

Plaintiff

Defendants

Court file No.

92/15

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
Cobourg

**STATEMENT OF CLAIM**

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CERTIFIED TO BE A TRUE COPY OF  
THE ORIGINATING PROCESS ISSUED  
HEREIN.

  
SOLICITOR FOR PLAINTIFF

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

**LAURA YONTZ,**

**PLAINTIFF**

**- and -**



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

**DEFENDANTS**

**STATEMENT OF CLAIM**

**TO THE DEFENDANT(S)**

**A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU** by the plaintiff(s). 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 plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, 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 prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

**IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

**IF YOU PAY THE PLAINTIFF'S CLAIM,** and \$2,000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

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

Date: SEP 23 2015

Issued By: Angela Barry

Registrar  
860 William Street  
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44 University Avenue  
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- TO: DR. MICHAEL JONES  
44 University Avenue  
Cobourg, ON, K9A 1C8
- TO: NORTHUMBERLAND FAMILY HEALTH TEAM  
Northumberland Mall  
Lower Level  
1111 Elgin Street West  
Cobourg, ON  
K9A 5H7

1) The Plaintiff claims against the Defendants:

- a) a declaration that the termination of the Plaintiff's employment on or about April 14, 2015, was wrongful;
- b) damages against the Defendant, Northumberland Family Health Team, resulting from the failure of the Defendant to provide the Plaintiff with reasonable notice of termination in the sum of \$250,000;
- c) damages against the Defendant, Northumberland Family Health Team, for intentional infliction of mental distress in the amount of \$50,000;
- d) aggravated and, or, exemplary damages in the amount of \$50,000;
- e) damages as against all the Defendants jointly and severally for the tort of interference with the economic relations of the Plaintiff in the amount of \$250,000;
- f) damages as against all the Defendants jointly and severally for the tort of inducing breach of contract in the amount of \$250,000;
- g) damages for injury to the Plaintiff in her reputation and calling in the amount of \$50,000;
- h) pre-judgment interest in accordance with section 128 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;
- i) post-judgment interest in accordance with section 129 of the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;
- j) costs of the action on such basis as this Honourable Court deems just; and

- k) such further and other relief as to this Honourable Court may deem just.
- 2) The Plaintiff, Laura Yontz, (the "Plaintiff") resides in the Town of Cobourg, Ontario. Until the date of facts giving rise to this action, she was employed as Executive Director of the Defendant, Northumberland Family Health Team in Cobourg, Ontario.
  - 3) The Defendant, Northumberland Family Health Team (hereinafter "NFHT") is a not-for-profit Ontario corporation. A Family Health Team is a health care corporation that includes a team of family physicians, nurse practitioners, registered nurses, social workers, dietitians, and other professionals who work together to provide health care for their community.
  - 4) A family health team is fully funded by the Ministry of Health and Long Term Care (hereinafter called the "Ministry") and ultimately answerable to the Ministry of Health and Long Term Care for how it conducts its affairs. The physicians, *inter alia*, provide services through a community Family Health Team are paid according to a blended fee model to provide services to patients.
  - 5) The defendants Dr. Mark Essak, Dr. Rina Daskalopolous, Dr. Kathy Barnard-Thompson, Dr. Emma Smith, Dr. Michael Bayer, Dr. Michael Jones (hereinafter the "Board") were at all materials times physicians licenced to practice medicine in the Province of Ontario and were members of the Board of the Defendant NFHT. They became parties to the funding agreement between the NFHT and the Ministry in or about 2011.
  - 6) The Plaintiff commenced employment with the NFHT on or about October 6, 2014. She was retained as a replacement for the previous Executive Director, Brian Ferguson, after he left the employ of NFHT on short notice. At the time of her termination on or about April 17, 2015, the Plaintiff was 56 years of age. Her annual compensation was approximately \$88,000, together with comprehensive health, insurance and pension benefits fully paid by

the Defendant NFHT. Full particulars of the benefits, and various plans and the costs thereof are wholly within the knowledge of the Defendant NFHT.

- 7) The Plaintiff administered a staff of about 22 persons in the employment classifications described above. In addition there are 21 physicians working for the NFHT. At all material times the Plaintiff reported to the Board of Directors of NFHT.
- 8) The Plaintiff, prior to joining the NFHT was employed at Extencicare (Canada) Inc. for 16 years as their Administrator. The Plaintiff was paid more but also was in a position that involved more direct hands-on management and was on-call at all times. All of the Plaintiff's major goals had been attained during her tenure at Extencicare. Specifically the Plaintiff held a key management role in developing, negotiating contracts for and opening over a dozen long term care centres. This was almost identical to the project that the NFHT was undertaking.
- 9) The NFHT organization had set the goal of moving into a new building and wished to combine the operations and culture of the organization into an effective team. The Board of NFHT, and especially Dr. Essak, was aware that the Plaintiff had the experience, management and communications skills to attain these goals. In persuading her to take the position, NFHT needed the Plaintiff's experience and expertise in her field as it managed a budget of over 1.9 million dollars and she had accomplished similar goals with her previous employers.
- 10) Mark Essak approached the Plaintiff to inform her of the position of Executive Director at the NFHT. Dr. Essak encouraged the Plaintiff to apply for the position and took steps to ensure her application was submitted properly. The Plaintiff was offered an interview within hours of submitting her application. Even though the Plaintiff would receive less money in working for the NFHT than at her previous place of employment, NFHT promised to support her through what was expected to be resistance from the staff to the changes that they anticipated being instituted by the Plaintiff in the work environment of the NFHT. Dr. Essak himself informed the Board that there might be some resistance from

staff but they were to support the Plaintiff in accomplishing her goals and not interfere with staff issues.

- 11) NFHT through Dr. Essak represented itself as requiring the Plaintiff to lead the organization as she had demonstrated the experience, skill ability that would be required in the new position and which challenge appealed to the Plaintiff.
- 12) Until the termination of her employment, the Plaintiff had an exemplary employment record in the areas of both attendance and competence. She was never disciplined or criticized for the manner in which she performed her duties. Her termination on April 14, 2015 was therefore both shocking and surprising.
- 13) Prior to hiring of the Plaintiff the NFHT had lost its previous Executive Director who had left suddenly. The reason for his departure had not been explained to the Plaintiff. It was made clear to the Plaintiff that the NFHT was having organizational problems and required a director with the organizational skill and experience possessed by the Plaintiff.
- 14) It was stated to the Plaintiff that there had been evidence of favoritism by the previous Executive Director amongst the staff. One of her tasks would be to rectify this situation.
- 15) The Plaintiff, in commencing her management duties 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 senior 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 to the NFHT for payment. Not only is this practice against the accounting rules of the Ministry, the work invoiced was done during regular business hours and was work that would in the ordinary course be part of the staff's regular duties, for which they drew a regular salary.
- 16) Yet another example of suspicious bookkeeping came to the Plaintiff's attention when a staff member asked why the RRSP top-up method had been changed. On

investigation the Plaintiff discovered that this staff person had reported receiving an RRSP top-up of approximately \$12,000.00. The records however only revealed a payment of \$1,000.00. The records also showed that concurrently with this supposed payment that a payment was made to the NFHT computer and technology provider in an amount in excess of \$12,000.00 without verification details and that other payments to certain staff amounting to about \$15,000 had been made as a consulting fee for work that came within their duties as employees.

- 17) The records of the NFHT showed that certain members of staff were paid for a five day work week when in fact they had only been working a three day work week. Review of staff scheduling revealed that certain members of staff were regularly paid for each regular business day whether or not they actually attended work that day. RRSP top-up amounts that were not approved by the board of the NFHT were paid arbitrarily.
- 18) A staff member had had her salary doubled during the period of time between the termination of the former Executive Director and the Plaintiff taking that position; a period of about seven weeks. This would have been under the direct control of the Board Chair, Mark Essak. 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.
- 19) In reviewing the bookkeeping the Plaintiff confirmed a payment of \$15,000.00 prior to the Plaintiff taking the position of Executive Director that had been made to one of the senior staff. That person approached the Plaintiff and indicated that she did not benefit from the full \$15,000 but only \$5,000.00. She further indicated that the remainder was evenly divided between another senior staff and the former Executive Director. That staff member delivered a cheque for \$5,000.00 to the plaintiff payable to the NFHT as reimbursement for her share of the funds. These funds had been for "consulting" work that was unsubstantiated by the records and that would not be allowed in any event. This blatant funnelling of funds out of the NFHT caused the Plaintiff to commence an in depth review of the books of the NFHT as it was her responsibility to deliver verified books to the auditor and so to the Ministry.



- 20) A review of the records by the Plaintiff revealed that in one case two large flat screen televisions were purchased by the NFHT. A relative of certain staff invoiced and was paid by the NFHT for delivery charges for the televisions. These large flat screen televisions were taken to the homes and used as the personal property of certain staff without ever having arrived at the NFHT offices. These televisions are certainly the property of the NFHT despite never having been used by the NFHT or even being in its offices.
- 21) Among the discrepancies and transgressions disclosed by the records of the NFHT were the following:
- a) One senior administrative staff had processed payments against invoices submitted by other senior staff for recruitment work that formed part of the regular duties of that staff amounting to double billing the NFHT over an extended period of time;
  - b) Payments to other staff members were being processed through the books of the NFHT as travel expenses when a short investigation demonstrated that these were actually payment in lieu of time which is against the Ministry rules;
  - c) Thousands of dollars were processed through "Petty Cash" that would not have ordinarily been allowed and some of which were subsequently coded to "clinical travel" when this was clearly not the case;
  - d) Payments to staff were cleared despite the staff in question did not work the dates for which the payments were made;
  - e) Family members of certain staff were retained to work on site with confidential patient information while not being employed by the NFHT or making the required confidentiality agreement, all of which is in contravention of the Ministry rules;
  - f) Payments were made for personal items for certain staff and delivered to their residence while being coded as NFHT property.
- 22) Certain acts that were contrary to the rules of the agreement with the Ministry were known to the Board Chair and were not prevented or disciplined. The former Executive Director had been specifically instructed by the Ministry, as appeared from email records, that certain types of charges were not permitted by the Ministry. These included a staff member

invoicing as a consultant, paying benefits to a consultant, paying unapproved increased salary to certain staff and altering the record of a charge to transfer an expense to a different account than it normally belonged in order to access the funds in that other account. The records of the NFHT show that these restrictions were within the knowledge of the Board of Directors or some of them and despite this it took no steps to prevent these practices.

23) The Plaintiff attempted to carry out her duties as defined by her position and responsibilities as Executive Director and as set out in the agreement between the NFHT and the Ministry. When she became aware of the various suspicious transactions the Plaintiff attempted to investigate the transactions and to inform the Board of her suspicions and her findings. Despite the legal obligation imposed on the Plaintiff by the rules as set out by the Ministry she was obstructed in her efforts to verify and validate the financial books of the NFHT by the Board of Directors and specifically by the Board Chair, Mark Essak. The Plaintiff was instructed to ignore the suspicious transactions and records, not to inform the Board formally of her suspicions or findings and to “smooth over” the transgressions, and specifically she was not permitted to discipline the transgressing staff members, even though this duty is well within the mandate of the Executive Director. Specifically, the Board Chair, Mark Essak, instructed the Plaintiff as follows:

- a) not to cash the cheque that the staff had returned to the NFHT as set out in Paragraph 19 and not to mention this item at a regular Board meeting;
- b) not to contact the insurer about possible loss which may have resulted in funds being recovered and returned to the MOHLTC, the ultimate funder;
- c) not to contact the Ministry concerning what appears to be a clear case of fraud happening within the office of the NFHT; and
- d) not to call for a forensic audit of the books despite ample evidence of wrongful dealings with the funds of the NFHT.

24) Each doctor’s clinic that conducted NFHT business in its offices was allowed a certain amount of rent to be paid to them by the NFHT. The Board Chair of the Board, Dr. Mark Essak, directed to the Plaintiff to increase his own rent by approximately 400%

despite the increase was meant to be 32%. He also requested that the Plaintiff transfer benefits being paid on behalf of one staff member to another otherwise ineligible staff member. This item was contrary to the Ministry directives concerning expense rules.

- 25) The Plaintiff as Executive Director attended all Board meeting as a non-voting member. The Board Chair, Mark Essak refused to allow the Plaintiff to use her discretion and fulfil her obligation by informing the board of these perceived breach of the rules governing family health teams and contravention to their contract with the Ministry.
- 26) When the Plaintiff brought these issues to the attention of the Board of Directors through Dr. Essak she was instructed not to address these concerns at the Board meeting. In fact at the last Board meeting attended by the Plaintiff the Board Chair attempted to prevent her from completing her statement to the Board concerning these matters.
- 27) The financial books of the NFHT must be audited yearly by a Chartered Accountant in accordance with the rules of Ministry. The Plaintiff's discovery of funds missing and misdirected obligated her not to approve the books to be sent to the auditor or to the Ministry as complete and *bone fide*. In fact the Plaintiff's review revealed examples of billing and invoicing practices that were not in conformity with the rules under which the NFHT operated and certain other transactions that appeared to be fraudulent transactions on the part of certain management staff personnel of the NFHT.
- 28) Other than those items where the Board Chair of the Board clearly had personal knowledge, he knew or should have known of the majority of additional improper payments as he personally approved all payments, including those mentioned on Paragraphs 17, 18 and 19. Despite clear knowledge of accounting improprieties the Board Chair demanded the Plaintiff sign the Board Compliance Attestation even though he and the Plaintiff knew this to be incorrect.

- 29) To follow the instructions given by Dr. Essak would cause the Plaintiff to contravene the rules under which the NFHT was obligated to operate pursuant to the mandate from the Ministry and to breach the contract with the Ministry, as she would be required to make a declaration stating that she believed that the Financial statements were accurate and conformed to the rules and regulations as set out by the Ministry when she knew this was false.
- 30) Dr. Essak had attempted to interfere with and prevent the communication of the Plaintiff with the Board of Directors of the NFHT and when she refused to withhold the information she had discovered he attempted to terminate the employment of the Plaintiff because of her refusal to permit accounting practices contrary to the interests of the NFHT.
- 31) On April 14, 2015 the Plaintiff attended a meeting of the Board of Directors as was usual. She was prepared to and desired to report to the board on the conduct she had discovered that she believed not only contravened the permitted financial practices of the NFHT but wrongfully diverted the funds of the NFHT to certain individual staff members and to name those individuals and transactions that resulted in misappropriated funds. Dr. Essak, the Board Chair, attempted to prevent the Plaintiff from properly reporting to the Board and ordered her out of the meeting rather than accept the report for consideration.
- 32) Without notice or warning the Defendant NFHT terminated the Plaintiff's employment on April 14, 2015, by text message followed letter dated that same day and sent by Dr. Essak on behalf of the Board advising her of her termination without cause effective immediately. She was not permitted to return to work.
- 33) The abrupt and unusual manner in which the Plaintiff was terminated, occurring as it did in a small community like Cobourg, where she was known as the face of the Defendant NFHT and as an accomplished manager in the health services sector, caused her to be viewed as having done something inappropriate if not illegal. The Plaintiff sat on committees in the community on behalf of the NFHT to further the interests of not

only the NFHT but of the health services community in Northumberland as a whole, where she was considered a valuable asset to the various negotiations that were in progress. She was for a time spurned and shunned by others in the community and was unable to obtain replacement equivalent employment or any employment at all in Cobourg or its immediate environs.

- 34) The Plaintiff has not been offered any salary in lieu of notice. The method of her dismissal was high handed and cavalier. The cynical manner in which the Defendant NFHT breached its duty of fair dealing and good faith by submitting to the outrageous and illegal demands of the Defendant the Board Chair remains unaddressed.
- 35) The Plaintiff states having regard to the circumstances of her termination, and her essentially assuming a pariah status in her community, reasonable notice in this case would be at least eighteen months inclusive of salary and cost of benefits.
- 36) The Plaintiff has incurred expenses and costs in connection with her efforts at mitigation and seeks reimbursement of said costs by the Defendant NFHT. Full particulars will be provided to the Defendant by the Plaintiff at trial.
- 37) As a result of her dismissal, the Plaintiff has been placed in a position where she must seek employment in a limited job market, limited at least to the extent she would have difficulty replacing total annual compensation which was a function of her accumulated service and experience. The highly respected reputation of the Plaintiff which is a significant factor in her ability to be employed in her field and at her accustomed level of responsibility has been irreparably tarnished.
- 38) With respect to the Defendant Board members, the Plaintiff states they knowingly and with intent embarked on a course of action designed to induce or force the Defendant NFHT to breach the Plaintiff's contract of employment which but for their demands and actions would not have occurred.