

Court File No. CV-17-2346-00

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

*(Court Seal)*

ANGELINA RIVERS, SHARON ZEHR, SHELLEY HEINRICH  
and BARRY ZEHR and FRANK HEINRICH

Plaintiffs

and

WATERLOO REGIONAL POLICE SERVICES BOARD and  
WATERLOO REGIONAL POLICE ASSOCIATION

Defendants

Proceeding under the *Class Proceedings Act, 1992*, S.O. 1992, c.6

**AMENDED STATEMENT OF CLAIM**

TO THE DEFENDANT:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. 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 \$5,000 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 May 30, 2018  
Amended: March 29, 2018

Issued by \_\_\_\_\_  
Local Registrar  
Address of 7755 Hurontario Street  
court office: Brampton, Ontario  
L6W 4T6

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1. **DEFINITIONS**

1. In this Statement of Claim, the defined terms shall have the meanings as set out in the List of Defined Terms attached as Schedule "A".

2. **CLAIM**

2. Ms. Rivers, ~~and~~ Ms. Zehr and Ms. Heinrich claim on their own behalf and on behalf of the Class Members:

- (a) an order pursuant to the *CPA* certifying this action as a class proceeding appointing Ms. Rivers, ~~and~~ Ms. Zehr and Ms. Heinrich as Representative Plaintiffs for the Class;
- (b) general and aggravated damages in the sum of ONE HUNDRED MILLION DOLLARS (\$100,000,000.00) for systemic and institutional gender-based discrimination and harassment based on WRPS' negligence, reckless disregard for the extreme emotional distress under tort of harassment; and breaches of the *Charter*;
- (c) punitive and exemplary damages in the sum of FIFTY MILLION DOLLARS (\$50,000,000.00);
- (d) prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *CJA*;
- (e) costs of this proceeding on a substantial indemnity basis, plus disbursements and applicable taxes; and,

(f) such further and other relief as this Court may deem just.

3. Mr. Zehr and Mr. Heinrich ~~claims~~ on his their own behalf and on behalf of the Family

Class Members:

(a) an order pursuant to *CPA* certifying this action as a class proceeding and appointing Mr. Zehr and Mr. Heinrich as Family Class Representative Plaintiffs for the Family Class;

(b) general damages in the sum of TEN MILLION DOLLARS (\$10,000,000.00);

(c) special damages in the amount of FIVE MILLION DOLLARS (\$5,000,000.00);

(d) punitive damages in the amount of TWO MILLION DOLLARS (\$2,000,000.00);

(e) prejudgment and postjudgment interest in accordance with sections 128 and 129 of the *CJA*;

(f) costs of this proceeding on a substantial indemnity basis, plus disbursements and applicable taxes; and,

(g) such further and other relief as this Court may deem just.

#### **OVERVIEW FOR THIS ACTION**

4. The Plaintiffs claim that they and fellow WRPS female Members were subject to systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault, by male Members of the WRPS, WRPS management, and the WRPA.

5. The Plaintiffs further claim that the WRPS and WRPSB are liable for the tortious sexual misconduct and gender-based discrimination of the male Members, senior officers and management of the WRPS.

6. The Plaintiffs further claim that the WRPS and the WRPA failed to fulfil their statutory, common law and contractual obligations to provide the Plaintiffs, and Class Members, with a work environment free of gender-based discrimination and harassment, sexual harassment and sexual assault.

7. The WRPS and the WRPA failed to ensure that complaints and grievances of harassment and discrimination were properly processed, investigated and resolved under the Harassment and Discrimination Procedure and the Collective Agreement.

8. The Plaintiffs and Class Members sought assistance from within the WRPS and the WRPA, including their peers, supervisors, management, and WRPA representatives. Their complaints, however, were discouraged, disregarded and otherwise ignored. Moreover, the Plaintiffs and Class Members were warned by their male Members and superiors within the WRPS and the WRPA that any complaints or grievances filed by them would result in their receiving further negative treatment within the workplace and would negatively impact their career advancement prospects within the WRPS.

9. The WRPS and the WRPA perpetrated the systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault, by failing to properly punish the wrongdoers and deter the insidious behaviour. On the contrary, in many cases, they promoted and rewarded the wrongdoers in face of the wrongful conduct, all of which served to force the

victims into isolation, subjected them to further trauma, and, in many cases, catapulted the victims towards an early departure from their chosen careers.

10. As a result of the systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault, the Plaintiffs and Class Members have suffered serious physical and psychological damages, loss of income and future earning capacity.

11. WRPS and WRPA created and continue to maintain a workplace poisoned by a discriminatory and sexualized culture that condones and encourages sexual harassment and gender-based discrimination towards women. The existing system for responding to sexual harassment within the police force is inadequate as it is plagued with pervasive and permeating misogyny from the high-ranking management to the low-ranking police officers. It also lacks adequate and independent oversight and has become a mechanism to simply cover up the wrongs and isolate the victims.

12. The pervasive systemic and institutional dismal failures to take allegations of gender-based harassment and discrimination seriously, overt bias against female complainants, failures to conduct proper investigations and provide an appropriate remedy, lack of transparency of the WRPS and WRPA's internal affairs and disciplinary process all deprived the Plaintiffs and Class Members with meaningful access to justice. The only viable recourse to achieve access to justice for the Plaintiffs, and Class Members as well as to achieve behaviour modification of the WRPS and WRPA is by this class action proceeding.

### 3. THE PARTIES

#### *a. Representative Plaintiffs*

13. Ms. Rivers, ~~and~~ Ms. Zehr and Ms. Heinrich propose to represent the Class.

14. At all material times, Ms. Rivers, ~~and~~ Ms. Zehr and Ms. Heinrich were Members of the WRPS and held the rank of Cadet or Constable or Sergeant. Ms. Rivers, ~~and~~ Ms. Zehr and Ms. Heinrich reside in Ontario.

15. Mr. Zehr is the husband of Ms. Zehr. Mr. Heinrich is the husband of Ms. Heinrich. Mr. Zehr and Mr. Heinrich proposes to represent the Family Class. Mr. Zehr and Mr. Heinrich resides in Ontario.

#### *b. The Class*

16. Ms. Rivers, ~~and~~ Ms. Zehr and Ms. Heinrich bring this action under the *CPA* on their own behalf and as proposed Representative Plaintiffs on behalf of all Class Members.

17. Mr. Zehr and Mr. Heinrich brings this action under the *CPA* on ~~his~~ their own behalf and as proposed Family Class Representative Plaintiffs on behalf of all Family Class Members.

#### *c. The Defendants*

18. The WRPS is a police force which was established in 1973 following the amalgamation of communities in Waterloo County. The WRPS' liability arises from the conduct, negligence and malfeasance of the WRPS and individuals who were at all material times WRPS employees, agents and servants.

19. The WRPSB is a civilian oversight body that governs how WRPS provides its services. Pursuant to the provisions of the *PSA*, the WRPSB is liable in respect of torts committed by members of the WRPS in the course of their employment.

20. The WRPA is a corporation duly incorporated pursuant to the laws of Ontario. It is the sole collective bargaining agent for all Members of the WRPS, save and except the Chief of Police, the Deputy Chiefs and Members represented by the Senior Officers' Association. The WRPA had and has the power to act as the representative of the Plaintiffs, and Class Members concerning all aspects of their employment with the WRPS pursuant to the provisions of the *PSA*, the *PSA* Regulations, and the Collective Agreement.

21. The WRPA is a necessary party to this action as it has failed to ensure the enforcement of the provisions, policies and procedures of the WRPS Harassment and Discrimination Procedure, the provisions, policies and grievance procedures under the Collective Agreement, and the statutory and regulatory duties and obligations of the WRPS under the *PSA* and *PSA* Regulations on behalf of the Plaintiffs and Class Members.

#### 4. THE REPRESENTATIVE PLAINTIFFS

##### a. Constable Angelina Rivers

22. Ms. Rivers has served in the WRPS as a Constable since December 2006.

23. For the first few years of her service at WRPS, due to her hard-work ethic and the competence she exhibited in her job performance, Ms. Rivers enjoyed her colleagues' respect and admiration. Throughout this time period, Ms. Rivers made key arrests, gathered important



intelligence, and otherwise performed tasks and responsibilities over and above her position as a patrol officer. Ms. Rivers took every opportunity to showcase her abilities.

24. On or around November 2012, Ms. Rivers secured a very coveted mentorship position in the Regional Drug Unit.

25. Shortly thereafter, in April 2013, Ms. Rivers' work environment significantly changed and became hostile. Specifically, Ms. Rivers was subjected to acts of gender-based sexual harassment and discrimination, which included but were not limited to:

- (a) certain male officers made unwanted sexual advances towards Ms. Rivers;
- (b) certain male officers began ignoring or refusing to acknowledge her presence in the workplace;
- (c) male officers refused to provide her with back-up when she was dispatched to a dangerous situation;
- (d) when Ms. Rivers reported her safety concerns to WRPS superiors, male officers warned her to be careful about how she treated people or she would get her "ass kicked";
- (e) male officers made offensive comments about her competence because she was a "girl";
- (f) on several occasions, Ms. Rivers overheard her male officer colleagues disparaging her work to other officers and supervisors;

- (g) male Members spread rumours about Ms. Rivers allegedly having an affair with a colleague, which resulted in unwanted sexual advances by other male Members. For example, on one occasion, Ms. Rivers' superior Sgt. Cardoza sent her a text message in the middle of the night inquiring about the alleged affair she had with a male Member and telling her that he was "totally insulted cause [she] coulda had [him]!!!" Sgt. Cardoza then proceeded to text Ms. Rivers that he was "naked and drunk," and requested that she send him naked pictures of herself. These messages were unwelcome, unwanted and not reciprocated; and,
- (h) when Ms. Rivers attempted to address the persistent rumours surrounding her alleged affair with another male Member, Sgt. Cardoza refused to take any action. Sgt. Cardoza also warned Ms. Rivers against taking her complaints further up the chain on the basis that such action could "seriously jeopardize her career".

26. Almost immediately after Ms. Rivers made a complaint described in paragraph 24(h), WRPS began to control and micromanage her time and performance. Specifically:

- (a) most of Ms. Rivers' reports were returned with requests for revision (which had never been the case for the previous seven years of her service at WRPS); and,
- (b) her superiors demanded that she account for every minute of her work shift, including the time she spent on her washroom breaks. In this regard, on the days during her menstruation cycle, Ms. Rivers was forced to account for and explain the extra time she spent in the washrooms, which subjected Ms. Rivers to further humiliation and degradation.

27. In addition to being socially isolated as described above, Ms. Rivers was transferred to a remote zone on the outskirts of Cambridge against her wishes in an act of retribution for speaking out against a male Member's sexual harassment.

28. In 2013, Sgt. Cardoza was found to have engaged in discreditable conduct in connection with his sexual harassment of Ms. Rivers. He received a lenient punishment for his discreditable conduct and remained in a position of authority, over women, even though he has been shown to abuse that authority for sexual purposes.

29. In an effort to avoid the constant gender-based discrimination, harassment and sexual harassment she was experiencing, Ms. Rivers applied for and was subsequently accepted to, the Crime Management Team ("CMT"). She began her new position in January 2015.

30. Ms. Rivers was the only female officer at CMT. In her new position, she was once again assigned to work under Sgt. Cardoza, despite his prior acts of sexual harassment against her.

31. Following Ms. Rivers' transfer to CMT, the acts of harassment and discrimination against her continued. Specifically:

(a) Ms. Rivers was singled out without cause, reprimanded, berated, humiliated and disciplined for her work performance despite the fact that the male Members made more serious errors and their errors were overlooked or swept under the rug by her superiors;

(b) Ms. Rivers was kept socially and physically isolated; and,

- (c) Ms. Rivers continued to receive sexually inappropriate text messages and pictures from Sgt. Cardoza.

32. Fearing further reprisal or retribution, Ms. Rivers did not report the ongoing discrimination and sexual harassment.

33. One particular distressing incident occurred in March 2015. During making an arrest, Ms. Rivers had custody of a 5-year-old girl who was clearly traumatized and hysterical because her mother had been arrested and taken away by police. As Ms. Rivers knew that it would take considerable time for family and children's services to arrive, she opted to take the child inside the child's own home so that the child could feel comfortable, use the bathroom, stay warm, and have something to eat. Her decision resulted in the WRPS charging her under the *PSA* for entering a house without authority, to which she was subsequently found guilty of discreditable conduct. The entire incident caused Ms. Rivers considerable emotional distress as she believed she took a compassionate and common sense approach to the situation to reduce the trauma experienced by a child witnessing her mother's arrest but was instead harshly punished by the WRPS.

34. On July 25, 2015, Ms. Rivers was informed by Staff Sgt. Lobsinger that she was being demoted from Constable to patrol officer as of January 2016 for the following infractions:

- (a) a scratch on her police car requiring repair (which had immediately been repaired after it had occurred and over a month before this reprimand);
- (b) a verbal reprimand for inquiring of a colleague (who was assigned to mentor her) how he organized his notes for a specific incident; and,

- (c) her failure to find certain shotguns at a crime scene, which Ms. Rivers investigated under the direct supervision of Sgt. Cardoza. Sgt. Cardoza was not reprimanded or otherwise disciplined.

35. Staff Sgt. Lobsinger advised Ms. Rivers of her demotion and the above three reprimands in the presence of two male officers of her team, which was a clear and further attempt to humiliate and demean her.

36. Ms. Rivers was reprimanded and penalized for conduct that the male Members were never reprimanded or disciplined for. On many occasions, the male Members committed more serious infractions and engaged in discreditable conduct which was not only condoned but rewarded by superiors.

37. In August 2015, Ms. Rivers launched an internal complaint with the Human Resources division of the WRPS, which prompted an internal investigation. To date, Ms. Rivers has not received the results of the investigation, which was completed in August 2016, despite her repeated requests.

38. WRPS hired a lawyer, Lauren Bernardi, to investigate Ms. Rivers' complaint. Ms. Bernardi made the following findings:

- (a) Sgt. Cardoza was not a credible witness and his evidence regarding sexual harassment was not credible;
- (b) the evidence of Staff Sgt. Lobsinger was not reliable in that he admitted that he tried to protect Sgt. Cardoza and accepted Sgt. Cardoza's allegations regarding Ms.

Rivers' performance without taking any steps to investigate and/or otherwise verify Sgt. Cardoza's allegations;

- (c) Staff Sgt. Lobsinger was biased in his assessment of Ms. Rivers' performance based on the already entrenched sexism and unfairness inflicted on Ms. Rivers over her previous years of service with the WRPS;
- (d) Sgt. Cardoza sent sexually suggestive BBM messages to Ms. Rivers that were both inappropriate and unwelcome. Sgt. Cardoza knew or ought to have known his behaviour was unwelcome, particularly given the relative power imbalance between them. This power imbalance also increased the seriousness of Sgt. Cardoza's behaviour;
- (e) Sgt. Cardoza exaggerated the extent of Ms. Rivers' errors; and,
- (f) everything Ms. Rivers did was evaluated such that even really minor mistakes were noticed and amplified. This created a situation in which she was deliberately set up to fail in almost every aspect of her job performance.

39. Despite Ms. Bernardi's findings, WRPS and WRPA failed to take any steps to hold Sgt. Cardoza and/or Staff Sgt. Lobsinger accountable for their misconduct and abuse of power. Both Sgt. Cardoza and Staff Sgt. Lobsinger remain in positions of authority over female officers.

40. Subsequently, in 2016, Ms. Rivers filed a complaint with the Human Rights Tribunal of Ontario.

41. The atmosphere of gender-based discrimination and sexual harassment that Ms. Rivers encountered at WRPS had significant and negative effects on her physical and mental health. Ms. Rivers has been diagnosed with major depressive disorder, PTSD, unspecified trauma disorder, and alcohol abuse disorder. Her trauma is directly attributed to her work experience, and the gender-based discrimination and sexual harassment she endured at WRPS.

**b. Constable Ms. Sharon Zehr**

42. Ms. Zehr, served in WRPS as a Cadet or Constable for two and a half years and left the force in 1991.

43. After successful completion of the Law & Security Administration Program at Fanshawe College and undergoing the constable selection process with the WRPS in 1988, Ms. Zehr was hired by WRPS and started her police career as a Cadet at the police headquarters in Kitchener.

44. She was proud, committed, and looking forward to a long and rewarding career at WRPS.

45. Immediately upon her commencement of employment at WRPS, Ms. Zehr was treated differently from her fellow male officers. On the first day of work, she was told by two male officers that they did not want her or any women on the force and that it was up to them “to get the women out”.

46. Ms. Zehr spent three months as a Cadet in Kitchener. During that time, Ms. Zehr continued to experience gender-based discrimination and harassment, and sexual harassment. Her requests for assistance with any projects to which she was assigned were ignored and she was disproportionately reprimanded if those projects were accomplished in a less than perfect way.

She was also denied opportunities for additional training, which were routinely granted to male officers.

47. In October 1988, Ms. Zehr was transferred to Cambridge where she was the only female Cadet. Despite the transfer, the acts of gender-based discrimination and sexual harassment continued. These acts included, but are not limited to the following:

- (a) Constable Brian Voegtle found out that Ms. Zehr was prescribed birth control pills for her abdominal pain. He humiliated her in front of officers by repeatedly yelling, “free fucking”;
- (b) the above comments led to increased unwanted sexual advances and inappropriate comments directed at Ms. Zehr. For example, Ms. Zehr was paired with Constable Dave Ely who drove Ms. Zehr to a remote and dark area and asked her to give him a “blow-job.” Notwithstanding the fact that Ms. Zehr reported the incident to her training officer, the offending officer was never reprimanded or otherwise disciplined. In fact, Ms. Zehr was paired with the same Constable not long after the first incident, at which point he once again sexually harassed her by attempting to engage her in a discussion regarding various sex positions and inquiring as to her favourite sex position;
- (c) Ms. Zehr was constantly subjected to degrading comments and name-calling by Constable Peter Hood and other fellow male Members, which over time, led to her developing an unwarranted reputation for being a sex symbol or “bimbo”;



- (d) a male officer put his fist through half of Ms. Zehr's sandwich as it was sitting in front of her on the table in the lunchroom;
- (e) Ms. Zehr found her police hat in a workplace vending machine, forcing her to pay for it in order to be in full uniform and avoid being scolded by her superiors;
- (f) a male officer took the gas card out of Ms. Zehr's police cruiser, thereby preventing her from being able to refuel her police cruiser;
- (g) Ms. Zehr attended an alarm call only to be startled by Constable Stephen Beckett (who is currently an Assistant Deputy Minister of Community Safety and Correctional Services) and Constable George Prine, who set off firecrackers near her; and,
- (h) Ms. Zehr was rear-ended at a red light by Constable Stephen Beckett who simply smiled and waved at her.

48. Out of fear for her safety and more unwarranted reprisals, Ms. Zehr did not report these offences but petitioned, applied and obtained a transfer to Kitchener.

49. Once in Kitchener, Ms. Zehr was placed under the supervision of Sgt. Haines.

50. There were three female officers on the platoon at that time: Ms. Zehr, Ms. Sharron Keiley, and Ms. Paula Rockey (Chu). The female officers did not have a change room and they had to use an old broom closet with no toilet or running water. In contrast, the male officers had a full change room and bathroom facilities.

51. In or about December 1990, Ms. Zehr was called into Sgt. Haines' office. At that time, he advised Ms. Zehr that he had written a negative report stating that she had refused to come into work when ordered, which was not true, along with several other similarly negative and fictitious comments. Sgt. Haines then told Ms. Zehr, "ya, but I wrote it in my notebook", and to either "quit or get fired".

52. Subsequent to Ms. Zehr's meeting with Sgt. Haines, the gender-based discrimination and sexual harassment continued to escalate such that, in addition to the acts constituting an affront to basic human dignity, Ms. Zehr began to fear for her safety and security. Specifically:

- (a) at a work party, while Ms. Zehr was intoxicated, Constable Dalrymple jumped on top of her and began kissing her. She felt violated. Years later, Constable Dalrymple was promoted to the rank of Staff Sergeant and assigned to lead the Emergency Response Unit of the WRPS ("ERU");
- (b) Constable Rene Kraus licked Ms. Zehr's earlobe during a briefing;
- (c) on one occasion, Constable Michael Mooney and Constable Jeff Rumble together with three other male Members of WRPS dragged Ms. Zehr, against her will, toward the men's change room. Frightened and unsure of what the five men would do to her once inside the privacy of the men's change room, Ms. Zehr grabbed onto the doorframe fighting to be freed. Despite her resistance and pleas to leave her alone, the male officers stopped only after a Staff Sergeant ordered them to stop; and

- (d) Sergeant Allan Cassidy reached under Ms. Zehr's top and undid her bikini top while she was helping at a summer cleanup organized by the WRPA.

53. Although Ms. Zehr contacted her WRPA representative to report the gender-based discrimination and sexual harassment she had experienced, she was advised that it would be too costly for the WRPA to take any actions regarding her allegations. The WRPA representative therefore did nothing whatsoever to address Ms. Zehr's concerns.

54. The atmosphere of gender-based discrimination and harassment, sexual harassment and sexual assault that Ms. Zehr encountered while working at WRPS had significant and negative effects on her physical and mental health, human dignity and sense of self-worth. After enduring this intolerable treatment for two and a half years, she quit the WRPS on January 31, 1991.

55. Despite leaving the WRPS, Ms. Zehr continued to experience a persistent stream of gender-based discrimination and sexual harassment and bullying by the WRPS Members. Without limitation, this included the following:

- (a) after leaving WRPS, Ms. Zehr first worked as a college instructor and later began working as an Investigator at the Eaton Centre, in downtown Kitchener. Although successful in her position with detecting and preventing loss and trespassing, working at Eaton Centre required Ms. Zehr to work directly with the WRPS whenever she made an arrest. This was an extremely distressing experience for Ms. Zehr, as the WRPS officers continued to harass her and made degrading comments about her inability to hold down a job;

- (b) from 1994 to 1998, Ms. Zehr worked at Conestoga College as a Technologist in the Law & Security Administration Program. During her tenure, numerous police officers visited the program, including Bryan Larkin, the current Chief of Police at the WRPS, and Constable Dave Mann, a WRPS officer who was completing his sentence of community service. Some of the police officers who visited the program made further derogatory comments about her;
- (c) in September 2004, Ms. Zehr began working at Wilfrid Laurier University (“WLU”) as a Special Constable. As part of her job at WLU, she was required to complete her Special Constable academic and use of force training at the WRPS headquarters in Cambridge. As a result, Ms. Zehr was once again exposed to a wave of sexual harassment and abuse by male Members;
- (d) on May 26, 2006, Ms. Zehr submitted a complaint to the Human Rights Tribunal of Ontario together with two other female officers and entered into a settlement with WLU later that year. Despite the settlement, the persistent harassment, discrimination, and intimidation continued and became so unbearable that Ms. Zehr decided to leave WLU;
- (e) in September 2008, Ms. Zehr began working as the Residential Program Manager for Anselma House, a shelter for women and children who were victims of domestic violence. The position also involved interacting with Members of the WRPS and attending various events alongside them. In or about May 2010, Ms. Zehr attended a shelter fundraiser, wherein she ran into Deputy Chief Mike Mann and Police Services Board Chair Ken Seiling. At that time, both men made derogatory

statements about the length of her employment at the shelter and laughed loudly at her; and,

- (f) in or about June 2010, the Executive Director of Women's Crisis Services of Waterloo Region advised Ms. Zehr that she was adding two male WRPS officers to her Agency's Board: Gregory Lamport ("Lamport") and Dave Obermeyer. Lamport was an officer who gave out a "homo of the year" award within the Emergency Response Unit to any officer who performed his duties, in his opinion, in a feminine or gay fashion. Despite a fault finding against Lamport, the WRPS not only protected him, but promoted him from the rank of Staff Sergeant to Inspector, a senior officer position within the WRPS.

56. The ongoing gender-based discrimination and harassment, sexual harassment and sexual assault, experienced by Ms. Zehr over three decades, both overt and subtle by the Members of the WRPS, had continuous and unrelenting negative effects on her livelihood and wellbeing. Over time, the effects she suffered ultimately became unbearable. As a result in August of 2010, Ms. Zehr not only resigned from her position as the Residential Program Manager for Anselma House, but retired from the field of mental health and justice altogether.

57. Notwithstanding Ms. Zehr's attempt to remove herself from any potential interaction with Members of the WRPS, the gender-based discrimination and harassment, sexual harassment and sexual assault continued. Specifically, on February 22, 2013, Ms. Zehr had an encounter with Dennis Willfang, a WLU Special Constable, who tried to hit her in the head with a set of dumbbells at a gym they both belonged to. Ms. Zehr sought protection from some of the employees of the gym. Ms. Zehr contacted HRC regarding the incident. She was advised to make a police report.

Ms Zehr called WRPS and her complaint was given occurrence number 13-041956. Following her report of the incident to the WRPS, Ms. Zehr emailed the lead investigator for the criminal harassment and assault investigation at WRPS and requested an update of the investigation. To date, the WRPS has not provided any information to Ms. Zehr regarding the investigation.

58. The constant exposure to gender-based discrimination and harassment, sexual harassment and sexual assault, combined with the discriminatory and degrading culture created by the male Members of the WRPS greatly impacted Ms. Zehr's mental and physical health. For safety reasons, in December 2015, Ms. Zehr sold her home and moved out of the Waterloo Region entirely.

c. **Ms. Heinrich**

59. Ms. Heinrich has been a member of the WRPS since July 15<sup>th</sup>, 1991.

60. From the onset of her employment, Ms. Heinrich experienced various forms of gender discrimination, which she tolerated in order to advance her career at WPRS.

61. In 1997/1998, Ms. Heinrich sought assistance from WRPA in connection with the overtime she had accumulated but had been denied to her. She was informed that she could no longer take that time ("ya snooze ya lose") and that the platoon sheet containing the lieu hours had been shredded.

62. Once Ms. Heinrich notified the WRPA, the allegedly "shredded" sheet was located and she was presented with an overtime slip containing all of her lieu hours. However, she was advised by her superior that by signing the overtime slip she was endorsing her career suicide and that she would pay for it for a very long time. She was also informed that she was now a "Constable For Life".

63. In the following years, Ms. Heinrich assisted at the Training Branch on her days off in overtime and worked day shift for Use of Force sessions. She became a certified Fist Suit role player and a certified Use of Force Instructor. She later became certified to teach adults through the Police College. Yet, despite her hard work, qualifications and recognition from her immediate supervisors and the Training Branch members, she was passed over for the permanent transfers.

64. During that time, she also observed that her colleagues who had no qualifications were promoted and transferred.

65. Ms. Heinrich learned from that incident not to complain to my superiors or engage WRPA, unless it was absolutely critical, as the penalties were harsh and protracted.

66. In approximately 2005, Sergeant Tucker ("Tucker") and Sergeant Williamson ("Williamson"), two of Ms. Heinrich's supervisors, unbeknown to her, launched a sexual harassment complaint on behalf of Ms. Heinrich against a Chinese Staff Sergeant ("Staff Sergeant").

67. Ms. Heinrich informed her superiors that the allegations were baseless and that she did not wish to participate in the investigation regarding our Staff Sergeant. Later that day, Ms. Heinrich advised her Inspector that Tucker's and Williamson's their actions were tainted by racism.

68. Following the incident, Ms. Heinrich was promptly blacklisted and ignored. Her work environment became very toxic and she was deliberately isolated from her colleagues. Those who chose to speak with Ms. Heinrich were treated poorly.

69. Despite Tucker's discriminatory and toxic actions against Chinese Staff Sergeant and Ms. Heinrich, he was later elected to the position of the WRPA President.

70. In 2009, a few members of Ms. Heinrich's Platoon went to the WRPA to get help to deal with Staff Sergeant Munro ("Munro") because of Munro's belligerent conduct. Munro had explosive reactions to everyday stresses, which usually ended with him kicking garbage cans, throwing things around the office, swiping the desktops and clearing everything off in one swoop.

71. Munro was very upset and angry that the platoon members went to the WRPA. Eventually, he learned the names of the members who launched the complaint and unleashed his vengeance. Many very skilled officers, whom Ms. Heinrich directly supervised, were overlooked for transfers as a result of their complaint. They were assigned to do menial tasks, were negatively documented for little errors, and their transfer requests or requests for time off were either ignored and/or denied. Ms. Heinrich also observed that a dedicated and competent female police officer undeservingly received a terrible performance evaluation one day before her maternity leave because she had voiced concern about Munro's abusive conduct.

72. When Ms. Heinrich approached the Divisional Inspector to address serious issues surrounding Munro's unruly vindictive conduct, she was transferred out of the Kitchener Division and reassigned to the Forensic Identification Unit ("FIU") in Waterloo. In fact, in January 2010, more than half of the platoon was split up and transferred. Yet, Munro remained in his position of authority and continued his tyranny. No disciplinary action was taken against Munro until he had a physical confrontation with a male Staff Sergeant a couple years later.

73. Ms. Heinrich did not engage WRPA because she saw how terribly her platoon members were treated by Munro once they complained to WRPA and that there was not any action taken by WRPA to address Munro's unruly and unprofessional conduct. In fact, his demeanour towards these members escalated when he became knowledgeable of who complained.



74. Despite her transfer to FIU, the harassment and discrimination continued. Ms. Heinrich was asked by her FIU Staff Sergeant Henry Gren (“Gren”) whether or not she was done having children and whether or not she was a “retard” when he perceived she was asking a lot of questions regarding Forensic Processing.

75. In September of 2016, when Ms. Heinrich was the acting Staff Sergeant of the FIU, an order came out prohibiting police officers from wearing a baseball hat while on duty with a few exceptions outlined. She advised her Senior Leadership Team member that she would direct her team to contact the WRPA for assistance to clarify headdress code and/or if they needed assistance with shelter from weather elements during their shifts. Ms. Heinrich was then told that “under no circumstances should I ever be asking or referring any of my members to contact the Association. Ever.” She was further advised that since she was a branch manager, she should not be going to the WRPA either.

76. In April 2017, despite being an Acting Staff Sergeant for over a year, Ms. Heinrich was advised that she was unsuccessful in the promotional process to become a confirmed rank. She immediately notified the WRPA of her concerns about the promotional process and sought their assistance.

77. Despite multiple emails from WRPA advising her that there have been no developments since the initial inquiry, no action has been taken by WRPS to address Ms. Heinrich’s concerns. There were two females in the process for Staff Sergeant, both of Acting officers without any identified issues for over a year. There were no women promoted to Staff Sergeant in 2017.

78. Practice shows that female officers who have affairs with the senior police officers get promoted, even if they lack qualifications whereas female officers, like Ms. Heinrich, who reject

sexual advances from male officers or choose to speak up and engage the formal process get reprimanded and punished.

79. Ms. Heinrich was relieved of her duties as an Acting Staff Sergeant by Ken Taylor (“Taylor”) on June 25th, 2017.

80. Since July 2017, many WPRS members approached Ms. Heinrich complaining about Taylor’s conduct. They reported to her that Taylor was very offensive, lacked leadership skills, and made discriminatory comments. They also told her that the morale of the unit was very low. Finally, they informed her that they were afraid of taking the issue up the command for fear of reprisal. They felt that the WRPS would not deal with Taylor but would come down hard on complainants.

81. On September 11, 2017, Ms. Heinrich finally went to see her Inspector about Taylor’s conduct and recommended that he be transferred as the Staff Sergeant to the Homicide Unit (now called Major Crime).

82. Despite numerous complaints, Taylor remains as a Staff Sergeant at the FIU.

83. On Friday, November 17, 2017 (2 months after Ms. Heinrich spoke to the Inspector), Ms. Heinrich and Taylor had a meeting. He advised Ms. Heinrich that he was aware that she had sent emails to the Inspector. In fact, he recited some of the emails she had sent. He also told her that she rallied the troops and that by doing so she “drove a huge knife in his back”.

84. Shortly after this meeting in November 2017, Ms. Heinrich reached out to the WRPA again for assistance regarding egregious disclosure of the emails sent to the Inspector. She has not received any assistance from WRPA.

85. Since November 17, 2017, the work environment has become poisonous for Ms. Heinrich and other members who reached out to the Inspector about Taylor's unbecoming conduct.

86. In December 2017, Ms. Heinrich filed an affidavit in support of the Plaintiffs' position concerning jurisdiction of the court over this legal proceeding. As a result of that affidavit, WRPS hired Lauren Bernandi ("Bernandi"), a third party investigator, to review complaints against Taylor. Ms. Heinrich contacted Patricia Rivett ("Rivett"), a Director of Human Resources, numerous times trying to re-schedule the meeting. Her emails and phone calls went unanswered. Eventually, Rivett advised Ms. Heinrich that the meeting was cancelled at her request. Yet, during the meeting, Bernandi advised Ms. Heinrich that the reason the meeting was re-scheduled from the original date was because Rivett failed to provide her with Ms. Heinrich's affidavit.

87. On December 19, 2017, Ms. Heinrich called the Deputy Chief to advise WRPS that she was coming forward in the class action and to provide the reasons why. In response, the Deputy Chief asked Ms. Heinrich where she wanted to be transferred to. Ms. Heinrich responded that she did not understand why she had to be transferred for speaking out. She also reminded the Deputy Chief that the last time she reported discriminatory practices and insidious conduct of her superior she was transferred to FIU.

88. Since Ms. Heinrich swore her affidavit in December 2017, Taylor has advised Ms. Heinrich that should not be surprised by the fact that he no longer speaks to her at her workplace. If the communication is required, Taylor is short with and dismissive of Ms. Heinrich. He will not acknowledge her work-related emails and does not inform Ms. Heinrich if he is working on work related issues or not. These include but not limited to:

- (a) Revamping the fingerprint exam; and

(b) Fingerprint processes for deceased persons.

89. To date, WRPS has seen fit to keep Taylor as Ms. Heinrich's Staff Sergeant, which creates an enormous stress and anxiety to Ms. Heinrich. In addition to Taylor's complete disregard of Ms. Heinrich, she is being targeted and harassed by Taylor's supporters.

90. For example, in March 2018, Ms. Heinrich responded to a sudden death investigation with her partner who is newer to FIU. On March 13th, 2018, Ms. Heinrich was reprimanded by the Staff Sergeant in charge of the Major Crime Unit for speaking too much with the parent of the deceased at the scene. The two Detectives present at the scene, Cory Schmidt ("Schmidt") and Constable Louise Stemmler ("Stemmler"), felt that Ms. Heinrich "crossed a line" because she spoke too much to the parent about the events leading to the unfortunate death of her child. The parents had approached Ms. Heinrich to introduce themselves at the scene and they spoke about their child. The natural progression of the conversation went to the events surrounding his death. When Ms. Heinrich asked the Staff Sergeant if the family complained about her, she said no, not at all. Ms. Heinrich was advised that the complaint came from Schmidt and Stemmler.

91. Schmidt is a close friend and a previous partner of Taylor.

92. Ms. Heinrich previously reported Stemmler behaving poorly at a training venue and lying about her participation. As a result, Stemmler was transferred out of Detectives Unit.

93. The call Ms. Heinrich attended was graphic in nature and very stressful given the young age of the deceased. Yet, despite Ms. Heinrich's stellar performance and thorough investigation at the scene, she was reprimanded for showing empathy to the parents of the deceased because of

Stemmler's and Schmidt's vindictive actions. She was also questioned why she was even at the scene.

94. The pervasive systemic and institutional dismal failures to conduct proper investigations and dispense an appropriate remedy, lack of transparency of the WRPS and WRPA's internal affairs and disciplinary process all deprived Ms. Heinrich of a meaningful process to address the systemic and institutional failures.

95. The atmosphere of gender-based discrimination and sexual harassment that Ms. Heinrich encountered at WRPS had significant and negative effects on her physical and mental health. Her trauma is directly attributed to her work experience, and the gender-based discrimination and sexual harassment she endured at WRPS.

**d. Mr. Barry Zehr**

96. Mr. Zehr is a former Superintendent at WRPS. He retired from the WRPS in April 2017.

97. Mr. Zehr has incurred expenses and loss of consortium, care, guidance and companionship as a result of the systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault perpetrated against Ms. Zehr by the male Members of the WRPS, the WRPS senior officers and management, and the WRPA.

**e. Mr. Heinrich**

98. Mr. Heinrich is currently a police officer at WRPS.

99. Mr. Heinrich has incurred expenses and loss of consortium, care, guidance and companionship as a result of the systemic and institutional gender-based discrimination and

harassment perpetrated against Ms. Heinrich by the male Members of the WRPS, the WRPS senior officers and management, and the WRPA.

#### **ALLEGATIONS OF THE PLAINTIFFS AND CLASS MEMBERS**

100. During the time the Plaintiffs served as Members of the WRPS, including their training, they were subjected to persistent and systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault, by male Members of the WRPS. The atmosphere created by the male Members was misogynistic and encouraging of degradation and hostility towards women. Non-exhaustive examples of this gender-based discrimination and harassment, sexual harassment and sexual assault, are described throughout this pleading.

101. The WRPS treated the Plaintiffs Class Members differently than their male Members, particulars of which include but are not limited to:

- (a) it was common for the Plaintiffs to receive or overhear sexually explicit and offensive comments from male Members, including their superiors, which demeaned or belittled women. The Plaintiffs were personally called “bitch” and/or “slut” by male Members of the WRPS on numerous occasions and witnessed the same in relation to other Class Members.
- (b) the Plaintiffs constantly heard male Members calling the Plaintiffs, and Class Members other derogatory and offensive terms. Sexualized jokes directed towards the Class Members became a part of the culture at the WRPS and became everyday experiences of the Plaintiffs and other Class Members;

- (c) isolated by male Members, Class Members began to socialize together. Shortly thereafter, the male Members labeled them as “lesbians” and made demeaning comments about sexual orientation and lesbian relationships;
- (d) many Class Members were labelled “crazy” and considered emotionally unstable/unfit to do their job;
- (e) the Plaintiffs experienced a general culture of objectification of women. On various occasions, the Plaintiffs overheard male Members conversing and debating about which female Members were attractive, ugly and whether the male Members would have sex with them or not;
- (f) the Plaintiffs also experienced different treatment of Class Members on the basis that they were perceived as being weaker and inferior to male Members. As a result, the Plaintiffs and other Class Members were treated as though they were inferior at their jobs on account of their gender. Opportunities for advancement were more limited to Class Members, and the Plaintiffs felt that, as women, they needed to prove themselves more, work harder and be in better physical shape than a male in the same trade to gain the respect of male Members and superiors;
- (g) the Plaintiffs and Class Members were also treated as intellectually inferior in that:
  - (i) the male Members of equivalent or lesser rank and/or experience were assigned to more complex, high-profile files and tasks than the Plaintiffs and other Class Members;

- (ii) the male Members of equivalent or lesser rank and/or experience, received better career, education, and training opportunities than the Plaintiffs and other Class Members; and,
- (iii) the male Members of equivalent or lesser rank and/or experience, received better career counselling, formal mentorship, feedback on their performance reviews, and consideration for promotion than the Plaintiffs and other Class Members;
- (h) the Plaintiffs and Class Members were often subjected to unwanted physical and/or sexual touching by the male Members of the WRPS;
- (i) the Plaintiffs and Class Members were often put in perilous situations due to male officers refusing to provide them with back-up when they were dispatched to dangerous situations;
- (j) the Plaintiffs and other Class Members received unwanted text messages and pictures that were sexual in nature. For example, Ms. Rivers received pictures of a penis “x-ray” saying “hey guys, I hurt my knee”. The same male Member sent her pictures of golf balls asking her if she liked his balls;
- (k) the Plaintiffs also witnessed offensive and degrading comments directed towards them and other Class Members who became pregnant and took parental leave. Moreover, Class Members were held back and were not allowed to advance in their career although they had more skill and experience than their male counterparts; and



- (l) the generally accepted attitude exhibited by male Members of the WRPS is that women should know what they are getting into by joining WRPS - they can either put up with it or get out.

102. Constant exposure to gender-based discrimination and harassment and degrading culture towards the Plaintiffs and Class Members within the WRPS and the WRPA greatly impacted their mental and physical health and had the effect of demeaning, humiliating, and limiting careers of the Plaintiffs and Class Members.

103. Many Class Members were and are reluctant to disclose discriminatory practices to peers or their superiors to avoid being labelled as a troublemaker. Also, based on the Plaintiffs' observations and experience of the common and persistent sexual harassment, discrimination and bullying of female Members by male Members, the Plaintiffs and Class Members are aware that reporting the incident will trigger retaliation, reprisals and retribution by the male Members.

104. The duties and obligations of the WRPA were and are to represent the interests of the Members concerning all aspects of their employment within the WRPS. The culture and atmosphere created by the systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault committed by male Members of the WRPS permeated the practices and procedures of the WRPA such that they were ineffective in advancing and protecting the interests and concerns of Class Members. The WRPA refused or failed to advance, administer and investigate complaints or grievances, under the Harassment and Discrimination Procedure and the Collective Agreement.

105. On many occasions, Ms. Rivers complained to other Members, including her superiors, that she was subjected to gender-based discrimination and harassment, sexual harassment and

sexual assault by male Members of WRPS. Her complaints were either ignored or summarily investigated and dismissed.

106. Likewise, Ms. Zehr complained to her supervisors about the gender-based discrimination and harassment, sexual harassment and sexual assault, she experienced. These complaints were never properly investigated or addressed.

107. Likewise, Ms. Heinrich sought assistance from within the WRPS and the WRPA, including peers, supervisors, management, and WRPA representatives. However, her complaints were discouraged, disregarded and otherwise ignored.

108. Due to the systemic culture of gender-based discrimination and harassment, sexual harassment and sexual assault in the WRPS and the WRPA, the Plaintiffs and Class Members were forced to leave the WRPS, which deprived them of the opportunity for advancement along with the resulting loss of income and benefits.

109. Despite the Plaintiffs' efforts to draw the attention of both the WRPS and the WRPA to the systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault, the WRPS and WRPA have done nothing more than silence the wrong, further isolate the Plaintiffs and protect and insulate the culture of gender-based discrimination and harassment, sexual harassment and sexual assault, thereby keeping it from public scrutiny and condemnation.

#### **CAUSES OF ACTION**

110. The Plaintiffs make three substantive claims against the WRPS and WRPSB, each of which is particularized in the subsequent paragraphs:

- (a) the WRPS, by the WRPSB, is liable to the Plaintiffs and Class Members for the systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault, committed by male Members of the WRPS against the Plaintiffs and Class Members based upon the systemic and institutional negligence of the WRPS;
- (b) the WRPS has breached the Plaintiffs' and Class Members' right to be free from discrimination on the basis of gender-based discrimination and harassment, sexual harassment and sexual assault, under section 15 of the *Charter*; and,
- (c) the WRPS, by the WRPSB, is liable to the Plaintiffs and Class Members for the outrageous conduct of male Members of the WRPS against the Plaintiffs and Class Members, and the reckless disregard for the extreme emotional distress caused to the Plaintiffs and Class Members under the tort of harassment.

**f. Systemic and Institutional Negligence**

111. The WRPS and WRPA owe statutory, contractual and common law duties and obligations to the Plaintiffs and Class Members to ensure that they work in an environment free of gender-based discrimination and harassment, sexual harassment and sexual assault, including but not limited to the following:

- (a) section 15(1) of the *Charter* states that 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 based upon sex;

- (b) sections 5(1), 5(2) and 7(2) of the *OHRC* state that every person has a right to equal treatment with respect to employment without discrimination or harassment, and a workplace that is free from harassment and sexual harassment from employers or agents of the employer or by any other employee;
- (c) section 8 of the *OHRC* requires that employers refrain from reprisals or threats of reprisal taken against employees relating to an employee having claimed, or in trying to enforce an *OHRC* right, or to retaliate against the employee for making a claim or attempting to enforce a right under the *OHRC*;
- (d) sections 32.0.1(1)(b), 32.0.6, 32.0.07 of the *OHSAA* require that employers establish and institute workplace harassment codes of conduct, policies and investigatory procedures to protect workers;
- (e) section 50(1) of the *OHSAA*, requires that no employer shall dismiss or threaten to dismiss a worker, discipline or suspend or threaten to suspend a worker, impose any bounty upon a worker, or intimidate or coerce a worker, because the worker has acted in compliance with the *OHSAA* and *OHSAA* regulations;
- (f) the *ESA* provides minimum standards for employees regarding hours of work and employee leaves of absence. Section 74 of the *ESA* prohibits reprisals, requires that an employer not intimidate, dismiss or otherwise penalize an employee or threaten to do so because the employee exercises or attempts to exercise a right under the *ESA*; and,

- (g) the above statutory obligations and duties are express and/or implied terms of employment between employers and employees.

112. The Plaintiffs and Class Members have been subjected to systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault by male Members of the WRPS and the WRPA.

113. The WRPS owes duties of care to the Plaintiffs and Class Members to allow them to work in an environment free of sexual misconduct, including gender-based discrimination and harassment, sexual harassment and sexual assault.

114. The WRPS and its male Members breached their duty of care to the Plaintiffs and Class Members by, among other things:

- (a) frequently making degrading remarks that reference women's bodies;
- (b) frequently making sexual jokes and innuendos aimed at women;
- (c) frequently making discriminatory comments about the abilities of women;
- (d) abusing their positions of authority by coercing subordinate Class Members to engage in inappropriate sexual relationships;
- (e) engaging in intentional, unwelcome, non-consensual touching of a sexual nature;
- (f) promoting a sexualized atmosphere;
- (g) ignoring, excusing and condoning sexual misconduct;

- (h) failing to adhere to applicable statutory duties, contractual obligations, policies, procedures and processes with respect to gender-based discrimination, sexual harassment and sexual assault;
- (i) deterring Class Members from reporting sexual misconduct of male Members;
- (j) deliberately preventing complaints of sexual misconduct from reaching the attention of senior-level officials;
- (k) punishing victims of sexual misconduct, including the obstruction of their career advancement and casting aspersions on their abilities to perform their roles in the WRPS; and,
- (l) endangering the lives of the Class Members by failing to provide back-up to them when they were dispatched to dangerous situations out of reprisal or to deter the Class Members from reporting sexual misconduct.

115. Senior-level male Members of WRPS, including officers with oversight responsibilities, breached their duties of care to the Plaintiffs and Class Members by, among other things:

- (a) failing or refusing to reasonably supervise male Members or take reasonable measures to prevent sexual misconduct;
- (b) failing or refusing to provide adequate training on prohibited sexual conduct, thus perpetuating the view that sexual misconduct would be tolerated within the WRPS;
- (c) imposing a culture that discourages victims from reporting sexual misconduct;

- (d) failing or refusing to provide Class Members with an adequate reporting mechanism that is independent of the WRPS;
- (e) failing or refusing to adequately investigate complaints of sexual misconduct;
- (f) failing or refusing to appropriately sanction male Members for gender-based discrimination and harassment, sexual harassment and sexual assault;
- (g) imposing meaningless sanctions against offenders after complaints of sexual misconduct have been substantiated while at the same time promoting the male offenders, which served to condone the sexual misconduct;
- (h) failing or refusing to provide adequate internal victim support services;
- (i) failing or refusing to provide adequate programs and services to victims of sexual misconduct;
- (j) failing or refusing to institute and abide by adequate policies, procedures, processes, codes of conduct or guidelines to protect the safety, physical and mental health, and welfare of the Plaintiffs and Class Members and to reduce the likelihood that they would be subjected to gender-based discrimination and harassment, sexual harassment and sexual assault; and,
- (k) failing or refusing to adequately and consistently apply policies, procedures, processes, codes of conduct or guidelines that existed for the above-described purposes; and,

- (l) failing or refusing to promote, or not adequately promoting, meaningful initiatives to prevent sexual misconduct.

116. The WRPS knew or ought to have known that the actions and omissions of male Members of WRPS were of a kind reasonably capable of causing damages to a person of normal fortitude and that the Plaintiffs and Class Members would suffer damages as a result.

117. The leaders of the WRPS and the WRPA have always been men. The men who have created and perpetuated the toxic work environment for women have controlled the work environment and the mechanisms for obtaining redress. Complaints result in light punishment, if any, for the male perpetrators, and retaliation for the female complainant. The system as it operates, in fact, rewards discriminatory behavior and punishes those who complain about it. Class Members are left with a choice of enduring the unendurable, or quitting. Class Members have lost confidence in the ability of the WRPS and the WRPA to rectify the sexual discrimination that is chronic and pervasive in the workplace.

118. The systemic and institutional failure on the part of the WRPS and WRPA to comply with their applicable statutory and contractual duties to the Plaintiffs and Class Members rendered the applicable policies, processes and procedures and under the Harassment and Discrimination Procedure, the applicable policies, processes and grievance procedures under the Collective Agreement, and complaints under the *OHRC*, the *OHSA* and the *ESA*, to be an ineffective and inadequate means to address and redress gender-based discrimination and harassment, sexual harassment and sexual assault against the Plaintiffs and Class Members.



**g. Breach of the *Canadian Charter of Rights and Freedoms***

119. Section 15(1) of the *Charter* provides that 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 based upon sex.

120. The WRPS has breached the Plaintiffs' and Class Members' right to be free from discrimination on the basis of sex, pursuant to s. 15 of the *Charter* as described in paragraphs 70-75 above.

121. In the context of decisions that implicate the *Charter*, to be defensible, a decision must accord with the fundamental values protected by the *Charter*.

122. The actions and/or inactions of the male Members of WRPS allowed a poisoned work environment to persist, which discriminated against the Plaintiffs and the Class Members on the basis of their gender identity and was not in accordance with the fundamental values protected by section 15 of the *Charter*.

123. Gender-based discrimination and harassment, sexual harassment and sexual assault, violates section 15(1) of the *Charter* and cannot be justified under section 1 of the *Charter*.

**h. Tort of Harassment**

124. The WRPS is independently liable to the Plaintiffs and Class Members for the systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault, by male Members of the WRPS, under the tort of harassment.

125. The acts of systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault, committed by male Members of the WRPS and WRPS senior officers and management, constituted outrageous conduct by the WRPS against the Plaintiffs and Class Members.

126. The WRPS' flagrant failure to address and to condone, gender-based discrimination and harassment, sexual harassment and sexual assault, of female police officers intended to cause emotional stress and mental suffering, or was in reckless disregard to the emotional stress and mental suffering that would be caused by the outrageous conduct.

127. The outrageous conduct by the WRPS was the actual, or proximate, cause of the emotional stress and mental suffering sustained by the Plaintiffs and Class Members.

#### 5. INJURY AND DAMAGES

128. As a result of the systemic and institutional negligence and egregious conduct of male Members of WRPS, and the WRPS senior officers and their management, for which WRPS is liable, the Plaintiffs and Class Members, have sustained injuries and damages, including but not limited to:

- (a) PTSD;
- (b) diminished self-worth;
- (c) depression;
- (d) anxiety;
- (e) difficulty in coping with emotional stress and mental anguish;

- (f) attempted suicide;
- (g) suicidal ideation;
- (h) feelings of guilt and self-blame; and
- (i) insomnia;
- (j) loss of consortium; and
- (k) loss of enjoyment of life.

129. These injuries have caused and continue to cause the Plaintiffs and other Class Members pain, suffering, loss of enjoyment of life, loss of physical, mental and emotional health. Therefore, the Plaintiffs claim damages resulting from the permanent psychological trauma that resulted from the actions of the WRPS.

130. Additionally, the Plaintiffs claim damages for lost past and future income, lost pension income and benefits, lost benefits associated with employment, and lost future employment opportunities that would have resulted from continued employment by the WRPS.

131. Additionally, the Plaintiffs and Class Members sustained special damages, losses and expenses for medical treatment, rehabilitation, psychological counselling and other care.

132. The Class Members claim damages under section 24 of the *Charter* on the basis that the conduct of the WRPS and WRPA was fundamentally wrong, exercised in bad faith and constituted a flagrant abuse of power. The compensation will remedy personal loss, including the permanent psychological harm suffered by Class Members. Compensation will allow Class Members to

vindicate their rights, the violation of which damaged society as a whole. Compensation to Class Members will also serve the important public purpose of future deterrence.

133. As a result of the systemic and institutional gender-based discrimination and harassment, sexual harassment and sexual assault, and negligence, by the male Members, senior officers and management of the WRPS, Mr. Zehr claims damages for himself and on behalf of the Family Class Members under the *FLA* for:

- (a) out-of-pocket expenses;
- (b) travelling expenses;
- (c) loss of consortium;
- (d) payment of all services provided to the Class Members on a *quantum meruit* basis;  
and,
- (e) loss of care, guidance and companionship.

## 6. PUNITIVE AND EXEMPLARY DAMAGES

134. The actions of the WRPS were willful, arrogant, callous, reprehensible, malicious and abusive, and constituted a gross violation of the constitutional, statutory, and common law rights of the Plaintiffs and Class Members.

135. This is an appropriate case for punitive damages as the conduct of the male Members, senior officers and management of the WRPS, was deliberate, which lasted unhindered for many years, and represented a marked departure from ordinary standards of decent conduct.

136. Compensatory damages are insufficient in this case. The conduct of male Members, senior officers and management of the WRPS, merit punishment and warrants society's condemnation of the conduct engaged by the WRPS and to achieve the goals of both specific and general deterrence.

## 7. LEGISLATION

137. The Plaintiffs plead and rely upon the following status and regulations:

- (a) *Class Proceedings Act 1992*, S.O. 1992 c.6;
- (b) *Courts of Justice Act*, R.S.O. 1990, c.C.43;
- (c) *The Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982, c.11;
- (d) *Employment Standards Act 2000*, S.O. 2000, c.41;
- (e) *Human Rights Code*, R.S.O. 1990, c.H.19;
- (f) *Family Law Act*, R.S.O. 1990, c.F.3;
- (g) *Negligence Act*, R.S.O. 1990, c.N.1, s.1;
- (h) *Occupational Health & Safety Act*, R.S.O. 1990, c.O.1; and,
- (i) *Police Services Act*, R.S.O. 1990, c.P.15

## 8. PLACE OF TRIAL

138. The Plaintiffs propose that this Action be tried at Brampton, Ontario.

May 30, March \_\_\_, 2018

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## SCHEDULE "A"

## LIST OF DEFINED TERMS

1. "Ms. Rivers" means the Plaintiff, Angelina Rivers;
2. "Ms. Zehr" means the Plaintiff, Sharon Zehr;
3. "Mr. Zehr" means the Plaintiff, Barry Zehr;
4. "Ms. Heinrich" means the Plaintiff, Shelley Heinrich;
5. "Mr. Heinrich" means the Plaintiff, Frank Heinrich;
6. "*Charter*" means the *Charter of Human Rights and Freedoms*, Part I of the *Constitution Act*, 1982, being Schedule B to the *Canada Act* 1982 (U.K.), 1982, c.11, s.24(1);
7. "*CJA*" means the *Courts of Justice Act*, R.S.O.1990, c. C.43, as amended;
8. "Class" and "Class Members" means all female persons who were or are presently Members of the WRPS;
9. "Collective Agreement" means the 2015-2019 Collective Agreement between the Waterloo Regional Police Services Board and the Waterloo Regional Police Association, effective January 1, 2015 to December 31, 2019 and predecessor Collective Agreements;
10. "Court" means the Superior Court of Justice;
11. "CPA" means the *Class Proceedings Act*, 1992, S.O. 1992, c.6, as amended;
12. "ESA" means the *Employment Standards Act 2000*, S.O. 2000, c.41, as amended;
13. "Family Class" and "Family Class Members" means derivative claims of individual family members of Class Members pursuant to s.61 of the *FLA*;
14. "Family Class Representative Plaintiffs" means the Plaintiffs, Mr. Barry Zehr and Mr. Frank Heinrich;

15. “**FLA**” means the *Family Law Act*, R.S.O. 1990, c.F.3, as amended;
16. “**Harassment and Discrimination Procedure**” means the Harassment and Discrimination Procedure of the WRPS effective 2007, as amended in 2010 and 2014;
17. “**HRC**” means the Ontario Human Rights Commission.
18. “**Member**” means a “member” as defined in the *Police Services Act*, R.S.O. 1990, c.P.15;
19. “**OHRC**” means the Ontario *Human Rights Code*, R.S.O. 1990, c.H.19;
20. “**OHS**” means the *Occupational Health & Safety Act*, R.S.O. 1990, c.O.1, as amended;
21. “**Plaintiffs**” and “**Representative Plaintiffs**” mean Ms. Angelina Rivers and Ms. Sharon Zehr, collectively;
22. “**PSA**” means the *Police Services Act*, R.S.O. 1990, c.P.15;
23. “**PSA Regulations**” means O. Reg. 123/98 and O. Reg. 268/10, under the *Police Services Act*, R.S.O. 1990, c.P.15, as amended;
24. “**PTSD**” means post-traumatic stress disorder;
25. “**Sgt. Cardoza**” means Sergeant Nathan Cardoza, a Patrol Sergeant at WRPS;
26. “**Sgt. Haines**” means Acting Sergeant John Haines, a former Police Sergeant at WRPS;
27. “**Staff Sgt. Lobsinger**” means Staff Sergeant Paul Lobsinger, a Staff Sergeant in the Criminal Investigations Branch at WRPS;
28. “**WRPA**” means the Waterloo Regional Police Association;
29. “**WRPS**” means the Waterloo Regional Police Service; and
30. “**WRPSB**” means the Waterloo Regional Police Services Board.



ANGELINA RIVERS et al.  
Plaintiffs

-and-  
Defendants

WATERLOO REGIONAL POLICE SERVICE BOARD et al.

Court File No. CV-17-2346-00

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**BRAMPTON**

**AMENDED STATEMENT OF CLAIM**

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