

LAURA YONTZ

and

DR. MARK ESSAK et al.

Plaintiff

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Cobourg

STATEMENT OF DEFENCE

BLANEY MCMURTRY LLP

Barristers & Solicitors

2 Queen Street East, Suite 1500

Toronto ON M5C 3G5

William D. Anderson (LSUC #31736M)

Tel: (416) 593-3901

Fax: (416) 593-5437

BAnderson@blaney.com

Lawyers for the Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

LAURA YONTZ

Plaintiff

- and -

DR. MARK ESSAK, DR. RINA DASKALOPOULOS,
DR. KATHY BARNARD-THOMPSON, DR. EMMA SMITH,
DR. MICHAEL BAYER, DR. MICHAEL JONES and
NORTHUMBERLAND FAMILY HEALTH TEAM

Defendants

STATEMENT OF DEFENCE

1. The Defendants deny each and every allegation of fact as alleged in the Statement of Claim unless expressly admitted herein.

BACKGROUND:

2. The Defendant, Northumberland Family Health Team ("NFHT"), was incorporated on January 21, 2011 pursuant to the *Ontario Corporations Act*. The NFHT operates as an interdisciplinary health team providing a full range of medical and healthcare services to the community of Cobourg.
3. The NFHT currently operates its administration and interdisciplinary health team from premises located at 1111 Elgin Street West, Cobourg. The NFHT operates in conjunction with medical staff located at three (3) clinics: The Cobourg Clinic, 44 University Avenue; The Cobourg Health Centre, 316 King Street East; and The Cobourg Medical Centre, 1060 Burnham Street (the "Clinics").

4. The Defendants, Dr. Mark Essak, Dr. Rina Daskalopoulos, Dr. Kathy Barnard-Thompson, Dr. Emma Smith, Dr. Michael Bayer and Dr. Michael Jones (the "Individual Defendants") are practicing physicians at the Clinics and were members of the Board of Directors of the NFHT on April 14, 2015.
5. The NFHT receives its funding from the Province of Ontario and specifically the Ministry of Health and Long-Term Care (the "Ministry"). The NFHT works closely with the Ministry to ensure compliance with the Ministry's policies, procedures and regulations in relation to the newly created family health teams in the Province of Ontario.
6. The Defendants, specifically including the Individual Defendants, are highly respected professionals and members of the Cobourg community. The Defendants state and plead that the Statement of Claim asserts allegations which are intentionally or recklessly vague, misleading and false and are intended, in bad faith, to publically malign the Defendants.

THE FORMER EXECUTIVE DIRECTOR:

7. The Defendants deny that the former Executive Director left the employ of the NFHT "on short notice" or that he "left suddenly" as alleged by the Plaintiff at paragraphs 6 and 13 of the Statement of Claim.
8. On or about July 8, 2014, the former Executive Director tendered four weeks' notice of the resignation of his employment effective August 14, 2014, in accordance with the former Executive Director's employment agreement. The former Executive Director resigned to accept employment in the private sector.
9. Prior to the resignation of the former Executive Director, the Defendants had no knowledge, information or belief with respect to any financial impropriety regarding the former Executive Director. The defendants did not withhold any information or mislead the Plaintiff, at any time, regarding the former Executive Director's resignation, as suggested by the Plaintiff at paragraph 13 of the Statement of Claim.

THE HIRING OF THE PLAINTIFF:

10. The Defendants admit that the Plaintiff, Laura Yontz ("Yontz"), was employed by Extendicare as an administrator at an Extendicare Nursing Home.
11. The Defendant, Dr. Mark Essak ("Essak"), regularly visited patients at Extendicare's Nursing Home and knew of Yontz as the administrator of the nursing home. Essak was not aware of the Plaintiff's "experience, management and communications skills" in relation to "moving into a new building and combining operations and culture of an organization into an effective team" as stated by the Plaintiff at paragraph 9 of the Statement of Claim.
12. Following notice of resignation by the former Executive Director in or about July, 2014, the NFHT publicly advertised for a new Executive Director. Applications were to be submitted to the business manager, Tracy West, on or before August 8, 2014.
13. Approximately one week prior to the application deadline, Essak met with Yontz at the Extendicare Nursing Home in the course of visiting his patients, and asked Yontz whether she knew of anyone who might be interested in the new Executive Director position at NFHT. Essak did not inquire if Yontz was interested in the position or seek to persuade her to apply for the position. In fact, Essak was aware that Yontz had previously turned down an opportunity to apply for a similar job with a healthcare team in Prince Edward County, and assumed that Yontz had no interest in such a position. Yontz did not express any interest in the position at the NFHT and no further discussion regarding the position took place between Essak and Yontz. Approximately three days later, Yontz announced to Essak, again on a visit by Essak at the Extendicare Nursing Home, that she was personally interested in the Executive Director position. Essak advised Yontz that if she truly was interested in the position, she should put in an application as the deadline for applications was August 8, 2014.
14. On or about August 7, 2014, Yontz submitted her application for the position of Executive Director of the NFHT and was granted an interview with the NFHT in the ordinary course. Dr. Essak took no steps to ensure that the Plaintiff's application for employment was "submitted properly" or at all, as alleged at paragraph 10 of the Statement of Claim.

15. At no material time did Essak encourage, solicit, assist or promote Yontz' application for the position of Executive Director in advance of any of the other nine (9) candidates for the position.
16. Yontz participated in and completed an interview process with the NFHT hiring committee. Following a review of all candidates pursuant to that interview process, Yontz was offered employment as the Executive Director by correspondence dated September 5, 2014.
17. Specifically, Yontz was offered employment pursuant to the terms and conditions of a written offer of employment (the "Employment Agreement") which included, *inter alia*, a probationary period of three months at which time Yontz' employment could be terminated without notice or payment in lieu of notice. Thereafter, the Employment Agreement provided for the following notice of termination:

After the successful conclusion of the probationary period, NFHT may terminate your employment at any time without notice or payment in lieu of notice where it has just cause to do so. Where just cause is not alleged, NFHT may terminate this agreement and your employment at any time upon giving you written notice in accordance with the applicable provisions of the *Employment Standards Act, 2000* or, at NFHT's election, pay in lieu of notice or some combination thereof. You acknowledge that such notice or payment in lieu of notice constitutes your sole entitlement upon termination whether by contract, statute or common law and payment or provision thereof by NFHT constitutes accord and satisfaction and a full and final release by you of all claims or potential claims arising out of your employment or the termination thereof.

18. On or about September 8, 2014, Yontz expressly and by her signature agreed to all of the terms and conditions of the Employment Agreement, specifically including, but not limited to, the termination provisions thereof.

THE PLAINTIFF'S EMPLOYMENT:

19. Yontz commenced her employment with NFHT on or about Monday, October 6, 2014 and was employed for approximately six (6) months.

20. Yontz' duties and responsibilities related almost exclusively to managing the day-to-day operations of the NFHT. Yontz was responsible to and reported to the Board of Directors of the NFHT (the "Board of Directors").
21. The Defendants deny the statement that the Plaintiff had a "exemplary employment record in the areas of both attendance and competence and that she was never disciplined or criticised for the manner in which she performed her duties" as alleged at paragraph 12 of the Statement of Claim. As early as December 2014, concerns were expressed by staff to the Board of Directors regarding Yontz' "confrontational" communication style. Further, other performance issues were presented to the Board of Directors regarding employees being omitted from payroll, employees being censored and ignored and generally a high level of dissatisfaction with respect to the management style of the Plaintiff.
22. On or about March 4, 2015, the Board of Directors met to specifically discuss issues relating to Yontz' management and communication style and agreed to review those issues again in April, 2015 after Yontz had been given an opportunity correct her behaviour and performance.
23. Essak and the Defendant, Dr. Emma Smith ("Smith"), met with Yontz on or about March 9, 2015 to provide Yontz with feedback regarding a number of the issues of concern regarding her performance up to and including that date. Yontz was further requested to focus on the day to day management of the staff and business.
24. Notwithstanding the above, on or about April 8, 2015, Essak, on behalf of the Board of Directors, received a ten-page document prepared by the interdisciplinary health practitioners employed by the NFHT entitled "Changes in NFHT function and workplace morale" (the "Ten-Page Complaint"). In the Ten-Page Complaint, the staff complained, *inter alia*, of the Executive Director's "abrasive" approach to staff, the Executive Director being "erratic, forgetful and disorganized", and the Executive Director being "disruptive and bullying". The staff listed a number of their specific and particularized concerns with respect to the performance of the Executive Director.

25. At the next regular meeting of the Board of Directors on April 14, 2015, the Board of Directors intended to and did retire "in-camera" to discuss the issue of the Plaintiff's performance. Yontz was not "ordered out of the meeting" on April 14, 2015, nor was she precluded from "reporting to the Board" about the financial practices of the NFHT as alleged by Yontz at paragraph 31 of the Statement of Claim. Yontz' concerns regarding the former Executive Director, which will be specifically addressed below, had previously been reported to the Board of Directors and were being reviewed and acted upon by the Board of Directors.
26. At the Board of Directors' meeting on April 14, 2015, Yontz had been specifically and expressly requested to provide the Board of Directors with information regarding required end of fiscal year purchases. This request was made of Yontz in the previous meeting of the Board of Directors on March 24, 2015. Yontz advised the Board of Directors on April 14, 2015 that she was occupied with "certain crises" and could not provide for the day-to-day tasks or the information which was specifically directed by the Board of Directors to have been presented by Yontz on April 14, 2015.
27. During the in-camera session of the Board of Directors, it was resolved that Yontz had not been and continued not to be in compliance with her obligations as the Executive Director and that her attitude and performance with respect to staff was unacceptable. The Board of Directors resolved at that meeting that Yontz' continued employment was not tenable and that NFHT should terminate Yontz' employment. Yontz was provided with written notice of the termination of her employment with the NFHT on April 14, 2015.
28. NFHT did not take the position that there was just cause for the termination of Yontz' employment without notice or payment in lieu of notice. Accordingly and as specifically provided for in the Employment Agreement, the NFHT provided Yontz with payment of one week's salary in lieu of notice of termination and continuation of her benefits for a period of one week.
29. The Defendants, specifically including but not limited to NFHT, state and plead that all contractual and statutory obligations owed to Yontz pursuant to her Employment

Agreement, and otherwise, have been satisfied and that there was no breach of the Employment Agreement or any contract of employment as alleged by Yontz.

THE PLAINTIFF'S COLLATERAL CLAIMS OF IMPROPRIETY:

(a) The Consulting Services:

30. Tracy West ("West") is the business manager of NFHT and a healthcare consultant. West was engaged as a consultant to assist in the creation and incorporation of the NFHT.
31. In August, 2011, West was hired by the NFHT as a part-time business manager. As a part-time business manager, West was employed for 17.5 hours per week. By agreement with the former Executive Director of the NFHT, West was permitted to and did from time to time submit invoices for additional services requested of her by NFHT in addition to the 17.5 hours per week of her regular part-time employment. This arrangement was approved by both the former Executive Director and the Ministry.
32. In fiscal year 2011/2012, West invoiced and was paid as a consultant in the amount of \$7,488.00. In fiscal 2012/2013, West invoiced and was paid as a consultant in the amount of \$7,818.00.
33. In March of 2014, the former Executive Director requested that West submit invoices totalling \$15,000.00.
34. On or about March 3 and March 4, 2014, West tendered two invoices totalling \$15,000.00, as directed by the former Executive Director. West was further directed by the former Executive Director to pay \$5,000.00 to each of the former Executive Director and his assistant in respect of their additional services. West was advised by the former Executive Director that these payments had been approved by the Board of Directors. They had not.
35. At paragraph 15 of the Statement of Claim, the Plaintiff states that: "in commencing her management duties [she] began a review of the financial books and practices of the members and staff of the NFHT. She soon discovered that the previous Executive Director

and certain staff would hire each other as consultants for the projects they were working on and a "consulting" invoice, often from a numbered company, would be submitted by the NFHT for payment". This is untrue. The issue of the consulting invoices was specifically brought to the attention of Yontz by West in February, 2015.

36. Specifically, on or about Friday, February 6, 2015, after the Plaintiff had been employed for four (4) months, the business manager West advised Yontz of her arrangement to invoice the NFHT for specific project work beyond her normal 17.5 hours of part-time employment. West further advised Yontz that her last year's invoices were higher than in previous years, as a result of the direction given to her by the former Executive Director to pay fees for service to both the former Executive Director and his assistant.
37. On or about Monday, February 9, 2015, Yontz, without advising or receiving direction from the Board of Directors, retained counsel on behalf of NFHT and further advised West that she was guilty of fraud.
38. On February 10, 2015, Yontz attended a meeting of the Board of Directors and advised the Board of Directors that she intended to terminate the employment of the two NFHT employees who had received consulting fees, without further investigation into the allegations of fraud, and a third employee who had been engaged in a workplace conflict with Yontz. The Board of Directors confirmed with Yontz that allegations of fraud must be properly investigated, including the right of the accused to answer and respond to what amount to criminal allegations. Yontz was further directed not to terminate the third employee without a proper business case.
39. The Board of Directors directed Yontz to continue her investigations to determine what possible rights and remedies were available to NFHT in respect of the alleged improper payments and whether such payments were authorized by the Ministry and to report back to the Board of Directors. The Board of Directors further directed Yontz in writing on March 19, 2015 to have the NFHT accountants review "all consulting invoices and hard good purchasing over the last two - three years".

40. On March 17, 2015, the Ministry specifically and expressly confirmed, contrary to that which is alleged by the Plaintiff at paragraphs 15 and 22 of the Statement of Claim, that the Ministry had provided its authorization for the NFHT's part-time business manager, West, to be paid separately as a consultant for work performed over and above her employment as a part-time business manager.
41. As a consequence of the allegations of fraud made by Yontz against West, West retained her own legal counsel. In correspondence to counsel to the NFHT, West's lawyer confirmed his information that his client's invoices in March, 2014 were prepared in accordance with the instructions that West received from the former Executive Director who had confirmed to West that the Board of Directors had approved the payments. The correspondence from West's lawyer further confirms that West was prepared to reimburse the NFHT in the amount of \$10,000.00 in respect of the payments which West made to the former Executive Director and his assistant.
42. On or about June 12, 2015, West and the former Executive Director's assistant provided NFHT with reimbursement of \$10,000.00. The former Executive Director was requested but has refused to repay the \$5,000.00 paid to him by West in 2014.
43. West has confirmed that she performed actual consulting services in fiscal 2013/2014 for and on behalf of the NFHT in an amount over \$8,000.00 as had been requested of her by the former Executive Director and as had been approved by the Ministry.
44. Accordingly, no actual losses were sustained or incurred by the NFHT in respect of the 2014 consulting invoices and no insurance claim was considered necessary or appropriate.
45. The Defendants state and plead that the Board of Directors has been provided with no information or evidence to establish that any of the three employees that Yontz requested to terminate for cause had knowingly participated in a fraud against the NFHT, as stated by Yontz.
46. NFHT is not, at this time, aware of any further or other allegation of financial impropriety in respect of the former Executive Director or any employee or consultant engaged by the NFHT. The Board of Directors has reviewed and continues to review all material financial

matters with NFHT's accountants and the Ministry, as required by the Ministry and the Board of Director's fiduciary obligations to the NFHT.

(b) RRSP Practice:

47. The Plaintiff alleges a practice with respect to "RRSP top-up" with respect to various employees of the NFHT.
48. The Defendants state and plead that the practice with respect to "RRSP top-up" as approved by the former Executive Director ceased effective July 2014, prior to Yontz' employment as the Executive Director.
49. Specifically, the Ministry allows benefits to be provided to employees of the NFHT equivalent to 20% of the budgeted salaries. In years prior to July, 2014, if there were unspent funds within the 20% benefits budget, the former Executive Director would authorize the payment of "RRSP top-up" to employees at the end of the fiscal year. All funds were within the budget of the NFHT and were previously allocated by the Ministry to provide employees with benefits, including RRSP benefits. This practice, while not contrary to the policies, rules and regulations of the Ministry, was not specifically approved by the Board of Directors. As stated above, prior to Yontz' employment, the *ad hoc* RRSP practice was discovered and discontinued and a formal process introduced for the payment of RRSP benefits which was subject to the Board of Directors' approval. The Defendants state that this allegation is pleaded by the Plaintiff to falsely suggest impropriety and had no connection to the termination of the Plaintiff's employment.

(c) The Purchase of Two Television Sets:

50. In or about 2014, the NFHT purchased two flat screen television sets which the organization intended to use at the new larger clinical and administrative premises. At that time the NFHT had located new larger premises and was concluding its lease negotiations with the landlord. The discussions related to a lease of the new NFHT premises were terminated in mid-2014 and the NFHT commenced a renewed search for appropriate new

premises. Accordingly, the two flat screen TVs were never used or installed at the new NFHT premises. Unbeknownst to the Board of Directors, the two flat screen televisions were removed from the NFHT premises and moved to the homes of the former Executive Director and another employee, at the direction of the former Executive Director, allegedly for the purpose of storing the television sets.

51. In July, 2014, the former Executive Director volunteered to the Board of Directors that he was in possession of one of the flat screen televisions. The Board had not approved the use of the television set by the former Executive Director. However, the NFHT did not have any present use or requirement for the flat screen TV. Accordingly, the Board of Directors insisted upon payment from the former Executive Director of the full cost of the television set, which the former Executive Director paid to the NFHT. Subsequently, the second television was returned to the NFHT and is currently in its possession.
52. The NFHT has suffered no loss or damages in respect of the two flat screen television sets. Moreover, the allegations in respect of the televisions sets, made by the Plaintiff at paragraph 20 of the Statement of Claim, were known and resolved by the NFHT and the Board of Directors, without loss to the NFHT, and have no connection or relevance to the termination of the Plaintiff's employment. These allegations are again intended merely to attempt to embarrass the NFHT and its Board of Directors.

(d) The Staff Member "Doubling" Her Salary:

53. At paragraph 18 of the Statement of Claim, the Plaintiff alleges that a staff member had her salary doubled after the termination of the former Executive Director and before hiring the Plaintiff. The Plaintiff further alleges at paragraph 18 that: "this increase would not have been approved by the Ministry, a fact which was or should have been within the knowledge of the Board members". Again, this allegation relates to a period prior to the Plaintiff's employment and is specifically and expressly untrue.
54. On August 13, 2014, prior to the employment of the Plaintiff at NFHT, the Ministry specifically and expressly authorized NFHT to employ the part-time business manager, West, as the interim full-time business manager. Transitioning from as a 0.5 FTE to a FTE

doubled the business manager's salary for a period of approximately seven (7) weeks. This arrangement was expressly approved by the Ministry.

(e) Other Innuendo, Allegations and Suggestions of Impropriety

55. In addition to the facts set out above, the Defendants state and plead as follows:

- (i) The Defendants have no knowledge and deny any allegations of impropriety regarding travel expenses being paid in lieu of time worked, as alleged at paragraph 21 of the Statement of Claim;
- (ii) The Defendants have no knowledge and deny any allegations of impropriety regarding "petty cash" being coded to "clinical travel" as alleged at paragraph 21 of the Statement of Claim;
- (iii) The Defendants have no knowledge and deny any allegations of impropriety regarding payments to staff for sick days or other days where employees did not attend at work as alleged at paragraph 21 of the Statement of Claim;
- (iv) The Defendants have no knowledge and deny any allegations of impropriety regarding family members of staff receiving confidential patient information as alleged at paragraph 21 of the Statement of Claim; and
- (v) The Defendants have no knowledge and deny any allegations of impropriety regarding the allocation of NFHT lease payments at any of the Clinics, as alleged at paragraph 24 of the Statement of Claim.

56. The Defendants deny that the Plaintiff at any time was denied her right to “fulfill her obligation by informing the Board of any perceived breach of rules governing the NFHT”. The Defendants further deny any alleged breach of the rules governing the NFHT.
57. The financial books and records of the NFHT are audited on an annual basis by the NFHT’s chartered accountants in accordance with the rules of the Ministry and the Institute of Chartered Accountants.
58. At no time was the Plaintiff required to sign the “Board Compliance Attestation” as alleged by the Plaintiff at paragraph 28 of the Statement of Claim.
59. At no time was the Plaintiff ever refused access to the Board of Directors and denied the right to provide information to the Board of Directors or any member of the Board of Directors.

CONCLUSION:

60. The Plaintiff was employed by NFHT for a period of approximately 6 months.
61. During the tenure of the Plaintiff’s employment, staff at the NFHT raised multiple concerns with respect to the Plaintiff’s inattention to the day-to-day operations of the NFHT and her aggressive and demeaning communication with staff.
62. On or about April 14, 2014, the Plaintiff’s employment was terminated pursuant to the termination provisions of the Plaintiff’s Employment Agreement, as a result of concerns related to the Plaintiff’s job performance.

63. The Defendants deny that the NFHT has breached any contract with the Plaintiff, nor have the Individual Defendants induced a breach of any contract, or interfered with the Plaintiff's economic relations with the NFHT, as alleged.
64. The Defendants deny that any public comment, discussion or disclosure was unlawfully made by the NFHT or its Board of Directors regarding the Plaintiff to any third party and the Defendants specifically deny any defamation, libel or slander of the Plaintiff.
65. The Defendants deny intentionally inflicting any mental distress upon the Plaintiff, as alleged. In the alternative, the Defendants deny that the Plaintiff has suffered any loss, injury or damage at law caused by the Defendants.
66. The Defendants deny that the Plaintiff has suffered any damages and that the damages claimed by the Plaintiff are excessive, remote and unmitigated. In fact, the Plaintiff commenced employment with the Brighton Quinte West Family Health Team shortly after being terminated by the NFHT.
67. The Defendants state and plead that this Action ought to be dismissed with costs payable to the Defendants.
68. The Plaintiff has chosen to plead and rely upon allegations which she claims illustrate the "scurrilous" financial practices of the NFHT which, intentionally or carelessly, are inaccurate, untrue and irrelevant in order to attempt to embarrass and scandalize the Court and these public pleadings.

69. The Defendants state and plead that a result of the unfounded and derogatory allegations made by the Plaintiff, the costs payable to the Defendants ought to be payable by the Plaintiff on a substantial indemnity basis.

December 18, 2015

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

William D. Anderson (LSUC #31736M)
Tel: (416) 593-3901
Fax: (416) 593-5437
BAnderson@blaney.com

Lawyers for the Defendants

TO: JAMES J. MCGRATH
Barrister & Solicitor
17 Cobourg Street
Cobourg ON
K9A 1M8

LSUC #24405V
Tel: (905) 373-1999
Fax: (905) 373-1922

Lawyer for the Plaintiff