

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

BRUCE POOLE

Plaintiff

-and-

THE CORPORATION OF THE CITY OF GUELPH

Defendant

STATEMENT OF DEFENCE

General

1. The defendant, The Corporation of the City of Guelph (“City”), admits the allegations contained in paragraphs 2, 4, 5, 6, 29, 30, the first sentence of 32, 35, and 61 of the Statement of Claim.

2. Except as specifically admitted herein, the City denies the relief requested at paragraph 1 of the Statement of Claim, and every other allegation contained in the Statement of Claim, and puts the plaintiff, Bruce Poole (“Mr. Poole”) to the strict proof thereof.

The Parties

3. The City is a municipal corporation incorporated under the laws of Ontario with its municipal office at 1 Carden Street, Guelph, Ontario.

4. Mr. Poole is a former employee of the City.

Terms and Conditions of Employment

5. Mr. Poole commenced employment with the City on December 5, 1984 as a building inspector. In March 1995, he was promoted to the position of Chief Building Official (“CBO”), a position which he continued to hold in 2015 when his employment was terminated without cause.

6. At the time of his termination, Mr. Poole was entitled to a base salary of \$147,003.68, participation in the City’s employee benefits plans, and participation in the OMERS pension plan.

7. CBO is a position mandated by the *Building Code Act, 1992* (“Act”) and as such, Mr. Poole was responsible for carrying out statutorily required duties, including establishing policies and procedures for the enforcement of the Act and the Building Code within the City, coordinating and overseeing the enforcement of the Act and the Building Code within the City, and issuing and revoking building permits.

8. In addition to these statutory duties, until April 7, 2015 Mr. Poole also served as General Manager of the City’s Building Services department. In that capacity, his responsibilities included management and planning for the department, and supervising approximately 35 direct and indirect reports.

Organizational Restructuring and Elimination of General Manager Position

9. In late 2014 and early 2015, the City underwent an organizational restructuring. The restructuring was broad in scope, affecting approximately 100 City employees.

10. Pursuant to the restructuring, the City eliminated more than a third of its general manager (“GM”) positions, reducing the total number from 28 to 18. Some of the affected GMs had their employment terminated outright, while others were offered the opportunity to continue their employment in manager positions.

11. As part of the restructuring, the City amalgamated the Building Services department, of which Mr. Poole was GM, with the Planning Services department, of which an employee named Todd Salter was GM. This required the elimination of one of the two GM positions. The City chose to appoint Mr. Salter as GM of the amalgamated department. Mr. Poole remained in the position of CBO, but this position was reassigned to the manager level rather than the GM level. This was consistent with the City's treatment of several other GMs whose positions were eliminated due to the restructuring.

12. The City's decision to appoint Mr. Salter as GM of the amalgamated department was made in good faith for legitimate business reasons. The City continued to require Mr. Poole's experience and expertise in the CBO role. The City considered that it would be difficult for Mr. Poole to effectively perform his CBO statutory duties, which are substantial, if he was also required to learn the operations of the Planning Services department and serve as GM of the amalgamated department, which is nearly double the size of the department he had managed previously. Therefore, the City determined that Mr. Salter was better placed to assume the increased responsibility of being GM of the amalgamated department so that Mr. Poole could focus on his CBO responsibilities.

13. The City states that another change made by the City pursuant to the organizational restructuring was to transfer the enforcement of certain by-laws, together with three full-time and one part-time staff members responsible for their enforcement, from the Building Services department to the City's corporate by-law group. The City states that moving by-law enforcement to the by-law group was also a legitimate and good-faith decision made as part of the comprehensive restructuring process.

14. Consistent with its treatment of other GMs affected by the restructuring, the City offered to maintain Mr. Poole's GM salary for a period of 20 months in order to assist his transition to the new arrangements. Mr. Poole's responsibilities as a manager and CBO also remained identical to the responsibilities he had performed previously, except for the transfer of the enforcement of certain by-laws as noted above.

15. The City specifically denies the allegation at paragraph 22 of the Statement of Claim that its decision was improperly motivated. Its decision was made solely for the good faith business reasons set out above, pursuant to the comprehensive restructuring process, and consistent with the treatment of other affected GMs. Mr. Poole was in no way targeted or singled out, as set out herein.

16. The City further specifically denies the allegation at paragraph 22 of the Statement of Claim that these changes caused any embarrassment, humiliation or stress to Mr. Poole. Since the organizational restructuring was widely known and affected a large number of employees, including more than a third of the City's GMs, there was no embarrassment or humiliation in being affected. Furthermore, Mr. Poole continued to hold the prestigious position of CBO, continued to hold a managerial role with a similar number of direct reports, continued to perform nearly all of the same duties and responsibilities, and continued to receive the same compensation for the first 20 months following the change.

17. In this regard, the City specifically denies the allegation at paragraph 19(e) of the Statement of Claim that it removed a large number of Mr. Poole's responsibilities and duties. In response to paragraphs 19(b), (c) and (d), the City states that department head, senior management leadership team and steering committee participation is reserved for GMs. As such, Mr. Poole's exclusion from such participation was an automatic consequence of the elimination of the GM position. The City's decision to do so was made in good faith for legitimate business reasons, and Mr. Poole was not targeted or singled out.

Implementation of Restructuring and Mr. Poole's Response

18. Although the restructuring was implemented across the City on March 3, 2015, Mr. Poole was on a medical leave of absence at that time. The City, again acting in good faith, delayed the implementation of the changes to Mr. Poole's employment pending his return.

19. Upon his return, on April 7, 2015, the City implemented the changes. The City offered Mr. Poole two choices:

- a. accept the changes outlined above, in which case his current compensation would continue for a period of 20 months until December 7, 2016; or
- b. end his employment with the City, in which case he would receive a 20-month working notice period until December 7, 2016 and an additional lump sum payment of 30 weeks' pay, for a total severance package of approximately 27 months.

20. Mr. Poole failed to select either of these options. Instead, on April 20, 2015, he criticized the City, and asked for revisions, before he would select either option. The City had no obligation to make revisions. Mr. Poole also demanded copies of letters that had been provided to other employees, which the City had no obligation to provide.

21. The City pleads that Mr. Poole confirmed that he would not accept the changes in his employment and asserted constructive dismissal. Mr. Poole expressly alleged constructive dismissal as part of his harassment complaint, as referenced herein.

Unfounded Harassment Complaint and Fair and Neutral Investigation

22. On April 20, 2015, Mr. Poole filed a formal Complaint of harassment and discrimination against the City's entire four-person executive team. The essence of the complaint was that Mr. Poole should not have been selected to participate in the restructuring and that the City's decision in that regard amounted to harassment and age discrimination. In fact, the Complaint was entirely without merit as the City's decision was made solely for legitimate reasons.

23. The City retained a neutral third party investigator, Dean Benard of the firm Benard & Associates, to investigate the Complaint. Mr. Benard did so in a thorough, fair and impartial manner. The City specifically denies that the investigation was flawed as

alleged at paragraph 24 of the Statement of Claim, or otherwise, and responds as follows:

- a. In response to paragraph 24(a), it was not necessary for the investigator to meet the additional witnesses Mr. Poole identified. The Complaint concerned the City's decision to select Mr. Poole for participation in the restructuring, and there were no witnesses, other than the respondents, who had participated in that decision. The investigator met with all four respondents.
- b. In response to paragraphs 24(b) and (c), the City specifically denies that the investigator either stated or "implied" to Mr. Poole that his complaints were well-founded or that he was in jeopardy. In the alternative, even if the investigator "implied" such things during an initial meeting, which is denied, as a fair and neutral investigator he remained open-minded and willing to change initial opinions after hearing all of the evidence.
- c. In response to paragraph 24(d), the City specifically denies that Mr. Poole lacked an opportunity to challenge the respondents and their position. In fact, the investigator met with Mr. Poole an additional time after meeting the respondents, for the specific purpose of putting to him the respondents' position and hearing his reply. Subsequently, Mr. Poole submitted seven pages of single-spaced, handwritten notes and several additional pages of attachments in reply to the respondents' position, which the investigator fully considered.

24. Ultimately, after multiple meetings with Mr. Poole, reviewing the voluminous documentation (more than 500 pages) submitted by Mr. Poole allegedly in support of his Complaint, interviews with the respondents, and reviewing a considerable volume of documents provided by the respondents, the investigator correctly concluded that the Complaint was unfounded.

25. Mr. Benard did not consider Mr. Poole's complaint of constructive dismissal as it was outside his mandate as a harassment and discrimination investigator.

Conclusion of Investigation and Confirmation of End of Employment

26. On August 14, 2015, Mr. Benard reported the results of the investigation to the City. At that time, Mr. Poole was on vacation, scheduled to return August 21, 2015.

27. The City placed Mr. Poole on a paid leave of absence following his return from vacation pending its decision on next steps regarding his employment. This was necessary in light of the investigator's conclusion that Mr. Poole's harassment and discrimination Complaint was unsubstantiated, Mr. Poole's continuing refusal to accept the changes in his employment, his refusal to select an option either for continued employment or a severance package, and his repeated assertions of constructive dismissal.

28. Based on all of these circumstances, the City concluded that Mr. Poole had taken the position that he had been constructively dismissed from his employment and that his employment was at an end. The City further concluded that Mr. Poole would not be accepting its offer of continued employment under the new terms and conditions. Therefore, the City formally recognized the termination of Mr. Poole's employment on August 26, 2015.

Fair and Reasonable Severance Package

29. The City states that Mr. Poole took the position these changes to his employment constituted a constructive dismissal effective April 7, 2015. In the alternative, he asserted constructive dismissal on or before June 24, 2015 effective at the time of the assertion.

30. At the time of the dismissal, the City made Mr. Poole an extremely fair and reasonable severance offer, comprising 20 months' working notice plus 30 weeks'

additional pay in lieu of notice, for a total severance package equivalent to 27 months. Mr. Poole unreasonably refused this offer.

31. When the City formally recognized the termination of Mr. Poole's employment on August 26, 2015, the City offered Mr. Poole a severance package comprising some 23 months' salary continuation. However, since Mr. Poole alleged that a constructive dismissal had occurred on April 7, 2015, the amounts the City paid him between that date and August 26, 2015 constitute working notice. Accordingly, Mr. Poole was effectively offered a severance package in excess of 27 months. Again, he unreasonably refused this offer.

32. The City pleads that regardless of whether Mr. Poole's termination date is deemed to be April 7, June 24, or August 26, 2015, the amounts provided and offered to Mr. Poole upon his termination of employment were fair, reasonable and generous in light of his age at the time of termination of 56 years, his 30 years of service, the nature of his position as CBO, and other relevant factors. Accordingly, Mr. Poole is not entitled to any damages.

No Reprisal

33. In addition, contrary to the allegations at paragraphs 13 through 17, 22, 26 through 31, 34 and 52 of the Statement of Claim, the City specifically denies that it retaliated against Mr. Poole for raising concerns regarding alleged building permit issues.

34. At any given time, the City has approximately 6,000 building permits. The concern which Mr. Poole raised in 2013 was that a number of permits had remained "open" for too long. According to Mr. Poole, in October 2013 there were more than 70 outstanding "open" building permits. The City states that this is not a large number relative to the City's total number of permits.

35. Nonetheless, the City worked actively and cooperated with Mr. Poole to “close” the open permits. Mr. Poole acknowledged that by June 2014, the City had successfully reduced the number of “open” permits by more than half, to 31.

36. On July 10, 2014, Mr. Poole sent an e-mail to the City’s entire executive team copying several other City officials to allege that a particular manager had assigned employees to work without a proper building permit. In this relatively public forum, Mr. Poole accused the other manager of “*on-going disrespect*,” being part of an “*unprofessional and unaccountable culture*,” and causing “*potential risks and public embarrassment*”. He also requested that the manager be forbidden from entering onto any job sites without Mr. Poole’s or his direct subordinates’ approval.

37. As a result of Mr. Poole’s e-mail, a meeting was held on July 11, 2014 to clarify his concerns and create an action plan to address them going forward. Contrary to paragraph 16 of the Statement of Claim, this meeting was positive and respectful, and at no time was Mr. Poole criticized for bringing his concerns forward. The City specifically denies the allegation at paragraph 16 that a member of the management team warned Mr. Poole of alleged negative career consequences. The only concern the City raised regarding Mr. Poole’s behaviour was that he should not have publicly embarrassed a manager by copying the entire executive team and several other officials on his e-mail.

38. Following the meeting, an action plan was reached to address Mr. Poole’s concerns, to which Mr. Poole was satisfied.

39. The City further specifically denies the allegation at paragraph 17 that it created a poisoned workplace for Mr. Poole. Furthermore, this allegation was rejected by the investigator.

40. The City states that at all times, it took the concerns Mr. Poole had raised seriously and worked actively to address them. The City did not retaliate against Mr. Poole for raising these concerns, and its decisions were made for the legitimate, good faith reasons set out above.

41. The City also states that many of Mr. Poole's concerns were *de minimis* in nature. For example, his issuance of a notice to comply and his instructions to his staff to lay charges against the City, as described at paragraphs 26 and 28 of the Statement of Claim, related to minor caulking that needed to be done in a City Hall window and a magnetic strip on a door which was not working. Mr. Poole's behaviour was not a good faith attempt to enforce the *Act* or the Building Code, but rather an attempt to retaliate against the City for including him in the restructuring.

No Damages

42. The City denies that Mr. Poole is entitled to wrongful dismissal damages or any of the other damages or losses as alleged in the Statement of Claim, or otherwise.

43. The City denies any bad faith as alleged at paragraphs 49 through 52 of the Statement of Claim, or at all.

44. The City denies that its actions were intended to or did cause Mr. Poole mental distress as alleged at paragraphs 53, 54 and 57 of the Statement of Claim, or at all.

45. The City further denies that Mr. Poole is entitled to punitive or aggravated damages as alleged at paragraphs 55 through 58 of the Statement of Claim, or at all. The City states that there is no independent actionable wrong, and therefore, punitive or aggravated damages are not available to him. The City denies that it has conducted itself in a manner remotely close to the harsh, vindictive, reprehensible and malicious conduct to justify an award for punitive or aggravated damages. In fact, at all times, the City acted in good faith and treated Mr. Poole with respect.

46. The City pleads that the damages claimed by Mr. Poole are remote, excessive, and not recoverable at law.

47. The City pleads that Mr. Poole has failed to take any or reasonable steps to mitigate his damages by seeking alternate employment, and his damages ought to be reduced as a result.

48. The City requests that this action be dismissed with costs on a substantial indemnity basis.

Date: March 30, 2016

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PLAINTIFF

and

THE CORPORATION OF THE CITY OF GUELPH
DEFENDANT

Court File No. 105/16

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Guelph

STATEMENT OF DEFENCE

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