



Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Electronically issued : 25-Feb-2019  
Délivré par voie électronique : 25-Feb-2019  
Toronto  
DE IVEEEN.

**HENTROSE NELSON and JEAN-MARIE DIXON**

Plaintiffs

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO,  
ASSOCIATION OF LAW OFFICERS OF THE CROWN, and  
DAVID BULMER, as a representative of  
ASSOCIATION OF MANAGEMENT, ADMINISTRATIVE AND  
PROFESSIONAL CROWN EMPLOYEES**

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 of 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 in Form 18B *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.

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 \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of Superior Court of Justice  
court office: 393 University Avenue, 10th Floor  
Toronto ON M5G 1E6

TO: MINISTRY OF THE ATTORNEY GENERAL  
Crown Law Office (Civil Law)  
McMurtry-Scott Building  
720 Bay Street, 11th Floor  
Toronto, Ontario M7A 2S9

AND TO: ASSOCIATION OF LAW OFFICERS OF THE CROWN  
180 Dundas Street West, Suite 2004  
Toronto, Ontario M5G 1Z8

AND TO: ASSOCIATION OF MANAGEMENT, ADMINISTRATIVE AND  
PROFESSIONAL CROWN EMPLOYEES  
1 Dundas Street West  
Suite 2310, P.O. Box 72  
Toronto Ontario M5G 1Z3

Attention: David Bulmer

## CLAIM

### I. PRAYER FOR RELIEF

1. The plaintiffs Hentrose Nelson (**Hentrose**) and Jean-Marie Dixon (**Jean-Marie**) claim:

#### *Declarations*

- (a) a declaration that the defendant Her Majesty the Queen right of Ontario (the **Crown** or the **OPS**) owed and breached its contractual, constitutional, statutory, and common law duties owed to the plaintiffs;
- (b) an order under rule 12.07 of the *Rules of Civil Procedure* that the defendant David Bulmer (**Bulmer**) defend this proceeding on behalf of or for the benefit of all the members of the defendant Association of Management, Administrative and Professional Crown Employees (**AMAPCEO**);
- (c) a declaration that AMPACEO owed and breached its contractual, statutory, and common law duties to Hentrose;
- (d) a declaration that the defendant the Association of Law Officers of the Crown (**ALOC**) owed and breached its contractual, statutory, and common law duties to Jean-Marie;
- (e) a declaration that the Crown breached the plaintiffs' rights under the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act*,

1982, being Schedule B to the *Constitution Act 1982* (UK), 1982 c 11 (the **Charter**), specifically under sections 2, 7, and 15;

- (f) a declaration that the defendants breached their respective obligations owed to the plaintiffs under the Ontario *Human Rights Code*, RSO 1990, c H.19 (**Code**), specifically under sections 5, 7(2) and 8;
- (g) a declaration that the Crown breached its obligations to the plaintiffs under the *Occupational Health and Safety Act*, RSO 1990, c O.1 (**OHS**), specifically under sections 27, 32 and 50;
- (h) a declaration that the Crown breached its obligations to the plaintiffs under the *Employment Standards Act, 2000*, SO 2000, c 41 (**ESA**), specifically under sections 46, 49, 56, and 74;
- (i) a declaration that the Crown breached its obligations to the plaintiffs under the *Ontarians with Disabilities Act, 2001*, SO 2001, c 32 (**ODA**), specifically under section 8;
- (j) a declaration that the Crown breached its obligations to the plaintiffs under the *Public Service of Ontario Act, 2006*, SO 2006, c 35, Sched A (**PSOA**), specifically under sections 34, 36, 42;
- (k) a declaration that the Crown breached its obligations to the plaintiffs under the *Freedom of Information and Protection of Privacy Act*, RSO 1990, c F.31 (**FIPPA**);

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- (l) a declaration that the Crown breached its obligations to the plaintiffs under the *Personal Health Information Protection Act, 2004*, SO 2004, c 3, Sched A (**PHIPA**);
- (m) a declaration that the Crown breached its obligations to the plaintiffs under their respective collective agreements;
- (n) a declaration that the Crown breached its obligations to the plaintiffs under the following OPS Programs, Policies and Directives (together, the **OPS Policies**):
  - (i) Workplace Harassment and Discrimination Prevention Policy (**WDHP**);
  - (ii) Respectful Workplace Policy (Policy to Support a Respectful Workplace and Prevent Workplace Harassment and Discrimination);
  - (iii) Workplace Violence Prevention Policy (**WVP**);
  - (iv) Public Service Commission Directives – Employment Policy;
  - (v) Disclosure of Wrongdoing Directive;
  - (vi) Disability Accommodation Policy;
  - (vii) Policy on Preventing Barriers in Employment;

- (viii) Public Service Commission Key Directive on HR Administration;  
and
- (ix) Human Resource Management Directive;
- (o) a declaration that the defendants are liable to the plaintiffs for the damages caused by breach of their constitutional, contractual, statutory, and common law duties;
- (p) a declaration that the defendants breached their contractual, constitutional, statutory, and common law obligations owed to the plaintiffs, and therefore the plaintiffs' spouse, children, grandchildren, parents, grandparents, brothers, or sisters (the **Family Members**) are entitled to damages under section 61 of the *Family Law Act*, RSO 1990, c.F.3;

***Damages***

- (q) twenty million dollars (\$20,000,000) in pecuniary and non-pecuniary damages for negligence, intrusion upon seclusion, harassment, assault, negligent investigation, intentional infliction of mental suffering, intentional infliction of nervous shock, breach of contract, breach of the *Charter*, and breach of the *Code*;
- (r) one million dollars (\$1,000,000) on behalf of the Family Members for loss of consortium, care, guidance, and companionship;

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- (s) five million dollars (\$5,000,000) for punitive, moral, and aggravated damages;
- (t) prejudgment interest under section 128 of the *Courts of Justice Act*, RSO 1990, c C.43 (**CJA**);
- (u) postjudgment interest under section 129 of the *CJA*;
- (v) the costs of this proceeding, plus all taxes;
- (w) the total costs, plus taxes, of any other proceedings, including but not limited to filing the plaintiffs' Applications under the *Code* and retention of legal representation and associated disbursements related to the plaintiffs asserting their rights under their respective collective agreements, OPS Policies, and grievances;

***Public Interest Remedies***

- (x) a "Truth and Conciliation" commission for Black, Indigenous and racialized employees in the OPS;
- (y) funding for WDHP and human rights complaints brought by OPS employees who experience anti-Black racism, racial discrimination, and racial harassment;
- (z) ongoing mandatory cultural competence and anti-Black racism training for all Crown employees, servants, agents, and representatives;

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- (aa) ongoing mandatory cultural competence, and anti-racism training for all unions with collective agreements with the Crown, and their employees, servants, agents, and representatives;
- (bb) an Ontario-wide anti-racism, racial diversity, and racial inclusion audit;
- (cc) an Ontario-wide anti-racism, diversity, and inclusion environmental scan of the Crown and its agencies, boards, and tribunals to be conducted annually, and the results made public; and
- (dd) such further and other relief as this court may deem just.

## **II. BACKGROUND**

2. In Schedule A to this statement of claim, the plaintiffs define certain terms of art used in this claim.

### **B. THE PLAINTIFFS**

3. Hentrose and Jean-Marie reside in the Greater Toronto Area. They are both Crown employees.

4. Hentrose is a Black female professional who started employment with the OPS (the Ontario Public Service) in or around 2004. Hentrose's most senior role was Team Lead, with responsibility for the finance and administration portfolio, Deputy Minister's Office, Ministry of Citizenship and Immigration (**MCI**). As a result of anti-Black racism, in 2015, Hentrose was demoted to a junior coordinator position. The ensuing mobbing, harassment, discrimination, hostility, and ongoing mistreatment that Hentrose was



subjected to by OPS Management and staff forced Hentrose out of the workplace.

Hentrose is a member of AMAPCEO.

5. Jean-Marie is a Black female professional who started employment with the OPS in 2002. Jean-Marie is currently employed as senior counsel with the Ministry of the Attorney General (**MAG**), Civil Remedies for Illicit Activities Office (**CRIA**), and a member of ALOC. In May 2016, Jean-Marie was suspended from CRIA after raising her experiences of anti-Black racism in the workplace, and to date remains displaced from the OPS.

## **C. THE DEFENDANTS**

### **1. CROWN**

6. The Crown has a workforce of approximately 68,000 employees, who work within ministries, agencies, and corporations, providing public service to Ontarians.

7. The Crown is subject to all liabilities in tort to which, if it were a person of full age and capacity, it would be subject: (a) regarding a tort committed by any of its servants or agents; and (b) regarding a breach of the duties that one owes to one's servants or agents by reason of being their employer.

8. The Crown's liability arises from the conduct (acts and omissions) and malfeasance of the Crown and individuals who were, at all material times, OPS employees, agents, servants, or representatives.

## **2. AMAPCEO**

9. AMAPCEO is a trade union, and the exclusive bargaining agent for administrative and professional Crown employees working for ministries, agencies, boards, and commissions in Ontario. AMAPCEO's headquarters is in Toronto.

10. AMAPCEO had and has the power to act as the representative of Hentrose for all aspects of her employment with the Crown, under the *PSOA* and the collective agreement between AMAPCEO and the Crown.

11. AMAPCEO is a necessary party to this action as it has failed to ensure the enforcement of the collective agreement, provisions, policies, and procedures of the WDHP, and labour and human rights legislation.

12. Bulmer is President of AMAPCEO.

## **3. ALOC**

13. ALOC is incorporated under the laws of Ontario. It represents all civil lawyers and articling students employed by the Crown. ALOC is in Toronto and has approximately 750 members.

14. ALOC had and has the power to act as the representative of Jean-Marie for all aspects of her employment with the Crown, under the *PSOA* regulations and the collective agreement between ALOC and the Crown.

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15. ALOC is a necessary party to this action as it has failed to ensure the enforcement of the collective agreement, policies and procedures of the WDHP and WVP, and human rights and labour legislation.

16. The duties and obligations of AMAPCEO and ALOC were and are to represent the interests of the plaintiffs for all aspects of their employment with the Crown. Yet AMAPCEO and ALOC failed to advance appropriately the complaints and grievances on behalf of the plaintiffs. The culture of systemic and institutional anti-Black racism in the OPS influenced AMAPCEO and ALOC so that they have been and are ineffective in protecting the wellbeing, safety, interests, and concerns of the plaintiffs.

17. AMAPCEO and ALOC have participated in the silencing of the plaintiff and have protected the Crown and their respective association members who have engaged in discriminatory and harassing conducts towards the plaintiffs, concealing anti-Black racism from scrutiny and condemnation.

18. AMAPCEO and ALOC are vicariously liable for the actions of their employees, servants, agents, and representatives.

### **III. RACIAL INEQUITIES, SYSTEMIC AND ANTI-BLACK RACISM IN CANADA**

19. Anti-Black racism in Canada can be traced back to the Transatlantic Slave Trade that began in Nova Scotia in the early 1600s. This period details a brutal history and experience of enslavement, racial segregation, and colonization of Black people of African descent, who were marked as targets for various forms of exploitation and violence. Black people were controlled and considered further from human beings, less

sensitive, more able to withstand pain, and less intelligent. It was a system of punishment and heightened surveillance. Embedded in historically hegemonic ideologies are perceptions that portray Black people as cheap and an expendable labour force, which perpetuate oppressive stereotypes and can also foster internalized racism that can be as destructive, if not more, than external forms of racial oppression.

20. While the exclusion of Black people was overt and standard practice in the sixteenth to eighteenth centuries, salient exclusionary practices in social, economic, and political spheres exist to date and continue to reinforce the historical oppression and marginalization of Black people in Canada. Canadian institutions have embedded policies and practices that reflect and reinforce the negative beliefs, attitudes, prejudices, stereotyping, and discrimination directed at people of African descent subjecting them to anti-Black racism. Racial oppression is experienced as a lack of opportunity, poor health and mental health outcomes, poor education outcomes, higher rates of precarious employment and unemployment, significant poverty, and overrepresentation in the criminal justice, mental health, and child welfare systems.

21. While anti-Black racism is not new to Canada, it is now obscured. Since the abolition of slavery in 1834, anti-Black racism in Canada has been continually reconfigured to adhere to the national myths of racial tolerance. Many Canadians are unaware that slavery and segregation existed here, long before Canada existed as a country. The obscuring of anti-Black racism from public view makes it harder to address and eliminate, and compounds the mental, physical, psychological, and financial harms suffered by Black people in Canada.

22. In 2016, the United Nations Working Group of Experts on People of African Descent (the **Working Group**) identified concerns with institutional racism in Canada, and pointed to Canada's history of enslavement, racial segregation, and marginalization as the roots of anti-Black racism in Canada. Among the several recommendations by the Working Group to combat systemic racism, it urged the government of Canada to move beyond mere understanding and research, and to develop concrete initiatives to eliminate anti-Black racism in Canada.

23. Racism is a public health emergency. But based on the actual and lived experiences of Black people, there is much skepticism about the commitment or ability of current institutions to address systemic and structural anti-Black racism in Canada. While it is important that policies and programs be developed and implemented in a sustained and effective manner, and that their impact be assessed with reference to the lived experiences and views of racialized people hurt by racism, courts must also have a role in addressing racism in Canada, if we are to realize substantive change. All three branches of government must spearhead the fight against and elimination of anti-Black racism within their defined spheres.

#### **IV. ANTI-BLACK RACISM ENTRENCHED IN THE OPS**

24. Anti-Black racism, and racism in general, along with white privilege and white supremacy, are pervasive and entrenched within the OPS, greatly affecting the personal and professional wellbeing of racialized employees.

25. Anti-Black racism, racism in general, and white privilege and white supremacy in the OPS reflect Canada's history of the enslavement of Black people, the forced

assimilation of Indigenous people, and colonization. It hurts the personal and professional wellbeing of racialized employees. The Crown knows internal workplace systems and processes, such as the WDHP, have been ineffective in addressing racism in the OPS:

- (a) in July 2015, AMAPCEO presented the Employer with a report entitled “Recommendations on the OPS WDHP Policy and Program”, which set out several recommendations, such as the need for more detailed and specialized WDHP understanding among managers, the need for greater transparency surrounding the WDHP investigation process and employees’ fear of reprisals from managers or coworkers upon filing a WDHP complaint, and raised concerns with the Employee Assistance Program lacking neutrality;
- (b) in November 2015, the Crown released the “OPS Anti-Racism Action Plan” (the **Action Plan**), which concluded:
  - (i) Aboriginal, Black, South Asian, and visible minority employees reported discrimination and harassment at rates higher than other OPS employees;
  - (ii) in the two years before the Action Plan, 22% of all Black OPS employees experienced discrimination in the workplace, higher than all other visible minority OPS employees;

- (iii) even though Black workers are 4% of Ontario labour force and 4% of OPS employees are Black, only 2% of senior management are Black; and
- (iv) there are systemic racism barriers in hiring, promotions, assignments, and compensation that prevent OPS employees from reaching their full potential.

26. In February 2016, the Ontario government created an Anti-Racism Directorate (**ARD**) to “address and prevent systemic racism in government policy, legislation, programs and services.”

27. The “Achieve Blue Survey”, conducted in or around 2016, revealed that racialized women at MAG’s Crown Law Office – Civil Office (**CLOC**) have experienced racial discrimination and racial harassment in the workplace. Non-racialized women did not perceive or register any issue with racism at CLOC. Racism at CLOC resulted in at least one racialized woman relocating to a different workplace.

28. In 2017, the Ontario government commissioned a “confidential” Workplace Report, which concluded that MAG’s entire Civil Law Division is a “toxic” work environment, where “constant fear and retribution” were prevalent. The report concluded that racialized employees were disfavoured by senior managers because of their race.

29. In March 2017, the Ontario government released a plan, entitled “A Better Way Forward: Ontario’s 3-Year Anti-Racism Strategic Plan” (the **Strategic Plan**), a “whole-

of-government” approach to identifying and addressing systemic racism and promoting racial harmony in Ontario. The Strategic Plan included the Anti-Black Racism Strategy initiative, which is aimed at addressing anti-Black racism and improving outcomes for Black people in Ontario.

30. In June 2017, the Ontario government passed the *Anti-Racism Act, 2017*, SO 2017, c 15, which required Ontario to maintain an anti-racism strategy, including initiatives to eliminate systemic racism and advance racial equality.

31. Further, the OPS’s internal systems and processes, including grievances, controlled by unions and Crown (not employees), have proven futile in addressing anti-Black racism:

- (a) the Ontario government has heard directly from Black employees, through various formats, including at the Black Ontario Public Service Employees Network (**BOPSers**) Annual Town Hall Meetings (to date, there have been around 13 meetings), that anti-Black racism is prevalent in the OPS, with damaging consequences for employees;
- (b) in June 2012, BOPSers made a presentation to the Deputy Minister, Government Services, and Associate Secretary of Cabinet, entitled “Addressing Anti-Black Discrimination in the OPS”—the presentation demonstrated that 70 percent of Black employees who reported their experiences of discrimination in the OPS reported no satisfaction with the outcome and that only 13 percent reported a satisfactory outcome;



- (c) despite the creation of ARD, to “address and prevent systemic racism in government policy, legislation, programs and services”, several Black women were suspended or displaced from the OPS after raising their experiences of anti-Black racism, racial discrimination, and racial harassment;
- (d) in 2016, the Ontario government hosted ten ARD public community meetings across the province to hear “ideas on addressing systemic racism” and heard from several individuals that anti-Black racism is entrenched in the OPS;
- (e) in December 2017, the Ontario government released the Anti-Black Racism Strategy, which is aimed at eliminating disparity of outcomes for Black Ontarians by 2024 through a five-part framework; and
- (f) in December and January 2018, the OPS Management, including the Secretary of Cabinet, heard directly from several OPS employees that anti-Black racism is prevalent in the OPS, diminishing their professional and personal wellbeing.

32. Despite the historical and ongoing outreach efforts of Black and racialized employees to OPS Senior Management, many research reports and surveys, townhall meetings, investigations, grievances, human rights applications, and the existence of various internal and external systems and processes, Black and racialized employees, particularly Black women, continue to be subjected to individual, systemic, and institutional racial discrimination and racial harassment in the OPS.

## **V. PLAINTIFFS' EXPERIENCES OF DISCRIMINATION AND HARASSMENT**

### **A. HENTROSE NELSON**

33. In 2004, Hentrose started employment with the Crown as a contract employee. She immediately earned the respect and admiration of colleagues as her penchant for hard work and commitment was unequivocal.

34. Notwithstanding, Hentrose was subjected to several acts of racism, anti-Black racism, racial harassment and discrimination, highly negative, abusive, and traumatic experiences, and improper conduct beyond all bounds of decency by employees, agents, servants, and representatives of the Crown.

35. In 2005, a white woman, who managed Hentrose's work, told Hentrose she "feared" Black people. This manager routinely asked and expected Hentrose to undertake "office housework". These requests made Hentrose feel uncomfortable. For example, repeatedly, this manager insisted that Hentrose and other racialized employees transport boxes outside the office, using a metal cart. Hentrose and her colleagues found these requests demeaning and requested transportation services to carry out the tasks. Their requests were denied by this manager.

36. The ongoing denials to Hentrose, after she made reasonable and repeated requests for resources to assist in the completion of assigned work, perpetuated the trope of "the uppity Black woman." The Crown's actions made clear to Hentrose that she, a woman of color, was not being heard. All the same, she continued to advocate for equitable treatment in the workplace. The Crown ended Hentrose's contract.

37. Subsequently, Hentrose was hired on a permanent basis at MCI. Almost immediately, she was mistaken for the janitorial staff, which perpetuated the stereotype of Black women as “mammy figures”.

38. Despite Hentrose’s calm disposition and strong work ethic, some of her colleagues treated her derisively. They often complained to OPS Management about how they perceived Hentrose should be completing her assigned work or what they perceived to be incorrect actions she undertook. Repeatedly, Hentrose had to prove to OPS Management that she was intelligent enough to complete the tasks assigned.

39. In 2008, Hentrose competed and secured the position of Team Lead, Finance and Administration, Communications Branch, MCI. This position reported to the Director. Hentrose successfully executed in this role, where she also enjoyed excellent rapport with OPS Management, colleagues, stakeholders, and clients.

40. In this senior role, Hentrose was tasked, among other things, with the management of the branch’s budget, results-based planning activities, financial reporting on behalf of MCI to the Auditor General, and the supervision of three administrative staff. Hentrose was the only Black employee in an administrative role and the only Black female Team Lead in the Branch.

41. Hentrose readily accepted opportunities in the office of the Deputy Minister and throughout MCI, whether representing OPS Management on an Executive Assistant Committee in the Deputy Minister’s Office or volunteering on multiple fundraising causes as a stellar campaigner for several charities the Crown supported. Hentrose could be relied on to deliver and fully be committed to her work. As Hentrose thrived in

the workplace, she considered these experiences as progressive next steps in her development towards OPS Management. Her career path was moving in a direction aligned with her plans.

42. But shortly after Hentrose's appointment in the Team Lead role, her work environment became increasingly hostile. Hentrose's colleagues often appeared perplexed, that she, an immigrant, did not have an accent when speaking. They often remarked "your English is really good". Further, almost daily, her colleagues made unwarranted and baseless complaints to OPS Management questioning her abilities and fit, perpetuating the stereotype that Black women are "unintelligent". Despite these discriminatory and harassing actions, OPS Management took little or no action in deescalating the racism Hentrose was subjected to.

43. In July 2011, Deborah Swain (**Swain**) joined MCI as Communications Director. Immediately, Swain began to control and micromanage Hentrose's time and performance. Swain subjected Hentrose to harassment, verbal insults, threats of dismissal, and other insensitive and dehumanizing acts:

- (a) Swain visibly loathed Hentrose and made this clear to staff—within the first five days of her joining MCI, Swain repeatedly threatened to transition Hentrose's role;
- (b) Swain immediately acted on her threats of "transitioning" Hentrose by assigning her "office housework", including cleaning out drawers and unwinding phone cords, while a white staff, assigned to support Swain, was excluded from such menial, humiliating and degrading tasks;

- (c) when Hentrose tried to speak with Swain about these discriminatory and harassing actions, Swain accused Hentrose of “creating drama” and told Hentrose to “stand down”—Swain’s actions again perpetuated the stereotypes that Black women are “uppity” and “should know their place”;
- (d) Swain complained to OPS Management about Hentrose and started a false narrative that Hentrose was “angry” and presented Hentrose as being inept;
- (e) Swain continued to harass and provoke Hentrose, almost daily—when Hentrose refused to engage her, she became enraged and screamed at Hentrose, “I can tell you to do anything, and you have to do it”, subjecting Hentrose to humiliation and degradation in the workplace;
- (f) Swain employed other tactics—she had daily meetings designed to berate and criticize Hentrose and, when Swain’s attempts to evoke an “angry” response from Hentrose failed, she accused Hentrose of not being “a team player” (implying that Hentrose could only be a team player if she did not speak up about the harassment and abuse, she was suffering); and
- (g) when Hentrose pointed out that her work assignments were discriminatory, demeaning and not what was being assigned to non-Black staff, Hentrose faced resistance and isolation from some of her colleagues and Swain, and Hentrose was made to feel unwelcome at work.

44. The harassment and discrimination Hentrose experienced at the hands of Swain, had a devastating effect on her physical and psychological wellbeing, causing the onset of horrifying nightmares and extreme and ongoing mental distress. Hentrose pleaded with staff and OPS Management, however her colleagues were “fearful” to get involved.

45. Rather than intervene, Communications Branch management largely ignored Swain’s actions. Yet Assistant Director Mary Dowding-Pare (**Dowding-Pare**) was relentless in getting involved. Dowding-Pare’s abusive, corrosive, discriminatory, and harassing behaviours were particularly damaging to Hentrose’s health and safety in the workplace.

46. Dowding-Pare did whatever was necessary to ensure Swain’s happiness, even at Hentrose’s peril or breaking the law. For example, when Dowding-Pare assigned a white staff to empty and clean Swain’s office drawers while Swain was on vacation, the white staff was outraged and refused the instructions. Rather than redirect the white staff, Dowding-Pare demanded that Hentrose complete the task, while hovering at Hentrose’s workstation. Hentrose refused and pointed out Dowding-Pare’s racist behaviour. Dowding-Pare ignored and slighted Hentrose for days.

47. When Hentrose could no longer cope with Dowding-Pare’s or Swain’s discriminatory behaviours, she alerted the Crown about her poisoned and hostile work environment. Her concerns were not taken seriously. Hentrose was advised by human resources to consider taking a “stress leave”.

48. With no substantive action from the Crown, and the continued persecution at the hands of Swain, Hentrose was forced to file a WDHP complaint. Hentrose was

approximately three months pregnant. The Crown knew how susceptible and vulnerable Hentrose was to the emotional and mental distress inflicted on her by Swain's particularly improper conduct.

49. After human resources apprised Swain about Hentrose's WDHP complaint, Swain's discriminatory and hurtful actions towards Hentrose escalated. Immediately, she embarked on a campaign aimed at intentional infliction of pain and suffering against Hentrose by:

- (a) falsely accusing Hentrose of "twisting" things;
- (b) taunting Hentrose that she was "documenting" Hentrose's actions;
- (c) removing essential duties from Hentrose's job function without explanation, implying Hentrose was inadequate and not intelligent enough to complete her assigned tasks;
- (d) sabotaging Hentrose's work by shifting timelines and then blaming Hentrose for not meeting "deadlines";
- (e) setting Hentrose up to fail;
- (f) eroding Hentrose's workplace value and brand, and destroying her influence within the organization; and
- (g) deliberately orchestrating and hindering Hentrose's promotional opportunities.

50. Despite Hentrose's ongoing pleadings for help, the Crown took no action to alleviate the persecution and suffering Hentrose was experiencing at the hands of Swain. Swain remained in a position of authority over Hentrose.

51. After the Crown failed to act, Hentrose contacted AMAPCEO about the harassment and discrimination she was experiencing. Eventually, the Crown conducted an internal investigation, which concluded that Swain had engaged in an "escalating pattern of harassing behaviour" but refused to find that Hentrose was discriminated against or harassed.

52. After working in a hostile work environment for some time, Hentrose became critically ill in October 2011. She was around six months pregnant. Because of the work-induced stress, anti-Black racism, racial harassment, and racial discrimination Hentrose's baby was delivered extremely premature, weighing only 750 grams.

53. During her illness, the Crown denied Hentrose access to sick leave benefits and refused to accommodate her pregnancy and childbirth. The Crown also dehumanized Hentrose, and forced her to rely on Employment Insurance during this critical time and as her family grappled with the survival of their premature baby, who was hospitalized for several months.

54. The shock and trauma of the Crown's actions and the resulting psychophysiological impact on Hentrose was devastating. In October 2012, she filed an Application under the *Code*.



55. In April 2015, Hentrose returned to the workplace and experienced discriminatory and retaliatory events. Hentrose was forced to return to the same work environment, in a demoted junior coordinator position, now reporting to Dowding-Pare, who reported to Swain.

56. Beginning in April 2015, Hentrose advised Deputy Minister Helen Angus (**Angus**) about the racism, discrimination, and harassment she was being subjected to by the Crown's employees, servants, agents, and representatives. Hentrose was reassigned to report to Jack Kado (**Kado**), Manager, Issues and Media Relations. But Hentrose was abruptly, and without explanation, reassigned to Dowding-Pare.

57. In or around June 2015, Hentrose was contacted by human resources and advised that Liborio Campisi (**Campisi**), Director, Human Resources, had hired a mediator to "restore" the workplace. On at least two occasions, Cathy Luna (**Luna**), Human Resources Business Advisor, contacted and spoke with Hentrose about expectations in the mediation process. Despite assurances and commitments from Luna, including upholding confidentiality, Dowding-Pare shared specific information (only Hentrose and Luna discussed) during a one-and-one meeting.

58. Swain also engaged the services of mediators of her choice to arbitrate in this process, despite being a party. Hentrose became sceptical of the process, but proceeded in good faith. Luna coordinated two mediation meetings between Hentrose and the mediator and confirmed these by email to Hentrose. Following Luna's confirmation email, the mediator hired by the Crown contacted Hentrose and provided a

copy of an agreement to mediate by email. Hentrose was advised that Swain also received a copy of the agreement to mediate.

59. Campisi, Luna, and the Crown's employees, servants, agents, and representatives conspired to deny Hentrose access to her legal rights. Campisi breached an agreement to mediate on behalf of the Crown, then commenced a false narrative that he was unaware of the agreement to mediate. Campisi advised Hentrose the crown was merely facilitating a forum for Swain and Hentrose to address "differences". Luna ignored Hentrose's calls and was hostile when Hentrose inquired about the breach.

60. Despite Hentrose alerting Angus of her ongoing mistreatment, blatant acts of wrongdoing, and the abuse of process by Luna, Campisi, and other senior managers, Angus never provided Hentrose with any assurance or indication about the wrongdoings or abuse of process. Angus's inactions exposed Hentrose to relentless abuse, racial harassment, and discrimination by the Crown's employees, servants, agents, and representatives. Angus did not try to protect Hentrose's interest as required under the *PSOA*.

61. Dowding-Pare, Swain and the white staff conspired and withheld from Hentrose vital resources and information Hentrose required to complete her job, ignored requests for information or meetings, and gave incorrect and inaccurate information to others. Dowding-Pare often warned Hentrose that she "better be ready". Further, to harm Hentrose's reputation and career, Dowding-Pare, Swain and human resources staff demonstrated unwarranted distrust of Hentrose and spread false statements about

Hentrose, which caused Hentrose great mental distress, loss of reputation, and physical, psychological and financial harm.

62. In 2015, when Angus did a meet-and-greet with MCI Communications staff, Angus approached her workstation and saw Hentrose's name plate but looked right at and through Hentrose without emotion or courtesy. Angus did not greet her like other staff and was as "cold as ice". Hentrose felt in that moment her fight against racial harassment and racial discrimination in the workplace would be twice as hard, as OPS Management did not care about the demeaning, unlawful and unwarranted treatment, that she, a Black and racialized employee, was subjected to at the hands of white employees in senior management. Hentrose was disheartened. The WDHP department was deceptive in addressing the anti-Black racism and discrimination Hentrose was exposed to in the workplace. The Crown took no substantive action and subjected Hentrose to a poisoned and toxic work environment:

- (a) both Dowding-Pare and Swain exhibited a corrosive and toxic mannerism towards Hentrose in the assignment of tasks;
- (b) although Swain was not allowed to interact with Hentrose, Swain still ordered and directed Hentrose's work;
- (c) several times Dowding-Pare advised Hentrose "you better get ready", which made Hentrose feel threatened, distraught and fearful for her safety and wellbeing;

- (d) Dowding-Pare assigned Hentrose no meaningful work—instead, she relegated Hentrose to ordering taxi chits, updating phone lists, monitoring print supplies, and setting up meetings, while a white woman, junior to Hentrose, assumed more meaningful responsibilities assigned before to Hentrose and tried assigning work to Hentrose;
- (e) the actions of both Dowding-Pare and Swain were intended to pressure Hentrose to quit, because Hentrose had filed a WDHP complaint, a grievance under the collective agreement, and an Application under the *Code*;
- (f) several times Hentrose asked Dowding-Pare for clarification about the ambiguity of her role and the junior white employee's role, but she was ignored—eventually, Dowding-Pare advised Hentrose that Swain preferred that the white employee undertake “high-priority tasks” even though those duties were Hentrose's responsibility;
- (g) as punishment for speaking out, Dowding-Pare directed Hentrose to “the cage” to complete “office housework” (e.g., clean a dirty basement storage room used to store boxes and unwanted supplies)—Hentrose refused, saying the work was demeaning and dehumanizing and the stereotype that Black women should occupy lower positions, are disposable, and are to be abused;

- (h) the cage had not been cleaned by any staff in over four years but Dowding-Pare thought it would be a good “project” for Hentrose to “transition” back to work;
- (i) Swain often complained to Dowding-Pare that Hentrose was “not doing a good job” in submitting reports on time when, in fact, both women repeatedly moved deadlines to make Hentrose or complained when Hentrose submitted reports early;
- (j) Swain and other OPS Management excessively abused their authority, engaged in practices of gross mismanagement and wrongdoings, and coerced Hentrose to participate;
- (k) Hentrose was pressured to cover-up improper expenditure by OPS Management;
- (l) Dowding-Pare and Swain often ignored, took no action, and minimized Hentrose’s efforts to carry out her work—Hentrose was mocked, criticized, penalized, ostracized, and denied opportunities to reach her full potential in the workplace, after she identified gross mismanagement and wrongdoings, and made recommendations to OPS Management;
- (m) Dowding-Pare advised Hentrose that Angus’s office provided instructions to sole source writing services—when Hentrose asked for supporting documentation so could proceed, Hentrose received an email from Swain, advising her to “stand down”; and

- (n) Dowding-Pare contacted Hentrose at home and intimidated her to falsify documents in breach of the Crown's framework for financial delegation of authority and other policies—when Hentrose refused, fearing the wrongdoing would be used as grounds to terminate her employment, Dowding-Pare abused and threatened her.

63. After Hentrose filed a second WDHP complaint with the Crown, Swain and Dowding-Pare were found to have reprised Hentrose after she complained and filed an Application under the *Code*. From that point, both women, along with some of Hentrose's colleagues, made her life a "living hell". For example, when Hentrose required accommodation in the workplace, she was mocked and deprived of obligatory accommodation by Dowding-Pare.

64. Rather than remedying the discrimination Hentrose suffered, Swain and Dowding-Pare continued their micro-aggressions. For example, both women withheld Hentrose from professional development and training and destroyed an ergonomic workstation that Hentrose used to accommodate her disability.

65. In a deliberate and orchestrated scheme and to penalize Hentrose, Swain created a new position of Executive Assistant. The responsibilities of the position mirrored Hentrose's prior position of Team Lead, Finance and Administration, that Hentrose occupied before filing a WDHP complaint, grievance, and Application under the *Code*.

66. In March 2016, Hentrose was verbally assaulted and harassed by Dowding-Pare. Hentrose repeatedly asked Dowding-Pare to stop harassing her. The entire incident

caused Hentrose considerable emotional distress as she continued to be the target of anti-Black racism, racial harassment, and racial discrimination. Hentrose immediately alerted OPS Management.

67. Following an unusually long and unexplainable WDHP review of Hentrose's complaint, the Crown advised Hentrose in late 2016 it would be hiring an external investigator to review the anti-Black racism, racial harassment, and racial discrimination she was subjected to in the workplace.

68. Noting several breaches and discrepancies in the WDHP's internal review process, Hentrose made reasonable efforts to speak with the WDHP department. With no success, Hentrose wrote to Steve Orsini (**Orsini**), Secretary of the Cabinet and Head of the OPS, repeatedly. Orsini took no action to remedy the discrepancy and the WDHP process continued. Again, Hentrose was ignored and "silenced".

69. In March 2017, the Crown wrote to Hentrose about her participation in the investigation an external investigation. Hentrose responded to the WDHP department, seeking a response to her requests to the Cabinet Office and the WDHP department in 2016. Again, Hentrose was ignored.

70. The Crown reassigned Hentrose's WDHP file to another WDHP Advisor. Hentrose found the WDHP Advisor's mannerism was curt and offensive when she inquired about the response to her prior requests made to Orsini and the WDHP department. The WDHP Advisor threatened to proceed with the investigation and provide Hentrose with a report because "you [Hentrose] are stalling the process".

71. To date, over 2½ years later, Hentrose has not received a response from Orsini or the WDHP department about concerns Hentrose raised about the policy breach. Because of the Crown's failure to act, Hentrose was forced out of participating in a breached WDHP proceeding.

72. The Crown's employees, servants, agents, and representatives conspired to withhold information from Hentrose, denied her access to vital information and a fair investigative process, thereby prejudicing Hentrose and preventing her timely access to procedural and substantive justice. As a result, Hentrose was forced to retain a lawyer, resulting in her experiencing financial harm.

73. During Hentrose's employment, the Crown's employees, servants, agents, and representatives have been callous in respecting Hentrose's requests for privacy and repeatedly shared her personal information with third parties without her consent. In June 2016, because of the deliberate and ongoing psychological torment, anti-Black racism, racial harassment, and racial discrimination that Hentrose was subjected to, she was forced to take a leave of absence. During her absence, the Crown continued to harass and discriminate against her:

- (a) when Hentrose was medically cleared by her doctor to return to work, the Crown refused, and arbitrarily suspended her from January to November 2017, placing her on "absence" from work;
- (b) in November 2017, the Crown demanded that Hentrose provide medical evidence supporting her "absence" after they arbitrarily suspended her;



- (c) over the next several months, the Crown threatened Hentrose with termination and harassed her by phone, email, and letters—Hentrose continued to advocate for a workplace free from anti-Black racism, racial discrimination, and racial harassment; and
- (d) based on the Crown's conduct during her ongoing and unexplained absence from the workplace, Hentrose felt even more ostracized and alone.

74. The Crown has shown wanton disregard for Hentrose's wellbeing, dehumanized her, breached her privacy, and has acted in bad faith in addressing its breach of her *Charter* and human rights.

75. After further threats, including loss of income, in March 2018, Alexander Bezinna (**Bezinna**), Deputy Minister, contacted Hentrose after Hentrose raised concerns about her ongoing persecution while both Swain and Dowding-Pare remained in the workplace and in positions of authority. Bezinna advised Hentrose that Steven Davidson, Associate Secretary of the Cabinet, had contacted him to contact Hentrose to talk about her "situation". Bezinna advised Hentrose he would be her sole contact on behalf of the Crown, and he would advise human resources not to "bother" Hentrose further.

76. Later in March 2018, Bezinna requested to meet with Hentrose. Both Hentrose and Jean-Marie met with Bezinna. He advised Hentrose he had reviewed her file and wanted to discuss with her the misconduct she had been subjected to in the workplace.

77. Bezinna advised Hentrose and Jean-Marie he would be meeting with Orsini following their meeting and invited them both to suggest any requests they wanted him to raise with Orsini. Bezinna made certain and specific commitments, on behalf of the Crown, to Hentrose and Jean-Marie, which have not been satisfied. In July 2018, Bezinna retired.

78. Repeatedly, the Crown distributed Hentrose's personal health information without her consent. Despite Hentrose's objections, the Crown continued sharing Hentrose's personal health information at will. In April 2018, the Crown's employees, servants, agents, and representatives indiscriminately and without Hentrose's consent shared her personal information to third parties.

79. In June 2018, Hentrose was alerted by the Crown that the external investigations into her second WDHP complaint were completed (over 2½ years after the Crown was alerted about her experiences of anti-Black racism in the workplace, and over 7 years since she filed her first WDHP complaint, detailing her poisoned work environment, and being subjected to racial discrimination and racial harassment by Swain).

80. Hentrose then received a vexatious letter from Maureen Buckley (**Buckley**), Chief Administrator Officer, MCI, in June 2018, falsely accusing Hentrose of refusing to participate in the external investigative process following the filing of Hentrose's second WDHP complaint with the Crown. Buckley's action is a perpetuation of the false narrative that the Crown has relied on in "silencing" Hentrose. In response, Hentrose made further requests to the Crown about its breach of the WDHP. The Crown has ignored Hentrose's requests for information about the WDHP breaches.

81. During the summer of 2018, as Hentrose prepared to self-represent at the Human Rights Tribunal of Ontario, she contacted colleagues who had witnessed the ongoing mistreatment, harassment, and discrimination she was subjected to in the workplace and who had supported her in advancing her case for equitable and fair treatment. Her colleagues were now indifferent and advised Hentrose they have already been interviewed by an external investigator hired by the Crown and could no longer provide her with witness statements in her human rights case.

82. In August 2018, Hentrose provided Orsini with a medical update after she continued to be subjected to anti-Black racism, racial discrimination, and racial harassment by the Crown's employees, servants, agents, and representatives. For the next several weeks, the Crown continued its callous, relentless, and sustained actions. For example, the Crown provided Hentrose with multiple and duplicate non-urgent information by email and courier. Further, an agent of the Crown harassed Hentrose at her home: he blocked her driveway, repeatedly banged on her front door, and refused to leave her property for at least 20 minutes. Hentrose and her family have become increasingly afraid for their welfare.

83. Despite Hentrose's pleadings with Orsini, the Crown's employees, servants, agents, and representatives have continued to harass Hentrose, by personally delivering to her home non-urgent communication that could otherwise be mailed to Hentrose.

84. In September 2018, despite Hentrose's specific and reasonable requests to Buckley to stop contacting her, Buckley ignored Hentrose and continued to call and to

write Hentrose. Buckley sent correspondence by courier to Hentrose, advising Hentrose she had been cut off payroll. Hentrose alerted the Crown and AMAPCEO to address the baseless, unlawful, discriminatory and harassing actions, which led to her constructive dismissal. Buckley has continued to harass Hentrose with unwarranted and unwelcomed behaviour.

85. Throughout Hentrose's dehumanizing experiences, justice has proved to be a privilege that has eluded her, as a Black woman. Hentrose continues to experience anti-Black racism, racial harassment, and racial discrimination, perpetuated and sullied by a broken human rights system.

86. Hentrose identified that, in almost all circumstances after painfully sharing her lived experiences of racial harassment, racial discrimination and anti-Black racism in the OPS, there is a common theme with most organizations she has consulted about her human rights matter—she has had considerable unusual and unexplained delays, and has been ignored or met with incivility by the Crown's employees, servants, agents, and representatives.

87. Hentrose and Jean-Marie consulted with the Minister responsible for the ARD, in achieved a moratorium on the firing and suspension of racialized and Black OPS employees.

88. The defendants have continually failed Hentrose, despite her efforts to address the anti-Black racism, racial discrimination, and racial harassment she has been subjected to in the workplace.

89. Further, the Defendant's unlawful actions and wanton disregard for Hentrose's dignity, wellbeing, psychological health, and safety in the workplace, as a Black woman, has caused her and her family irreparable harm

## **B. JEAN-MARIE**

### **1. Background**

90. Jean-Marie is an exceptional and diligent lawyer, with a successful career. She has consistently treated her colleagues with respect, generosity, and compassion.

91. Even so, as a Black woman, Jean-Marie has experienced anti-Black racism, misogynoir, racial discrimination, and racial harassment since she began her career with the OPS in 2002.

92. During her career, Jean-Marie has been subjected to anti-Black racism, misogynoir, macro-and microaggression, surveillance, racial profiling, criminalization, excessive monitoring, marginalization, isolation, racial stereotyping and tropes, policing, segregation, psychological oppression, racial discrimination, racial harassment, malignant and purposeful lies about her behavior and character, assaults, violence, threats, displacement, and wrongful suspensions and termination.

93. Jean-Marie's efforts to address her highly negative, abusive, and traumatic experiences in the OPS were met with ambivalence, denial, condemnation, contempt, hostility, menace, obfuscation, threats, marginalization, isolation, retaliation, reprisal, and discipline from the defendants. This conduct has resulted in her being displaced as Crown counsel across four different ministries.

94. In May 2016, after raising with OPS Management her more recent experiences of racial discrimination and racial harassment in the workplace, Jean-Marie was abruptly, and without notice, suspended from the OPS, under the *PSOA* discipline and termination provisions, in retaliation. This was a shocking, humiliating, and traumatic experience for Jean-Marie and her family.

95. The defendants' conduct, both acts and omissions, have caused irreparable personal and professional harm to Jean-Marie.

## **2. Family Responsibility Office (FRO)**

96. In 2002, Jean-Marie was employed as an Articling Student at the FRO.

97. Jean-Marie immediately experienced anti-Black racism and misogyny.

98. Jean-Marie (and FRO litigation counsel) was assisted on her court files by litigation coordinators, whose job description included obtaining hard copy of FRO files required for court proceedings from storage and including updated FRO enforcement documents and reports in these files for her attendance at court.

99. In or around 2008, Jean-Marie learned that her litigation coordinator, Carol Hagen (**Hagen**), a white woman, was spreading malicious lies about her, while at the same time relying on Jean-Marie for venting her personal and workplace gripes and emotional support.

100. Hagen's conduct harmed Jean-Marie's personal and professional wellbeing. While Hagen knew the negative impact her conduct was having on Jean-Marie's

wellbeing, she never apologized to Jean-Marie for her actions. Instead, Hagen tried to absolve herself of any personal responsibility for her misconduct by claiming that her treatment of Jean-Marie stemmed from issues surrounding Hagen's own personal life, such as menopause or her parents' death.

101. When Jean-Marie approached her then Legal Director, Barbara Nawrocki (**Nawrocki**), about Hagen's conduct and its deleterious effect on Jean-Marie's wellbeing, Nawrocki responded with ambivalence and refused to do anything to protect Jean-Marie or address Hagen's misconduct.

102. To alleviate some of the harm that Hagen was inflicting on her, Jean-Marie asked that a different litigation coordinator be assigned to the court region under her and Hagen's carriage. OPS Management refused to accommodate Jean-Marie's request.

103. Jean-Marie also asked to have a neutral public space in a hallway (where FRO files were already being kept) for her and Hagen to exchange files, eliminating the need for either of them to attend at each other's confined workspace. OPS Management refused to accommodate Jean-Marie's request, citing that Hagen wanted to continue to work directly with Jean-Marie.

104. When Jean-Marie contacted ALOC for assistance, the then-President, Deanne Exner (**Exner**), expressed concern about the racial abuse Jean-Marie was experiencing in the workplace. Exner said that she would "informally" contact OPS Management, as in her experience this was the best approach. But when Jean-Marie next spoke with Exner, she appeared visibly upset and angry. Exner advised Jean-Marie that OPS

Management had threatened Exner about her assisting Jean-Marie. Exner and ALOC refused to provide Jean-Marie with any assistance, support, or advocacy.

105. When a new Legal Director, Donna Holmes (**Holmes**), was hired at FRO, Jean-Marie informed Holmes about Jean-Marie's experiences of racism in the office, and Hagen's conduct. Holmes responded with open hostility towards Jean-Marie, and publicly displayed support for Hagen (e.g., hugging Hagen in the FRO hallways, acting as a confidant to Hagen, and socializing and drinking with Hagen).

106. FRO staff also demonstrated support for Hagen in the face of Jean-Marie's complaints:

- (a) To support Hagen and to undermine Jean-Marie's relationship with the courts and judges, a litigation counsel or FRO representative deliberately attended at of one of the courts under Hagen's and Jean-Marie's carriage and placed in the court's FRO Enforcement File a copy of one of Jean-Marie's Panel (Court) Results Report, which was solicitor client privileged. The Report provided information to Jean-Marie's client (FRO) about a problematic position taken by the judge. Jean-Marie was unaware this had happened until the judge angrily brought it to her attention. This was an upsetting situation for both the judge and Jean-Marie.
- (b) Office support staff refused to follow instructions Jean-Marie provided to them, and denied having received her instructions.



- (c) Counsel and support staff treated Jean-Marie with animus and blamed her for a panel (*per diem*) lawyer receiving reduced hours in the courts Jean-Marie was attending.
- (d) Counsel and articling students isolated Jean-Marie and refused to associate with her whether in the office or at external events.

107. When Jean-Marie again went to ALOC for support and representation about the anti-Black racism and misogynoir she was experiencing at FRO, the then-President, Nick Hedley (**Hedley**), and ALOC representatives subjected Jean-Marie to further racial discrimination and harassment, including denigration, hostility, micro-aggressions, mocking, derision, dismissiveness, and threats, and unwarrantedly challenged her credibility. Hedley refused to bring a grievance on Jean-Marie's behalf. Hedley dismissed Jean-Marie complaint that she was the subject of racial discrimination in the workplace.

108. One day, after Jean-Marie had met with Holmes about Hagen's and the staffs' misconduct, Jean-Marie went to speak with a white male senior counsel in his office. While having a private and quiet conversation, Holmes interrupted their conversation and aggressively ordered and removed Jean-Marie from the colleague's office. Holmes then ordered Jean-Marie to leave the workplace and placed her on a discriminatory forced and protracted leave of absence, covering about two years.

109. OPS Management and ALOC asserted that Jean-Marie could not return to FRO unless she agreed to work directly with Hagen.

110. OPS Management and ALOC acknowledged that Jean-Marie was subjected to a poisoned and toxic work environment at FRO. But they insisted that as Hagen wanted to continue to work directly with Jean-Marie, and as it was her right to do so, Jean-Marie had to submit a letter from a psychiatrist setting out that Hagen's conduct was harming her before OPS Management would take any steps to address the racial discrimination and racial harassment Jean-Marie was experiencing.

111. During Jean-Marie's meetings with ALOC's employees, agents, servants, or representatives, they threatened Jean-Marie with loss of her job, income, vehicle, and home and subjected Jean-Marie to harrowing and demeaning assertions, such as "a train is coming to hit you in the head, and you don't see it."

112. When Jean-Marie sought ALOC's assistance about FRO counsel, Deanne Nixon (**Nixon**), who had contacted human resources, pretending to have Jean-Marie's consent to do so, and obtained personal information about her, ALOC and Hedley refused to do anything to address this matter. Hedley protected Nixon, without her even having to request ALOC's assistance. Hedley said to Jean-Marie that even had Nixon murdered another member, ALOC would not intervene on behalf of the aggrieved member.

113. Throughout these events, the Crown, OPS Management, and ALOC were disparaging of Jean-Marie, and consistently treated her with animus, hostility, contempt, and callousness.

### 3. Ministry of Community and Social Services and Ministry of Labour

114. While Jean-Marie was barred from working at FRO, she was given intermittent short-term employment at the Ministry of Community and Social Services (**MCSS**) and the Ministry of Labour (**MOL**).

115. While at MCSS and MOL, Jean-Marie was targeted because of having raised her experiences of anti-Black racism at FRO and subjected to racial discrimination and racial harassment. Abuse by staff and OPS Management included: hostility, isolation, marginalization, targeting, belittling, infantilizing, policing, profiling, invasion of privacy, barging into her office, interrupting her conversations, undermining, the creation of false narratives or lies about her, and sabotaging and punishing staff who associated with Jean-Marie (e.g. forbidding staff who had taken the stairs during lunch and breaks, from doing so with Jean-Marie, getting a support staff to pretend that Jean-Marie was harming her).

116. Jean-Marie filed an Application under the *Code* against FRO staff and OPS Management about her experiences of racial discrimination and racial harassment at FRO, naming in the title of proceedings individuals who had engaged in acts of anti-Black racism against her. The Crown's response was to protect staff and OPS Management not Jean-Marie. OPS Management moved to have the named individuals removed from the title of proceeding. Jean-Marie received no support from ALOC or OPS Management. They were willing to assist employees Jean-Marie had said had engaged in discriminatory and harassing conduct towards her.

117. Jean-Marie's experience at the Human Rights Tribunal of Ontario was highly negative. The adjudicator was hostile and antagonistic towards Jean-Marie. She did not have an appreciation, sensitivity, or knowledge about anti-Black racism.

118. Years later, Jean-Marie learned that other OPS Black female employees had also experienced anti-Black racism in the OPS during the same period Jean-Marie was at FRO. Notably, during meetings with ALOC and Crown's counsel, they kept hidden from Jean-Marie that other Black women and BOPSers had raised with OPS Management, including the Secretary of the Cabinet, the damaging issue of anti-Black racism in the OPS.

119. Because of the abuse and discrimination Jean-Marie was subjected to by ALOC and its counsel about her experiences of anti-Black racism at FRO, their lack of advocacy on her behalf, and their refusal to bring a grievance on her behalf, Jean-Marie did not feel comfortable or safe in bringing these issues to the attention of ALOC. She was precluded from the support and access to justice available to her non-Black colleagues through the grievance process.

#### **4. Civil Remedies for Illicit Activities Office (CRIA)**

##### **(a) Overview**

120. In the fall of 2011, Jean-Marie was placed by OPS Management at CRIA. Jean-Marie remained a full-time equivalent (employee) at FRO.

121. Throughout Jean-Marie's employment at CRIA, she experienced anti-Black racism, in its many and ugly manifestations.

122. Invariably, when Jean-Marie went to OPS Management seeking protection, asking that OPS Management abide by its own workplace programs, policies, processes, and directives, and human rights and labour legislation, she was unsupported and met with complacency, anger, denial, derision, and menace.

123. OPS Management deliberately participated in acts of racial discrimination and racial harassment against Jean-Marie, and has been purposeful, willful and ardent in protecting OPS staff and OPS Management who have engaged in misconduct towards Jean-Marie.

124. In 2016, after complaining many times that she was being racially harassed and racially discriminated against, OPS Management refused to address Jean-Marie's concerns. Instead, OPS Management engaged in reprisal against Jean-Marie, by bringing a management-initiated WDHP counter-complaint and a WVP Complaint against Jean-Marie, on behalf of CRIA Management and staff.

125. On May 16, 2016, the OPS Management, abruptly and discriminatorily placed Jean-Marie on a discipline and termination-based suspension.

126. The suspension barred Jean-Marie from attending at CRIA and all other MAG workplaces. To date, Jean-Marie remains displaced from the OPS.

**(b) Experiences of Anti-Black Racism and Misogynoir**

127. Often, Jean-Marie experienced and witnessed general acts of racism, racial discrimination, racial harassment, and differential treatment:

- (a) Jean-Marie was assigned “poor” quality files by OPS Management, compared to her white colleagues;
- (b) Jean-Marie and other racialized counsel were assigned “Blitz” files--these files had been at CRIA for a long time without being resolved by counsel originally assigned to them, yet racialized counsel were placed under scrutiny and pressure to close these files;
- (c) when CRIA retained three racialized female counsel, a white male lawyer complained that the “face” of CRIA was changing;
- (d) at a CRIA staff training session on diversity and inclusion, in response to a question posed by the Black female facilitator, the Office Manager, Betty Leung (**Leung**), stated that “people in China hate Black people and Black skin, but love white people, and are very worshipful of white skin and blonde hair”;
- (e) CRIA staff engaged in culturally offensive and buffoonish impersonations of Redd Foxx’s character “Fred Sandford” from the sitcom *Sandford and Son* right outside Jean-Marie’s office;
- (f) CRIA staff would gossip about Jean-Marie and, when she walked by, would turn silent and resume conversation only after she passed; and

- (g) when Jean-Marie was discussing the need to address racism in the workplace, CRIA counsel stated, “that we need to take baby steps.”

128. Routinely, OPS Management relied on anti-Black stereotypes, tropes, and misogynoir when confronting and berating Jean-Marie about otherwise commonplace incidents, and routinely undermined Jean-Marie in relation to students, support staff, and counsel:

- (a) In late August or early September 2015, Jean-Marie was discriminatorily characterized and labelled by CRIA and Constitutional Law Branch (**CLB**) Management as being “rude”, “aggressive”, “inappropriate”, and “unprofessional”, in response to an innocuous email she sent to junior counsel at CLB (working on a file with her) requesting that senior counsel assist them on a forfeiture application that involved *Charter* claims against a police force.
- (b) CRIA’s Acting Legal Director, Tom Schneider (**Schneider**), ambushed and chastised Jean-Marie for her “rude” treatment (her email) of CLB’s junior counsel. OPS Management’s sole concern was the junior counsel’s “morale”, and not the legitimate, work-related reasons underlying Jean-Marie’s request.
- (c) Then, in April 2016, when Jean-Marie approached Schneider about her recent experiences of anti-Black racism in the workplace, he once again abusively and unwarrantedly labelled Jean-Marie as “rude” and “inappropriate”. Three years later, Schneider continued his anti-Black and

defamatory sentiments, falsely labelling Jean-Marie as: “large”, “difficult”, “rude”, “inappropriate”, “intimidating”, “insubordinate”, “aggressive”, “bullying”, “threatening”, and “unprofessional”.

- (d) On more than one occasion, when another individual at CRIA, for example a law clerk or another lawyer, complained to Schneider about Jean-Marie, he immediately sided with the complainant and labelled or reprimanded Jean-Marie as “unprofessional”.
- (e) In January 2014, Jean-Marie was working on a large complex fraud file—she started the forfeiture application proceeding and brought several motions. When the new Legal Director, Vickie Kondo (**Kondo**), arrived at CRIA, she expressed this file was too prestigious for Jean-Marie to have carriage of solely in her name.
- (f) Kondo assigned a white male to the file as senior counsel. He was on the file in name only and Kondo did not expect this counsel to work on the file (nor did he—although Jean-Marie was amicable to him, he expressed no interest in doing so).
- (g) During Jean-Marie’s work on the file, she obtained an order allowing the Crown to take physical possession of certain property, which included hundreds of gift and credit cards with monetary value. When Jean-Marie arrived at CRIA, she advised her colleague about the cards and the reconciliation to take place. Before reaching her office desk, Jean-Marie heard her colleague (whom had never worked on the file), loudly



announcing in the hallway to staff that there are thousands and thousands of dollars on the cards, a support staff, Lori Blaskovitch (**Blaskovitch**) (a white woman), will have carriage of the cards, the cards will be kept in Blaskovitch's office, and Jean-Marie will only have access to the cards during Blaskovitch's work hours.

- (h) In a meeting with her colleague about the cards, the senior counsel re-asserted his rules about the cards. When Jean-Marie opposed this unreasonable and biased position, he became hostile, leaned over his desk, pointing his finger in her face, and snidely interrogating Jean-Marie about why she would need access to the cards outside Blaskovitch's work hours.
- (i) This same colleague also emailed CRIA staff reiterating his position about Jean-Marie's access to the cards.
- (j) Jean-Marie was called into a discipline meeting with Kondo, whom was immediately hostile and aggressive with Jean-Marie. Kondo asserted that Jean-Marie's colleague had made a complaint against her, falsely stating that Jean-Marie had called him a "racist" and that Jean-Marie would be disciplined;
- (k) When Jean-Marie requested a lieu day after working several overtime hours (including on the weekend and attending in North Bay) on a colleague's file, Kondo, in public, scathingly criticized Jean-Marie's

request as “authoritative”, “insubordinate”, and “demanding” (in other words, “uppity”).

- (l) When Jean-Marie advised an articling student that it was not appropriate to address her with “Hey...”, other staff members began orally addressing Jean-Marie with “Hey...” to harass her.
- (m) When Jean-Marie was out of town on a forfeiture hearing, she received an email (copied to the office) from CRIA’s Deputy Director asking if she could take on an urgent file. Jean-Marie emailed the Deputy Director (copied to the office) declining the file and setting out her work commitments. The Deputy Director then assigned the file to a white junior counsel, Gayle Karding (**Karding**), who had recently joined CRIA. When Jean-Marie returned to the office, she was met with hostility from every single person she encountered—support staff and counsel alike. When Jean-Marie spoke with Karding, she was angry.
- (n) Karding belligerently asserted that because Jean-Marie had not accepted the file, Karding now had to work on it, and as she is new to the office and a new call, she could not refuse to take on the file like Jean-Marie had. Everyone in the office aligned with Karding and (as usual) openly demonstrated hostility towards Jean-Marie, even though there was nothing unusual in counsel advising that they could not take on a file because of other demands, Jean-Marie had a heavy caseload and other work commitments, Jean-Marie rarely used the help of students, Jean-

Marie is senior counsel, Jean-Marie did not assign the file to Karding, Jean-Marie consistently worked longer hours than anyone else in the office, and it is customary in the legal profession for lawyers to work long hours in the early/junior years of their careers.

- (o) When Jean-Marie advised the Deputy Director that staff were treating her with hostility about her inability to take on the urgent file, she learned that staff had complained to her about Jean-Marie's inability to take on the file.
- (p) Schneider chastised Jean-Marie when she could not attend two staff meetings (not uncommon for staff) because of other commitments, even though Jean-Marie's actions were not extraordinary, and it is expected for staff to prioritize their work commitments.
- (q) OPS Management and counsel continually undermined Jean-Marie and encouraged students not to assist with her files. For example, one evening, senior counsel, Roz Train (**Train**), who is a white female, came and stood at the entrance of Jean-Marie's office. Immediately, Train chastised and challenged Jean-Marie about her assignment of work to the summer student. Train angrily said that the student would not be doing the assignment. Rather than supporting Jean-Marie, Schneider and Miriam Young (**Young**) supported Train and the summer student in their inappropriate conduct and chastised Jean-Marie for having delegated work to the student.

- (r) Schneider and Young engaged in racial discrimination and racial harassment against Jean-Marie for having assigned work to the summer student, including: publicly berating her, challenging her ability as counsel to assign work, fabricating damaging stories about her based on anti-Black stereotypes and tropes, isolating and marginalizing her, policing her, racial profiling, and being aggressive towards her.
- (s) Jean-Marie was subjected to staff angrily complaining about her having assigned work to the student, and one junior counsel brazenly told Jean-Marie she did not have the right to assign the student work.
- (t) After Jean-Marie communicated with Malliha Wilson (**Wilson**), the then-Assistant Deputy Attorney General of Ontario (**ADAG**), about the racial discrimination and racial harassment she was experiencing in the workplace, Schneider had a sudden “change in attitude” about the incident involving the student. Schneider acknowledged that the summer student’s, Train’s and Young’s conduct had been inappropriate. Yet Schneider refused to speak directly to the student about his conduct and directed (and insisted) that Jean-Marie, whom he knew was vulnerable and experiencing anti-Black racism in the workplace, approach the student herself. After Jean-Marie spoke to the student, Schneider said to Jean-Marie that the student had made a serious WDHP complaint in retaliation against her.

- (u) Subsequently, Jean-Marie was subjected to hearing Schneider openly supporting the student about his spurious allegations and was summoned in writing to attend a disciplinary meeting (with ALOC) about her purported “mistreatment” of the student. In 2019, Jean-Marie learned that Schneider has discriminatorily and defamatorily asserted that Jean-Marie was “bullying the student.”
- (v) Because of Jean-Marie’s experiences of anti-Black racism in the workplace, Jean-Marie did not feel comfortable assigning work to students even though her colleagues routinely did so and were encouraged to do so, despite their year of call.
- (w) On at least one occasion, a law clerk, Renee Savoie (**Savoie**), refused to follow Jean-Marie’s instructions about filing affidavits of service on her court matters, angrily asserting that it was unnecessary.
- (x) Savoie advised Jean-Marie’s new law clerk, Neil Waterman (**Waterman**), that he should disregard Jean-Marie’s instructions about side-barring caselaw for her matters. Discriminatorily, both staff and OPS Management openly supported Savoie’s conduct, which included angrily stomping around the office for about two weeks about this incident, in a display of anger against Jean-Marie. Savoie, staff, and OPS Management’s conduct resulted in Jean-Marie experiencing fear, apprehension, anxiety, and degradation.

129. Several times, Julia Evans (**Evans**), in her capacity as CRIA counsel and OPS Management engaged in discriminatory and harassing conduct towards Jean-Marie:

- (a) Whenever Jean-Marie brought up the issue of racial discrimination and racial harassment in the workplace, Evans denied, trivialized or negated her experiences.
- (b) Evans refused to address the racial discrimination and racial harassment that Jean-Marie was experiencing in the workplace.
- (c) When Jean-Marie was discussing racism in the workplace with Evans, she angrily asserted that Canada is not the United States, and that we do not have an issue with racism in Canada.
- (d) When Jean-Marie raised with Evans the racial discrimination that a male South Asian lawyer had experienced at CRIA, she denied any racism and said it was because he is “weird”.
- (e) When Black counsel attended at Evans’ office, they were not welcomed—she refused to make eye contact, would begin typing, make funny facial expressions, and acted uncomfortable and disengaged. In contrast, Evans openly engaged non-Black counsel (and support staff) in business and personal conversations, and even went out for lunch with them.
- (f) After Jean-Marie experienced aggressive and hostile behaviour from a white male judge in court, Evans failed to provide support and, to the contrary, undermined Jean-Marie in the courtroom and the office.

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- (g) Just before one of Jean-Marie's attendances in court, Evans's negative discussion with Jean-Marie and attitude towards her induced a physical illness in Jean-Marie and resulted in Jean-Marie becoming pallid, sweaty, disoriented, nauseous, and vomiting--Evans's response was to tell Jean-Marie to take a taxi home.
- (h) Evans has a longstanding personal and professional relationship with individuals at CRIA who have engaged in discriminatory and harassing conduct towards Jean-Marie. In retaliation against Jean-Marie for having raised her experiences of anti-Black racism at CRIA, in her capacity as Portfolio Director, Evans started an OPS Management-initiated WDHP investigation and an OPS Management-initiated WVP investigation against Jean-Marie and suspended Jean-Marie under the discipline and termination provisions of the *PSOA*.

130. Several times, Young engaged in discriminatory and harassing conduct towards Jean-Marie:

- (a) Young refused to address the racial discrimination and racial harassment that Jean-Marie was experiencing in the workplace.
- (b) While taking stakeholders around the office and introducing them to CRIA staff, Young would routinely not introduce them to Jean-Marie.
- (c) Young demonstrated displeasure about the number and type of committees that Jean-Marie participated on (e.g., CRIA's Litigation

Committee, MAG's Articling and Summer Student Committee, CRIA's Student Committee) and actively tried to undermine Jean-Marie's presence on these committees.

- (d) Young routinely questioned Jean-Marie's assessment of a situation or person (e.g., when Jean-Marie advised Young of a negative experience with a particular OPS male counsel, Young dismissed her experience yet she immediately accepted a white female colleague's negative assessment of the same individual).
- (e) Young expected Jean-Marie to assist with menial tasks not a part of her job description (i.e., emptying out the dishwasher (which Jean-Marie never used), running errands, cleaning up garbage).
- (f) When Justice Tulloch was appointed to the Court of Appeal, Jean-Marie and another Black colleague were subjected to Young yelling the word "black" several times while in her office, in the hallway when passing Jean-Marie's office, and in the Legal Director's office.
- (g) When Jean-Marie and an articling student attended Toronto court with Young, the security officer allowed Young to enter, unhampered, by showing her identification. When Jean-Marie approached, he snidely asked, "Can I help you with something?" and Young stated, "She is with me," condoning his racist behaviour.



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- (h) When Jean-Marie advised Young that she did not have capacity to assist her on an urgent basis, Young berated Jean-Marie using the word “shit”.
- (i) When speaking with CRIA counsel, Amy Then (**Then**), about her baby daughter, Young said, in Jean-Marie’s presence, that blonde hair and blue-eyed children are better.
- (j) Shortly before Jean-Marie was suspended on May 16, 2016, Young told Jean-Marie that addressing racism in the office would not and should not come at the discomfort of white staff.

131. On more than one occasion, Lisa Will (**Will**), a white female counsel at CRIA, who was on a job swap/transfer from Scarborough’s Criminal Crown Office, engaged in racially discriminating and racially harassing conduct towards Jean-Marie:

- (a) unprovoked, Will berated and swore at Jean-Marie, repeatedly using the word “fuck” and “fucking”. Train observed this interaction without intervening to assist Jean-Marie.
- (b) Jean-Marie approached Will about her misconduct and its negative effect on Jean-Marie’s wellbeing. Will justified her behaviour by describing herself as a “bitch”.
- (c) When Jean-Marie advised Schneider of this incident, he informed Will of what Jean-Marie had told him. Will then mocked the incident to Jean-Marie when they next encountered each other.

- (d) Will removed Jean-Marie's bottles of water from an office fridge. CRIA staff and Will were angry and disgruntled when Jean-Marie asked Will to replace them.

**(c) Discriminatory Suspension of Jean-Marie**

132. In January 2016, a Black-male junior flex counsel (the **Flex Counsel**), informed Jean-Marie that CRIA lawyers and support staff had been organizing or orchestrating acts of discrimination and harassment against her. He also advised her that Rosanna Francis (**Francis**), a Black female law clerk, and Diana Almond (**Almond**), a white administrative assistant, were spearheading the discrimination and marginalization against Jean-Marie for white counsel and support staff.

133. The Flex Counsel said to Jean-Marie he had been advised by staff that he must participate in marginalizing Jean-Marie or he would receive the same negative treatment as her. When the Flex Counsel did not participate in the marginalization of Jean-Marie, he experienced adverse treatment by staff and OPS Management.

134. The Flex Counsel told Jean-Marie that in 2015 and in January 2016, he advised both Schneider and Young that Jean-Marie was being discriminated against, that he was under a lot of stress because of the negative environment, and that he did not want to continue working at CRIA.

135. The Flex Counsel told Jean-Marie he had informed Jane Price (**Price**), the Director of Education and Development in the ADAG's office, whom he had known for

several years, of what was happening at CRIA, and that he had asked to be re-assigned to remove himself from the negative environment.

136. The Flex Counsel told Jean-Marie that Wilson had advised Evans to address the discrimination Jean-Marie was experiencing at CRIA. Then the Flex Counsel informed Jean-Marie he had learned from the ADAG's office that in response to their mistreatment of Jean-Marie, both Francis and Almond would be removed from CRIA.

137. While Jean-Marie knew that since she had started working at CRIA, she had been subjected to unwarranted macro and microaggressions, Jean-Marie was scared and shocked to learn that the conduct of CRIA staff towards her was organized and orchestrated. Jean-Marie found this to be threatening and traumatic and was afraid for her safety and wellbeing.

138. Besides informing OPS Management, the Flex Counsel also informed other OPS counsel about the organized acts of discrimination and harassment by CRIA staff members against Jean-Marie.

139. On February 9, 2016, at a Law Society of Ontario event, the Flex Counsel and Price discussed with Jean-Marie (and another OPS counsel) the organized acts of discrimination and harassment taking place at CRIA against Jean-Marie. Price said that she could tell that the Flex Counsel was under tremendous stress and the situation at CRIA was bad and that she knew that what was happening must be terrible because in all the years she had known the Flex Counsel, he had never appeared so "undone". Price said that she felt sorry for Jean-Marie, and then gave her a hug. The other OPS counsel who was present responded that a hug was not enough, and that something

more needed to be done to address the discrimination Jean-Marie was experiencing at CRIA.

140. Directors at CRIA and OPS Management not only condoned, defend, trivialize, ignore, and deny the acts of anti-Black racism, misogynoir, racial discrimination, and racial harassment taking place against Jean-Marie, they also fostered and participated in such acts against Jean-Marie.

**(d) Boardroom Incidents — April 2016**

141. CRIA has two boardrooms, identified as BRM A and BRM B. These two boardrooms are adjoined, with their own exterior doors, and an interior accordion sliding door that can separate them when closed. Each boardroom has its own boardroom table: BRM A can fit about 21 chairs around its perimeter, and BRM B can hold about 14 chairs.

142. Using the boardrooms by CRIA staff (and visitors) is a common practice and not unusual. Sometimes, people or their materials would be in the boardrooms for weeks.

143. In April 2016, Jean-Marie had carriage of a large and complex fraud file, which consisted of several boxes of documents and binders. Two lawyers were assigned to assist Jean-Marie on this file: senior counsel, Gary Valiquette (**Valiquette**), a white male, and the Flex Counsel.

144. The Flex Counsel, Valiquette, and Jean-Marie worked together in BRM A, where the office's IT Systems Coordinator, had set up Jean-Marie's laptop and monitor, and internet access.

(i) **Incident #1**

145. Around mid-April 2016, Jean-Marie was working alone in BRM A and a white Law Practice Program student, Alexander Jewett (**Jewett**), was working alone in BRM B. The interior door separating the two boardrooms was open.

146. Sara MacDonald (**MacDonald**), a white female lawyer, who had recently joined CRIA from the Scarborough Crown Attorney's office, attended at the exterior door of BRM A, with Valiquette, who stood behind her.

147. MacDonald stood in the exterior doorway of BRM A and said, in a hostile manner, "What is going on here? Are you setting up shop in this room too?" Jean-Marie said that she was working on a large file, but there was plenty of room and they could share the table. MacDonald said that they could not share the table, as she and Valiquette were working on a presentation and needed to talk to one another. Jean-Marie congenially responded that their conversation would not bother her, saying that she could use her headphones to block any sounds.

148. Rather than accept Jean-Marie's compromise, MacDonald angrily reiterated that she needed the boardroom. In response, Jewett offered to leave BRM B, which made MacDonald angrier, because Jean-Marie as the Black woman, should accommodate MacDonald's and the student's needs.

149. The accordion door separating BRM A and B, generally needs two people, standing on each side, to close it. After MacDonald and Valiquette entered BRM B,

Jean-Marie offered to close the accordion door with Valiquette, as MacDonald was pregnant. MacDonald angrily rejected Jean-Marie's offer, saying it was offensive.

150. MacDonald's conduct towards Jean-Marie was demeaning, discriminatory and harassing, and premised on anti-Black racism, misogynoir and white privilege.

MacDonald did not question Jewett's right to work alone in BRM B. Even though Jean-Marie was counsel, and senior to Jewett and MacDonald, MacDonald questioned Jean-Marie's right to use the boardroom alone.

## **(ii) Incident #2**

151. On April 21, 2016, while Jean-Marie was working alone in BRM A, MacDonald attended at the door, and again confronted Jean-Marie about her use of the boardroom. MacDonald said to Jean-Marie in a hostile and antagonistic manner that there was a presentation taking place in the boardroom at 1pm.

152. Jean-Marie said that she was aware of, and attending, the presentation. But MacDonald demanded to use the same power outlet on the table that Jean-Marie was using for her laptop computer and monitor. Jean-Marie said that MacDonald use a different outlet, but MacDonald refused. MacDonald yanked out Jean-Marie's laptop and monitor plugs, threw them on the table, and plugged in her own laptop computer. In response, Jean-Marie unplugged MacDonald's laptop, and re-plugged in her laptop computer and monitor.

153. MacDonald continued to berate and argue with Jean-Marie, and when Jean-Marie said that she did not want to discuss the matter, MacDonald mocked her, saying, “Only Jean-Marie can talk, only Jean-Marie can talk.”

154. When Jean-Marie refused to leave the boardroom, MacDonald reported her to Schneider, who came to the boardroom with MacDonald and immediately verbally attacked and admonished Jean-Marie, stating: “I’m not going to have a pregnant woman crawl under the table to plug in her laptop.” When Jean-Marie tried to explain what had happened, Schneider stated that she was “rude.”

155. Schneider, without inquiring or investigating the circumstances, treated Jean-Marie as the wrongdoer. Schneider did not treat Jean-Marie like MacDonald—he was quick to chastise her and did not seek to investigate or remedy the discrimination against Jean-Marie.

156. A few minutes later, in a private conversation with Jean-Marie, Schneider tried to justify his taking MacDonald’s side without hearing from Jean-Marie, by saying he was “just trying to keep the peace.”

157. Schneider disputed Jean-Marie’s assertion that his conduct was rooted in racial stereotypes and white privilege. When Jean-Marie complained about Schneider’s inaction in response to the discrimination and harassment raised by Flex Counsel and her, Schneider questioned Jean-Marie’s right to use the boardroom at all.

158. After the presentation, Jean-Marie advised Schneider she was experiencing trauma and needed the rest of the day off to deal with the boardroom incident. Rather than address Jean-Marie's concerns, he made light of the issue.

159. Ultimately, Jean-Marie was set up in BRM B, the smaller boardroom, for "optics reasons", which was discriminatory and humiliating to her.

**(iii) Incident #3**

160. On April 28, 2016, while Jean-Marie was working alone in BRM B, MacDonald purported to check in on Jean-Marie. Given that Jean-Marie and MacDonald were not working together, there was no reason for her "visit" except to harass and demean Jean-Marie. MacDonald confronted Jean-Marie, saying "Jean-Marie I've never been so disturbed in my life."

161. When Jean-Marie questioned the use of "disturbed"—a term often used when Black people speak out against racism and white privilege—MacDonald abruptly left the boardroom.

162. When the Flex Counsel and Valiquette arrived to work on the file, and saw Jean-Marie visibly upset, they encouraged Jean-Marie to talk to Schneider about the boardroom incidents.

**(e) Schneider Failed to Respond to Jean-Marie's Complaints**

163. On April 28, 2016, Jean-Marie raised the boardroom incidents with Schneider.



164. At the beginning of their discussion, Schneider said to Jean-Marie, “You intimidate me.” Schneider failed to take Jean-Marie’s concerns seriously or to exhibit any sensitivity to the issue of anti-Black racism and refused to accept that Jean-Marie may have been, never mind was, the target of racial discrimination and racial harassment. He minimized Jean-Marie’s complaint about the boardroom incidents, saying she and MacDonald were just being “childish.” He failed to take responsibility, as OPS Management, to address MacDonald’s behaviour or Jean-Marie’s and the Flex Counsel’s previous complaints about discrimination and harassment at CRIA.

165. When Jean-Marie questioned why Schneider had taken MacDonald’s side, if they were simply being childish, he again questioned her right to use the boardroom. He also responded by raising new concerns about Jean-Marie’s use of filing cabinets and the storage room.

166. Schneider’s conduct perpetuated the prejudice that Jean-Marie, as a Black woman, is not to occupy space, is not worthy of protection, and is not valued as a human, especially when compared to white women.

167. On April 29, 2016, Jean-Marie again alerted Schneider to her poisoned work environment and his fostering this toxicity by ignoring, trivializing, or participating in acts of racism against her.

168. On Friday, April 29, 2016, and Monday, May 2, 2016, Jean-Marie could not attend work because of the stress and trauma she had been experiencing at CRIA.

169. In his response on May 2, 2016 (copying Young), Schneider failed to address Jean-Marie's substantive concerns. Rather, he inappropriately questioned whether she would be using vacation or sick leave for the days she was absent.

170. In a further response, on May 4, 2016 (copying Young), Schneider disputed that Jean-Marie had been subjected to racial discrimination at CRIA. Despite the Flex Counsel's and Jean-Marie's previous complaints, Schneider claimed to be "surprised and saddened" by her allegations, stated that the "Employer takes all allegations of workplace harassment and/or discrimination seriously". He said that he had told Evans of Jean-Marie's concerns.

171. Jean-Marie forwarded her email exchange with Schneider to others, including Wilson, and received no response or acknowledgement of OPS Management's obligation to act under WDHP in response to her complaints of discrimination and harassment.

172. On May 5, 2016, Christine Hobkinson (**Hobkinson**), WDHP Advisor, contacted Jean-Marie (copying Evans). Hobkinson said that Jean-Marie "may have concerns which potentially engage the WDHP." Hobkinson also said that, under the WDHP, she had to conduct a Preliminary Assessment of Jean-Marie's complaint to determine whether the issues raised fall within the scope and application of the WDHP. She asked Jean-Marie to provide specific examples of acts that amounted to a WDHP violation.

173. Hobkinson failed to address Jean-Marie's inquiries why OPS Management did not start a WDHP investigation after the Flex Counsel had notified them of widespread discrimination and harassment against Jean-Marie. This failure is all the more

problematic because when CRIA staff made false allegations about Jean-Marie's conduct, OPS Management immediately started a WDHP and WVP process against her on their behalf.

**(f) OPS Management Started Investigations Against Jean-Marie**

174. On May 12, 2016, Hobkinson reiterated that Jean-Marie, rather than OPS Management, must start a WDHP investigation about her "alleged" complaints about discrimination in the workplace.

175. In the same conversation, Hobkinson advised that OPS Management had started a WDHP complaint and a WVP complaint against Jean-Marie based on complaints by CRIA staff. Hobkinson did not provide the name of the complainant, despite acknowledging that she would have normally provided this information.

176. The written complaint, provided the same day, included no particulars or the information requested by Jean-Marie on the phone. The substance of the complaint itself was highly discriminatory, invoking anti-Black female tropes and stereotypes by describing Jean-Marie as a yeller, disrespectful, loud, aggressive, intimidating, unprofessional, combative, harassing, and a threat to staff's wellbeing and safety.

177. The OPS Management Complaints and Investigations against Jean-Marie were started after she and the Flex Counsel raised complaints of anti-Black racism, discrimination, and harassment in the workplace, including the incidents in CRIA's boardrooms involving MacDonald and Schneider.

**(g) OPS Management Suspended Jean-Marie**

178. On May 16, 2016, Jean-Marie was called to a meeting with Evans. Randy Holloway, a Human Resources Business Advisor, was with Evans.

179. Evans handed Jean-Marie a Notice of Suspension Letter (the **Suspension Letter**), which outlined OPS Management's Complaints against her, based on allegations "recently" made by unnamed CRIA staff:

- (a) yelling and engaging in loud and aggressive behaviour towards colleagues and management;
- (b) engaging in arguments with colleagues and treating them in a disrespectful and intimidating manner; and
- (c) conduct in the workplace that is unprofessional, aggressive, and combative, so that individuals are concerned for their well-being and safety.

180. The Suspension Letter provided for "a suspension with pay pending investigation for twenty (20) working dates...effective immediately."

181. Jean-Marie was forbidden from attending at CRIA or any other MAG workplace, unless specifically instructed by OPS Management, and was forced to immediately handover her BlackBerry and identification card to Evans.

182. Jean-Marie questioned the apparent reprisal against her, but Evans refused to address Jean-Marie's concerns. Evans also could not identify the sections or directives under which Jean-Marie was being suspended, as referenced in the Suspension Letter.

183. Jean-Marie's remote access to government services was immediately deactivated, even though other counsel (and employees) on suspension or leave were not removed from these government services and databases.

184. Jean-Marie could only attend CRIA later in day to retrieve some of her belongings. On Evans's orders, Jean-Marie could not be alone in her office or access her computer and emails. Young did not leave Jean-Marie alone in her office, and intrusively supervised Jean-Marie's access of her computer, landline, and emails.

185. Jean-Marie's email and landline had been disconnected and an "out of office" message activated, all either before or while she was being suspended.

186. This experience for Jean-Marie was shocking, painful, re-victimizing, and degrading, and harmed Jean-Marie's professional and personal wellbeing.

187. In the history of ALOC, Jean-Marie knows of several serious complaints and investigations, including several sexual assault complaints made against white counsel. The alleged perpetrator was never suspended under the WDHP or WVP, had their remote access removed, nor were they barred from all OPS employee databases. The allegations against Jean-Marie, which amounted to a "reverse racism" claim, were characterized as "serious" but her claims of anti-Black racism, misogynoir, and stereotyping were minimized, denied or not acknowledged at all.

188. Contrary to Hobkinson's comments about Jean-Marie's complaint, there was no preliminary assessment conducted in the OPS Management-initiated WDHP complaint (or WVP complaint) against Jean-Marie.

189. On June 9, 2016, Evans informed Jean-Marie in writing that the suspension was extended for 20 days. Jean-Marie continued to receive suspension letters by email. Starting in September 2016, they were in the name of and signed by the then-ADAG, Irwin Glasberg (**Glasberg**).

190. Jean-Marie was not provided with information about the WDHP and WVP investigations or complaints against her.

191. From May 20 to June 2, 2016, Jean-Marie communicated with Hobkinson to determine, among other things, the status of the investigations, the details of the complaints against her, and the terms of her suspension.

192. On June 3, 2016, Hobkinson informed Jean-Marie that Sharona Freudmann of Brainsell Consulting (**Freudmann**) would be conducting the WDHP external investigations and wanted to meet with Jean-Marie immediately.

193. Jean-Marie responded, on June 6, 2016, by requesting information about Investigator Freudmann, the name of the complainant(s) against Jean-Marie, the purpose of the meeting with Freudmann, and a copy of the Directive referenced in the Suspension Letter.

194. On June 8, 2016, Hobkinson informed Jean-Marie she had been suspended on "unclarified" allegations, the meeting with Freudmann would likely take several hours,

and the Directive referenced in the Suspension Letter was incorrect. Hobkinson's refused to disclose the name of the complainant(s).

195. Jean-Marie asked Hobkinson about Freudmann's expertise in anti-Black racism, clarification of the investigation process, the name of the complainant(s) against her, and for access to her office and laptop computer and student dockets to obtain information pertinent to Jean-Marie's complaint.

196. On June 9, 2016, Hobkinson repeated her request that Jean-Marie meet with Freudmann. Hobkinson provided none of the information sought by Jean-Marie or explain why the OPS Management complaint had resulted in Jean-Marie's abrupt suspension and isolation, even though there was no equivalent reaction to her complaints.

197. The same day, Jean-Marie emailed Hobkinson (copying Evans) saying again that she had not received the name of the complainant and, as she previously said, that she would need this information before meeting with Freudmann.

198. Hobkinson replied on June 10, 2016 (copying Evans) that the "initial meeting between you and the Investigator will be to discuss the particulars of your complaint, not those against you. You will be provided the details of the complaints against you once the investigator has gathered/clarified that information."

199. On June 13, 2016, Evans once again barred Jean-Marie from attending the workplace and denied her access to documents in the Crown's control needed to support her complaint.

200. On June 14, 2016, ALOC filed the first of three grievances, about the procedural aspects of Jean-Marie's suspension and requested copies of all documentation that the Crown was relying on. Despite its obligation under the collective agreement (and workplace policies), the Crown has refused to provide ALOC or Jean-Marie with the requested information.

201. On June 30, 2016, Hobkinson informed Jean-Marie she could provide any supporting documentary evidence after meeting with Freudmann.

202. On July 4, 2016, based on the lack of fairness and transparency with the WDHP and WVP investigations and the Crown's lack of impartiality, Jean-Marie asked Hobkinson: "Please forthwith provide me with any and all communication/ documentation provided to the employer and the investigator related to me, the complaints and this matter." Hobkinson, in response, said: "is not the practice of the WDHP Section to provide internal documents pertaining to complaints."

203. On July 6, 2016, Jean-Marie asked again for the requested information. Again, Hobkinson refused, now on the basis that the communications between the Crown and Freudmann, purportedly a neutral external party, are "internal documents".

204. On July 8, 2016, the Crown's Designee, Michael Waby (**Waby**) the Executive Director of Criminal Justice Modernization, Courts Services Division, presided for the Employer at the Step 2 Meeting for the first grievance dated June 14, 2016. He reserved his decision.



205. The same day, in response to another request for a copy of communications between the Crown and the Freudmann, and other outstanding materials, Hobkinson asserted once again that the communications between the Crown and the Freudmann are internal communications, “it is not the practice nor obligation of the WDHP Section to provide internal documents pertaining to complaints at the investigation stage;” and that “[d]isclosure could occur...as part of a grievance or other adjudicative proceeding.”

206. On July 12, 2016, Waby denied the first grievance.

207. On July 15, 2016, ALOC emailed the Crown’s counsel Jennifer Richards (**Richards**), Deputy Director for the Treasury Board Secretariat, asking that Jean-Marie, be given access to her office to retrieve personal items and her office computer “in order to properly respond to the WDHP/WVP complaints.”

208. The same day, ALOC also sent a letter to the Crown requesting particulars of the allegations against Jean-Marie and disclosure of the name(s) of the complainant(s).

209. On July 18, 2016, Richards again denied Jean-Marie access to her office and documents in the Crown’s control that would assist Jean-Marie with her claim.

**(h) Jean-Marie Prohibited from Attending Education Courses**

210. On October 7, 2016, Jean-Marie advised CRIA Management that she had registered for the ALOC conference in November and sought to arrange co-payment with ALOC of the conference fees.

211. Several days later, on October 18, 2016, OPS Management, on the instructions of Evans, responded by chastising Jean-Marie for not obtaining advance approval to attend the conference. According to Evans, the suspension rendered it “inappropriate” for Jean-Marie to attend the ALOC conference and she must cancel her registration by October 21<sup>st</sup>.

212. Although Jean-Marie had ALOC’s support to attend this ALOC event, Jean-Marie was forced to cancel her registration after being threatened with disciplinary action. She missed out on mandatory Continuing Professional Development (**CPD**) opportunities and networking with her colleagues and friends, even though her complaints against CRIA staff had not resulted in any investigation or consequences. Jean-Marie’s continued absence from the workplace and ALOC events perpetuated the narrative that Jean-Marie was the “problem”.

213. CRIA staff who participated in acts of workplace discrimination and harassment against Jean-Marie, who had not been suspended as Jean-Marie was, could attend the conference.

214. The Crown also prohibited Jean-Marie from attending CPD courses and activities both on and off MAG premises. The Crown’s refusal to allow Jean-Marie to attend CPD courses and activities was a reprisal against Jean-Marie for asserting her rights to be free from discrimination and harassment in the workplace.

**(i) The Crown's WDHP Statement of Allegations**

215. On November 10, 2016, six months after Jean-Marie was suspended, she received a list of allegations against her (the **Statement of Allegations**) in a letter from the Crown. The attachments to the letter were not enclosed and were provided on November 14, 2016.

216. On November 14, 2016, in response to Jean-Marie's and ALOC's request for clarification, Richards confirmed that the Statement of Allegations encompassed all the allegations made against Jean-Marie that resulted in her suspension. Contrary to WDHP, these allegations were provided 182 days after the WDHP investigation was started against Jean-Marie, and 90 days after the prescribed timeline for the completion of a WDHP investigation.

217. None of the allegations includes conduct that is violent or in violation of the WVP, despite the frequent reference during Jean-Marie's suspension to her being a safety threat.

**(j) No Meaningful Investigation**

218. On November 14, 2016, ALOC filed a second grievance with the Crown for breaching its obligations to Jean-Marie under the collective agreement and applicable legislation and requested all documentation that the Crown relied on in support of its position and in response to the grievance. ALOC also provided the Crown with Jean-Marie's procedural WDHP Complaint against the OPS Management. Despite its

obligation under the collective agreement (and the OPS Polices), the Crown has refused to provide Jean-Marie and ALOC with the requested information.

219. At Jean-Marie's request, she was permitted to attend at her office in late December 2016 to log her CPD hours and obtain some belongings. Even though she attended outside normal office hours, Jean-Marie was observed by her coworkers being supervised by an ALOC representative and an OPS Management representative, Krista Jones (**Jones**). During Jean-Marie's attendance at CRIA, Jones and Richards (who was not present at CRIA) exchanged inappropriate, demeaning, mocking, and discriminatory emails about Jean-Marie and made light of her experiences of anti-Black racism in the workplace. This experience for Jean-Marie was highly humiliating, re-victimizing and traumatizing.

220. The Crown maintained that Jean-Marie's suspension was not disciplinary, as it was paid, but provided no meaningful response to ALOC's complaint that it was punitive.

221. On February 14, 2017, ALOC submitted a third grievance to the Crown about the Crown's denial to approve Jean-Marie's attendance for an accredited CPD human rights course. The Step 2 Meetings for the November 2016 and February 2017 grievances were held on April 7, 2017, before Waby. But nothing was resolved. The arbitration hearing is currently scheduled for May 2019.

222. On February 27, 2017, the Crown received Jean-Marie's response, dated January 21, 2017, to the Statement of Allegations.

223. Jean-Marie tried to continue to contribute to the OPS. For example, in February 2017, Jean-Marie MC'd BOPSers Black History Month celebration event. Orsini was one of the guest speakers. Subsequently, in March 2017, in an email to Jean-Marie, Orsini cavalierly expressed to Jean-Marie how much he "enjoyed" a discussion which took place at the event. That discussion was deeply painful for Jean-Marie and other Black employees and participants—it was about OPS Management's conduct of not disciplining managers and employees (as they do racialized staff) who engage in racial discrimination against Black and racialized employees.

224. Evans, Schneider, and Young were allowed to continue in their managerial roles during Jean-Marie's suspension, and Evans and Young were each rewarded with higher managerial authority.

225. In September 2017, ALOC had to bring a motion, which was opposed by the Crown, for Jean-Marie's reinstatement to the OPS.

226. Despite her reinstatement, based on the baseless conduct of the Crown and ALOC and their employees and representatives, and the harm to Jean-Marie's wellbeing, to date she remains out of the workplace.

**(k) WDHP and WVP Reports**

227. Under the WDHP and WVP, the OPS Management-initiated investigations against Jean-Marie and the OPS Management-initiated investigation about the Flex Counsel's and Jean-Marie's complaints to CRIA Management (Schneider and Young) should have been completed, including the respective reports, by early August 2016.

But, on February 10, 2017, Jean-Marie was advised by the Crown that Freudmann would no longer be conducting the investigations. Instead, the Crown appointed a new investigator, Carolyn Lee (**Lee**), to start the investigation afresh. In late June 2018, two years after the WDHP and WVP were due, the Crown provided Jean-Marie with a copy of the two WDHP Reports authored by Lee.

228. Lee's report about the WDHP complaint against Jean-Marie states that Freudmann interviewed the Crown's witnesses between August 25 and November 15, 2016. Freudmann began interviewing the Crown's witnesses 15 days after the 90-day period prescribed in the WDHP for the completion of the WDHP investigation. This was not a reasonable or *bona fide* delay and was prejudicial to Jean-Marie.

229. Lee read the witness statements prepared by Freudmann, and re-interviewed the Crown's witnesses, some more than once. No names nor genders are noted in Lee's report, nor how many times she interviewed the witnesses.

230. In November 2016, Jean-Marie's procedural WDHP complaint was provided to the Crown. Jean-Marie's WDHP complaint focused on how she was suspended and did not deal with her substantive claims of racial discrimination and racial harassment in the workplace.

231. In her second report, purported to be an investigation into Jean-Marie's procedural WDHP complaint, Lee states that she interviewed the respondents between January 22, 2018 and June 12, 2018. Lee named several individuals who Jean-Marie did not identify as respondents (as her WDHP complaint only focused on the procedural

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way that she was suspended). Lee then concluded that these individuals had not discriminated against Jean-Marie.

232. Lee's reports are replete with lies and fabrications about Jean-Marie and are founded on anti-Black female tropes and stereotypes. The reports demonstrate that Lee is biased, and that the Crown retained an investigator to investigate issues about anti-Black racism who does not understand basic human rights concepts, terms, and principles in general, let alone have an expertise in anti-Black racism, white privilege, and white supremacy.

233. Lee herself relies on anti-Black racist sentiments, anti-Black bias, misogyny, anti-Black stereotypes and tropes, white privilege, white supremacy, and white fragility in arriving at her damaging conclusions. Lee's reports appear to be written for the benefit and protection of the Crown, and those who engaged in acts of anti-Black racism and misogyny against Jean-Marie.

234. From November 2016 to February 2019, Jean-Marie repeatedly advised the Crown—including senior OPS Management, such as Orsini, former Deputy Attorney General Patrick Monahan, Glasberg, Michel Helie, Deputy Attorney General Paul Boniferro, as well as ALOC—that the Statement of Allegations against her, and the manner of her treatment was discriminatory and in reprisal against her for having complained about her experiences of anti-Black racism, misogyny, racial discrimination, and racial harassment in the OPS. Yet, harmfully, Jean-Marie received no meaningful response from the Crown, and no response or assistance whatsoever

from ALOC's employees, agents, servants, and representatives. To date, the Crown has refused to provide Jean-Marie with the names of the complainants.

235. Jean-Marie has also not received from the Crown a report related to the WDHP investigation about the complaints that Flex Counsel and Jean-Marie made to Schneider and Young about Jean-Marie's experience of racial discrimination and racial harassment in the workplace.

236. Jean-Marie has also not received from the Crown a report related to the WVP investigation against her.

**(I) ALOC Engaged in Discriminatory Conduct Against Jean-Marie**

237. ALOC's employees, agents, servants, and representatives, including the counsel appointed for Jean-Marie's grievances, have:

- (a) participated in racial discrimination and racial harassment of Jean-Marie, dating back to her time at FRO;
- (b) been dismissive, unsupportive and undermining of Jean-Marie's attempts to hold the Crown accountable for its conduct (acts and omissions), and have failed to advance Jean-Marie's interests and her rights under the collective agreement, OPS internal workplace systems and processes, and labour and human rights law;
- (c) advocated for ALOC members in conflict with Jean-Marie, even when no request for assistance has been made by members;



- (d) advocated for OPS Management, at the expense of Jean-Marie's professional and personal wellbeing and in opposition to Jean-Marie's legal rights; and
- (e) demonstrated a lack of competency, training, and expertise (and a steadfast unwillingness to learn) in issues relevant to Jean-Marie's experience of individual, institutional, systemic and systematic anti-Black racism in the workplace, and have themselves engaged in anti-Black stereotypes, misogynoir, anti-Black bias, stereotypes, and tropes:
  - (i) in around 2008, when Jean-Marie was first introduced to ALOC's appointed counsel, she was asked about her occupation—the lawyer appeared surprised when Jean-Marie stated that she is a lawyer, although it should have been obvious as Jean-Marie is a member of ALOC;
  - (ii) ALOC and its lawyers treated Jean-Marie with open hostility and disrespect, and at times refused to even speak to or engage with her;
  - (iii) in 2016, senior counsel attended the Step 2 grievance meeting not having informed herself of Jean-Marie's case, and went on to "ham it up" with the Crown's counsel during the meeting, and even encouraged the OPS Management's designee, who was adjudicating the matter, to rule in favour of the Crown;

- (iv) in 2016, senior counsel (and the then-President of ALOC, Earl Dumitru (**Dumitru**), and ALOC's Labour Relations Specialist) despite having practiced labour and human rights law for almost 30 years stated that she had never heard of the term "white privilege" or the white woman, Peggy McIntosh, whom coined the term three decades ago—this was exceedingly problematic and prejudicial to Jean-Marie, as Jean-Marie was suspended by OPS Management because she was overheard saying "white privilege" and that Jean-Marie raising her experiences of anti-Black racism with white people was reverse racism against them;
- (v) despite Jean-Marie and other racialized counsel beseeching ALOC and Dumitru to retain counsel with training and a demonstrated commitment and expertise in matters affecting their racialized members, such as racism, anti-Black racism, misogynoir, white supremacy, and white privilege, ALOC refused to do so because ALOC has "a long-standing relationship" with its lawyers;
- (vi) ALOC and its lawyers continually pressured Jean-Marie to acquiesce to OPS Management's breach of the *Charter*, the *Code*, and labour law;
- (vii) despite ALOC and its lawyers lack of knowledge in human rights laws as it pertains to racism, anti-Black racism, anti-Black bias, racial abuse, white supremacy, and white privilege, which were

pertinent to Jean-Marie's experience of racial discrimination and racial harassment in the workplace, ALOC and Dumitru and refused to retain appropriate counsel, stating that ALOC was going to do things the way they have always done them in the past;

- (viii) ALOC refused to retain counsel with an expertise in matters relating to Jean-Marie's experience of anti-Black racism in the workplace, but then relied on Jean-Marie's private counsel for advice, incurring thousands of dollars in legal fees, which Jean-Marie had to pay and ALOC refused to assist her with;
- (ix) ALOC's board member assigned to assist and support Jean-Marie did not take Jean-Marie's experiences of racial discrimination and racial harassment in the workplace seriously (laughingly advising Jean-Marie that she should view OPS Management's suspension of her as a vacation), did not communicate with Jean-Marie, was uninformed, undermining, advocated for the Crown, and failed to attend the Step 2 grievance meeting;
- (x) ALOC and Dumitru were cavalier and complacent about the Crown's breaches of Jean-Marie's human rights and asserted that there is an "obey now and grieve later" principle in labour law jurisprudence that dictates that unionized employees must follow their employer's directives, even if the employer is violating provisions of the collective agreement or the *Code*;

- (xi) ALOC and Dumitru refused to provide any commentary or advocacy on the Statement of Allegations against Jean-Marie;
- (xii) ALOC and Dumitru left Jean-Marie on her own, during an extremely traumatic period, suffering from the negative effects of anti-Black racism to assess the Statement of Allegations against her—Jean-Marie was solely responsible for reviewing and the documents and pointing out missing materials, inconsistencies with the WDHP, and seeking clarification; and
- (xiii) ALOC refused to provide any commentary on Lee's reports, which are replete with lies, mischaracterizations, and anti-Black sentiments, stereotypes, and tropes, and reveal that the Crown retained an investigator that not only has no expertise in racism, anti-Black racism, white supremacy, and white privilege, but lacks a basic understanding of human rights concepts, principles and understanding.
- (xiv) in the summer of 2015, Neil Abraham (**Abraham**), Train, Young, Schneider and others conspired to have Abraham not complete an assignment Jean-Marie had given him, and falsely, in order to harm her reputation and career, claimed that Jean-Marie had engaged in discriminatory conduct towards Abraham—this claim was made to OPS Management and staff, the two external investigators, Freudmann and Lee, and others;

- (xv) in writing and orally, during the period 2015 to 2018, Abraham, Train, Young, Schneider, MacDonald, Then, Valiquette, Price, OPS Management, and others, conspired to make and made false statements regarding Jean-Marie's behaviour and character, meant to harm Jean-Marie her career, reputation, and mental, physical and financial wellbeing, to OPS Management and staff, the external investigators, Freudman and Lee, and others—as a result of these acts Jean-Marie's was suspended from the OPS, and suffered harm;
- (xvi) since May 2016, the Crown, ALOC and their respective employees, servants, agents and representatives, conspired together to withhold disclosure, delay and undermine the grievance process, and breach Jean-Marie's *Charter* and *Code* rights, to protect ALOC's members and OPS Management and staff whom engaged in anti-Black racism against Jean-Marie—as a result of their conduct (acts and omissions), Jean-Marie suffered harm;
- (xvii) the Crown's employees, servants, agents and representatives conspired to withhold information from Jean-Marie, denied her access to vital information and a fair investigative process, thereby prejudicing Jean-Marie and preventing her timely access to procedural and substantive justice—as a result, Jean-Marie was forced to retain counsel, resulting in her experiencing financial harm.

### (m) Privacy Breaches

238. In or around, March or April 2018, the Crown disclosed to an individual and her firm, at first described by OPS Management as an independent third party, confidential and personal information belonging to the plaintiffs, such as their home addresses and WDHP records, which may include their medical documentation.

239. When the plaintiffs expressed concern to Orsini about this breach of their privacy, his counsel, William Bromm, described the third party as a Crown Agent and asserted a client-solicitor relationship with the Crown.

240. The Crown has refused to disclose to the plaintiffs the extent of the privacy breach. The plaintiffs' brought a complaint under *FIPPA*. Yet this process has been stonewalled.

## VI. CAUSES OF ACTION

### A. Negligence

241. The defendants and their employees, servants, agents, and representatives owed statutory, contractual, and common law duties of care to Hentrose and Jean-Marie (particularized in Schedule B as the **Defendants' Duties**).

242. The defendants breached their duty of care by permitting the plaintiffs to suffer wrongful acts (particularized in Schedule B as the **Wrongful Acts**) and through the defendants' failures (particularized in Schedule B as the **Defendants' Failures**).

243. These breaches have resulted in harm to the plaintiffs (particularized in Schedule B as the **Plaintiffs' Harms**).

244. AMAPCEO and ALOC breached the standard of care by either failing or refusing to ensure the enforcement of the WDHP, WVP, and grievance procedures under the respective collective agreements, and the statutory and regulatory duties and obligations of AMAPCEO and ALOC under the *Crown Employees Collective Bargaining Act, 1993*.

245. The culture and atmosphere created by systemic and institutional anti-Black racism in OPS permeated the practices and procedures of AMAPCEO and ALOC, respectively, so that they could not and did not advance and protect Hentrose's and Jean-Marie's interests.

246. Hentrose and Jean-Marie often complained about anti-Black racism in the OPS to AMAPCEO and ALOC—their complaints were ignored or never properly investigated and addressed. Instead, AMAPCEO and ALOC isolated and silenced Hentrose and Jean-Marie to protect their other members and to hide the systemic and institutional anti-Black racism in the OPS.

247. The defendants and their employees, servants, agents, and representatives knew, or ought to have known, that the Wrongful Acts and the Defendants' Failures were occurring, and were of a nature that would cause the Plaintiffs' Harms.

**B. Intrusion Upon Seclusion**

248. The Crown and its employees, servants, agents, and representatives intentionally or recklessly invaded the plaintiffs' private affairs or concerns, as particularized above, without lawful justification.

249. A reasonable person would regard this invasion of privacy as highly offensive causing distress, humiliation, and anguish.

**C. Harassment**

250. The conduct of the defendants and their employees, servants, agents, and representatives was outrageous. It was intended to, and did, cause the plaintiffs' emotional stress. Alternatively, it was carried out with a reckless disregard for whether it would cause the plaintiffs to suffer from emotional stress. To date, the defendants' outrageous conduct is ongoing.

251. The plaintiffs suffered and continue to suffer severe and extreme emotional distress, the proximate cause of which was the Wrongful Acts and Defendants' Failures, for which the defendants are directly and vicariously liable.

**D. Assault**

252. The conduct of the defendants and their employees, servants, agents, and representatives created a reasonable apprehension of threat of danger or violence to the plaintiffs.



**E. Negligent Investigation**

253. The Crown and its employees, servants, agents, and representatives owed a duty of care to the plaintiffs to investigate properly complaints and allegations about the plaintiffs.

254. The failure of the Crown and its employees, servants, agents, and representatives to conduct a proper investigation into complaints and allegations about the plaintiffs has caused compensable damage to the plaintiffs.

**F. Intentional Infliction of Mental Suffering**

255. The conduct of the defendants and their employees, servants, agents, and representatives was flagrant and outrageous, was calculated to harm the plaintiffs, and has resulted in the plaintiffs' mental suffering. To date, the defendants' flagrant and outrageous conduct is ongoing.

256. The conduct of the defendants' and their employees, servants, agents, and representatives has caused and continues to cause the plaintiffs to suffer visible and provable illnesses.

**G. Intentional Infliction of Nervous Shock**

257. The conduct of the defendants and their employees, servants, agents, and representatives was extreme and calculated, and intended to harm the plaintiffs, and has resulted in psychological trauma to the plaintiffs.

258. The conduct of the defendants' and their employees, servants, agents, and representatives has caused and continues to cause the plaintiffs to suffer visible and provable illnesses.

#### **H. Breach of Contract**

259. The defendants breached contractual duties, expressed and implied, to the plaintiffs, including:

- (a) the defendants and their employees, servants, agents, and representatives failed to operate in a manner of good faith and fairness towards the plaintiffs;
- (b) the defendants failed to adhere to the principles of due process, fairness, and natural justice in their dealings with the plaintiffs;
- (c) the defendants failed to ensure that employees, servants, agents, and representatives, adhere to, uphold and actively enforce the *Charter*, *ESA*, *Code*, *OHSA*, *ODA*, *FIPPA*, *PHIPA*, and *OPS Policies*, all of which are implied terms of the plaintiffs' contracts, in their dealings with the plaintiffs;
- (d) the defendants failed to ensure that their employees, servants, agents, and representatives, who violated the law and *OPS Policies* in their dealings with the plaintiffs, were appropriately investigated and disciplined; and

- (e) the defendants breached their obligations to the plaintiffs owing under their employment and collective agreements, from the Wrongful Acts and the Defendants' Failures, causing the Plaintiffs' Harm.

**I. Breaches of the *Charter***

260. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

261. Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national, or ethnic origin, colour, religion, sex, age, or mental or physical disability.

262. Some or all of the Wrongful Acts perpetrated against the plaintiffs by the Crown and its employees, servants, agents, and representatives and the Crown's Failures violate equality rights enshrined in the *Charter*, and constitute discrimination based on intersectional grounds of race, colour, national or ethnic origin, colour, sex, and mental or physical disability.

263. Some or all of the Wrongful Acts perpetrated against the plaintiffs by the Crown and its employees, agents, servants, and representatives and the Crown's Failures creates a distinction based on prohibited grounds that creates a disadvantage for the plaintiffs by withholding benefits from them that are available to others and by imposing burdens, obligations, and restrictions on them that are not imposed on others. This

distinction creates disadvantage by perpetuating disadvantage, prejudice, or stereotyping of them as Black women.

264. The decisions, actions or inactions, Wrongful Acts, and Crowns' Failures allowed a toxic and poisoned work environment to persist in the OPS, which discriminated against the plaintiffs based on their immutable identify and was not in accordance with the fundamental values protected by sections 7 and 15 of the *Charter* and cannot be justified under section 1 of the *Charter*.

265. The Crown's breaches of the *Charter* caused the Plaintiffs' Harms.

**J. Breaches of the Code**

266. Every person has a right to equal treatment with respect to employment without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status, or disability.

267. Some or all of the Wrongful Acts perpetuated against the plaintiffs by the defendants and their employees, servants, agents, and representatives and the Defendants' Failures constitutes discrimination with respect to employment based on intersectional grounds of race, ancestry, place of origin, colour, ethnic origin, sex, and disability.

268. Every employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender

identity, gender expression, age, record of offences, marital status, family status, or disability.

269. Every person has a right to equal treatment with respect to membership in any trade union, trade or occupational association or self-governing profession without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sexual orientation, gender identity, gender expression, age, record of offences, marital status, family status, or disability.

270. Every person has a right to freedom from harassment in the workplace because of sex by his or her employer or agent of the employer or by another employee.

271. Employers must refrain from reprisals or threats of reprisal taken against employees relating to an employee having claimed, or in trying to enforce a *Code* right or to retaliate against the employee for making a claim or attempting to enforce a right under the *Code*.

272. Some or all of the Wrongful Acts perpetuated against them by the defendants and their employees, servants, agents, and representatives and the Defendants' Failures constitutes discrimination and harassment in employment and association based on intersectional grounds of race, ancestry, place of origin, colour, ethnic origin, sex, and disability.

273. The defendants' breaches of the *Code* caused the Plaintiffs' Harms.

## **VII. DAMAGES**

274. The defendants are directly and vicariously liable for the Wrongful Acts committed by their employees, servants, agents, and representatives against the plaintiffs and the Defendants' Failures, and thus are liable to pay damages for the Plaintiffs' Harms that have followed.

275. Compensatory damages are insufficient here.

276. The defendants knew or ought to have known that the Wrongful Acts of their employees, agents, servants, and representative and the Defendants' Failures would cause the Plaintiffs' Harms.

277. The defendants knew or ought to have known that the plaintiffs were vulnerable arising from their immutable intersectional characteristics (gender, race, sex, colour, ethnicity, and ancestry), and the Wrongful Acts and the Defendants' Failures would cause irreparable harm to the plaintiffs.

278. The Wrongful Acts of the defendants and their employees, servants, agents, and representatives and the Defendants' Failures merit punishment and warrants society's condemnation to achieve the goals of both specific and general deterrence.

### **B. Punitive Damages**

279. The conduct of the defendants was wanton, willful, callous, cavalier, cruel, arrogant, reprehensible, malicious, highhanded, oppressive, biased, lackadaisical,

unethical, adversarial, and abusive, and constituted a gross violation of the constitutional, contractual, statutory, and common law rights of the plaintiffs.

280. The Crown benefited from the publicity surrounding the plaintiffs' advocacy, while not taking any substantive measures to address the Wrongful Acts committed and being committed against the plaintiffs. For example, in response to advocacy by the plaintiffs (and community activists), Orsini stated there would be a zero tolerance for racism in the OPS and there would be a moratorium on the suspension and firing of Black and racialized workers. But the Crown failed to address the anti-Black racism, racial discrimination, and racial harassment the plaintiffs were experiencing, and terminated the plaintiffs' employment.

281. The Crown's failure to protect the plaintiffs completely contradicted the Crown's public pronouncements of "zero tolerance of racism of any kind in the OPS."

282. AMAPCEO's and ALOC's failure to protect the plaintiffs and participation in Wrongful Acts completely contradicted their duty of fair representation owing to the plaintiffs.

### **C. Aggravated Damages**

283. The defendants knew or ought to have known that the Wrongful Acts of their employees, agents, servants, and representatives, and the Defendants' Failures would have resulted in the plaintiffs suffering mental distress, anxiety, anguish, grief, vexation, humiliation, indignation, outrage, wounded pride, damaged self-confidence and

esteem, loss of faith in friends, colleagues, association, and the Crown, and harm their dignity, feelings, and self-respect.

#### **D. Moral Damages**

284. The defendants and their employees, servants, agents, and representatives, operated in bad faith towards the plaintiffs, causing them to suffer a reasonably foreseeable harm.

285. Because of the breaches set out above, the plaintiffs have sustained and will continue to sustain injuries as set out in the Plaintiffs' Harms. The plaintiffs also have lost wages, including overtime opportunities, merit increases, promotional opportunities, and future income and correlating pension income. The plaintiffs have also incurred medical, legal, administrative, travel and other costs. The plaintiffs' seek full recovery of these damages.

#### **VIII. CONCLUSION**

286. The defendants have harmed and failed the plaintiffs.

287. The plaintiffs have suffered at the hands of the defendants, and they are entitled to damages, including pecuniary and non-pecuniary general damages, special damages, and moral, aggravated, exemplary and punitive damages.

288. The Crown is one of the largest employers in Canada and is entrusted with extraordinary power and influence that affect and impact the lives of all Ontarians. As a result, it is particularly damaging when the Crown operates as if it is above the



rule of law, and violates constitutional, statutory, contractual and common law duties governing its relationship with its most vulnerable employees and citizens.

289. AMAPCEO is the second largest union representing Crown employees, and purports to be “dedicated to providing outstanding representation and other services” to its members, and “advocat[ing] for better working conditions for everyone”. Yet, while being aware of “the large discrepancy between the goals if the WDHP and the actual practices in the workplace”, it failed to provide competent, appropriate and fair representation to Hentrose about her experiences of anti-Black racism.

290. ALOC is an association representing lawyers, whose members represent the Crown on civil and quasi-criminal matters, and advise on policy, regulation, and legislation to the Crown. ALOC members “have a unique historical relationship to the Crown in *ensuring* critical safeguards for the rule of law.” Thus, it is particularly damaging, wanton and reprehensible that ALOC and its employees, servants, agents, and representatives failed to uphold contractual, statutory and common law duties owed to Jean-Marie, and to provide her with competent, appropriate and fair representation about her experiences of anti-Black racism.

291. Institutional and systemic anti-Black racism and misogynoir have a long and indelible history in the OPS. They are entrenched in the very psyche and culture of OPS. The ubiquitous and insidious nature of anti-Black racism and misogynoir in the OPS is so deeply ingrained, so that egregious individual acts of anti-Black racism and misogynoir against Hentrose and Jean-Marie were viewed as normative by the defendants. As a result, internal OPS internal processes, arbitration, and human rights

applications are ineffective in addressing and redressing anti-Black racism and misogynoir in the OPS. The only viable recourse to achieve justice for the plaintiffs, and to achieve behaviour modifications of the Crown, AMPACEO, and ALOC is by this proceeding. The high-handed and callous conduct of the defendants warrants condemnation by this court.

**IX. PLACE OF THE TRIAL**

292. The trial of this action should take place in the City of Toronto.

DATE OF ISSUE

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**SCHEDULE A  
TERMS OF ART**

Anti-Black Racism	Anti-Black racism is the prejudice, attitudes, beliefs, stereotyping, and discrimination that is directed at people of African descent and is rooted in their unique history and experience of enslavement. Anti-Black racism is deeply entrenched in Canadian institutions, policies, and practices, so that anti-Black racism is either functionally normalized or rendered invisible to the larger white society. Anti-Black racism is manifested in legacy of the current social, economic, and political marginalization of African Canadians in society.
Anti-Racism	An active and consistent process of change to eliminate individual, institutional and systemic racism.
Barrier	An overt or covert obstacle. Used in employment equity to mean a systemic obstacle to equal employment opportunities or outcomes; an obstacle which must be overcome for equality to be possible.
Bias	A subjective opinion, preference, prejudice, or inclination, often formed without reasonable justification, that influences an individual's or group's ability to evaluate a particular situation objectively or accurately; a preference for or against. Reasonable apprehension of bias exists when there is a reasonable belief that an individual or group will pre-judge a matter and thus cannot assess a matter impartially because of bias.
Black People	People of African and Caribbean descent and those who define themselves as such, who are now residents or citizens of Canada.
Conciliation	Mainly an informal communications process aimed at getting the parties to establish meaningful dialogue, narrow down issues in dispute and suggest cooperative ways of resolving conflict. The goal of conciliation and mediation (see below) is to settle racial or ethnic disputes peacefully and outside the court system.

Discrimination	The denial of equal treatment and opportunity to individuals or groups because of personal characteristics and membership in specific groups, with respect to education, accommodation, health care, employment, and access to services, goods, and facilities. Behaviour that results from distinguishing people on that basis without regard to individual merit, resulting in unequal outcomes for persons who are perceived as different. Differential treatment that may occur on the basis of race, nationality, religion, ethnic affiliation.
Diversity	A term used to encompass all the various national, racial, ethnic, religious, and other backgrounds of people. Used increasingly in Canada to describe workplace programs aimed at reducing discrimination, promoting equality of opportunity and outcome for all groups. The range of human qualities and attributes within a group, organization, or society. The dimensions of diversity include, but are not limited to, ancestry, culture, ethnicity, language, race, religion, and socio-economic status.
Equity	A condition or state of fair, inclusive, and respectful treatment of all people. Equity does not mean treating people the same without regard for individual differences.
Ethnic Group	Refers to a group of people having a common heritage or ancestry, or a shared historical past, often with identifiable physical, cultural, linguistic and religious characteristics.
Ethnicity	The multiplicity of beliefs, behaviours, and traditions held in common by a group of people bound by particular linguistic, historical, geographical, religious and racial homogeneity. Ethnic diversity is the variation of such groups and the presence of several ethnic groups within one society or nation.
Harassment	Persistent, on-going communication (in any form) of negative attitudes, beliefs, or actions towards an individual or group, that is known or ought reasonably to be known, to be unwelcome, with the intention of disparaging that person(s). Harassment can be manifested in name calling, jokes or slurs, graffiti, insults, threats, discourteous treatment, and written or physical abuse. Harassment may be subtle or overt.

Human Rights	Human rights affirm and protect the right of every individual to live and work without discrimination and harassment. Human rights policies and legislation seek to create a climate in which the dignity, worth, and rights of all people are respected, regardless of age, ancestry, citizenship, colour, creed (faith), disability, ethnic origin, family status, gender, marital status, place of origin, race, sexual orientation or socio-economic status.
Immigrant	One who moves from his/her native country to another with the intention of settling for the purpose of forging a better life or for better opportunities. This may be for several personal, political, religious, social, or economic reasons. The word is sometimes used incorrectly to refer, implicitly or explicitly, to people of colour or with nondominant ethnicities.
Intersectionality	The experience of the interconnected nature of ethnicity, race, creed, and so on, (cultural, institutional and social), and the way they are imbedded within existing systems so that they define how one is valued.
Marginalization	On race and culture, the experience of persons outside the dominant group who face barriers to full and equal participating members of society. Refers also to being “left out” of or silenced in a social group.
Mediation	The intervention into a dispute or negotiation of an acceptable impartial and neutral third party who has no authoritative decision-making power, to reach voluntarily and acceptable settlement of issues in dispute. In a race relations context, its aim is to reach a signed agreement setting out specific steps to be taken by each side to restore social harmony and peaceful relations.
Misogynoir	Means the intersection of racism, anti-Blackness, and misogyny that Black women experience. The term is specific to Black womanhood, as misogynoir cannot be experienced by women of any other race, but can be perpetuated by people of any gender or race.

Oppression	<p>Means the subjugation of one individual or group by a more powerful individual or group, using physical, psychological, social or economic threats or force, and often using an explicit ideology to sanction the oppression; and the injustices suffered by marginalized groups in their everyday interactions with members of the dominant group. The marginalized groups usually lack avenues to express reaction to disrespect, inequality, injustice, and lack of response to their situation by individuals and institutions that can make improvements.</p> <p>The unilateral subjugation of one individual or group by a more powerful individual or group, using physical, psychological, social or economic threats or force, and often using an explicit ideology to sanction the oppression.</p>
Poisoned Work Environment	<p>Means a negative, hostile, or unpleasant workplace because of comments or conduct that tend to demean a group identified by one or more prohibited grounds under the Code, even if not directed at a specific individual. A poisoned work environment may result from a serious single event, remark, or action.</p>
Privilege	<p>The experience of freedoms, rights, benefits, advantages, access, and opportunities afforded some people because of their group membership or social context.</p>
Race	<p>Race is the socially constructed differences among people based on characteristics such as accent or manner of speech, name, clothing, diet, beliefs and practices, leisure preferences, places of origin and so forth.</p>
Racial Discrimination	<p>Racial discrimination is any distinction, exclusion, restriction, or preference based on race, colour, descent, or national or ethnic origin, which nullifies or impairs the recognition, enjoyment, or exercise of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. Racial discrimination is a major barrier for racialized people. It is present in individual attitudes and behaviours such as in interpersonal relations. It is also present in how society is organized, including the norms and assumptions that underpin institutional practices or the way we do business. This results in advantages for those who are considered “white” and inequities for those who are considered the “other” or “non-white”.</p>

Racial Profiling	Any action undertaken for reasons of safety, security, or public protection that relies on assumptions about race, colour, ethnicity, ancestry, religion, or place of origin rather than on reasonable suspicion, to single out an individual for greater scrutiny or differential treatment. Profiling can occur because of a combination of the above factors, and age and gender can influence the experience of profiling.
Racialized Person or Racialized Group	A person or group that is non-White or Caucasian. Using the terminology “racialized person” or “racialized group” is more accurate than “racial minority,” “visible minority,” “person of colour,” or “non-White”.
Racism	Racism refers not only to social attitudes towards non-dominant ethnic and racial groups but also to social structures and actions which oppress, exclude, limit and discriminate against such individuals and groups. Racist social attitudes originate in and rationalize discriminatory treatment.  Racism also refers to a system in which one group of people exercises power over another based on skin colour; an implicit or explicit set of beliefs, erroneous assumptions, and actions based on an ideology of the inherent superiority of one racial group over another, and evident in organizational or institutional structures and programs as well as in individual thought or behaviour patterns.
Racist	Refers to an individual, institution, or organization whose beliefs and actions imply (intentionally or unintentionally) that certain races have distinctive negative or inferior characteristics. Also refers to racial discrimination in the policies, practices, and procedures of institutions, corporations, and organizations that, though applied to everyone equally and may seem fair, result in exclusion or act as barriers to the advancement of marginalized groups, thereby perpetuating racism.
Stereotype	A preconceived over generalization of a group of people, ascribing the same characteristic(s) to all members of the group, regardless of their individual differences. An overgeneralization, in which the information or experience on Stereotyping may be based on misconceptions, incomplete information, and false generalizations about race, age, ethnic, linguistic, geographical or natural groups, religions, social, marital or family status, physical, developmental or mental attributes, gender, or sexual orientation.

Systemic Discrimination	The institutionalization of discrimination through policies and practices which may appear neutral on the surface, but which have an exclusionary effects on particular groups, so that various minority groups are discriminated against, intentionally or unintentionally. This occurs in institutions and organizations where the policies, practices, and procedures (e.g., employment systems – job requirements, hiring practices, promotion procedures) exclude and act as barriers to racialized groups. Systemic discrimination may also result from some government laws and regulations.
Systemic Racial Discrimination	Means patterns of behaviour, policies, or practices that are part of the structures of an organization or an entire sector can disadvantage or fail to reverse the ongoing impact and legacy of historical disadvantage of racialized persons. This means that even though you did not intent to, your “normal way of doing things” might be harming racialized persons.
Tolerance	Usually meant as a liberal attitude toward those whose race, religion, or nationality differs from one’s own. Since it has the connotation of ‘put up with’, today the term acceptance is preferred. That is, through anti-racism and equity work we aim to counter intolerance, and to achieve acceptance for all.
Visible Minority	Term used to describe people who are not White. Although it is a legal term widely used in human rights legislation and various policies, currently the terms racialized minority or people of colour are preferred by people labelled as “visible minorities”.
White	A social colour. The term is used to refer to people belonging to the majority group in Canada. There are many different people who are “White” but who face discrimination because of their class, gender, ethnicity, religion, age, language, or geographical origin. Grouping these people as “White” is not to deny the very real forms of discrimination that people of certain ancestry, such as Italian, Portuguese, Jewish, Armenian, or Greek, face because of these factors.
White Privilege or White Skin-Privilege	<p>The societal privilege that benefits people whom society identifies as white in some countries, beyond what is commonly experienced by non-white people under the same social, political and economic circumstances.</p> <p>The unearned privileges that white people or white-skinned people experience (often unconsciously) because they are not subjected to racism.</p>



White Supremacy

A racist belief that white people are superior to people of other races and thus should be dominant over them.

The idea (ideology) that white people and the ideas, thoughts, beliefs, and actions of white people are superior to People of Colour and their ideas, thoughts, beliefs, and actions. While most people associate white supremacy with extremist groups like the Ku Klux Klan and the neo-Nazis, white supremacy is ever present in our institutional and cultural assumptions that assign value, morality, goodness, and humanity to the white group while casting people and communities of color as worthless (worth less), immoral, bad, and inhuman and “undeserving.” Drawing from critical race theory, the term “white supremacy” also refers to a political or socio-economic system where white people enjoy structural advantage and rights that other racial and ethnic groups do not, both at a collective and an individual level.

## **SCHEDULE B**

### **Wrongful, Negligent and Intentional Acts**

The plaintiffs have experienced anti-Black racism, misogynoir, racial discrimination, racial harassment, racial bullying, and abuse of authority in various forms, including the following:

- (a) discrimination and harassment, about gender, race, ethnicity, ancestry, place of origin, colour, disability, and sex;
- (b) berating, insults, attacks, assaults, mocking, ridicule, discrediting, gaslighting, silencing, ambushing, mobbing, gossiping, racial profiling, sabotaging, policing, macro and microaggressions, and the spreading of rumours and lies about them;
- (c) devaluation, dehumanization, segregation, ostracism, and psychological oppression of the plaintiffs;
- (d) conspiring, colluding, falsifying and destroying records;
- (e) being put in a position of having to advocate for themselves about their experiences of anti-Black racism in the OPS, while the Crown willingly uses all of its capital, financial and human resources to defend, advocate for and support their oppressors and wrongdoers;
- (f) negative anti-Black stereotypes and tropes;

- (g) management forcing them to work in unsafe work conditions;
- (h) withholding information and responsibilities;
- (i) withholding training or other job opportunities;
- (j) sabotaging of work and interfering with the plaintiffs' work;
- (k) undermining relationships with staff, stakeholders, clients, and others;
- (l) setting up unrealistic goals and deadlines;
- (m) creating and fostering an uncivil, disrespectful, toxic and poisoned work environment for the plaintiffs;
- (n) punitive transfers, or refusals to transfer;
- (o) punitive leaves, suspensions, termination of employment or threat of employment termination, and constructive dismissals;
- (p) interruption of pay, reduced pay, and pay termination or threat of pay termination;
- (q) improper, unwarranted disproportionate criticisms or trivial fault-finding and excluding or singling out for unusual treatment;
- (r) acts and omissions designed to humiliate, denigrate, embarrass, exclude or isolate the plaintiffs;

- (s) conduct intended to cause emotional stress, anxiety, psychological distress, and physical and financial harm;
- (t) inappropriate use or disclosure of confidential information about the plaintiffs;
- (u) threats, retaliation, and reprisals for questioning, complaining, grieving or seeking assistance to deal with experiences of anti-Black racism, misogynoir, discrimination, harassment, and abuse of authority; and
- (v) wrongful and bad faith use of internal administrative and discipline processes and managerial discretion.

The above are collectively referred to as the “**Wrongful Acts**”.

### **Defendants’ Failures**

The anti-Black racism, misogynoir, racial discrimination, racial harassment, bullying, and abuse of authority, suffered by the plaintiffs were made worse by the defendants’ failures or actions, including the following:

- (a) maintaining and permitting an organizational culture which fosters racism, dysfunction, discrimination, harassment, racial bullying, and abuse of authority/power;
- (b) refusing to recognize Wrongful Acts as wrong, or complaints as valid;
- (c) wrongly asserting that misconduct was a reasonable exercise in managerial discretion;

- (d) ignoring or excusing complaints about anti-Black racism, misogynoir, racial abuse, and a toxic and poisoned work environment;
- (e) ignoring, excusing, defending, fostering and condoning white supremacy, white privilege, and white fragility;
- (f) falsely asserting and supporting that there is such a thing as “reverse racism”, and that complaints about anti-Black racism, amount to reverse racism against white people;
- (g) defending OPS Management and staff who have engaged in racial discrimination, racial harassment, micro and macro-aggressions, misogynoir, anti-Black racism, intimidations, lies, and racial stereotyping;
- (h) providing legal representation to OPS Management and to staff who have engaged in racial discrimination, racial harassment, micro and macro-aggressions, misogynoir, anti-Black racism, intimidations, lies, and racial stereotyping;
- (i) refusing to effectively and expediently remedy anti-Black racism/conduct;
- (j) failing to ensure adherence to constitutional, statutory, contractual and common law duties;
- (k) failing or choosing not to recognize the vulnerability of the plaintiffs;

- (l) failing to investigate complaints in a proper, non-capricious, non-superficial, timely, fair, and impartial manner, and failing to investigate at all;
- (m) engaging in or permitting vexatious comments or conduct;
- (n) engaging in or permitting retaliation and reprisal for raising discrimination, harassment, bullying and abuse of authority concerns/experiences;
- (o) failing to ensure that individuals investigating complaints about anti-Black racism, racism, misogynoir, intersectionality, white supremacy, white privilege, and racial abuse had the education, training, expertise, and competency to do so;
- (p) failing to maintain or enforce legislation, policies, and proper procedures to prevent or minimize the risk of Wrongful Acts;
- (q) using intimidation, threats, isolation, and loss of career and educational opportunities and employment to silence complainants;
- (r) rewarding those who have engaged in discrimination, harassment, bullying and abuse of authority/power, for example, promoting the wrongdoer, removing the complainant/victim from the workplace, while permitting the harasser to remain in the workplace, often including in physical proximity to the complainant and in a position of

authority/power over the person(s) harassed, and ostracizing complainants;

- (s) failing to provide and ensure the plaintiffs were provided with disclosure;
- (t) failing to carry out appropriate or any remedial action about anti-Black racism, misogynoir, discrimination, harassment, bullying and abuse of authority; and
- (u) intentionally and recklessly breaching, on several occasions, duties owed to the plaintiffs under *FIPPA* and *PHIPA* by sharing, without the plaintiffs' implied or explicit consent, their personal information, records, and documents with a third party whom the Crown at first identified as an independent third-party reviewer.

The above are collectively referred to as “**Defendants’ Failures**”.

### **The Harms Suffered by the Plaintiffs**

The Wrongful Acts and the Defendants’ Failures have caused the plaintiffs to suffer:

- (a) loss of reputation and dignity;
- (b) criminalization, humiliation, denigration, and disenfranchisement;
- (c) work disruption, displacement, demotion, and exclusion;
- (d) impaired ability to obtain and sustain employment;

- (e) loss of income or income opportunities, including, merit increases, promotions, pension compensation, and overtime pay;
- (f) post-traumatic stress disorder, mental affliction, anxiety, depression, psychiatric/psychological affliction, cynicism, distress, fear, anger, grief, anguish, nervousness, shock, panic attacks, and nightmares;
- (g) miscarriages, complicated pregnancies, premature delivery, premature childbirth and accompanying issues, hospitalization, and sexual dysfunction;
- (h) loss confidence in self and others, and low self-esteem;
- (i) social isolation, marginalization, exclusion, and displacement;
- (j) feelings of futility, degradation, frustration, incompetence, powerlessness, psychosomatic illness, poor concentration, restlessness, exhaustion, lack of motivation, loss of safety, insecurity, and fear of returning to work;
- (k) hypertension, headaches, incontinence, weight gain/loss, physical pain, and other ailments;
- (l) temporary or permanent incapacity requiring medical attention, including medical and psychiatric/psychological treatment and counselling;



...

- (m) impaired ability to enjoy and participate in familial, social, recreational, and employment activities;
- (n) loss of general enjoyment of life;
- (o) problems with interpersonal relationships; and
- (p) injury to dignity, feelings, and self-respect.

The above are collectively referred to as the “**Plaintiffs’ Harms**”.

### **Defendants’ Liability**

The defendants are directly and vicariously liable for the Plaintiffs’ Harms arising from the Wrongful Acts and the Defendants’ Failures carried out directly by the defendants and through their employees, agents, servants, and representatives.

### **Defendants’ Duties**

At all material times, the defendants owed to the plaintiffs constitutional, statutory, contractual, and common law duties to ensure that they work in a safe environment. Such duties include the obligations to:

- (a) ensure a work environment free of anti-Black racism, misogynoir, racial discrimination, racial harassment, racial abuse, racial bullying, and abuse of authority/power;
- (b) ensure a safe and healthy work environment;
- (c) ensure adequate human, financial and material resources;

- (d) uphold *Charter* values and protect *Charter* rights, and rights contained within the *Code*, including equal treatment regardless of gender, sex, pregnancy, race, colour, ancestry, ethnicity, or disability;
- (e) accommodate the plaintiffs per the *Charter* and the *Code*;
- (f) establish, maintain and follow adequate internal policies, processes, directives, and guidelines, and legislation/regulation about racism, discrimination, harassment, disability, abuse of authority, racial bullying, discipline, and use of managerial discretion/authority;
- (g) retain, educate, train, supervise, appropriately monitor and discipline employees, members, agents, and representatives on matters relating to racism, discrimination, harassment, disability, abuse of authority, racial bullying, discipline and use of managerial discretion/authority;
- (h) use of reasonable care to ensure the health and safety of the plaintiffs;
- (i) provide and maintain safe work environments for employees and members;
- (j) investigate and address anti-Black racism, misogynoir, discrimination, harassment, abuse of authority and racial bullying when circumstances warrant, or a complaint is made, including, by providing appropriate assistance and redress to the plaintiffs; and

- (k) take all reasonable steps to prevent Wrongful Acts, the Defendants' Failures and the Plaintiffs' Harms.

The above are referred to collectively as "**Defendants' Duties**".

HENTROSE NELSON and other  
Plaintiffs

-and- HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO and others  
Defendants

Court File No.

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
TORONTO

**STATEMENT OF CLAIM**

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