Schedule A to Form 11

Response to the Request for an Order during Proceedings
Removal of Individual Respondents

1. I am fully cognizant that the unnecessary naming of personal respondents is a practice to be discouraged, as is set out in the HRTO Practice Direction, as well as Tribunal jurisprudence. Rule 1.7(b) of the Tribunal's Rules states:

> In order to provide for the fair, just and expeditious resolution of any matter before it the Tribunal may:
> … (b) add or remove a party

Consent to Remove the Three Following Respondents

2. After careful consideration, I am withdrawing the names of the following three individual respondents since their harassing conduct does not form the substance of this Application:

    1) Barb Reder [St. Thomas Aquinas High School ("STA")]
    2) Barb Mahon [Regina Mundi College ("RMC")]
    3) Shannon Askew (RMC)

3. I respectfully request that the style of cause be amended accordingly.

The Remaining 14 Personal Respondents Should Not be Removed

4. I respectfully submit that the 14 remaining personal respondents should not be removed, particularly at this early stage, as:

    a. The conduct of the individual respondents is a central issue in my Application which makes it appropriate to award remedies against the individual respondents if an infringement is found;
    b. The allegations against the Respondents if proven, *would not be deemed to be the actions of the organizational respondent under s. 46.3(1) of the Code;*
    c. The removal of individual respondents will prejudge the issues and prejudice me;
    d. I was subject to "various acts of blatant, systematic harassment and discrimination" and reprisal by the individual respondents; and
    e. To do so will give persons a license to engage in breaches of the *Code* without ever being held liable if there is a corporate type respondent, behind which he/she could hide.

5. The *Code* is remedial and restorative – it is not punitive. I am not requesting that the personal respondents remain a part of the Application for punitive reasons, but rather because the public

interest requires that remedies be ordered against perpetrators of discrimination in order to achieve one of the primary purposes of the *Code*, the elimination of discrimination.

6. Clearly, the events as described in the Application constitute harassment, as the personal respondents engaged in a course of discriminatory conduct that damaged my health, tarnished my reputation, poisoned my work environment, made the required conditions of my accommodation unsustainable; and played an active role in eliminating me from the workplace denying me my right to earn my livelihood and to continue to work with dignity.

7. Although I recognize and agree that the employer is vicariously liable for the actions of an individual employee, I am asserting that there is a "compelling juridical reason" to maintain the individual respondents in the Application as stated in *Sigrist and Carson v London District Catholic School Board*, 2008 HRTO 14 at p 42 ("Sigrist").

> A compelling juridical reason may exist, for example, where it is the individual conduct of a proposed personal respondent that is a central issue as opposed to actions which are more in the nature of following organizational practices or policies or where the nature of the alleged conduct of a proposed personal respondent may make it appropriate to award a remedy specifically against that individual if an infringement is found.(emphasis added)

8. I am also aware of the factors that may be considered by the Tribunal as set out in *Persaud v. Toronto District School Board*. The school board respondent employer does not have the ability to respond and/or remedy the comments stated by these individuals, as put forth by the Respondent using *Persaud v Toronto District School Board*, 2008 HRTO 31 at p 5 *("Persaud")*, Vice-Chair Mark Hart states:

> In considering whether any compelling reason exists to continue the proceeding against a personal respondent, one way of approaching this question is to ask whether it is necessary to involve this person as a party in order to have a fair, just and expeditious resolution of the merits of the complaint.

The answer to this question is yes, it is necessary to involve these individuals as a party in order to have a fair, just and expeditious resolution of the merits of the complaint and for the reasons provided in *Dumouchelle v. Cimpress DBA Vistaprint*, *supra*, by Vice-Chair Bruce Best, in *Fernando v. M.G.R. Contracting and Maintenance Ltd.*, *supra*, by Vice-Chair Naomi Overend and in *Sault v. Ontario Native Women's Association, supra*, by Vice-Chair Jennifer Scott.

9. This application involves allegations of severe misconduct being made against the named individuals; if proven, it would be appropriate to award a remedy against the individual

respondents. I submit that what happened to me at STA was a repeat of what took place at RMC the previous year.

10. While the corporate respondent has indicated willingness to take responsibility for the actions of the respondents, the personal respondents should take personal responsibility for their actions. The acts of the individual respondents are central to my Application. The individual respondents were not operating in compliance with their duties as employees of the LDCSB, as they breached the school Board's Harassment policies and procedures and discriminated against me.

11. The **LDCSB Respectful Workplace, Violence and Harassment Prevention Policy** states:

> As defined by the Ontario Human Rights Code, harassment is engaging in a course of vexatious comment or conduct against a worker in a workplace that is known or ought reasonably to be known to be unwelcome and is related to one or more of the 14 protected grounds. Age (18-65), Race, Place of Origin, Marital Status, Disability, Record of Offences, Colour, Citizenship, Sexual Orientation, Ancestry, Religion, Sex, Ethnic Origin, Family Status.
> Workplace harassment may have some or all of the following components:
> - it is generally repetitive, although a single serious incident may constitute workplace harassment if it undermines the recipient's psychological or physical integrity and has a lasting harmful effect.
> - it is hostile, abusive or unreasonable.
> - it affects the person's dignity or psychological integrity.
> - it results in a poisoned work environment.
> - In addition, behaviour that intimidates, isolates or discriminates against the recipient may also be included. Some examples of workplace harassment may include:
> - verbally abusive behaviour such as yelling, insults, ridicule and name calling including remarks, jokes or innuendo that demean, ridicule, intimidate or offend.
> - workplace pranks, vandalism, bullying or hazing.
> - gossiping or spreading malicious rumours that demean, ridicule, intimidate or offend.
> - excluding or ignoring someone, including persistent exclusion of a particular person from workplace-related social gatherings.
> - undermining someone's work efforts by deliberately withholding information that would enable a person to do their job.
> - providing demeaning or trivial tasks in place of normal job duties.
> - humiliating someone.
> - sabotaging someone's work.
> - displaying or circulating offensive pictures or e-mails.

- impeding an individual's efforts at promotions or transfers for reasons that are not legitimate.
- making false accusations about someone in memos or other work related documents.

Poisoned Work Environment: As a result of incidents of workplace violence or harassment, the working environment becomes a hostile or uncomfortable place to work, even if the person is not being directly targeted. This is commonly referred to as a poisoned or toxic work environment and it is also a form of harassment.

False Allegations: A person, who submits a complaint in good faith, even where the allegations cannot be substantiated, has not violated the policy. However, if an investigation results in a finding that the complainant falsely and knowingly accused the respondent of workplace violence or harassment or did so with malicious intent or in a malicious manner, the complainant may be subject to appropriate disciplinary action, up to and including the possibility of termination. Making false allegations is considered a violation of the policy and the investigation results and any sanctions will be recorded in the employee's personnel file.

12. This is not a case where the individual respondents unintentionally breached the *Code* but a case in which the respondents acted in breach of their duties and obligations, denying me my right to earn my livelihood and to continue to work with dignity and for retaliating against me for having requested an accommodation and/or filed a Human Rights Grievance.

13. Removing individual respondents prior to production of documents and examining evidence would prejudice my rights and result in a defect that would be difficult to address later as was the case in Arbitration where Arbitrator Brown wrote on November 16, 2014: **[TAB 34]**

> *PROCEDURAL RULING RELATING TO DISCIPLINE OF MANAGERS*
>
> *OECTA now seeks to amend the list of remedies contained in the grievance by adding an order directing the employer to impose appropriate discipline on Messrs. Sheardown and Vecchio. Even assuming an arbitrator has jurisdiction to make an order of this type, I conclude the principles of natural justice would preclude me from granting this type of remedy in the case at hand, because neither of the named individuals was invited to participate in the hearing at the outset. This defect cannot be rectified by an invitation issued now, after almost all of the evidence has been heard.*

14. There is great prejudice to me in removing the individual respondents when their comments, attitude and position, separate from the school board's deeming me incapable of continuing work based on my disability, contributed to my health injury and loss of livelihood. This is a case of cumulative trauma and continuous discrimination. The Respondents repeatedly subjected me to harassment and discrimination on account of my disability and their objection to my accommodation.

15. The largeness of the group who colluded, the performance meeting at the Board on February 14, 2013 and the following humiliating discipline letter that remained in my employee file from February 19, 2013 until Arbitrator Brown ordered that it be removed from my file on July 23, 2015, the spreading of negative rumors about my character and performance were all actions that made the workplace unbearable and were detrimental to my health and employment.

16. The fact that the LDCSB is using the words, attitudes and behaviour of the individual respondents at the prospect of working with me again as a basis for termination, contradicts the reasoning of *Persaud.*

17. Ten of the 14 respondents are/were "directing-minds" of an educational institution who are heavily involved in creating a culture that excluded and marginalized me based on two *Code* grounds due to my need for an accommodation and my ethnic origin. As an "outsider" in reference to not being born in Canada and "the little Egyptian" in reference to my country of origin. I was not worthy of accommodation.

    - Superintendent Ed DeDecker;
    - CEO Human Resources Maureen Bedek;
    - Ms. Karin Kristoferson, LDCSB's Labour Officer, in charge of collective agreement administration and interpretation matters, grievances and harassment concerns/complaints;
    - Principals Linda Thomas, Nick Vecchio and Mark Priamo
    - Vice principals Marinelli, Sheardown and Sefeldas

18. The individual conduct of the respondents **Jan Mallender, Mary Liz Chen, Rodd Lucier, Colette Mcnally, Rita Haill, Linda Thomas, John Marinelli, Jim Sefeldas, Mark Priamo, Nick Vecchio, Rick Sheardown, Maureen Bedek, Karin Kristoferson, Edward Dedecker** is the central issue and separate from the issue of the corporation's discrimination because of termination based on disability.

19. The individual conduct, as outlined in the termination letter of October 29, 2014, is the refusal of **Jan Mallender, Mary Liz Chen, Rodd Lucier, Colette McNally, Rita Haill** to work with me because l needed an accommodation due to my disability.

20. The harassment and false accusations by the 5 named teachers directly contributed to the employer's decision to terminate me. My Dismissal Letter October 29, 2014 **[**TAB 11and TAB 37**]** clearly states:

    > Productions in Grievances l, 2 and 3 all contain particulars in this regard. **Rodd Lucier**, **Jan Mallender** and **Mary Liz Chen** have all said they would refuse to work with the Grievor in the future. **Colette McNally** and **Rita Haill** have both posted out of RMC

> rather than risk having to work with the Grievor. It is clear that there would be serious issues placing the Grievor at RMC or STA; **[Emphasis added]**

20. The October 29, 2014 dismissal letter, also cruelly states:

> At a meeting of the Secondary Principals Council on May 12, 2014 at the CEC, participants were reviewing the April round of postings. The group referenced a full-time guidance vacancy at CCH. There was discussion about the possibility of holding the position for the Grievor, depending on her ability to return to work. The principal, Mark Priamo was very upset, indicating that he had worked with the Grievor previously, knows how she is, that it would be "a disaster" and that he would not do it.

21. This humiliating, defamatory and targeting conduct will be one of the central issues in this proceeding. It constitutes *prima facie* evidence of discrimination on two *Code* grounds due to my need for an accommodation and my ethnic origin, where I was not allowed at his school, or worthy of an accommodation.

22. Mr. Priamo's contact with me occurred at Catholic Central High School between September 2003 and June 2005 when my outstanding performance was the subject of commendation by numerous school and Senior Board administrators, priests, colleagues, parents and students**[TAB 24 and TAB 25].** Mr. Priamo's untruthful, defamatory and humiliating comments concerning this period of time are deliberate actions to discriminate against me, tarnish my reputation and caused severe harm to me.

23. The cruelty of the treatment I received and the discriminatory conduct and comments are also flagrant i.e. Principal Thomas humiliated me in my first meeting with her in my first week at STA due to my need for an accommodation as reported in the third grievance where she stated, among others, **[TAB 8]**

- My school has always had a positive environment and now it is negative because of you. You have created this negative environment and you are responsible to change things around.
- You have to understand because you can only do one job, the board has no vacant positions, wherever you go you will be displacing someone and this will create a negative environment and people will not be happy and will resent you, you will not be welcomed, you have to understand this.
- What are you going to do to change this negative environment that you have caused? I just talked to you for 5 minutes and you broke down in tears.

- So now, are you done with all your legal issues or do you still have to go to court and lawyers … are you not done with this yet? I don't want this to affect the work here; I don't want you to bring this here.
- You have had these doctors for how long? All your life? When did this condition start?

24. Furthermore, in the July 15, 2014 letter sent by the LDCSB where, among others, they cruelly state: **[TAB 27]**

> Ms. Michail's colleagues are aware of her "hypervigilance" and a number of them (including but not limited to OECTA members) have expressed their unwillingness to work with her. Some have asked us where she will be placed, as they plan to apply for transfers if she is placed in their current school.

25. The LDCSB never contested the following findings of facts in the MacNair's report where among others, that:
    a. Harassment allegations: "Despite Mallender's and Chen's suggestions to the contrary, I concluded that their complaints were filed mainly as a response to Michail's February 4th, 2014 grievance"; **para. 459**
    b. That "Thomas was far from adept or sensitive in her dealings with Michail during the latter's first weeks in school"; **Para. 130**
    c. "Mallender was inclined to over-state the burden of work assigned to Chen, while minimizing the amount of time and effort associated with the duties given to Michail"; **Para. 310**
    d. "I was satisfied that Michail's concerns were genuinely held, and that the shift to her of sixty new students in mid-year caused her real apprehensiveness"; **Para. 358**
    e. "On a cursory examination of the Guidance Roles and Responsibilities chart, Michail's assigned responsibilities did appear slightly more onerous than her colleagues, even bearing in mind that Chen's status had been reduced to half-time guidance counsellor, that evaluation was hotly disputed on all sides, however, as soon became clear to me"[1] **para. 269**
    f. "That "Reder's tone during our interview was brusque, irritated and defensive. While she insisted that she and others at STA strove to be polite to Michail, and sometimes overly

[1] it is noteworthy to mention that Ms. Chen was full time and not "half –time" as they led the investigator to believe.

polite, she did not deny that she showed annoyance when approached by Michail with the various requests outlined above"; **Para. 211**

g. "Mallender, Chen and Marinelli were too quick to dismiss the work that she had accomplished in doing so in my view"; **Para. 358**

h. "I was also persuaded that, contrary to the impression held by Mallender and Chen (and through them, by Marinelli) Michail was not maintaining insistence upon a division of the list which would have resulted in her having disproportionately fewer students than the other guidance counsellors." **Para. 359**

i. "That was not Michail's issue, as Marinelli saw it, and she made no reference to a special rapport with any students. Instead, this was "all about the numbers", in Marinelli's view, in particular Michail's fervent claim that those numbers showed her to be inequitably treated. He was incorrect in that assumption, I concluded, and was under a misimpression as to what Michail was actually proposing". **Para.**

j. "Michail's STA colleagues assumed, wrongly, that her solution was merely aimed at reducing her workload"; **Para. 360**

k. "she [the Applicant] made essentially the same complex presentation to Thomas, but it was lost on the principal". **Para. 360**

l. "That in a follow-up memorandum to Thomas on October 1st, 2013[2], Bedek warned of her concern that there could be "an undermining of Michail" if the resentment which she observed were left unchecked". **Para. 153**

m. "Mallender's and Chen's apparent frustration stemmed from the same factors which they expressed to me: the unfair impact of Michail's transfer upon Chen and other STA staff, late announcement of the transfer by the Board" **Para. 153**

n. "Thomas appeared to think that this kind of tough, direct approach with Michail was called for during their August 30th conversation. Thomas aimed to make Michail confront the reality that she had been less than successful at two schools and needed to avoid a repetition at STA. (…) Thomas was rash and imprudent in thinking that reminding Michail of her alleged failures[3] was likely to encourage a positive, constructive approach to her new position. Thomas' comments produced the opposite effect, almost certainly." **Para. 125**

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[2] **[TAB 38]** Memo from Bedek to Thomas, Marinelli and Kristoferson

[3] MacNair was misled to believe that there were issues with my conduct when the truth is that I was the victim of harassment, discrimination, multiple breaches of my human rights, reprisal, and the Tort of

o. "The news on the final day of school in June 2013 that another guidance counsellor was being transferred in was like a "black cloud over the school", Marinelli said. The teacher who was displaced as a result of the transfer was an active, high-profile teacher who coached teams in each sports season and was popular with students and staff alike. The general feeling among staff when they learned of the transfer and its "domino effect" was dismay, Marinelli recalled." **Para. 54**

p. Marinelli conceded that for any person coming to the school in this manner, "it was going to be tough". **Para. 55**

26. It appears that Mr. McNair was not made aware that in fact, Ms. Kristoferson was orchestrating a new scheme with STA "Directing-Minds" to set me up to provoke the "*insubordination*" that would lead to the "*breach of the employment contract*": "*Myriam's path of destruction*" as found through some documents provided during discovery **[TAB 21],** a repeat of the RMC scheme**:**
    i. the employer was in the process of what they called "*Myriam - path of destruction*", the "*backward design termination*";
    ii. Principal Thomas, vice-principal Marinelli and Guidance counsellors Mallender and Chen were intentionally dumping their work on me and overwhelming me with a sudden change and increase of my workload, while on medical accommodation; **[TAB 23]**
    iii. the goal was to set me up to provoke "insubordination", leading to the "breach of the employment contract", then fire me; **[TAB 21]**
    iv. Marinelli and Thomas all along knew that my list of duties included Marinelli's. Chen, Sefeldas and Mallender' responsibilities all dumped on me; **[TAB 23]**
    v. That this workload was unsustainable and assigned in bad faith to cause injury;
    vi. That my request for performance expectations, deliverables and written standards and procedure was reasonable and denying it to me was malicious and in bad faith to cover their unlawful actions to breach the Code. **[TAB 23]**
    vii. They lied and misled the investigator, especially Ms. Kristoferson, Principal Linda Thomas and Vice Principal John Marinelli who was a former Guidance counselor, coordinator and in charge of the Guidance department.
    viii. January 23, 2014 Kristoferson contacted Marinelli and Thomas and Marinelli reported that "observed Myriam appear stressed yesterday about the load of work she had"
    ix. February 4, 2014 Kristoferson contacted Principal Thomas and agreed to: **[TAB 21]**

Intentional Infliction of Mental suffering. My work performance was exemplary. See Awards **Tab 5** and **TAB 7** and WSIB decision **Tab 28**

- *"tighten the parameters, her* (the Applicant's) *response is irrational and unacceptable'.*
  This change has been discussed over the course of the last few weeks. Knew it was coming. Position is it is reasonable and we expect her to abide by the decision. Refusal deemed to be insubordination."
- Marinelli, "*thinks Maureen is heading in another direction*."
- "*Breaking the Labour contract → John already moving to a plan within the school. If MB is telling him this, he thinks it is going to happen*"
- Linda Thomas was sending snide emails about me. **[TAB 29 p. 1, 2, 10]**
- Kristoferson, Thomas and Marinelli were repeating the exact same actions as Kristoferson, Vecchio and Sheardown, instigating and inciting staff to make false accusations that they will condone without speaking to me, making false reports to Bedek and Investigators and setting me up for another performance concerns meeting.

x. I left STA on February 11, 2014 in the middle of the day, due to a breakdown after a semester of harassment and being humiliated that day by vice principal Sefeldas in front of co-workers. I was never able to return to work because my employer failed to accommodate me and terminated me without just cause on October 29, 2014 while I was on sick leave due to workplace injury as found by the WSIB **[TAB 28]**.

xi. I later found out that on February 7, 2014 Thomas encouraged a teacher, (Danielle Gosse) to write a cruel and malicious email about me and forward it to Bedek and Kristoferson without informing me reporting that I provided wrong information to students regarding a prerequisite for a course. In fact, the information I provided was absolutely accurate and Ms. Gosse was knowingly defaming me and I have all the evidence. **[TAB 29]** This teacher continues: *"She is not the person to put in front of any student body to "lead" a group".* **[TAB 29]** Thomas and Marinelli had full knowledge that they are sending severely false and defamatory information to Ms. Bedek that would have a detrimental impact on my employment.

xii. I later found out that on February 6, 2014 Thomas sent a snide and malicious email to Ms. Bedek and copied to Vice-Principal Marinelli and Ms. Kristoferson from a teacher (Adrianne Goddard). The email is untruthful, defamatory and portrays me as an insane counselor: *"it seems that they are being told that "Jesus will guide them*" (words attributed to me) *when they are struggling with course issues.*" Goddard and Thomas were simply defaming me and I have all the evidence. **[TAB 29 p. 1]**

xiii. Thomas and Marinelli never informed me of these emails or discussed their content with me since they both knew that they were fabricated, contained false and cruel information and were designed to tarnish my reputation and get me fired from my position.

xiv. On February 19, 2014, when they were planning a termination due to frustration of employment contract, they identified *"Human Rights, Rick Brown, previous poor management of Myriam, investigation report*" as barriers to termination **[TAB 21]**

xv. Also, on February 19, 2014, Bedek contacted OECTA, Fern Hogan OECTA's President reporting *"Chen and Mallender will return to work if MM not in*" **TAB 21]**

xvi. On February 21, 2014 Bedek discussed with Thomas, Marinelli: **TAB 21]**

> *Do we have all the performance issues as well? Emails, letters from parents, staff and students? How do we know she is not performing well?*

27. McNair indicates in his report:

> 358. The matter of the changes to the Guidance alpha lists for the second semester posed difficult questions for my determination. On this issue, I was satisfied that Michail's concerns were genuinely held, and that the shift to her of sixty new students in mid-year caused her real apprehensiveness. Michail was conscientious about her obligation to familiarize herself and meet with students on her alpha list. My review of her files during our May 20th meeting left little doubt as to the considerable progress which she had made in that regard by early February 2014. Mallender, Chen and Marinelli were too quick to dismiss the work that she had accomplished in doing so in my view.
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> 359. I was also persuaded that, contrary to the impression held by Mallender and Chen (and through them, by Marinelli) Michail was not maintaining insistence upon a division of the list which would have resulted in her having disproportionately fewer students than the other guidance counsellors. Michail's preferred options of splitting up the list or leaving her existing alpha list intact would have left her with an equal number of students or slightly more than her colleagues.
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> 360. Characteristically, Michail had prepared a detailed analysis of these numbers which she presented to me. I accepted her evidence that she made essentially the same complex presentation to Thomas, but it was lost on the principal. Michail's STA colleagues assumed, wrongly, that her solution was merely aimed at reducing her workload.'

Reprisal

28. Arbitrator Brown in his both decisions made findings of multiple violations of the *Code*, harassment, discrimination, deceit, bias, and the tort of intentional infliction of mental suffering.

29. Arbitrator Brown also made a finding that individuals at the LDCSB have retaliated against me for having filed a human rights complaint. He wrote in his July 2015 Award: **[TAB 7 p.67]**

> I conclude the facts at hand do satisfy all of the elements of the tort of intentional infliction of mental suffering. The reprisal in particular was flagrant and outrageous. [Emphasis added]

30. Section 8 of the Code states:

> *Reprisals*
> **8** Every person has a right to claim and enforce his or her rights under this *Act*, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

31. Reprisal is defined by the *Code* and in *Tesseris v. Pellark Dental Centre* 2014 HRTO 101

> 23. A reprisal claim, under section 8 of the *Code*, is distinct from allegations of discrimination because an applicant must establish the respondent intended to punish or retaliate against the applicant because he or she asserted his or her *Code* rights. The Tribunal set out the elements for a reprisal application in *Noble v. York University*, 2010 HRTO 878 at paragraphs 33 and 34, as follows:
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> Thus, in a complaint or application alleging reprisal, the following elements must be established:
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> a. An action taken against, or threat made to, the complainant;
> b. The alleged action or threat is related to the complainant having claimed, or attempted to enforce a right under the Code; and
> c. An intention on the part of the respondent to retaliate for the claim or attempt to enforce the right.
>
> In addition, the following principles are relevant:
>
> a. There is no strict requirement that the complainant has filed a complaint or application under the Code, and
> b. There is no requirement that the Tribunal find the respondent did in fact violate the complainant's substantive rights to be free from discrimination.

32. Investigator MacNair found that the individual harassment complaints made against me by Mallender and Chen **[TAB 39]** "were filed mainly as a response to Michail's February 4th, 2014 Grievance" after subjecting me to severe harassment in order to remove me from the workplace. It was a malicious tactic to retaliate against me and an attempt to divert attention away from their own behaviour. I did not harass or bully any of my co-workers and there was never any finding that I did. I was professional and respectful in all my dealings with them. I was a dedicated and caring teacher for 24 years with the LDCSB. I was well regarded by students, parents and colleagues. **[TAB 18** and **TAB 19]**.

33. McNair did not consider or even mention my response to the 2 malicious harassments complaints filed by Chen & Mallender in retaliation to my filing of a Human Rights grievance; **[TAB 19]** However, he made the following finding: **[TAB 17]**

> 459. Despite Mallender's and Chen's suggestions to the contrary, I concluded that their complaints were filed mainly as a response to Michail's February 4th, 2014 Grievance, and as a culmination of lengthy frustration in attempting to deal with her. Whatever that level of frustration, neither Mallender nor Chen was the victim of workplace harassment, I concluded." [Emphasis added]

21. To allow any of the individual Respondents to knowingly engage in reprisal and *"various acts of blatant, systematic harassment and discrimination"* and only have the corporation pay damages out of tax payers' money does not promote transparency and deterrence in the public interest. Most dangerous is that it would send a message that the workplace is a safe place where one can trample on others' human rights and the *Code* with impunity and hide within the corporation's immunity. This is the public interest remedy which is served by my Application.

Section 46.3 of the Ontario *Human Rights Code*

22. Section 46.3 of the Ontario *Human Rights Code* imports liability to a corporation or employer for actions or omissions "…done in the course of his or her employment…"

23. Section 46.3 does not however limit liability to the employer. Moreover, the automatic vicarious liability in s. 46.3 does extend to allegations of harassment. As such, the individual respondents responsible for the breaches of s. 5(2), remain proper parties.

24. In *Coburn v. 1297798 Ontario Inc. o/a Ontario Patient Transfer*, 2014 HRTO 44 Vice-Chair Eric Whist made it clear:

> [28] In the present case the applicant has alleged that in addition to his employment being terminated he was subject to harassment by all four named personal respondents and that the termination of his employment was, in part, in reprisal for his having complained about this harassment. Personal respondents can be personally liable for acts of harassment.
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> [29] I further note that three of the named personal respondents appear to have been owners of OPT, and two of them appear to have been directly involved in the decision to terminate the applicant's employment. If the Tribunal was to find that the termination of the applicant's employment was discriminatory, it is possible that the Tribunal could find one or more of the personal respondents personally liable given that the Tribunal has found owners and "directing minds" of corporate respondents personally liable in carrying out corporate related functions. See *Knibbs v. Brant Artillery Gunners Club,* 2011 HRTO 1032, *Cunanan v. Boolean Development Ltd*., 2003 HRTO 17. [Emphasis added]

25. In *Ontario Human Rights Commission v. Farris*, 2012 ONSC 3876, the Divisional Court specifically confirmed that:

> [33] Management employees who fail to take appropriate action to prevent discriminatory harassment in the workplace once they know of the offending conduct may be found personally liable for infringing an employee's right to a workplace free from sex discrimination under s. 5(1). Failing to deal with the harassment, thereby creating a poisoned work environment is a violation under s. 5(1) of the *Code*, a violation for which the corporation can be held vicariously liable. Furthermore, if the individual responsible for the harassment is a directing mind of the corporation, then the corporation can also be held liable for the individual act of harassment (see *Moffat v. Kinark Child and Family Services (No. 5)* (1999), 36 C.H.R.R. D/346 (Ont. Bd. Inq.); *Naraine v. Ford Motor Co. of Canada (No.4)* (1996), 27 C.H.R.R. D/230 (Ont. Bd. Inq.), aff'd (1999), 1999 CanLII 18727 (ON SCDC), 124 O.A.C. 39 (Div. Ct.), rev'd on other grounds (2001), 2001 CanLII 21234 (ON CA), 209 D.L.R. (4th) 465 (Ont. C.A.), leave to appeal ref'd [2002] S.C.C.A. No. 69).
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> [34] The fact that a corporate respondent may also be jointly and severally liable for the conduct of employees is not a basis to insulate the employees from personal liability (*Drummond v. Tempo Paint and Varnish Co. (No.4)* (1998), 33 C.H.R.R. D/175 (Ont. Bd. Inq.)). The purpose of s. 46.3 of the *Code* is to confirm the parallel statutory liability of corporations for the actions of their employees, not to replace it (*Reyes v. Seepersaud*, 2010 HRTO 933 at para. 7). [Emphasis added]

26. In *Johnson v. Yorkview Lifecare*, 2009 HRTO 1338, the Tribunal referred to sections 46.3 and 5(2) of the *Code*, and determined that, in the case of harassment in the workplace, the Legislature intended to permit an applicant to allege a breach of their rights under the *Code* as against, not only their employer, but also fellow employees who engaged in actions outside of the scope of their employment which amount to discrimination.

> [20] The *Code* sections 46.3 and 5(2) specifically deal with individual liability and stipulate that:
>
> > 46.3(1) For the purposes of this Act, except subsection 2 (2), subsection 5 (2), section 7 and subsection 46.2 (1), any act or thing done or omitted to be done in the course of his or her employment by an officer, official, employee or agent of a corporation, trade union, trade or occupational association, unincorporated association or employers' organization shall be deemed to be an act or thing done or omitted to be done by the corporation, trade union, trade or occupational association, unincorporated association or employers' organization.
> >
> > 5**(**2) Every person who is an employee has a right to freedom from harassment in the workplace by the employer or agent of the employer or by another employee because

> of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, age, record of offences, marital status, family status or disability.
>
> These sections of the Code indicate that in the case of harassment in the workplace, the Legislature intended to permit an applicant to allege a breach of their rights under the *Code* as against, not only their employer, but also fellow employees.

28. The thrust of the Respondent's (and Intervenor's) submissions is that the Corporate Respondent can implement any remedy for infringements of the *Code* and there is no compelling reason to proceed against the personal respondents as there would be no prejudice to their removal.

29. Respectfully, the Respondent's (and Intervenor's) position fails to understand this concept and the nature of the *Human Rights Code* and dignity-interests of Applicants litigating human rights matters. As clearly explained in *Reyes v. Seepersaud*, 2010 HRTO 933 (CanLII):

> [6] To the extent that the respondent *Seepersaud* relies upon section 46.3(1) for the assertion that an employee, officer, official or agent of a corporation cannot be held liable for a breach of the *Code*, **she is in error.** [Emphasis added]
>
> [7] Section 9 of the *Code* provides that "no person shall infringe or do, directly or indirectly, anything that infringes a right" under the Code. It is a well-established principle of human rights law that individual employees may be named as respondents and may be the subject of an order against them personally for breaching an individual's rights under the Code. **The purpose of section 46.3 is to confirm the parallel statutory liability of corporations, trade unions, etc, for the actions of their employees, members, etc, not to replace it**. [Emphasis added]

30. As set out in the Application, there are allegations made against the personal respondents, which, if established, would amount to an independent violation of the Ontario *Human Rights Code*. The Corporate Respondent is vicariously liable for these actions by virtue of section 46.3 of the *Code*, however that is not sufficient to dismiss the Application against the personal respondents prior to hearing testimonies and examining evidence to determine the scope, the extent and the impact of their actions.

31. I was subjected to years of abuse and harassment causing permanent damage to my health because of my need for an accommodation. As found by Arbitrator Brown and in the uncontested July 15, 2019 WSIB's decision**: [Tab 28 p. 8]**

> **P. 8**: I have also concluded that Mr. Sheardown's participated in the mistreatment of you during the meeting of February 25, 2011 by insisting that you confront your colleagues and by raising his voice and admonishing you publically. I fnd this conduct, by a manager, to be vexatious and contributed to the substantial work related stressor.

> …
> The arbitration decision goes on to say that Mr. Vecchio and Ms. Kristoferson, who orchestrated the meeting on February 14, 2013 had demonstrated a bias against you after your complaint was lodged. Mr. Brown found this behaviour to rose to the level of intentional infliction of emotional distress.
> … Mr. Brown's carefully and thoroughly analyzed this incident and concluded it constituted Intentional Infliction of emotional distress. Noting the sequence of events it does appear that the actions of Mr. Vecchion were retaliatory in nature and therefore constitute vexatious conduct that is not part of the employment function.

And on **P.9: *Predominant Cause***

- Once a substantial work-related stressor has been identified I must also determine if that stressor is the predominant cause of the mental injury.
- I have reviewed the available medical information and I am satisfied that the substantial work-related stressor is the predominant cause of the ongoing mental stress injury. The medical reports from your doctor supports that stress due to the incidents outlined above were the most significant causes of your mental stress injury.
- It is also noted that you have a pre-existing medical condition however you were diagnosed with that condition in childhood and it does not appear to (sic) the reason you stopped working nor does it appear to be cause of your mental stress injury.

32. The nature of the alleged conduct of the personal respondents is central issues in this matter, and far exceeded any "acts or thing done or omitted to be done in the course of their employment,'' which makes it appropriate to award remedy specifically against these personal respondents if infringement is found.

33. If the personal respondents, as "directing minds", have engaged in discriminatory conduct, lied and misled the investigator, incited teachers to make false accusations that they will condone without speaking to me, making false reports about me and collecting false allegations against me including theft **[TAB 29 p. 10]**; defamed, bullied and harassed me, falsely and knowingly accused me of workplace harassment, made ill-intentioned declarations causing me considerable pain and suffering negatively impacting my health, tarnishing my reputation and contributing to the employer's decision to terminate me in an unfair and humiliating manner; then it can hardly be said that their actions fell within the scope of their employment.

34. The reasons for the Board's and union's request to remove the individual respondents, is the need to shield these individuals from liability and from damaging and embarrassing evidence about their conduct. This request is strategic and is not in the interest of justice and the public

interest to ensure deterrence and that the Human Rights of vulnerable Canadians are protected at the workplace.

35. In *Dumouchelle v. Cimpress DBA Vistaprint*, 2020 HRTO 335, Vice-Chair Bruce Best wrote:

> [4] The request to remove Mr. Madia as a respondent is refused. The allegations against Mr. Madia if proven, would not be deemed to be the actions of the organizational respondent under s. 46.3(1) of the *Code*. It is, as such, not appropriate to remove him as a respondent. [Emphasis added]

36. Vice-Chair Judith Keene stated in *Madhani* v. *Sears Canada Inc.*, 2013 HRTO 290:

> [34] To state the obvious, there is nothing in the *Code* that exempts individuals from personal responsibility or states a presumption that a personal respondent should be removed. For this reason, I have some difficulty with the fourth *Persaud* criterion. The Divisional Court in *OHRC v. Farris* reminds us that a corporate respondent's possible joint and several liability for the conduct of employees is not a basis to insulate those employees from personal liability, as well as indicating that the Tribunal is expected to articulate case-based reasons why, having found liability under the *Code*, a remedy might not be imposed against a particular respondent.
>
> [35] In considering whether any principled reason exists to remove any respondent, corporate or personal, from the proceeding, one approach is to ask whether the removal of this person or entity as a party could jeopardise or promote the fair, just and expeditious resolution of the merits of the complaint.
>
> [36] In my view, the first consideration should be the purpose of the *Code*. It may be useful to look at the preamble, which among other things, speaks of "the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province". As summarized by the Divisional Court in *Farris*, "[t]he aim of the *Code* is the removal of discrimination."

37. In *Donevan v. University of Windsor*, 2010 HRTO 408, Alternate – Chair Kaye Joachim wrote:

> [5] The personal respondent, William Gallant is the professor who allegedly advised the applicant that he could not record the student discussions and disclosed to other students that the applicant's need for accommodation. Brent Angel is allegedly the person who recommended to Professor Gallant that a vote be taken, which resulted in the disclosure of the applicant's need for accommodation. Clayton Smith allegedly told the applicant that he would face suspension from the class or from the University and unilaterally withdrew the applicant from the class against his will. Ross Paul allegedly told the applicant that he did not want him at the University and that he would do anything to have him removed from campus. In my view these types of allegations (if ultimately

established) could potentially give rise to a finding that the respondents personally breached the applicant's rights and could result in remedial orders being made against them personally. I find that it is not appropriate to remove them from the proceedings at this time. [Emphasis added]

38. In *Fernando v. M.G.R. Contracting and Maintenance Ltd.*, 2013 HRTO 836, Vice-Chair Naomi Overend wrote:

> [15] On the face of the allegations, the individual conduct of Graziano Roti, the individually-named respondent, appears to be central issue. The applicant submits that his conduct fell outside the scope of an employee of the corporate respondent. Accordingly, it is not appropriate to remove him as a respondent at this juncture and the respondents' request is dismissed.

39. In *McGee v. Atria Development Ltd.*, 2019 HRTO 915, Vice-Chair Mark Hart wrote:

> [12] In my view, it is not appropriate at this stage of the proceeding to remove Atria as a party respondent. Whether or not Atria is ultimately liable for any violation of the applicant's *Code* rights is a matter best left to be determined at the hearing on the merits on the basis of a full evidentiary record, including evidence regarding the relationship between Atria, Bond and Mr. Jain and which entity was involved at the various stages of interaction with the applicant. [Emphasis added]
>
> [13] With regard to Mr. Jain, I appreciate that both Bond and/or Atria would be liable for his actions pursuant to s. 46.3(1) of the *Code*. However, the mere fact that a corporate entity may be liable for the actions of an officer or employee does not mean that an officer or employee who is found to have violated rights protected under the *Code* may not also be held personally liable; there is no doctrine of vicarious immunity under the *Code*: see *Ontario Human Rights Commission v. Farris*, 2012 ONSC 3876 (Div.Ct.) at para. 34.
>
> [14] Rather, in dealing with requests for the removal of personal respondents, this Tribunal has a discretion to do so by applying the factors identified in *Persaud v. Toronto District School Board*, 2008 HRTO 31. Considering these factors, it is my view that this is a case where the individual conduct of the personal respondent is a central issue in the proceeding, such that it is not appropriate to exercise discretion to remove Mr. Jain as a party respondent at this stage. I say this due to Mr. Jain's direct personal involvement in relation to the "deal" he says in his December 2016 e-mail was reached with the applicant regarding the rental of the unit, and his direct involvement in relation to the ultimate response to the applicant's request for unit modifications by letter dated May 19, 2017, both of which are alleged in this proceeding to have been discriminatory. [Emphasis added]

40. In *Sault v. Ontario Native Women's Association,* 2013 HRTO 807, Vice-Chair Jennifer Scott stated:

> [10] When allegations of harassment and reprisal are made against individual respondents, compelling reasons exist to continue the proceeding against them even where a corporate respondent assumes liability. In such cases, the actions of the individuals alleged to have engaged in this conduct is the central issue. If findings of harassment and reprisal are made, individual remedies may be required to remediate their conduct. The fact that the corporate respondent may be jointly and severally liable for the conduct of its employees is not a basis to insulate the employees from personal liability. See *Ontario Human Rights Commission* v. *Farris*, 2012 ONSC 3876 (Div. Ct.).
>
> [11] At this stage in the proceeding, the involvement of the three individual respondents in the alleged harassment and reprisal is unknown. It may be that one or more of the individual respondents had no role to play in the decisions that the applicant alleges were harassing and a form of reprisal. The difficulty facing the applicant is that she does not know who was involved in the decisions; she only knows who communicated the decisions. I agree with the Tribunal's comments in *Madhani* v. *Sears Canada Inc.*, 2013 HRTO 290, that where an applicant does not have sufficient detail as to who was actively involved or responsible for the impugned decisions, the removal of individual respondents may not be appropriate at an early stage in the proceeding. At paragraph 43 of that decision, the Tribunal stated:
>
> > In my view, a request to remove a respondent because he or she is unlikely in the circumstances to be found personally liable under the *Code* should be considered with great caution where the applicant (and the Tribunal) is not in a position to know sufficient detail to be sure who was actively involved or responsible. Where the request has been made before disclosure of documents and witness statements, there is usually much less information available that could be relevant to the decision to remove a respondent.
>
> [12] In this case, the parties have exchanged their pleadings. No documents or will- say statements have been disclosed. In my view, given the nature of the applicant's allegations against the individual respondents, it is not appropriate to remove them at this time. This finding does not preclude the respondents from making this request again once pre-hearing disclosure has been made. [Emphasis added]

Disclosure of Documents and Witness Statements

41. In *Commission scolaire de Laval v. Syndicat de l'enseignement de la région de Laval*, 2016 SCC 8 (CanLII) Judge Gascon stated:

> [72] … An employee is clearly entitled to examine and confront those who decided to dismiss him about the circumstances of their decision and the details of the process that

> led up to it. Likewise, it would be inappropriate to preclude in advance all questions about the motives behind the dismissal. As I have mentioned in para. 51 of these reasons, the appellants have themselves conceded that certain questions about the in camera deliberations and the grounds for dismissal would be relevant.

42. As Vice-Chair Judith Keene stated in *Madhani* v. *Sears Canada Inc.*, 2013 HRTO 290, a fair process would require that since I do not "*have sufficient detail as to who was actively involved or responsible for the impugned decisions, the removal of individual respondents may not be appropriate at an early stage in the proceeding*".

43. To date, I have not received any documents regarding my dismissal letter **[TAB 33]** nor have I received any witness Statement from the witnesses that the LDCSB is calling to testify against me **[TAB 15]**. As in *Sault v. Ontario Native Women's Association,* I do not know who was involved in the decision to dismiss me or how the decision was made. The LDCSB has failed to provide any meetings minutes or documents regarding my dismissal letter. I only know that Ms. Bedek is the one who communicated the decision in a discriminatory and humiliating letter that wasn't even addressed to me, **[TAB 11]** after 24 years of dedicated and exemplary service. **[TAB 18, TAB 24** and **TAB 25]**

44. All jurisprudence and legal tests require that the named individual remain parties. Due to the significant role that these individual respondents played throughout the history of this matter, it is in the interest of justice to maintain this list of 14 respondents. For example, Karen Kristoferson and Nick Vechico were found by the Arbitrator to be directly involved in orchestrating my reprisal, which resulted in an intentional infliction of mental suffering. This is a significant role as it shaped the entire history of this litigation and directly impacted my well-being. Ms. Kristoferson also played a significant role alongside Linda Thomas, John Marinelli and others at a later date when I was transferred to STA. It is worth noting that Ms. Kristoferson remains among the directing minds of the LDCSB and ironically, in charge of *Collective Agreement* administration and interpretation matters, grievances and harassment concerns/complaints where she continued with what Arbitrator Brown found to be a "*flagrant and outrageous conduct*". Arbitrator Brown wrote **[TAB 7]**:

> **P.59** This incomplete description not only fails to say Mr. Sheardown's conduct at the meeting was found to have violated the Human Rights Code but also makes no mention of three additional violations of the Code found by me to have occurred
>
> **P. 60** The premise Mr. Vecchio did not know of the complaint in February of 2013 is the only reason cited by Ms. Hewitt for concluding there had been no retaliation. This premise is false. … In the absence of any explanation from Ms. Kristoferson for not

> revealing this premise to be untrue, I conclude on the balance of probabilities she engaged in deception. In short, the summary provided by Ms. Kristoferson's in her memorandum was both very incomplete and deliberately misleading. [Emphasis added]
>
> **P. 62** I have already concluded both Mr. Vecchio and Ms. Kristoferson, who orchestrated the meeting on February 14, had demonstrated a bias against the grievor after her complaint was lodged.
>
> **P.63** Collette McNally objected to the grievor being accommodated in the guidance department and sent snide emails about her. Ms. McNally also contributed to Mr. Vecchio's harassment of the grievor on December 11 and later supported his misleading account of what happened that day.
>
> **P.67** I conclude the facts at hand do satisfy all of the elements of the tort of intentional infliction of mental suffering. The reprisal in particular was flagrant and outrageous.

45. The mere fact that some of the Respondents were part of the already adjudicated RMC Grievance should not shield them from liability for their further involvement and repeated harassment and discrimination where they played a critical role in refusing to accommodate me and ending my employment as clearly stated in my dismissal letter and the July 15, 2014 letter. The evidence required for the determination of my case and events leading to my dismissal are intertwined and overlap. This is a discrimination case of cumulative trauma and bad faith that must be viewed in its totality.

46. As previous Arbitration decisions and WSIB have found several of the individual respondents to have committed serious violations, it is crucial to have these respondents named. Removing any of these respondents would have a detrimental impact on the adjudication of my case and would defeat the purpose of the *Human Rights Code* to eliminate harassment and discrimination by not holding anyone liable.

47. Furthermore, this is a case where the individual conduct of the personal respondents is a central issue in the proceeding, as such, there is a compelling legal reason where the individual respondents' conduct may make it appropriate to award a remedy specifically against the personal respondents if a *Code* infringement is found.

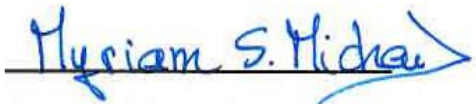
48. These individual respondents' actions carry a greater moral reprehensibility considering their full knowledge of my health condition which was revealed to them as an additional privacy violation, and the foreseeable damage that their harassing acts and omissions would have on my physical and mental health and wellbeing which is exactly what occurred.

49. Therefore, I respectfully submit that the Application against all the parties, as amended, must proceed, however should the Tribunal wish to consider any of these preliminary issues further

at this time, I respectfully request that a hearing be convened to address the same and allow me an opportunity to submit further evidence, obtain an order for production of documents, provide oral submissions and explain pertinent pieces of information that would be required to make that determination. I reserve my right to provide further submissions and evidence as necessary.

Please note that a copy of this submission has been sent to the Respondent LDCSB and the OECTA. Thank you for your consideration.

ALL OF WHICH IS RESPECTFULLY SUBMITTED ON SEPTEMBER 29, 2020 BY:



Myriam Michail
Applicant
Tel: (519) 657-2131
Email: myriammichail@hotmail.com