

Court File No. CV-24-00000203-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

FRANCINE DESORMEAU

Plaintiff

and

THE CORPORATION OF THE TOWN OF MATTAWA

Defendant

STATEMENT OF DEFENCE

1. The Defendant, Corporation of the Town of Mattawa, denies each and every allegation contained in the Statement of Claim, save as may be hereinafter expressly admitted.

The Parties

2. The Defendant is a town located in northeastern Ontario, and is a municipal corporation incorporated pursuant to the laws of the Province of Ontario.

3. The Plaintiff was formerly employed by the Defendant until her employment was terminated on or about July 9, 2024.

The Plaintiff's Employment

4. The Defendant states that the Plaintiff commenced her employment with the Defendant on or about July 5, 1999, in the role of General Office Clerk.

5. The Defendant states that the Plaintiff subsequently assumed the roles of Depute Clerk and Interim Chief Administrative Officer.

6. The Defendant states that on or about September 29, 2020, the Plaintiff was appointed to the position of Chief Administrative Officer, pursuant to a written employment agreement dated September 24, 2020.

7. The Defendant states that in her role as the Chief Administrative Officer, the Plaintiff was responsible for, *inter alia*, the following:

- a) acting as chief policy advisor to the Defendant's Council regarding policy, program and procedural formulation by coordinating the development, administration, and monitoring of policies and programs;
- b) overseeing the preparation of agenda, background material and reports for the Defendant's Council, committee and Council meetings;
- c) ensuring prompt notification to the Defendant's Council regarding topical or urgent matters, and attending meetings of Council and committees, providing technical and legislative interpretation and advice as required;
- d) exercising the responsibility of the Chief Administrative Officer as set out in section 229 of the *Municipal Act*, 2001;
- e) ensuring that the municipal affairs are conducted and carried out in accordance with municipal by-laws, policies, legislative requirements and Council's direction;
- f) monitoring and evaluating overall performance of the municipal operations;
- g) negotiating agreements and contracts on behalf of the municipality in accordance with Council's policies, procedures and directions, and overseeing their performance;
- h) ensuring that appropriate accounting and financial management systems are in place to record the financial transactions of the municipality in a manner consistent with the requirements of the Defendant's Council, the Province of Ontario and the Defendant's auditors;

- i) overseeing the preparation of the annual budget and preparing regular financial reports for the Defendant's Council;
- j) overseeing the development, approval and implementation of long-term capital works budgets and management of municipal assets and infrastructure;
- k) providing day-to-day management of the municipal staff; and
- l) performing other duties as required by the Defendant's Council.

8. The Defendant states that at the time of her termination, the Plaintiff's compensation comprised of an annual salary of One Hundred Eleven Thousand Six Hundred Fifty Dollars. (\$111,650.00), and enrollment in the Defendant's group health, dental, disability, and pension plans.

The Plaintiff's Absence and Interim Arrangements

9. The Defendant states that the Plaintiff commenced a period of short-term disability leave on February 13, 2023, which continued until June 7, 2023.

10. The Defendant states that during the Plaintiff's absence, it determined that it was necessary to appoint an Interim Chief Administrative Officer to address outstanding work and ensure the continued functioning of municipal operations.

11. The Defendant states that on or about May 5, 2023, the Plaintiff was directed to return all property belonging to the Defendant, including her computer, physical files, and any other municipal assets in her possession.

12. The Defendant states that the Plaintiff subsequently commenced long-term disability leave on June 8, 2023.

13. The Defendant states that in or around April 2023, it commissioned an operational review to be conducted by an independent third-party consultancy company. The report of this review concluded that the Defendant's operations were negatively affected by low staff morale, which was largely attributable to the Plaintiff's management style.

14. The Defendant states that during the Plaintiff's absence, it further discovered that for the majority of 2022, and leading up to the Plaintiff's leave of absence, she failed to perform various essential duties of her position. As a result, the Defendant was compelled to engage external assistance to remedy a substantial backlog of incomplete work, including tasks the Plaintiff was believed to have undertaken but had left uncompleted.

15. The Defendant states that on or about February 27, 2024, it was informed that the Plaintiff was scheduled to begin a gradual return to work on March 4, 2024.

16. The Defendant states that on or about February 29, 2024, it advised the Plaintiff that upon her return to work she would be placed on paid administrative leave pending an investigation into allegations of misconduct and dereliction of duty.

17. These allegations included, but were not limited to, the following:

- a) harassment and bullying of staff;
- b) unprofessional conduct towards staff members;
- c) inconsistent dissemination of information, which contributed to confusion and inefficiency within the organization;
- d) fostering a hostile and stressful work environment;
- e) failure to address workplace conflicts; and
- f) negligence in the performance of administrative duties.

18. The Defendant denies that there was institutional bias or individual bias involved in its investigation against the Plaintiff, and puts her to strict proof to the contrary.

Termination of Employment

19. The Defendant states that in or around July 2024, it concluded its investigation confirming that the Plaintiff had engaged in misconduct, including harassment, bullying, unprofessional behavior. The investigation further revealed that the Plaintiff's inconsistent dissemination of information caused confusion and inefficiency among staff, contributed to a hostile work environment, and that she failed to address workplace conflicts and neglected critical administrative duties.

20. The Defendant states that such conduct constituted a fundamental and irreparable breach of the employment relationship and the Defendant's trust.

21. The Defendant states that on or about July 9, 2024, the Defendant terminated the Plaintiff's employment effective immediately.

22. The Defendant states that upon termination, the Plaintiff was provided with all wages and accrued vacation pay owed up to the termination date.

Allegations of Wrongful Dismissal

23. The Defendant denies that the Plaintiff was wrongfully dismissed, as alleged or at all, and puts the Plaintiff to the strict proof thereof.

24. The Defendant states that the Plaintiff's employment was terminated for just cause and/or her willful misconduct, and/or willful neglect of duty that was not trivial and had not been condoned by the Defendant.

25. The Defendant states that as the Plaintiff's employment was terminated for just cause and/or her willful misconduct, and/or willful neglect of duty that was not trivial and had not been condoned by the Defendant, she is not entitled to any notice or pay in lieu of notice.

26. In the alternative, the Defendant states that the notice period and/or damages sought by the Plaintiff and as claimed in the Statement of Claim are excessive. The Defendant states that, if notice was required, which is not admitted but specifically denied, the minimum notice prescribed by the *Employment Standards Act, 2000* was appropriate in the circumstances.

27. The Defendant denies that the Plaintiff has sustained any damages or loss for wrongful dismissal, which is not admitted but expressly denied, or otherwise and put her to strict proof thereof.

28. The Defendant states that, should the Court find the Plaintiff is entitled to any damages for her employment, or the cessation of her employment, which is not admitted but expressly denied, the Plaintiff has failed in her obligation to mitigate her damages by seeking and obtaining alternate employment and/or other sources of income. The Defendant requests that the Plaintiff's damages be eliminated or, in the alternative, reduced, as a result of the Plaintiff's failure to act reasonably in the mitigation of her loss.

29. In the alternative, should the Plaintiff have secured alternate employment, the Defendant requests that any earnings from the Plaintiff's alternate employment be set off against any damages to which he may be entitled.

Allegations of Breach of the Human Rights Code

30. The Defendant denies that it has breached the *Human Rights Code*, as alleged or otherwise, and puts the Plaintiff to the strict proof thereof.

31. The Defendant states that at all times it acted in a candid, honest, fair, reasonable manner, in good faith at all times and for good and legitimate reasons and puts the Plaintiff to strict proof to the contrary.

32. The Defendant states that even if the allegations pleaded by the Plaintiff were deemed to be all factually true, which is not admitted but strictly denied, the facts as pleaded could not lead to a finding of discrimination and do not constitute a *prima facie* violation of *Human Rights Code* and, accordingly, ought to be dismissed.

33. The Defendant states that any request for a remedy under the *Human Rights Code* should be properly denied to the extent that no breach of the *Human Rights Code* can be substantiated and, accordingly, the Plaintiff has suffered no loss.

34. The Defendant states that the Plaintiff is not entitled to any damages and, in fact, states that any claim for damages is excessive, remote and not recoverable in law.

Claim For Unpaid Vacation

35. The Defendant states that it has paid to the Plaintiff all amounts owing in respect of vacation pay. The Defendant denies owing any further amount to the Plaintiff in respect of vacation pay, as alleged or at all, and puts the Plaintiff to the strict proof thereof.

No Defamation

36. The Defendant denies that its officers, employees or agents, made statements that were untrue, false, injurious or malicious, or that its officers, employees or agents intended to cause harm to the Plaintiff, as alleged or at all.

37. Further, and in the alternative, if the Defendant's officers, employees or agents made any statements relating to the allegations in the Statement of Claim, which is not admitted but is specifically denied, the Defendant denies that such statements are defamatory, bear any defamatory meaning, refer to the Plaintiff, were false in substance or fact, were made with malice, or caused injury to the Plaintiff's reputation or any injury whatsoever. Insofar as any such statements are statements of opinion, they are fair comment.

38. The Defendant states that the Plaintiff has failed to set out in the Statement of Claim, a cause of action in defamation or otherwise.

No Punitive, Aggravated, Bad Faith and Moral Damages

39. The Defendant denies that this is an appropriate case for an award of punitive, aggravated, bad faith and/or moral damages, as alleged in the Statement of Claim, or at all, and puts the Plaintiff to the strict proof thereof.

40. The Defendant denies that its conduct warrants an award of punitive, aggravated, bad faith and/or moral damages. The Defendant denies the existence of any facts that would give rise to a claim for such damages, which allegations are without merit or legal foundation. The Defendant specifically denies that it committed any separate actionable wrong against the Plaintiff and puts the Plaintiff to the strict proof thereof.

41. The Defendant states that at all times it acted in a candid, honest, fair, reasonable manner, and for good and legitimate reasons and puts the Plaintiff to strict proof to the contrary.

42. The Defendant states that the Plaintiff has not pled any material facts to support a claim for punitive, aggravated, bad faith and/or moral damages, as alleged or at all, which are bald allegations. The Defendant states that these allegations are frivolous, vexatious, and without merit and ought to be dismissed or struck for failure to disclose a reasonable cause of action.

Other Submissions

43. In answer to the whole of the Statement of Claim, the Defendant states that if the Plaintiff suffered damages or losses as alleged or at all, which are not admitted but expressly denied, damages claimed by the Plaintiff are excessive and/or such damage or loss is too remote and not recoverable at law and/or the Plaintiff has failed to take reasonable steps to mitigate such damage or loss.

44. The Defendant pleads and relies upon, *inter alia*, the following legislation:

- a) *Employment Standards Act*, 2000, S.O. 2000, c. 41;
- b) *O. Reg. 288/01: Termination And Severance of Employment*;

- c) *Municipal Act*, 2001, S.O. 2001, c. 25;
- d) *Human Rights Code*, R.S.O. 1990, c. H.19; and
- e) *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended.

45. The Defendant requests that the Plaintiff's action be dismissed with the Defendant's costs to be paid by the Plaintiff on a substantial indemnity basis.

46. The Defendant consents that the action be tried in the City of North Bay.

DATED: October 30, 2024

WEAVER, SIMMONS ^{LLP}
Barristers & Solicitors
233 Brady Street
4th Floor
Sudbury, ON
P3B 4H5

Rose Muscolino
LSO #48127U

Tel: 705-674-6421
Email: rmuscolino@weaversimmons.com

Lawyers for the Defendant

TO: **TIERNEY STAUFFER** ^{LLP}
1600 Carling Avenue
Suite 510
Ottawa, ON
K1Z 8R1

Dana Tierney
LSO #26586E

Tel: 612-288-3210
Email: dtierney@tslawyers.com

Lawyers for the Plaintiff

Plaintiff and

THE CORPORATION OF THE TOWN OF MATHAWA
Defendant

Court File No. CV-24-00000203-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at NORTH BAY

STATEMENT OF DEFENCE

WEAVER, SIMMONS^{LLP}

Barristers & Solicitors

233 Brady Street

4th Floor

Sudbury, ON

P3B 4H5

Rose Muscolino

LSO #48127U

Tel: 705-674-6421

Email: RMuscolino@weaversimmons.com

Lawyers for the Defendant