

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

ANGELINA RIVERS, SHARON ZEHR,
and BARRY ZEHR

Plaintiffs

and

WATERLOO REGIONAL POLICE SERVICES BOARD and
WATERLOO REGIONAL POLICE ASSOCIATION

Defendants

**FACTUM OF THE DEFENDANT,
WATERLOO REGIONAL POLICE SERVICES BOARD**

September 15, 2017

MADORIN, SNYDER LLP
Barristers & Solicitors
P.O. Box 1234
55 King Street West, 6th Floor
Kitchener, ON N2G 4G9

James H. Bennett LSUC #20848Q
jbennett@kw-law.com
Tel: (519) 744-4491
Fax: (519) 741-8060

Lawyers for the Defendant,
The Waterloo Regional Police Services Board

TO: **CAMBRIDGE LLP**
333 Adelaide Street West
Fourth Floor
Toronto, ON M5V 1R5

R. Douglas Elliott LSUC #23685L
Chris Macleod LSUC #45723M
Elena Mamay LSUC #57710N
Sana Ebrahimi LSUC #67738W

Tel: (416)-477-7007
Fax: (289)-812-7385

Lawyers for the Plaintiffs,
Angelina Rivers, Sharon Zehr and Barry Zehr

AND TO: **SCARFONE HAWKINS LLP**
Barristers & Solicitors
1 James Street South, 14th Floor
P. O. Box 926, Depot 1
Hamilton, ON L8N 3P9

David Thompson LSUC #28271N
Matthew G. Moloci LSUC #40579P
Colleen Yamashita LSUC #A051468H

Tel: 905-523-1333
Fax: 905-523-5878

Lawyers for the Plaintiffs,
Angelina Zehr, Sharon Zehr and Barry Zehr

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

ANGELINA RIVERS, SHARON ZEHR,
and BARRY ZEHR

Plaintiffs

and

WATERLOO REGIONAL POLICE SERVICES BOARD and
WATERLOO REGIONAL POLICE ASSOCIATION

Defendants

**FACTUM OF THE DEFENDANT,
WATERLOO REGIONAL POLICE SERVICES BOARD**

PART I - NATURE OF THE MOTION

1. This is a Motion by the Defendant, Regional Municipality of Waterloo Police Services Board, improperly named as Waterloo Regional Police Services Board (the "WRPSB"), for an Order, pursuant to Rule 21.01(3)(a) of the *Rules of Civil Procedure*, dismissing the action on the ground that the Court has no jurisdiction over the subject matter of the action.

2. It is the position of the WRPSB that, as pleaded in the Statement of Claim, dated May 30, 2017, none of the Plaintiffs' claims is properly before the Court. The proper processes or forums that are available for the resolution of the Plaintiffs' claims are one of the following:

- (a) The grievances and arbitration process under the collective agreement between the WRPSB and the Defendant, Waterloo Regional Police Association ("WRPA"),

effective January 1, 2015 to December 31, 2019, and predecessor collective agreements;

- (b) The complaints and disciplinary proceedings process under the provisions of the *Police Services Act*, R.S.O. 1990, c. P.15, as amended, and the regulations thereto;
- (c) The application and hearing process of the Human Rights Tribunal of Ontario under the provisions of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended;
- (d) The application and hearing process of the Ontario Labour Relations Board under the provisions of the *Labour Relations Act, 1995*, S.O. 1995, c.1, Sched. A, as amended, to the extent that there are reprisal obligations under the provisions of s. 50 of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended, and/or to the extent that there are other enforcement mechanisms that are prescribed or recognized with respect to other alleged violations of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, as amended;

PART II - SUMMARY OF FACTS

3. On May 30, 2017, the action was commenced by Statement of Claim.

Reference: Affidavit of Filipe Mendes, sworn September 14, 2017, at para. 2.

4. The Plaintiffs are Angelina Rivers ("Ms. Rivers"), Sharon Zehr ("Ms. Zehr"), and Barry Zehr ("Mr. Zehr"). Ms. Rivers and Ms. Zehr were members of the Waterloo Regional Police Service ("WRPS"), and they claim on their own behalf and behalf of all female persons who were or are presently members of the WRPS. The Defendants are the WRPSB and the WRPA.

Reference: Affidavit of Filipe Mendes, sworn September 14, 2017, at para. 3.

5. As pleaded in the Statement of Claim, dated May 30, 2017, the Plaintiffs' claims are:

- (a) The Plaintiffs and fellow female members of the WRPS were subject to systemic and institutional gender-based discrimination and harassment, sexual harassment, and sexual assault by male members and management of the WRPS, and the WRPA;
- (b) The WRPS and the WRPSB are liable for the tortious sexual misconduct and gender-based discrimination of the male members, senior officers, and management of the WRPS;
- (c) The WRPS and the WRPA failed to fulfil their statutory, common law, and contractual obligations to provide the Plaintiffs and fellow female members of the WRPS with a work environment free of gender-based discrimination and harassment, sexual harassment, and sexual assault;
- (d) The WRPS and the WRPA failed to ensure that complaints and grievances of harassment and discrimination were properly processed, investigated, and resolved under the harassment and discrimination procedure and the collective agreement;
- (e) The Plaintiffs and fellow female members of the WRPS sought assistance from within the WRPS and the WRPA, including their peers, supervisors, management, and representatives of the WRPA, but their complaints were discouraged, disregarded, and otherwise ignored;
- (f) The WRPS and the WRPA perpetrated the systemic and institutional gender-based discrimination and harassment, sexual harassment, and sexual assault, by failing to properly punish the wrongdoers and deter the insidious behaviour;

- (g) As a result of the systemic and institutional gender-based discrimination and harassment, sexual harassment, and sexual assault, the Plaintiffs and fellow female members of the WRPS have suffered serious physical and psychological damages, loss of income and future earning capacity.

Reference: Affidavit of Filipe Mendes, sworn September 14, 2017, at para. 4.

6. As pleaded in the Statement of Claim, dated May 30, 2017, the WRPA is the sole collective bargaining agent for all members of the WRPS, save and except the chief of police, the deputy chiefs, and members represented by the senior officers' association, and that it had and has the power to act as the representative of Ms. Rivers and Ms. Zchr concerning all aspects of their former employment with the WRPS pursuant to the provisions of the *Police Services Act*, the regulations, and the collective agreement between the WRPSB and the WRPA, effective January 1, 2015 to December 31, 2019, and predecessor collective agreements.

Reference: Affidavit of Filipe Mendes, sworn September 14, 2017, at para 5.

7. By Article 23 of the collective agreement between the WRPSB and the WRPA, effective January 1, 2015 to December 31, 2019, all grievances or complaints are to be dealt with under the provisions of Article 42 of the collective agreement, which provides a grievances and arbitration process and procedure to deal with the grievance or complaint.

Reference: Affidavit of Filipe Mendes, sworn September 14, 2017, at para. 6.

8. The WRPSB therefore brings this Motion on the basis that the Plaintiffs' claims arise from the collective agreement between the WRPSB and the WRPA, effective January 1, 2015 to December 31, 2019, and that action should be dismissed on the ground that the Court has no jurisdiction over the subject matter of the action.

PART III - ISSUES AND LAW

A. Rule 21 of the *Rules of Civil Procedure*

9. Rule 21.01(3) of the *Rules of Civil Procedure* provides that:

A defendant may move before a judge to have an action stayed or dismissed on the ground that,

- (a) **Jurisdiction** – the court has no jurisdiction over the subject matter of the action;
- (b) **Capacity** – the plaintiff is without legal capacity to commence or continue the action or the defendant does not have the legal capacity to be sued;
- (c) **Another proceeding pending** – another proceeding is pending in Ontario or another jurisdiction between the same parties in respect of the same subject matter; or
- (d) **Action frivolous, vexatious or abuse of process** – the action is frivolous or vexatious or is otherwise an abuse of the process of the court,

and the judge may make an order or grant judgment accordingly.

Reference: *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 21.01(3).

B. Subsection 48(1) of the *Labour Relations Act, 1995*

10. Subsection 48(1) of the *Labour Relations Act, 1995* (the "*LRA*") imposes a mandatory arbitration clause requiring:

Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

Reference: *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A, s. 48(1).

C. The Collective Agreement between the WRPSB and the WRPA

11. As pleaded in the Statement of Claim, dated May 30, 2017, the WRPA is the sole collective bargaining agent for all members of the WRPS, save and except the chief of police, the deputy chiefs, and members represented by the senior officers' association.

Reference: Affidavit of Filipe Mendes, sworn September 14, 2017, at para. 5.

12. As pleaded in the Statement of Claim, dated May 30, 2017, the WRPA had and has the power to act as the representative of Ms. Rivers and Ms. Zehr concerning all aspects of their former employment with the WRPS pursuant to the provisions of the *Police Services Act*, the regulations, and the collective agreement between the WRPSB and the WRPA, effective January 1, 2015 to December 31, 2019, and predecessor collective agreements.

Reference: Affidavit of Filipe Mendes, sworn September 14, 2017, at para. 5.

13. Article 42 of the collective agreement between the WRPSB and the WRPA, effective January 1, 2015 to December 31, 2019, provides for a grievance and arbitration process. Article 23 of the collective agreement states that all grievances or complaints of members of the WRPS are to be dealt with under the provisions of Article 42.

Reference: Affidavit of Filipe Mendes, sworn September 14, 2017, at para 6.

14. Ultimately, if the member is dissatisfied with the decision of the chief of police or if the chief of police fails or refuses to act upon the grievance or complaint, and where the dispute arises from the interpretation, application, or administration of the collective agreement, it may be submitted for conciliation and/or arbitration in accordance with the *Police Services Act*, or where the dispute arises from other causes, it may be referred to the Ontario Civilian Police Commission ("OCPC") for determination.

Reference: Affidavit of Filipe Mendes, sworn September 14, 2017, at para 6.

D. The Decision in *Weber v. Ontario Hydro*

15. In *Weber v. Ontario Hydro* ("*Weber*"), in referencing now subsection 48(1) of the *LRA*, the Supreme Court of Canada stated:

The issue is not whether the action, defined legally, is independent of the collective agreement, but rather whether the dispute is one "arising under [the] collective agreement." Where the dispute, regardless of how it may be characterized legally, arises under the collective agreement, then the jurisdiction to resolve it lies exclusively with the labour tribunal and the courts cannot try it.

Reference: *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 at para. 43.

16. The Supreme Court of Canada concluded:

... mandatory arbitration clauses such as [subsection 48(1) of the *LRA*] generally confer exclusive jurisdiction on labour tribunals to deal with all disputes between the parties arising from the collective agreement. The question in each case is whether the dispute, viewed with an eye to its essential character, arises from the collective agreement. This extends to *Charter* remedies, provided that the legislation empowers the arbitrator to hear the dispute and grant the remedies claimed. The exclusive jurisdiction of the arbitrator is subject to the residual discretionary powers of courts of inherent jurisdiction to grant remedies not possessed by the statutory tribunal.

Reference: *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929 at para. 67.

E. The Decisions affirming *Weber*

17. In *New Brunswick v. O'Leary*, the Supreme Court of Canada affirmed the decision in *Weber* and concluded that the "essential character" of the dispute between the employer and the employee arose from the collective agreement. Arbitration, and not the court, was the proper forum for resolving the matter.

Reference: *New Brunswick v. O'Leary*, [1995] S.C.R. 967 at para. 5.

18. In *Bisaillon v. Concordia University*, the Supreme Court of Canada stated:

This Court has considered the subject-matter jurisdiction of grievance arbitrators on several occasions, and it has clearly adopted a liberal position according to which grievance arbitrators have a broad exclusive jurisdiction over issues relating to conditions of employment, provided that those conditions can be shown to have an express or implicit connection to the collective agreement...

Reference: *Bisaillon v. Concordia University*, [2006] S.C.J. No. 19 at para. 33.

19. The Supreme Court of Canada concluded that the analysis of whether a matter falls within the exclusive arbitration clause of a collective agreement must proceed on the basis of the facts surrounding the dispute between the parties and not on the basis of how the legal issues are framed. If the matter is only a part of the factual matrix of the dispute, then it is within the jurisdiction of the arbitrator.

Reference: *Bisaillon v. Concordia University*, [2006] S.C.J. No. 19 at para. 33.

20. In *Regina Police Association Inc. v. Regina (City) Board of Police Commissioners*, the Supreme Court of Canada confirmed that there are two elements that must be considered to determine whether the dispute arises from the collective agreement: the nature of the dispute; and the ambit of the collective agreement. The Supreme Court of Canada stated:

In considering the nature of the dispute, the goal is to determine its essential character. This determination must proceed on the basis of the facts surrounding the dispute between the parties, and not on the basis of how the legal issues may be framed: see *Weber, supra*, at para. 43. Simply, the decision-maker must determine whether, having examined the factual context of the dispute, its essential character concerns a subject-matter that is covered by the collective agreement. Upon determining the essential character of the dispute, the decision-maker must examine the provisions of the collective agreement to determine whether it contemplates such factual situations. It is clear that the collective agreement need not provide for the subject-matter of the dispute explicitly...

Reference: *Regina Police Association Inc. v. Regina (City) Board of Police Commissioners*, 2000 S.C.C. 14 at para. 25.

F. The Application of the *Weber* Decision

21. After *Weber*, the courts have consistently held that tort-related claims must proceed to arbitration where the essential character of the dispute between the parties relates to the interpretation, application, or alleged violation of the collective agreement:

- (a) In *K.A. v. Ottawa (City)*, the Ontario Court of Appeal held that a claim for damages related to sexual harassment and sexual assault in the workplace must proceed to arbitration.

The Ontario Court of Appeal stated:

It is common ground that the motion judge properly identified the essential character of the dispute as being a "claim that the City failed to act in a proper manner to prevent or curtail the sexual harassment and the sexual assault of the plaintiffs by Mr. Gauthier". ... In the end, this is a workplace dispute in which it is alleged that the employer failed to provide a safe working environment for its

employees. ... according to the jurisprudence binding on us, that brings this dispute squarely within the jurisdiction of the arbitrator under the collective agreement.

... for the purpose of determining the arbitrator's jurisdiction, there is no basis to distinguish between the claims framed in sexual assault and those framed in sexual harassment. It has been held that regardless of the legal characterization of the dispute, where the dispute arises out of the collective agreement, it must be arbitrated and that "[p]arties cannot avoid arbitration simply by pleading a common law tort".

Reference: *K.A. v. Ottawa (City)* (2006), 269 D.L.R. (4th) 116 at paras. 14-15.

- (b) In *Coleman v. Demers*, Justice Pomerance held that the court had no jurisdiction to hear the plaintiffs' claims as the dispute between the parties fell squarely within the ambit of the terms of the collective agreement.

The plaintiffs had commenced the action against their former employer, their former union, a former union representative, and a former employee. The plaintiffs were unionized employees and were bound by the collective agreement negotiated by their former employer and their former union. The plaintiffs sought damages against their former employer for wrongful dismissal, harassment, conspiracy, intentional infliction of mental suffering, negligent infliction of economic loss, as well as punitive, exemplary, and aggravated damages. The plaintiffs sought damages against their former union for breach of the union's constitution, negligent infliction of economic loss, negligence, conspiracy, intentional infliction of mental suffering, intentional interference with contractual relations, as well as punitive, exemplary, and aggravated damages.

The defendants argued that the action should be dismissed because the court did not have jurisdiction to hear the plaintiffs' claims as they arose out of the

interpretation, application, administration, or alleged violation of the collective agreement.

Citing *Weber*, Justice Pomerance concluded:

A Court does not have jurisdiction to intervene in labour disputes governed by statutory labour codes. Where an employer and employees through union representation have entered into a collective agreement, that agreement is binding upon all parties. Disputes that either relate to, or arise out of, collective agreement fall within the exclusive jurisdiction of specialized labour tribunals. They cannot be adjudicated in the courts.

Reference: *Coleman v. Demers*, [2007] O.J. No. 992 at para. 15.

- (c) In *Abbott et al. v. Collins et al.*, the Ontario Court of Appeal held that the action could not proceed and that the dispute between the parties should be addressed by the Ontario Civilian Commission on Police Services (now the Ontario Civilian Police Commission). A number of Ontario Provincial Police ("OPP") officers had alleged that they were transferred or reassigned as a form of disguised discipline. These officers commenced the action seeking compensation from the alleged responsible officers.

The defendants brought a motion for an order dismissing the plaintiffs' claim. The defendants asserted that the pleading disclosed no cause of action that could be pursued in the courts and that the matter must instead be pursued through arbitration.

The Ontario Court of Appeal concluded that the plaintiffs' claims were disciplinary in nature. The Ontario Court of Appeal had found that the limited provisions of the collective agreement, together with the provisions of the *Police Services Act* and its regulations, "formed a complete code governing all discipline for the OPP" and that

"[t]here was no gap which would give the Superior Court jurisdiction to the matter as a civil cause of action."

Reference: *Abbott et al. v. Collins et al.* (2003), 64 O.R. (3d) 789 at para. 15.

- (d) In *Toronto Police Association v. Toronto Police Services Board*, the Ontario Court of Appeal considered whether the essential character of a dispute between the parties was one of contract or one involving police discipline.

Police officers wore their uniforms to a union rally in contravention of an order of the chief of police. After the chief proposed to take disciplinary action, he met with representatives of the police association and an agreement was reached about the extent of the discipline. The parties later disagreed as to the meaning of the agreement, and the police association commenced an application.

The Ontario Court of Appeal concluded that the motion judge had erred in characterizing the dispute as contractual in nature. The Ontario Court of Appeal found that the error arose from the motion judge's focus on the relief sought in the application, rather than the factual context and the subject-matter of the dispute. The focus of the dispute was essentially about the consequences of discipline and not about the breach of an agreement. The disagreement of the parties as to the meaning of the agreement was relevant only to the extent that it affected the larger issue of the consequences of the discipline. As such, the dispute stood to be resolved under the statutory scheme of the *LRA* and was not properly before the courts.

Reference: *Toronto Police Association v. Toronto Police Services Board*, 2007 ONCA 742 at para. 15.

G. Section 46.1 of the *Human Rights Code*

22. Section 46.1 of the *Human Rights Code* (the "*Code*") provides that:

(1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under Part I of another party to the proceeding, the court may make either of the following orders, or both:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.

(2) Subsection (1) does not permit a person to commence an action based solely on an infringement of a right under Part I.

Reference: *Human Rights Code*, R.S.O. 1990, c. H.19, s. 46.1.

23. In *Seneca College v. Bhadauria* ("*Bhadauria*") and *Honda v. Keays* ("*Keays*"), the Supreme Court of Canada confirmed that the allegation of discrimination as an actionable cause based on a violation of the *Code* is not permitted.

24. In *Keays*, the Supreme Court of Canada stated:

Keays argued in cross-appeal before this Court that the decision in *Bhadauria* should be set aside and that a separate tort of discrimination should be recognized. In *Bhadauria*, Laskin C.J., writing for the Court, held that the plaintiff was precluded from pursuing a common law remedy because the applicable human rights legislation (the *Code*) contained a comprehensive enforcement scheme for violations of its substantive terms. The subtext of the *Bhadauria* decision is a concern that the broad, unfettered tort of discrimination created by the Court of Appeal would lead to indeterminate liability. Laskin C.J. wrote, at p. 189:

It is one thing to apply a common law duty of care to standards of behaviour under a statute; that is simply to apply the law of negligence in the recognition of so-called statutory torts. It is quite a different thing to create by judicial fiat an obligation — one in no sense analogous to a duty of care in the law of negligence — to confer an economic benefit upon certain persons, with whom the alleged obligor has no connection....

The concern that a tort of discrimination does not contain an effective limiting device was raised by interveners in this appeal. Moreover, as noted by the intervener Manitoba Human Rights Commission, jurisdictions outside Ontario have human rights legislation that vests jurisdiction exclusively with the provincial/territorial human rights tribunal. Accordingly, the concern in *Bhadauria* that recognition of a tort of discrimination would be inconsistent with legislative intent is still real.

Reference: *Honda v. Keays*, [2008] S.C.J. No. 40 at para. 65.

H. This Action should be Dismissed

25. Ms. Rivers and Ms. Zehr have commenced this action against their former employer and their former union. Ms. Rivers and Ms. Zehr were members of the WRPS, and as pleaded in the Statement of Claim, the WRPA is the sole collective bargaining agent for all members of the WRPS, save and except the chief of police, the deputy chiefs, and members represented by the senior officers' association.
26. As pleaded in the Statement of Claim, dated May 30, 2017, the WRPA had and has the power to act as the representative of Ms. Rivers and Ms. Zehr concerning all aspects of their former employment with the WRPS pursuant to the provisions of the *Police Services Act*, the regulations, and the collective agreement between the WRPSB and the WRPA, effective January 1, 2015 to December 31, 2019, and predecessor collective agreements.
27. The collective agreement between the WRPSB and the WRPA, effective January 1, 2015 to December 31, 2019, also states that all grievances or complaints are to be dealt with under the provisions of Article 42 of the collective agreement.
28. In the Statement of Claim, dated May 30, 2017, the Plaintiffs' main claim is that the WRPS and the WRPA failed to fulfil their statutory, common law, and contractual obligation to provide a work environment free of gender-based discrimination and harassment, sexual harassment, and

sexual assault. This essentially makes it a workplace dispute. According to the case law, that brings the dispute exclusively within the jurisdiction of an arbitrator under the provisions of the collective agreement between the WRPSB and the WRPA, effective January 1, 2015 to December 31, 2019, and predecessor collective agreements.

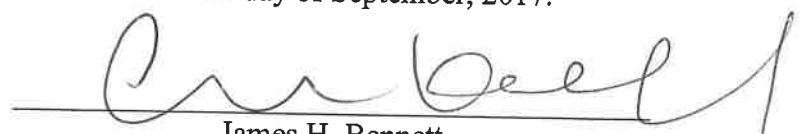
29. In the Statement of Claim, dated May 30, 2017, the Plaintiffs also claim that the WRPS and the WRPA perpetrated systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault. According to the case law, the claim of discrimination and harassment is prohibited, and any such claim should proceed through the application and hearing process of the Human Rights Tribunal of Ontario, under the provisions of the *Code*.

30. The WRPSB therefore submits that, as the Plaintiffs' claims arise from the collective agreement between the WRPSB and the WRPA, effective January 1, 2015 to December 31, 2019, and predecessor collective agreements, the action should be dismissed on the ground that the Court has no jurisdiction over the subject matter of the action.

PART IV - ORDER REQUESTED

31. The Defendants respectfully request an Order, pursuant to Rule 21.01(3)(a) of the *Rules of Civil Procedure*, dismissing the action on the ground that the Court has no jurisdiction over the subject matter of the action, with costs on a substantial indemnity basis, fixed and payable by the Plaintiffs to the WRPSB within 30 days, pursuant to Rule 57.03(1) of the *Rules of Civil Procedure*.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this ¹⁵..... day of September, 2017.


James H. Bennett

MADORIN, SNYDER LLP
Barristers & Solicitors
P.O. Box 1234
55 King Street West, 6th Floor
Kitchener, ON N2G 4G9

James H. Bennett LSUC #20848Q
jbennett@kw-law.com
Tel: (519) 744-4491
Fax: (519) 741-8060

Lawyers for the Defendant,
The Waterloo Regional Police Services Board

TAB A

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929.
2. *New Brunswick v. O'Leary*, [1995] S.C.R. 967.
3. *Bisaillon v. Concordia University*, [2006] S.C.J. No. 19.
4. *Regina Police Association Inc. v. Regina (City) Board of Police Commissioners*, 2000 S.C.C. 14.
5. *K.A. v. Ottawa (City)* (2006), 269 D.L.R. (4th) 116.
6. *Coleman v. Demers*, [2007] O.J. No. 992.
7. *Abbott et al. v. Collins et al.* (2003), 64 O.R. (3d) 789.
8. *Toronto Police Association v. Toronto Police Services Board*, 2007 ONCA 742.
9. *Honda v. Keays*, [2008] S.C.J. No. 40.

TAB B

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

1. *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, r. 21.01(3):

21.01(3) **To defendant** – A Defendant may move before a judge to have an action stayed or dismissed on the ground that,

- (a) **Jurisdiction** – the court has no jurisdiction over the subject matter of the action;
- (b) **Capacity** – the plaintiff is without legal capacity to commence or continue the action or the defendant does not have the legal capacity to be sued;
- (c) **Another Proceeding Pending** – another proceeding is pending in Ontario or another jurisdiction between the same parties in respect of the same subject matter; or
- (d) **Action Frivolous, Vexatious or Abuse of Process** – the action is frivolous or vexatious or is otherwise an abuse of the process of the court,

and the judge may make an order or grant judgment accordingly.

2. *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sched. A, s. 48(1):

48. (1) Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

3. *Human Rights Code*, R.S.O. 1990, c. H.19, s. 46.1:

46.1 (1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under Part I of another party to the proceeding, the court may make either of the following orders, or both:

- 1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
- 2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary

compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.

(2) Subsection (1) does not permit a person to commence an action based solely on an infringement of a right under Part I.

ANGELINA RIVERS et al.
Plaintiffs

-and-
Defendants

WATERLOO REGIONAL POLICE SERVICES BOARD et al.

Court File No. CV-17-2346-00

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
BRAMPTON

FACTUM

MADORIN, SNYDER LLP
Barristers & Solicitors
P.O. Box 1234
55 King Street West, 6th Floor
Kitchener, ON N2G 4G9

(519) 744-4491
(519) 741-8060 (Fax)

James H. Bennett LSUC #20848Q
jbennett@kw-law.com

Lawyers for the Defendant,
The Waterloo Regional Police Services Board