, former Commissioner Hawkes announced his retirement, to take effect in November 2018. While former Commissioner Hawkes and then Deputy Minister of Community Safety, Matt Torigian ("Deputy Minister Torigian") wanted to name Deputy Commissioner Gary

Couture as interim Commissioner, the Premier's office and Cabinet decided otherwise and Mr. Blair became Commissioner (interim) of the OPP on November 3, 2018.

48. In early- to mid-September, 2018, Deputy Minister Torigian was told by Orsini to find new work and leave the position of Deputy Minister of Community Safety. On October 1, 2018, the Premier, without holding a hiring competition, appointed Di Tommaso as the new Deputy Minister of Community Safety, effective October 22, 2018. One of Deputy Minister Di Tommaso's responsibilities was to assist with the OPP Commissioner hiring process. Prior to being named Deputy Minister of Community Safety, Di Tommaso was a Staff Superintendent with the Toronto Police Service, where he supervised his friend Supt. Taverner for several years. Di Tommaso's policing rank was lower than that of previous Deputy Ministers.
49. On October 22, 2018, MCSCS published a posting for the position of Commissioner of the OPP ("the original posting"). On October 24, 2018, only two (2) days after the original posting was made and Di Tommaso assumed his role as Deputy Minister of Community Safety, the job posting was modified ("the modified posting").
50. The significant difference between the two postings was that the required qualifications were considerably lowered in the modified posting from what they had been in the original posting. Specifically, the minimum rank requirement that featured in the original posting – a requirement of "Deputy Police Chief or higher, or Assistant Commissioner or higher in a major police service" – was absent in the modified posting. The modified posting only required candidates to be an "experienced executive with a background in policing."
51. The public rationale given by the Premier and the Minister of MCSCS, Sylvia Jones ("Minister Jones"), for the elimination of the minimum rank requirement was that the job posting was modified "to broaden the potential pool of applicants". Mr. Blair pleads that the rationale was in

fact more focused: that the job posting was modified to enable Toronto Police Service Supt. Taverner to apply.

52. On November 9, 2018 the Public Service Commission and the Executive Development Committee (“EDC”) met to approve the short list of candidates and the composition of the interview panel. Deputy Attorney General Boniferno and Orsini were members of the Public Service Commission. The EDC is responsible for executive-level talent management for the OPS. It comprises the same members as the Public Service Commission but its Chair is the Secretary of the Cabinet. Orsini was therefore Chair of the EDC at the time. The EDC meets at the same time as the Public Service Commission. Salvatore (Sal) Badali (“Mr. Badali”) (a Partner at the search firm, Odgers Berndtson, that was engaged to assist with the hiring process) and a colleague of Mr. Badali’s joined part of the meeting via telephone to explain the recruitment process.
53. First-round interviews were held on November 12, 2018. The interview panel consisted of three people: Deputy Attorney General Boniferno; Mr. Badali; and Deputy Minister Di Tommaso.
54. Only three candidates received second-round interviews: a senior employee with the OPP other than Commissioner Blair; Commissioner Blair; and Supt. Taverner. The candidates were interviewed in that order.
55. Second-round interviews were held on November 20, 2018. In advance of the second-round interviews, Commissioner Blair was informed that the interview panel would consist of the following people: Dean French, the Premier of Ontario’s Chief of Staff; Orsini, who was then Secretary of Cabinet; Deputy Minister Di Tommaso; and Sal Badali.
56. In advance of his second-round interview, Mr. Blair saw Dean French leave the building where the interview was being held. Approximately ten minutes prior to the beginning of Commissioner

Blair's second-round interview, Mr. Blair was informed that Mr. French would no longer be participating in the second-round interview panel.

57. Throughout the interview process, Sal Badali informed Mr. Blair on numerous occasions that he, Mr. Badali, had no input or decision-making power regarding the hiring for the next OPP Commissioner.

C.The Government of Ontario Announces Appointment of Supt. Taverner as OPP Commissioner

58. On November 29, 2018, the Government of Ontario announced that Supt. Taverner of the Toronto Police Service would be the next OPP Commissioner and would be assuming command on Monday, December 17, 2018.
59. The OPP Commissioner hiring process was rigged in favour of Supt. Taverner, but the defendants and the Government of Ontario attempted to ensure a public appearance of impartiality to cloak the decision in legitimacy.
60. It was widely reported that Supt. Taverner is a long standing, close family friend of Premier Ford and the Ford family. Deputy Minister Di Tommaso is also a friend of Supt. Taverner and his former boss.
61. Supt. Taverner was offered an annual salary at the top end of the salary grid for the position of Commissioner, even though he had little to no management experience of the level one would expect for the head of North America's third-largest deployed police force.

62. Ultimately, Supt. Taverner did not assume command of the OPP. Supt. Taverner withdrew his name from consideration on March 6, 2019, and on March 11, 2019, it was announced that Deputy Chief Thomas Carrique of the York Regional Police was the new OPP Commissioner.

D. Supt. Taverner Appointment Causes Widespread Public Concern Regarding Independence and Integrity of the OPP; Premier and Senior Cabinet Ministers Maintain OPP Hiring Process was Conducted by Senior Bureaucrats and Deny it was Flawed

63. Following the public announcement of Supt. Taverner as the new OPP Commissioner, public concern mounted regarding the independence of the OPP Commissioner hiring process. In response to public pressure, Members of the Cabinet made public comments (captured in Hansard) maintaining that Cabinet was not involved in the hiring process or hiring decision. They maintained that Cabinet had merely endorsed the hiring decision arrived at by an independent hiring panel. The mounting public concern regarding the OPP Commissioner hiring process led to two key events: (1) Mr. Blair raised concerns about the flawed OPP hiring process before the Ombudsman; and (2) Members of Provincial Parliament filed complaints before the Provincial Integrity Commissioner.

E. Mr. Blair Raises Concerns Regarding OPP Hiring Process & Supt. Taverner Appointment via Complaint Before Provincial Ombudsman

64. On December 11, 2018, Mr. Blair, in both his former capacity as the Commissioner (interim) of the OPP, and his personal capacity as a final candidate in the OPP hiring process, filed the Ombudsman Complaint. In the complaint, Mr. Blair raised concerns about the real and/or perceived political interference and cronyism that were impacting the independent operations of the OPP.

65. Mr. Blair's Ombudsman Complaint received widespread public attention due to the significant and serious allegations raised by Mr. Blair concerning political interference; the fact that the allegations concern the Premier of Ontario; the fact that Supt. Taverner's close relationship with Premier Ford was already the subject of significant media attention at the time; and the fact that there were irregularities in the OPP Commissioner hiring process, including the lowering of qualifications for the OPP Commissioner position which made it possible for Supt. Taverner to compete for the position.
66. The Ombudsman declined to review the OPP Commissioner hiring process. The Ombudsman communicated this in writing to Mr. Blair on December 12, 2018, and again on December 13, 2018. As a result, on December 14, 2018, Mr. Blair commenced a Divisional Court application seeking a determination of the Ombudsman's jurisdiction. This application remains before the Divisional Court.

F. Provincial Integrity Commissioner Conducts Review and Renders Findings Regarding the Inappropriate Involvement of Senior Bureaucrats in Flawed OPP Hiring Process

67. As a result of requests from NDP Member of Provincial Parliament ("MPP") Kevin Yarde and a request by Liberal MPP and interim leader John Fraser, Commissioner Wake conducted an investigation pursuant to section 31 of the *Members' Integrity Act*. The requests for investigation included requests based on section 2 of the *Members' Integrity Act*, which prohibits MPPs from making a decision, or participating in making a decision, "in the execution of his or her office if the member knows, or reasonably should know, that in the making of the decision, there is an opportunity to further the member's private interest or improperly to further another person's private interest."

68. On March 20, 2019, Commissioner Wake released his report on his investigation into whether Premier Doug Ford breached the *Members' Integrity Act* in the appointment of his long-time friend, Supt. Taverner. Commissioner Wake dismissed the allegations against the Premier; however, Commissioner Wake made many damning findings relating to this province's most senior bureaucrats, including the defendants in this action, as summarized below:

- a) Commissioner Wake's report provides a detailed account of the significant involvement of senior bureaucrats in the "flawed" (para. 242, pg. 63) process;
- b) Commissioner Wake's report states that "[i]n fact, the process was not independent" (para. 239, pg. 62);
- c) Commissioner Wake's report states that there existed "a preference [...] given to one candidate" (para. 240, pg. 62);
- d) Commissioner Wake's report examined the text messages between Orsini and the Premier's Chief of Staff, Dean French, and concludes that "[a]nyone examining these messages would have serious doubts as to the fairness of the process to the other candidates" (para 241, pg. 63); and,
- e) Commissioner Wake's key findings regarding a biased recruitment process are excerpted below (emphasis added):

[239] I accept Premier Ford's evidence that he stayed at arm's length from the recruitment process and that he believed it was independent. **In fact, the process was not independent as the Secretary stated in his evidence. The Secretary correctly noted that he was deputy minster to the Premier which is a position he held at pleasure.** It was for that reason that he objected to public announcements that the selection process was independent and insisted that it be referred to as a hiring recruitment process [...].

[240] I find that **there were some troubling aspects to the process that may have led, perhaps unintentionally, to a preference being given to one candidate.** In coming to this conclusion, I have considered the following:

1. As a result of his interactions with the Premier's Office over the offer of a position with the OCS [Ontario Cannabis Store], the Secretary was made aware that the Premier thought highly of Mr. Taverner;
2. Mr. Torigian's evidence that the Secretary told him that he felt 'pressure' to hire Mr. Taverner cannot be ignored even though the Secretary does not believe he was under any pressure from the Premier or his office. To some extent, Mr. Torigian's evidence is supported by Mr. Boniferro, who stated that he first heard of Mr. Taverner's name when the Secretary made a comment that the Premier's Office might suggest that he be offered a deputy minister role but that the Secretary thought it would be more appropriate for him to apply for the OPP Commissioner position. It does at least suggest that the Secretary was aware of the interest that the Premier and his office had in Mr. Taverner early on in the process;
3. The fact that the Secretary reached out to Mr. Taverner on LinkedIn on October 17 before the OPP Commissioner position had even been advertised demonstrates an elevated interest in Mr. Taverner;
4. This same level of interest was evident two days later when the Secretary sent Mr. Taverner's name to Mr. Badali as someone who might be interested in the position of OPP Commissioner without having first met him; and
5. According to the Secretary, Mr. French revealed his friendship with Mr. Taverner, if it was not already known, on November 19, the day before the second round of interviews. Although Mr. French disagrees that this was the basis for his recusal, the point is that the Secretary believed that Mr. French had a sufficiently close relationship with Mr. Taverner that he had to recuse himself from the same interview panel as the Secretary. At the very least there existed a potential for the Secretary to be predisposed favourably towards Mr. Taverner as a result of this belief.

[241] What I found most disconcerting in all the evidence were the text messages from the Secretary to Mr. French as to Mr. Taverner's progress throughout the process. **There seemed to be tacit acknowledgment by the Secretary that Mr. French was rooting for Mr. Taverner's success. Anyone examining these messages would have serious doubts as to the fairness of the process to the other candidates.**

[242] I appreciate that the principles of natural justice, including procedural fairness, may not apply to a recruitment process for a cabinet appointment. This will be discussed later in the "Opinion" section of this report. At this stage I am making findings of fact. **After considering all of the evidence immediately above I find that I have a reasonable apprehension that the recruitment process was flawed.** (pp. 62-63)

G. Reprisal and Conflicts of Interest: Premier Ford Promulgates Widespread Public Allegations that Mr. Blair Breached the Police Services Act and Submitted Retirement Papers to the OPP; Involved in Revocations

69. Shortly after Mr. Blair filed his December 11, 2018, complaint before the Ombudsman, and the same day Commissioner Wake publicly announced that he was conducting an investigation, Premier Ford began making public comments alleging that Mr. Blair had breached the *PSA*. On December 18, 2018, while participating in a media scrum at Amazon's new Toronto offices, Premier Ford made the below verbal comments.

"I could sit here and give you all the items that weren't accurate in that letter and there's endless ones. I could give you a list of all the Police Act that was broken throughout that whole letter, but none of you want to report on that."

"So what I'm going to do is take the high road and I'm going to let the review go through."

"We're looking forward to Ron Taverner becoming the OPP commissioner."

"Let's get through the review and see what happens."

"Brad Blair, first he put in his retirement papers in, then he pulled them back again. I get it, not a problem. I get it that he's upset he didn't win a fair process. I understand. Did he step over the line on a lot of things? I'm going to let the media decide that and I wish you would look into that."

70. The letter that Premier Ford is referring to in the above quotes is Mr. Blair's Ombudsman Complaint.

71. The Premier's December 18, 2018, remarks were captured on video and widely rebroadcasted on television, print media and the internet.
72. As a result of the Premier's allegations of breaches of the *PSA* and the Premier's statement that Mr. Blair had submitted retirement papers, counsel for Mr. Blair was forced to issue the following Press Statement:

STATEMENT FROM JULIAN FALCONER

While as legal counsel for Deputy Commissioner Blair, I will not be following up with additional comments today. The following is a statement in respect of Premier Ford's comments of today.

"A simple inquiry of the OPP would bear out that Deputy Commissioner Blair has never, and I repeat never, submitted retirement papers. This is simply a falsehood.

As for the personal shots by the Premier, no amount of intimidation or insult will deter the Deputy Commissioner from seeking a full airing of these issues."

73. Mr. Blair (who at the time was Deputy Commissioner) felt that Premier Ford was trying to intimidate and bully him into silence, in a context where there was a reasonable expectation that Mr. Blair would be called as a witness before Commissioner Wake.
74. Starting in mid-December 2018, Mr. Blair's legal counsel made several efforts to determine whether or not a *PSA* complaint and/or investigation against Mr. Blair had been made, as follows:

- a) On December 19, 2018, Mr. Blair's counsel wrote to Minister Jones. This correspondence was also copied to Premier Ford, Attorney General Caroline Mulroney, Deputy Attorney General Boniferno, and Deputy Minister Di Tommaso, among others;
- b) No response was received to the December 19, 2018, letter. Mr. Blair's counsel sent a follow-up letter on December 24, 2018, addressed to Minister Jones and Attorney General Caroline Mulroney, and copied to Premier Ford, among others;
- c) Neither Premier Ford, Minister Jones, Attorney General Mulroney, nor Deputy Attorney General Boniferno responded to the December 19, 2018, or the December 24, 2018, correspondences. On December 28, 2018, Mr. Blair received correspondence from Deputy Minister Di Tommaso which is discussed further below and did not address Mr. Blair's inquiries of the existence of any *PSA* complaint and/or investigation.

- 75. Despite the above efforts, Mr. Blair has never received notice under the *PSA* of a complaint and/or investigation regarding his conduct, nor have any of the above addressees to various correspondences provided any particulars of the same.
- 76. Nevertheless, Premier Ford continued to make public allegations that Mr. Blair had breached the *PSA*. On January 14, 2019, Premier Ford was interviewed by both Global TV News and CP24 News, while in Detroit, Michigan, attending an automotive show, and Premier Ford made the below statements. The Premier's statements were malicious in that the Premier was aware at the material time that Mr. Blair had not been provided any notice of complaint and/or investigations under the *PSA*, and/or the Premier did not take reasonable steps to ascertain the truth of his defamatory remarks prior to making them.

To Global TV News:

“I’m thoroughly disappointed with Brad Blair, the way he’s been going on, breaking the Police Act numerous times. It’s disturbing to say the least.”

To CP24 News:

“It’s unfortunate that one person has sour grapes, and it is very disappointing actually, and reacting the way he’s been reacting and breaking the Police Act numerous times. Someone needs to hold him accountable, I can assure you that.”

77. To date, Mr. Blair has not received notice under the *PSA* of a complaint and/or investigation regarding his conduct. Further, there have been no findings that former Deputy Commissioner Blair has in any way breached any provision of the *PSA*, in particular, nor are there any findings against him of misconduct, in general. Mr. Blair’s termination was not conducted pursuant to the *PSA*. The plaintiffs plead that Mr. Blair ought to have been provided with the protections and rights under the *PSA* before he could be legally terminated.
 78. Additionally, the Premier was involved in the decisions to revoke the Orders-in-Council that (a) appointed Mr. Blair interim Commissioner, and (b) appointed Mr. Blair Deputy Commissioner. The revoking Orders-in-Council were issued on December 15, 2018, and March 4, 2019, respectively. The plaintiffs plead that these actions, too, were a form of reprisal.
- H. **Reprisal and Conflicts of Interest: Senior Civil Servants Intimately Involved in OPP Hiring Process & Mr. Blair’s March 4, 2019, Termination**
79. Senior civil servants were intimately involved in the OPP Commissioner hiring process. The defendants Deputy Minister Di Tommaso, Deputy Attorney General Boniferno, former Secretary of Cabinet Orsini and Chief of Staff French all participated in the OPP Commissioner hiring process. They were therefore all identified in Mr. Blair’s Ombudsman Complaint.

80. On December 14, 2018, Premier Ford filed written submissions to the Integrity Commissioner wherein Premier Ford repeatedly asserts that the OPP Commissioner hiring process was executed by senior civil servants. These civil servants presented a single recommendation to Cabinet and Cabinet rubber-stamped this recommendation. Premier Ford's December 14, 2018, submission to the Integrity Commissioner states that the 2018 recruitment of the OPP Commissioner was planned and coordinated through the Office of the Secretary of Cabinet, Mr. Steve Orsini, alongside the MCSCS.
81. On the same date as Premier Ford's written submission to the Integrity Commissioner (i.e. December 14, 2018), Orsini announced his resignation.
82. On December 28, 2018, Deputy Minister Di Tommaso issued a warning letter to Mr. Blair, writing in his capacity as the Deputy Head and Ethics Executive for the OPP. Deputy Minister Di Tommaso's letter explicitly indicates that this letter was not intended to be disciplinary in nature but it goes on to remind Mr. Blair of his obligations as a public servant to maintain confidentiality of information that comes to his attention by virtue of his service as a public servant. Deputy Minister Di Tommaso's letter directly refers to Mr. Blair's Ombudsman Complaint.
83. On January 2, 2019, Mr. Blair's legal counsel wrote to legal counsel for the MCSCS, Mr. Brian Loewen ("Mr. Loewen"). Counsel raised concerns about Deputy Minister Di Tommaso's lack of impartiality and conflict of interest in providing written warnings to Mr. Blair in the nature of his December 28, 2018 letter, given the fact that Deputy Minister Di Tommaso was a key subject of Mr. Blair's December 11, 2018, complaint to the Ombudsman.
84. On January 4, 2019, Mr. Loewen wrote to Mr. Blair's legal counsel and advised that Deputy Minister Di Tommaso had sought advice from the Provincial Conflict of Interest Commissioner

regarding his continued oversight over Mr. Blair and therefore was of the opinion that no conflict existed.

85. On January 13, 2019, Mr. Blair's legal counsel wrote to Mr. Loewen seeking clarification as to what information was provided to the Conflict of Interest Commissioner in seeking his advice. To date, Mr. Blair has not received any response to this January 13, 2019, correspondence.
86. On March 4, 2019, Deputy Minister Di Tommaso personally attended at the OPP headquarters in Orillia, Ontario, in order to serve Mr. Blair with a termination letter authored by Deputy Minister Di Tommaso. Deputy Minister Di Tommaso took this extraordinary step notwithstanding the conflict of interest arising from the fact that he is a key subject of Mr. Blair's Ombudsman Complaint. As already stated, Mr. Blair took steps, via counsel, to advise Deputy Minister Di Tommaso of this conflict of interest; however, Deputy Minister Di Tommaso never recused himself from oversight over Mr. Blair.
87. Deputy Minister Di Tommaso's March 4, 2019, termination letter cites the Divisional Court filings as a contravention of Mr. Blair's obligations under the Conflict of Interest regulation pursuant to the *Public Service of Ontario Act* ("PSOA") and a violation of his oath of office. Deputy Minister Di Tommaso's March 4, 2019, termination letter also refers to his own December 28, 2018, letter as further grounds for Mr. Blair's termination, notwithstanding the fact that the December 28, 2018, letter clearly states that it is non-disciplinary in nature. Deputy Minister Di Tommaso dismissed Mr. Blair from employment pursuant to section 34 of the *PSOA*, effective immediately. For clarity, Deputy Minister Di Tommaso did not rely on the *PSA* to effect Mr. Blair's termination despite Mr. Blair being a sworn police officer.
88. The termination letter indicates that the termination was done with the permission of the Public Service Commission. Deputy Attorney General Boniferro was at all material times a member of

the Public Service Commission. Deputy Attorney General Boniferno participated in the first-round interviews of the OPP Commissioner hiring process and is a key subject of Mr. Blair's complaint before the Ombudsman and the related Divisional Court application. Deputy Attorney General Boniferno did not recuse himself from any deliberations and/or decisions by the Public Service Commission concerning Mr. Blair's termination.

89. Minister Jones, the Solicitor General, did not direct or participate in the decision to terminate Mr. Blair.
90. Mr. Blair pleads that these actions by the defendant civil servants are reprisal and an attempt to muzzle Mr. Blair, and that this reprisal is directly connected to Mr. Blair's good faith efforts to seek redress before the Divisional Court and the Provincial Ombudsman.
91. Further, the plaintiffs plead that at no point in time has any interim nor the current Commissioner of the OPP instructed Mr. Blair to cease from continuing the application before the Divisional Court or any other legal proceeding.

I. Mr. Blair Contests Legal Validity of March 4, 2019, Termination

92. The day after Mr. Blair filed his application with the Divisional Court, and within days of filing his Ombudsman Complaint, Mr. Blair was returned to his former position as a Deputy Commissioner when then-Deputy Commissioner Gary Couture was appointed to the role of interim Commissioner effective December 17, 2018. Mr. Blair returned to his rank of Deputy Commissioner because Order-in-Council 598/2017 appointed him Deputy Commissioner of the OPP, to serve at the pleasure of the Lieutenant Governor in Council for a period not to exceed March 22, 2020.

93. On March 4, 2019, Mr. Blair was terminated from employment and his Order-in-Council (598/2017) appointment as Deputy Commissioner was revoked effective the same day by way of Order-in-Council (277/2019). The plaintiffs plead that, if Order-in-Council 277/2019 is valid, Mr. Blair should have been returned to his prior rank as Chief Superintendent, which rank Mr. Blair held at the point of issuance of Order-in-Council 221/2014, dated February 12, 2014, which first appointed him Deputy Commissioner.
94. On March 6, 2019, Mr. Blair's legal counsel wrote to Deputy Minister Di Tommaso to inform him that the legal validity of the termination was in question, as there had been no process initiated or completed pursuant to the *PSA*. This letter of March 6, 2019, informed Deputy Minister Di Tommaso that Mr. Blair expected to resume his duties with the OPP as a Chief Superintendent. In the alternative, Mr. Blair would seek to retire from the OPP, with all the rights and privileges that would normally be afforded to him, had Mr. Blair retired from the position of Deputy Commissioner of the OPP with close to 33 years of service.
95. The plaintiffs plead that Mr. Blair's termination was unlawful, deliberate, and conducted in bad faith and not in accordance with the rule of law. Mr. Blair contests the legal validity of his March 4, 2019, termination under the *PSOA* and seeks damages for wrongful termination on three broad grounds:
- a) the discipline of all sworn police officers is governed by the *PSA*. Mr. Blair remains without notice of any complaint and/or investigation under the *PSA*, and could not be legally terminated unless procedures set out in the *PSA* were followed;
 - b) the purported grounds for Mr. Blair's termination are contested; and,

c) senior civil servants involved in Mr. Blair's termination were also the subject of Mr. Blair's complaint before the Ombudsman. The defendant senior civil servants' actions are a reprisal against Mr. Blair who was validly seeking the independent review before the Provincial Ombudsman and a determination of the Ombudsman's jurisdiction before the Divisional Court. As acts of reprisal, the civil servants' actions in firing Mr. Blair, an OPP officer, also constitute unwarranted interference in the operations of the OPP, thereby posing a threat to the rule of law. Further, the actions of these defendant senior civil servants were conducted while said defendants were under significant conflicts of interest, as already detailed above.

96. Additionally, Mr. Blair contests the validity of the Order-in-Council of March 4, 2019, which revoked the Order-in-Council appointing him Deputy Commissioner. The revocation of his appointment was a reprisal, effected without any procedural fairness, and constituted capricious exercise of public authority.

i. *The discipline of all sworn police officers is governed by the PSA*

97. The plaintiffs plead that the discipline of all sworn police officers is governed by the *PSA*. Mr. Blair swore an oath of office under the *PSA* in order to become a sworn police officer, employed by the OPP. The *PSA* provides that it is the Commissioner of the OPP who has the general control and administration of the OPP and the employees connected with it. Mr. Blair was at all material times relating to his termination an employee connected with the OPP.

98. Once sworn, Mr. Blair satisfied the definition of a "police officer" under the *PSA*. As a sworn police officer, Mr. Blair retains that status until either resignation or dismissal from the OPP. Resignation and dismissal of OPP officers occurs through the statutory scheme set out in the *PSA*.

Further, the plaintiffs plead that Mr. Blair retains his status as a sworn police officer, regardless of any appointments or rescission of appointments via Order-in-Council.

99. Mr. Blair did not resign; rather, Mr. Blair was terminated, purportedly for cause, on March 4, 2019. As detailed further below, Mr. Blair contests his termination for cause.
100. The statutory scheme governing discipline of all police officers was not followed in the termination of Mr. Blair. Mr. Blair was summarily fired without notice, without an opportunity to know the case against him, without an opportunity to reply, and without a hearing, all of which is required under the *PSA*. Further, Mr. Blair pleads that his termination was a reprisal for his raising of concerns about the OPP Commissioner hiring process before the Provincial Ombudsman. The plaintiffs plead that Mr. Blair formed the reasonable expectation that should an Order-in-Council appointment be revoked, he would revert to his prior rank as Chief Superintendent and retain his status as a sworn police officer.
101. The plaintiffs plead that Part V of the *PSA* provides a complete statutory framework for disciplining sworn police officers. These protections include:
 - a) The right to notice of a complaint (s. 76(3));
 - b) The right to a hearing (s. 76(9)) governed by the procedural protections of the *Statutory Powers Procedure Act* (s. 83(1));
 - c) The right to notice of the hearing (s. 83(4));
 - d) The right to counsel (s.83 (4));
 - e) The right to disclosure of the case against him (s. 83(5));

- f) The right to findings made on a clear and convincing evidentiary basis (s. 84(1)); and
- g) The right to an appeal to the Ontario Civilian Police Commission.

102. The plaintiffs plead that the only appropriate route to lawfully dismiss Mr. Blair was through Part V of the *PSA* and that the process and protections guaranteed by Part V of the *PSA* were not afforded to Mr. Blair.

103. Additionally, the plaintiffs plead that Mr. Blair's appointment as Deputy Commissioner could not be legally revoked via Order-in-Council without him being provided procedural fairness. Procedural fairness required providing Mr. Blair with the safeguards set out in Part V of the *PSA*.

ii. The purported grounds for Mr. Blair's termination are contested

104. The purported grounds for Mr. Blair's termination are identified in the March 4, 2019, termination letter. Those grounds are:

- a) The court materials filed before the Divisional Court in respect of Mr. Blair's application seeking a determination of the Ombudsman's jurisdiction to investigate Mr. Blair's December 11, 2018, complaint. The identified concern with these court filings is that they contained confidential information obtained during the course of Mr. Blair's employment, that Mr. Blair failed to comply with the defendant Di Tommaso's direction regarding confidential information, and that this disclosure is a contravention of obligations under the *PSOA* and a violation of Mr. Blair's oath of office under the *PSOA*;
- b) That Mr. Blair furthered his private interests by using his professional status and that this is a contravention of the Conflict of Interest regulations under the *PSOA*;

- c) That the above-identified concerns have ruptured the trust underlying the employment relationship; and
- d) That accordingly, Mr. Blair is dismissed pursuant to section 34 of the *PSOA* by Di Tommaso exercising authority delegated to him under section 44 of the *PSOA*, effective immediately, with the permission of the Public Service Commission.

- 105. The plaintiffs plead that Mr. Blair was a highly regarded employee and held an exemplary employment record with the OPP.
- 106. The plaintiffs plead that Mr. Blair did not breach any confidentiality provisions and did not violate any oath of office.
- 107. Mr. Blair pursued the December 11, 2018, complaint before the Ombudsman and the related Divisional Court application seeking a determination of the jurisdiction of the Ombudsman. Mr. Blair is not prevented from seeking such available avenues for his December 11, 2018, complaint by virtue of the position(s) he held. A complaint to the Ombudsman and a Divisional Court application are remedies available to Mr. Blair and he pursued them in good faith.
- 108. The defendants have never indicated with any specificity which court documents are of concern. The plaintiffs plead that a portion of the court documents were already in the public realm and were not initially disclosed by Mr. Blair. Secondly, the plaintiffs plead that a portion of the court documents were not subject to any confidentiality provisions due to the manner by which they were transmitted to the plaintiff, Mr. Blair.
- 109. In the alternative, if some or all of these records are deemed confidential, the plaintiffs plead that there was justification for the disclosure. The plaintiff Mr. Blair served as the highest-ranking member of the OPP at the time of filing his Ombudsman Complaint. The complaint raised *bona*

fide concerns about the independence and integrity of the OPP and therefore about the rule of law in this Province, and no other member of the OPP was in a position to raise such significant and serious concerns. The plaintiffs plead that Mr. Blair could not have raised these concerns with the defendant Di Tommaso as this defendant was involved in the hiring process as a member of both the first- and second-round interview panels. The plaintiffs plead that Mr. Blair owed a duty to protect the integrity and independence of the OPP, in particular as a consequence of the position Mr. Blair held. The plaintiffs plead that Mr. Blair discharged that obligation and exercised his rights to raise concerns before the Ombudsman and through the related Divisional Court Application. In short, Mr. Blair acted as a whistleblower raising concerns through official channels about cronyism, abuses of public office, and potentially-jeopardized independence of the OPP at a time when such concerns were widely raised by the media and widely shared by the public.

110. The plaintiffs plead that once Mr. Blair was removed from his position as interim Commissioner of the OPP, no Commissioner thereafter (interim or otherwise) ever instructed Mr. Blair to cease from continuing his Ombudsman Complaint or the related Divisional Court Application. Mr. Blair expressly pursued these legal avenues in both his personal and professional capacity. The plaintiffs plead that it was within the powers of the OPP command to direct Mr. Blair to cease his proceedings commenced in Mr. Blair's former professional capacity, but that no such direction was ever issued.

111. Further, Mr. Blair's materials for both the Ombudsman Complaint and the Divisional Court Application were provided and/or served on high-ranking members of the Provincial Government and/or the Attorney General's office, as the case may be. This notice was given out of an abundance of caution and to ensure awareness of the proceedings commenced by Mr. Blair. The plaintiffs plead that there were available remedies to seal court materials from the public realm,

and that no party (or prospective party) has ever brought a motion to seal such records or to prevent Mr. Blair from pursuing his proceedings in a professional capacity.

112. The plaintiffs plead that Mr. Blair was never directed by the defendant Di Tommaso, including by way of Di Tommaso's letter of December 28, 2018, to refrain from pursuing proceedings before the Provincial Ombudsman or at the Divisional Court. Mr. Blair was never told at any time that his actions in starting and/or continuing to pursue proceedings before the Provincial Ombudsman or at the Divisional Court could lead to his termination. Further, the plaintiffs plead that the defendant Di Tommaso never recused himself from direct oversight of Mr. Blair, notwithstanding the conflicts of interest, and that the plaintiff Mr. Blair never consented to the defendant Di Tommaso's oversight, given this defendant's obvious conflict of interest.
113. The plaintiffs plead that Mr. Blair did not further his private interests by using his professional status. Mr. Blair expressly pursued proceedings before the Ombudsman and the Divisional Court as a consequence of two facts: (1) that Mr. Blair was the interim Commissioner at the time of his Ombudsman Complaint; and (2) Mr. Blair was a finalist candidate in the OPP hiring process. The plaintiff, Mr. Blair, maintains and has always maintained that his actions were undertaken in the service of preserving the OPP's integrity and independence. Mr. Blair has pursued legal avenues at great personal cost: Mr. Blair has been publicly and falsely accused of breaching the *PSA*; Mr. Blair has been publicly and falsely accused of submitting retirement papers to the OPP; and Mr. Blair has been publicly and wrongfully terminated from a 33-year career with the OPP. Mr. Blair has not personally benefitted from pursuing these legal avenues, nor has Mr. Blair held any expectation of benefitting personally from his actions.
114. The plaintiffs repeat and rely on the facts pleaded aforesaid that senior civil servants were intimately involved in the OPP Commissioner hiring process and the above-described March 4,

2019, termination of Mr. Blair. The plaintiffs plead that Mr. Blair's March 4, 2019, termination was an act of reprisal by the civil servant defendants acting out of blind loyalty to the Premier of the Province of Ontario.

115. Finally, the plaintiffs plead that the Order-in-Council revoking Mr. Blair's appointment as Deputy Commissioner was issued on the basis of the capricious exercise of public power and is therefore invalid.

J. Tainted Appointments by the Ford government

116. The Defendants, specifically Premier Ford and French, acting alone and/or in concert, each with the knowledge and authority (implied and/or express) of the actions of the other, have engaged in a pattern of appointments of multiple close personal friends and family members to various ministries, agencies and councils with little or no regard to appropriate protocol or issues around conflict of interest. These appointments include but are not limited to the following:

- Superintendent Ron Taverner as OPP Commissioner. Superintendent Taverner is a long-time, close friend of Premier Ford. Superintendent Taverner became eligible to apply for the position of OPP Commissioner only after the qualifications were lowered following the posting for the job. In the face of public outcry over the Premier's efforts to install his friend as Commissioner, the Premier's office abandoned its efforts to appoint him and Superintendent Taverner ultimately withdrew his name for consideration as the OPP Commissioner;
- Tyler Albrecht as Agent-General for New York. Mr. Albrecht is a close personal friend of Mr. French who played lacrosse with Mr. French's son. Mr. Albrecht lacked the

qualifications for the job and resigned after the connection between him and French was made public;

- Taylor Shields as Agent-General for London. Ms. Shields is a relative of Mr. French. Ms. Shields resigned from the position after the familial relationship between her and Ms. French;
- Peter Fenwick as Strategic Transformation Advisor. Mr. Fenwick was an insurance customer of Mr. French for over two decades. After this relationship was made public, Mr. Fenwick was fired, and the position eliminated;
- Andrew Suboch as Chair, Justices of the Peace Appointments Advisory Committee. Mr. Suboch is close personal friend of Mr. French. After their relationship was made public, Mr. Suboch resigned from the position;
- Appointees to the Public Accounting Council, the regulatory body for accountants in Ontario: These appointments, in the discretion of the Government of Ontario, come with significant financial compensation paid by the regulatory body. In the case of Katherine Pal, appointed as a member of the Council, she is the niece of Dean French. Once the familial relationship was made public, Ms. Pal resigned from the position. In the case of Gavin Tighe, he is a lawyer in good standing with long time professional and/or personal connections to the Ford family including representing both the Premier and Dean French before the Integrity Commissioner. He remains in his position as Chair of the Council earning a six figure salary in excess of \$160,000.00 per year for performing part time work as Chair.

- Mario Di Tommaso as Deputy Solicitor General. Di Tommaso was first appointed as the Deputy Minister of Community Safety. Di Tommaso was appointed after former Deputy Minister Matthew Torigian was forced out of the position by Premier Ford and French. Di Tommaso was appointed without any competition for the position. The last three Deputy Ministers of Community Safety all held the rank of Deputy Chief/Commissioner or Chief of Police prior to taking the position.

LIABILITY OF THE DEFENDANTS

117. The plaintiffs rely on the facts as pled aforesaid in the following actionable claims. Further, the plaintiffs rely on the following indicia of bad faith and high-handedness by the defendants in the following actionable claims.
118. The plaintiffs plead that the civil servant defendants acted in bad faith in the conduct of Mr. Blair's termination, as follows:
- a) The civil servant defendants Di Tommaso, French, Boniferno, Orsini and Jane/John Doe(s) rigged the OPP hiring process in favour of Supt. Taverner while pretending the process was fair and impartial;
 - b) Premier Ford and/or French orchestrated the termination of Mr. Blair as retaliation for his unmasking of corrupt and inappropriate appointments made by Premier Ford and/or French;

- c) The civil servant defendants Di Tommaso, French, Boniferno, and Jane/John Doe(s) individually and/or collectively conducted Mr. Blair's termination on false grounds, without due process, and without legal authority. Mr. Blair was summarily fired without notice, without an opportunity to know the case against him, without an opportunity to reply, and without a hearing. The requirements for discipline and termination of a sworn police officer under the *PSA* were not met;
- d) The civil servant defendants Di Tommaso, French, Boniferno, and Jane/John Doe(s) individually and/or collectively conducted Mr. Blair's termination without any due regard to the lack of a *PSA* complaint and/or investigation and without any due regard to Mr. Blair's exemplary 33-year career with the OPP;
- e) The civil servant defendants Di Tommaso, Boniferno, Jane/John Doe(s) individually and/or collectively conducted Mr. Blair's termination while knowingly in conflicts of interest, while failing to recuse themselves from the conflicts of interest, and as a form of reprisal intended to dissuade Mr. Blair from pursuing concerns about the independence and integrity of the OPP in good faith;
- f) The civil servant defendants Di Tommaso, Boniferno, Orsini, and Jane/John Doe(s) individually and/or collectively stonewalled Mr. Blair when he explicitly raised concerns regarding, *inter alia*, the irregularities in the OPP hiring process; the false allegations by the defendant Premier Ford of *PSA* breaches and the submission of retirement papers by Mr. Blair; and the conflicts of interest by these defendants;
- g) The defendant Di Tommaso's only correspondence to Mr. Blair, dated December 28, 2018, expressly stated the correspondence was a non-disciplinary letter; however, the defendant Di Tommaso relied on the same correspondence as a ground for Mr. Blair's termination; and

h) The defendant Di Tommaso took the extraordinary step of personally attending OPP Headquarters in Orillia, Ontario, in order to personally terminate Mr. Blair and serve him with the March 4, 2019, termination letter.

119. The plaintiffs plead that the defendant Premier Ford and/or French acted in bad faith in the conduct of Mr. Blair's termination by promulgating an *ex post facto* pretense for Mr. Blair's wrongful termination by publicly and widely accusing Mr. Blair of having breached the *PSA* and of having filed retirement papers with the OPP. The plaintiffs plead that this conduct was done deliberately in order to discredit and tarnish Mr. Blair's reputation and in order to provide a false pretense for Mr. Blair's termination. The plaintiffs plead this conduct was a reprisal for Mr. Blair's efforts to seek transparency and accountability in relation to the OPP Commissioner hiring process.

A. Wrongful Termination

120. The plaintiffs plead that the only route to lawfully dismiss a sworn police officer is through Part V of the *PSA* and that the protections guaranteed in Part V of the *PSA* were not afforded to Mr. Blair.

121. The plaintiffs plead that Mr. Blair was wrongfully terminated as follows and as further outlined at paragraphs 74-109 of this claim:

- a) the discipline of all sworn police officers is governed by the *PSA*. Mr. Blair remains without notice of any complaint and/or investigation under the *PSA*, and could not be legally terminated unless procedures set out in the *PSA* were followed;
- b) there were no valid or good faith grounds to terminate Mr. Blair's 33-year employment with the OPP; and

- c) senior civil servants involved in Mr. Blair's termination were also the subject of Mr. Blair's complaint before the Provincial Ombudsman raising significant conflicts of interest and reprisal.

B. *Misfeasance in Public Office*

122. All the defendants are holders of public office. In the case of the defendant Steve Orsini, Mr. Orsini was a holder of public office at all material times, up until his effective date of resignation.
123. In particular, and without restricting the generality of the foregoing, the plaintiffs state that the defendant civil servants deliberately violated the law individually and/or collectively, by *inter alia*:
- a) improperly using their public authority to rig the OPP hiring process in favour of one candidate, Supt. Taverner, a friend of the Premier's;
 - b) unlawfully terminating Mr. Blair without legal justification under the *PSOA* and without any due process owed to all sworn police officers under the *PSA*;
 - c) conducting an unlawful termination, while engaged in significant and serious conflicts of interest as subjects of Mr. Blair's Ombudsman Complaint and Divisional Court Application and participants in Mr. Blair's termination;
 - d) concurrently failing to recuse themselves from all deliberations concerning Mr. Blair's employment as a consequence of the aforementioned conflicts of interest;
 - e) conducting an unlawful termination with improper intent and as a form of reprisal against Mr. Blair. The improper intent was to dissuade and/or punish Mr. Blair for raising good faith concerns about the independence and integrity of the OPP and/or raising concerns about the

particular conduct of the defendant civil servants and/or the defendant Premier Ford in the
OPP Commissioner hiring process.

The improper intent was to dissuade and punish Mr. Blair from pursuing these concerns in formal venues before the Ombudsman and the Divisional Court. There was a relationship of cause and effect between (1) Mr. Blair's raising of concerns before the Ombudsman and the Divisional Court and (2) Mr. Blair's termination, conducted by the civil servant defendants; and

- f) in conducting themselves as pled aforesaid, acting outside of any valid legal authority which they may possess.

124. In particular, and without restricting the generality of the foregoing, the plaintiffs state that the defendant Premier Ford deliberately violated the law, by *inter alia*:

- a) falsely accusing Mr. Blair of having breached the *PSA* via widespread, public comments;
- b) falsely accusing Mr. Blair of having submitted retirement papers while an employee of the OPP;
- c) furnishing *ex post facto* pretenses for a wrongful termination by falsely accusing Mr. Blair of having breached the *PSA*;
- d) publicly commenting about the private and confidential employment matters of a sworn police officer;
- e) breaching section 95 of the *PSA* which requires confidentiality in respect of all aspects of *PSA* matters; and

- f) capriciously exercising his public authority for unauthorized purposes, namely reprisal, relating to the Order-in-Council revoking Mr. Blair's appointment as Deputy Commissioner.

125. Without restricting the generality of the foregoing, the plaintiffs state that the defendants acted contrary to the rule of law by: acting outside the scope of their legal authority; firing Mr. Blair in an arbitrary manner; and interfering in the operations of the OPP by firing Mr. Blair, an OPP officer, without regard to the procedural requirements set out in the *Police Services Act*, as reprisal for his insistence on defending the independence of the OPP.

126. The plaintiffs plead that the aforementioned unlawful conduct was deliberately carried out by the defendant civil servants and the defendant Premier with the knowledge that the conduct is unlawful and that the conduct was likely to cause injury and harm, compensable under the law.

C. *Negligence*

127. The plaintiffs state that the defendants owed a duty of care to Mr. Blair.

128. The plaintiffs state that this duty of care is a consequence of the public positions and positions within the civil service, as the case may be, which are/were held by the defendants, and by their proximity to Mr. Blair.

129. The plaintiffs state that the defendants, acting collectively and/or individually, breached that duty of care.

130. In the case of the defendant Premier Ford, this defendant breached the duty of care by publicly issuing false allegations against Mr. Blair regarding breaches of the *PSA* and regarding the submitting of retirement papers by Mr. Blair. The plaintiffs plead that such allegations were made with the full knowledge that the assertions were not true. In the alternative, the plaintiffs plead that

the defendant Premier Ford made these false allegations recklessly, without reasonable care, and without any regard to the truth.

131. In the case of the civil servant defendants, these defendants breached their duty of care by, individually and/or collectively, (a) inviting Mr. Blair to participate in a rigged hiring process and (b) terminating Mr. Blair on false grounds and without the necessary due process owed to a sworn police officer under the *PSA*. Further, the plaintiffs plead that these defendants breached their duty of care owed to Mr. Blair by terminating Mr. Blair while under significant conflicts of interest. The particular conflict of interest is that the defendants Di Tommaso and Boniferro were both identified subjects of Mr. Blair's December 11, 2018, complaint to the Provincial Ombudsman and individuals involved in Mr. Blair's termination. The plaintiffs plead that these defendants acted with reprisal against Mr. Blair.

132. The plaintiffs state that the defendants collectively and/or individually breached the duty of care owed to Mr. Blair and accordingly are liable in negligence to Mr. Blair. The plaintiffs state that the injuries Mr. Blair suffered arose as a direct result of the negligence of the defendants, individually and/or collectively. The plaintiffs state that the negligent actions and/or inaction of the defendants as pled herein each and/or collectively caused the injuries to Mr. Blair, a consequence the defendants knew or ought to have known would occur as a result of such negligence.

D. Negligent Misrepresentation

133. The plaintiffs plead a claim in negligent misrepresentation against the defendant Di Tommaso in the manner of Mr. Blair's termination, as follows.

134. The defendant Di Tommaso relied on a non-disciplinary letter dated December 28, 2018, and Mr. Blair's proceedings before the Ombudsman and Divisional Court as grounds for Mr. Blair's March 4, 2019, termination.
135. In response to the defendant Di Tommaso's December 28, 2018 letter, Mr. Blair immediately notified the defendant Di Tommaso that he, Di Tommaso, was in a conflict of interest by the combined fact of defendant Di Tommaso's purported oversight over Mr. Blair and the fact that Mr. Blair raised concerns about this defendant's involvement in the OPP Commissioner hiring process before the Ombudsman/Divisional Court. The defendant Di Tommaso did not recuse himself from this conflict of interest.
136. Mr. Blair continued to pursue the Provincial Ombudsman complaint and the related Divisional Court application relying on the defendant Di Tommaso's express written statement that the December 28, 2018 correspondence was non-disciplinary and the defendant Di Tommaso's lack of recusal from conflict of interest.
137. The defendant Di Tommaso's purported grounds for terminating Mr. Blair included reliance on the December 28, 2018, non-disciplinary correspondence and Mr. Blair's proceedings before the Ombudsman and the Divisional Court. By the conduct pleaded aforesaid, the plaintiffs plead that the defendant Di Tommaso misrepresented the grounds upon which Mr. Blair was terminated.
138. The plaintiffs state that the above misrepresentations have been detrimental to Mr. Blair and that they have ultimately led to the summary termination of Mr. Blair's 33-year career with the OPP.

E. Intentional Infliction of Mental Suffering

139. In particular, and without restricting the generality of the foregoing, the plaintiffs state that the defendants individually and/or collectively caused mental distress by the intentional conduct pleaded aforesaid. The plaintiffs further state that the defendants knew or ought to have known that this unlawful conduct would cause mental distress to Mr. Blair. Further, the plaintiffs state that Mr. Blair suffered mental distress, embarrassment and loss of reputation as a direct result of the defendants' deliberate and/or reckless conduct.
140. The plaintiffs state that the defendants' conduct was for the purpose of injuring Mr. Blair and/or that the defendants were aware of the effect of their conduct but nevertheless continued in that conduct.
141. Without restricting the generality of the foregoing, Mr. Blair has suffered and continues to suffer mental distress from the very public impact of the incidents described above. This suffering includes, *inter alia*, emotional, psychological and/or mental trauma; embarrassment; loss of reputation; and economic loss.

F. Breaches of Section 2(b) of the Canadian Charter of Rights and Freedoms

142. The plaintiffs state that the defendants are additionally liable for violations of Mr. Blair's rights pursuant to section 2(b) of the *Canadian Charter of Rights and Freedoms*, by virtue of the facts pleaded aforesaid. Without restricting the generality of the foregoing, Mr. Blair was deprived of his rights to the fundamental freedoms of thought, belief, opinion and expression protected by section 2(b) of the *Charter*.
143. In particular, and without restricting the generality of the foregoing, the plaintiffs plead that Mr. Blair was deprived of his 2(b) *Charter* rights as follows:

- a) Mr. Blair was exercising his 2(b) *Charter* rights by pursuing a complaint before the Ombudsman, and the related Divisional Court Application;
- b) The plaintiffs plead that both proceedings were commenced and continued in good faith, with the objective of protecting the independence and integrity of the OPP;
- c) The plaintiffs plead that the defendants had a personal interest in discouraging Mr. Blair from pursuing those proceedings and in punishing him, and that they did both these things. Their discouragement included, *inter alia*, purporting to exercise oversight over Mr. Blair via the December 28, 2018 letter authored by the defendant Di Tommaso; falsely accusing Mr. Blair of breaching the *PSA* and submitting retirement papers, with such false accusations made by the defendant Premier Ford; and, ultimately, terminating Mr. Blair on March 4, 2019, with the termination conducted by the defendant Civil Servants; and
- d) The plaintiffs plead that this conduct by the defendants was reprisal against Mr. Blair for seeking *bona fide* remedies before the Ombudsman and the Divisional Court, in good faith.

DAMAGES

- 144. The plaintiff Mr. Blair seeks reinstatement of employment with the OPP at the rank of Deputy Commissioner.
- 145. In the alternative, Mr. Blair seeks reinstatement of employment with the OPP at the rank of Chief Superintendent.
- 146. In the further alternative, Mr. Blair seeks payment of his full severance entitlement for 33 years of service with the OPP culminating with his rank as Deputy Commissioner, as well as compensation for his 88 banked vacation days.

147. The plaintiff Mr. Blair claims damages against all defendants, including general, special, compensatory, punitive and aggravated damages, including but not limited to *Honda/Wallace* damages for bad faith, and pre- and post-judgment interest, resulting from the above actionable wrongs. Further, the plaintiff Mr. Blair pleads and relies upon section 24(1) of the *Charter* and states that Mr. Blair is additionally entitled to a remedy that this Honourable Court considers appropriate and just in the circumstances.
148. The plaintiffs may be put to moving and relocating expenses in order to secure suitable and/or similar replacement employment, the full particulars of which shall be supplied at or prior to trial.
149. The plaintiffs have mitigated their damages, the particulars of which shall be provided at or prior to trial.
150. The plaintiffs Mrs. Blair, Nathaniel, and Ashley each claim damages under the *Family Law Act*, RSO 90, c. F. In particular, Mrs. Blair, Nathaniel, and Ashley each enjoyed a close and loving relationship with Mr. Blair and have suffered the loss of Mr. Blair's guidance, care and companionship as a result of his wrongful termination.
151. The plaintiffs request costs of this action on a substantial indemnity basis together with the applicable HST.
152. The plaintiffs plead and rely on:
- a) The *Courts of Justice Act*, RSO 1990, c C.43;
 - b) the *Police Services Act*, R.S.O. 1990, c. P.15;
 - c) the *Public Service of Ontario Act*, 2006, S.O. 2006, c. 35 Sched. A;

- d) the *Proceedings Against the Crown Act*, RSO 1990, c P27;
- e) the *Ombudsman Act*, R.S.O. 1990, c. O.6;
- f) the *Negligence Act*, R.S.O. 1990, c. N.1;
- g) the *Canadian Charter of Rights and Freedoms*;
- h) the *Family Law Act*, RSO 90, c. F.; and,
- i) the Integrity Commissioner's Report, dated March 20, 2019.

153. The plaintiffs propose that this action be tried in the City of Toronto and be heard together with
Court File No: CV-19-00616339-0000.

DATE: Nov 18th, 2019

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