



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Electronically issued : 22-Mar-2019
Délivré par voie électronique :
Ottawa

B E T W E E N :

MATTHEW SKOF and OTTAWA POLICE ASSOCIATION

Plaintiffs

- and -

CHARLES BORDELEAU and OTTAWA POLICE SERVICES BOARD

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiffs. 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 plaintiffs' lawyer or, where the plaintiffs do not have a lawyer, serve it on the plaintiffs, 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.

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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 PLAINTIFFS' CLAIM, and \$3,500 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 plaintiffs' 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: March 22, 2019

Issued by: _____

Local Registrar

Superior Court of Ontario
Ottawa Court House
161 Elgin Street, 2nd Floor
Ottawa, ON K2P 2K1

**TO: CHIEF CHARLES BORDELEAU
c/o Ottawa Police Service
474 Elgin Street
Ottawa, ON K2P 2E6**

**AND TO: OTTAWA POLICE SERVICES BOARD
Attn: Councillor Diane Deans, Chair
110 Laurier Avenue West
Ottawa, ON K1P 1J1**

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CLAIM

1. The Plaintiffs, Matthew Skof and the Ottawa Police Association, claim against the Defendants, Charles Bordeleau and the Ottawa Police Services Board, the following:

- a) A declaration that the Defendants' conduct infringes and is inconsistent with subsections 2(b) and 2(d) of 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 (the "*Charter*"), and that these violations cannot be justified under section 1 of the *Charter*;
- b) Injunctive relief suspending the restrictions imposed on the activities of Association President Skof and an Order restraining, enjoining, and prohibiting the Defendants from taking any similar or further measures to impede or infringe the Plaintiffs' *Charter* rights;
- c) Damages pursuant to subsection 24(1) of the *Constitution Act, 1982* in the amount of \$250,000 for these same *Charter* breaches;
- d) A declaration that the Defendant, Charles Bordeleau, abused his office as Chief of the Ottawa Police Service and engaged in misfeasance in public office;
- e) Damages for misfeasance in public office by the Defendant, Chief Charles Bordeleau, in the amount of \$250,000;
- f) Costs of this action on a substantial indemnity basis, including HST;
- g) Pre-judgment and post-judgment interest in accordance with the *Courts of Justice Act*, RSO 1990, c.C.43, as amended; and
- h) Such further and other relief as this Honourable Court may deem just and expedient.

THE PARTIES

2. The Plaintiff, Matthew Skof ("Skof") joined the Ottawa Police Service ("OPS")

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or the “Service”) as a police officer in 1997. Skof has been on full-time leave from his duties with the OPS since December 2011, when he was elected to serve as President of the Ottawa Police Association. At all material times, Skof has resided in Ottawa, Ontario and has worked full-time as President of the Ottawa Police Association.

3. The Plaintiff, Ottawa Police Association (“OPA” or the “Association”), is a non-profit Ontario corporation established in 1962 and is the professional association of members of the Ottawa Police Service. The OPA’s objects include providing assistance to its members, improving their working conditions and remuneration, and elevating the standards of police services in the City of Ottawa. The OPA is an “association” under section 2(1) of the *Police Services Act*, RSO 1990, c P.15 (“PSA” or the “Act”), and is recognized by the Ottawa Police Services Board as representing members of the Service for all collective bargaining, labour relations, and membership representation purposes. The OPA maintains its offices in Ottawa, Ontario.

4. The OPA brings this action on behalf of itself, its members, and in the public interest.

5. The Defendant, Charles Bordeleau, was at all material times Chief of Police for the Ottawa Police Service, reporting to the Ottawa Police Services Board in accordance with the *PSA*. Pursuant to paragraph 41(1)(a) of the *Act*, Chief Bordeleau’s duties include administering the police service and overseeing its operation in accordance with the objectives, priorities, and policies established by the board under subsection 31(1).

6. The Defendant Ottawa Police Services Board (the “Board” or the “OPSB”) is a municipal police services board under the *PSA* for purposes of providing civilian oversight over the Ottawa Police Service. Pursuant to subsection 31(1) of the *Act*, the

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Board was at all material times responsible for the governance of the OPS, including recruiting, appointing and directing the Chief of Police, monitoring his or her performance, and establishing policies and by-laws for the effective management of the police service. The Board is party to two collective agreements with the Ottawa Police Association regarding the terms and conditions of employment for police officers and civilian members.

7. By virtue of subsection 50(1) of the *Police Services Act* and the common law, the Board is liable in respect of all torts and violations of the *Charter* committed by members of the Ottawa Police Service and agents of the Board, including the Defendant Chief of Police, Charles Bordeleau.

OVERVIEW

8. The events of this claim arise in the context of a long history of acrimony between the Defendant Chief of Police Charles Bordeleau and Association President Matt Skof. Elected as OPA President in 2011, Skof has regularly advocated for increased police staffing ratios in Ottawa, ethics in policing, and the fair and equitable treatment of OPS officers.

9. The Defendant Bordeleau purported to suspend the Plaintiff Skof from his employment in August 2018, but Skof has been on an indefinite leave from work since his election as OPA President. Bordeleau later served Skof with a Notice of Suspension on January 23, 2019 that prohibited him from accessing OPS buildings and facilities to conduct Association business. Bordeleau also withdrew Skof's access to OPS computer systems which he regularly used to obtain OPS policies and staff profiles to assist him in serving the OPA membership. Bordeleau further directed the Plaintiff Skof not to attend at public meetings of the Ottawa Police Services Board.

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10. Ottawa Police Association members freely elected Skof to be their authorized representative with their employer, the Ottawa Police Service and the Ottawa Police Services Board. Skof and the Ottawa Police Association claim that Chief Bordeleau has infringed their constitutional rights and freedoms. The Chief's restrictions impair and interfere with Skof's ability to represent and assist the OPA and its membership in a wide range of matters, including collective bargaining, discipline, grievance matters, and the standards of police services in Ottawa. These restrictions violate the Plaintiffs' freedom of association and freedom of expression, as protected by section 2 of the *Canadian Charter Rights and Freedoms*.

11. The Plaintiffs' further claim that the Defendant Chief Bordeleau deliberately violated their rights under the *Charter*. The primary purpose of the Defendant Bordeleau's abuse of authority and unlawful interference with the Plaintiffs' constitutional rights was to neutralize and/or impair Skof's ability to advocate for his members and to undermine his leadership and reputation in the eyes of his members and the community at large. This impacts on OPA members' right to freely choose who they wish to represent them with their employer.

12. As remedies, the Plaintiffs are seeking declarations, injunctive relief and damages to vindicate their constitutional rights.

BACKGROUND

i) The Ottawa Police Association

13. The OPA represents over 1,900 sworn and civilian members of the OPS. It bargains collectively on behalf of its members and is recognized as its members' exclusive bargaining agent and representative by the OPS and the Defendant OPSB. The OPA is governed by a Board of Directors and President, who are elected by its

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membership for three-year terms.

ii) Duties and Responsibilities of the Association President

14. The office of Association President is a full-time position and reports directly to the OPA Board of Directors. The President is the Chief Executive Officer of the Association and presides over all Association activities. The duties and responsibilities of President include:

- a. Liaising with the OPSB and the Chief of the OPS on behalf of the OPA and its members;
- b. Coordinating and directing the negotiation of collective agreements on behalf of OPA members;
- c. Communicating with OPA membership regarding collective bargaining and presenting final proposals for ratification;
- d. Representing the OPA and individual police officers and civilian members in grievances and disciplinary matters, both internally within the Service and in hearings or other proceedings as provided under the PSA and collective agreements;
- e. Attending, assisting, and representing OPA members in crisis situations, including in matters involving the SIU;
- f. Participation in consultations with the Board on matters of significant interest to OPA members, including the recruiting and appointment of a new chief of police; and
- g. Acting as chief spokesperson and advocate for the OPA and its members, both internally, to the Chief, the OPS, and the Board, and to the public at large.

15. During the course of carrying out these duties, the OPA President must regularly and routinely meet with OPA members and OPS management at various OPS buildings or properties. This includes both formal meetings that are scheduled in

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advance, as well as informal and impromptu meetings with members seeking advice or representation or to discuss Association business.

16. The OPA President is also required to attend OPS buildings and properties to deal with emergency situations and to assist members in need. For example, the *General Regulations*, O Reg 268/10 and other legislation identify certain circumstances in which the Special Investigations Unit (“SIU”) must be contacted and is required to investigate OPS members. When such critical incidents occur, police officers involved in the incident are required at law to be segregated from each other until after the SIU completes its interviews.

17. Police officers involved in such incidents are entitled under the *Conduct and Duties of Police Officers Respecting Investigations by the Special Investigations Unit*, O. Reg. 267/10, to consult with legal counsel and/or an Association representative and to have counsel or their Association representative present during their interview with the SIU.

18. Given the serious nature of these matters and the potential consequences for police officers involved in such incidents, the OPA has employees and Board members available on call to attend at such incidents at any hour of the day or night. As a Board member, the OPA President is on call to provide such representation and assistance to OPA members personally and immediately. In the most serious cases, the OPA President attends personally whenever possible.

iii) Skof’s Election and Leave of Absence from the OPS

19. The Plaintiff Matthew Skof joined the Ottawa Police Service in 1997 and attained the rank of Sergeant by 2008. OPA members elected Skof as the Association President in 2011. He was re-elected by the OPA membership in 2014 and 2017.

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20. To facilitate Skof's fulfilling the duties and obligations of his position as Association President, the Ottawa Police Association and the Ottawa Police Service negotiated an agreement under which Skof would be placed on an unpaid leave of absence and seconded by OPS to the OPA for the duration of his term as president, in accordance with Article 21 of the *Collective Agreement between the Ottawa Police Services Board and the Ottawa Police Association, Police Personnel*.

21. While serving as President of the OPA, Skof is not considered an active employee of the Board. The collective agreement does not apply in respect of Skof's employment, and he is not required to serve as a police officer during this leave of absence.

22. At the commencement of his leave, the Plaintiff Skof returned to OPS his use-of-force equipment, and ceased carrying his OPS badge or otherwise identifying himself as a police officer. However, unlike other police officers on unpaid leave, Skof was allowed to keep his OPS building access card and a secure electronic tablet that permits him to have access to all OPS policies, information and email addresses.

23. Skof's activities as OPA President include frequently meeting with OPA members and OPS management at various OPS buildings or properties. This includes both formal meetings that are scheduled in advance, as well as informal and impromptu meetings with members seeking advice or representation, discussing union business, and helping to manage and provide representation in emergency situations that may arise, such as any incidents that may require involvement of the SIU.

24. As President of the OPA, Skof is also formally consulted by the OPSB for the hiring of new chiefs and deputy chiefs of the Service. Currently there is a search for a new chief of the OPS. Prior to the events described further below, Skof was already

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consulted once by Diane Deans, OPSB member and current Chair of the Board, on the search for a new chief.

iv) Investigation and First Refusal of Recognition

25. On August 2, 2018, Skof was informed that Chief Bordeleau had made a written request to the Commissioner of the Ontario Provincial Police (“OPP”) to investigate a complaint pursuant to subsection 76(4) of the *Act*, concerning alleged violations of the police code of conduct.

26. The Defendant Chief Bordeleau then informed Skof that “the OPS will require a different primary contact who can act on behalf of the OPA” for the duration of the OPP investigation, and demanded that the OPA name an alternate representative.

27. The OPA objected to Chief Bordeleau’s demand, writing to remind both the Chief and the Board that the OPA is an independent organization and that its members have a right to freely choose their representative.

28. By letter dated August 31, 2018, the Defendant Chief Bordeleau rescinded his earlier correspondence directing the OPA to name a different representative. As a result, Skof was able to continue performing his duties as OPA President, including serving as a point of contact and making representations to OPS and the Board.

v) Charges and Suspension of OPA President

29. On January 23, 2019, the Defendant Chief Bordeleau presented the Plaintiff Skof with a “Notice of Suspension” which stated that, while it was recognized that he was on an unpaid leave of absence for an indefinite period of time, Skof nevertheless maintained his status as a police officer and was thus subject to suspension under Part V of the *PSA*.

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30. The Notice of Suspension ordered Skof to return and surrender his identification card, wallet badge, and building access card and prohibited him accessing OPS facilities, properties, or vehicles. The Notice of Suspension emphasized that “any and all Association business shall not be physically conducted in Ottawa Police Service buildings or properties”, and indicated that Skof was not to attend at public meetings of the Police Services Board.

31. These restrictions on Skof’s access to OPS facilities, properties and vehicles, and the unprecedented ban on his attendance at public meetings of the Board, significantly infringe on and interfere with his ability to express his views and represent the rights and interests of the OPA and its members. These restrictions have also damaged Skof’s reputation and standing as the elected representative of the OPA.

32. Prior to the suspension, Skof would attend at OPS buildings and properties every week to meet with and represent OPA members. One recent example in which the suspension has impacted on Skof and the OPA occurred on January 31, 2019, when two OPA members were subject to an SIU investigation for a shooting death near the Elmvale Acres Shopping Centre in Ottawa. One of the primary functions of the OPA is to assist in protecting the welfare and legal rights of its members in such situations. Skof attended at the 10th Line police station where witness officers to the incident were directed.

33. For an SIU investigation, Skof would normally enter the station and speak to the officers involved to ensure their well-being after a traumatic incident. He would liaise with the duty inspectors and sergeants to ensure proper protocol was followed, including segregation (but not isolation) of the officers and the legal duty to

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complete their notes and reports before meeting with legal counsel. He would coordinate legal representation for the officers, including contacting and facilitating access to lawyers. He would ensure the officers received food and anything else they might need. All of these activities would normally be carried out in the police building.

34. On January 31, 2019, Skof was not permitted to enter the 10th Line station. He parked his car outside and did his best to fulfill his role and assist his OPA members by telephone. He arranged for legal counsel and spoke to the lawyers in his car before coordinating their entry to the building by speaking to a duty sergeant by phone. He also spoke to the witness officers by phone and, later, met with each of them individually in his car on a side street to assess their well-being and needs and to answer their questions. Skof was focused on supporting his members, but the entire episode was humiliating for him and the OPA and it was suboptimal in terms of providing assistance.

35. The suspension has also interfered with Skof's ability to obtain routine feedback and input from members on the upcoming collective bargaining period.

36. Prior to the suspension, Skof would frequently access OPS computer systems to obtain staff profiles and policies for the performance of his duties assisting members. The Defendants' restrictions have interfered with Skof's ability to perform his duties. While some OPA staff and Board members have access to the OPS computer system, it impedes Skof's ability to perform his job in a timely way. It is also demeaning for him to contact others in the OPA to obtain this information.

37. Prior to the suspension, Skof would always be invited to speak at the OPS Professional Development Centre (PDC). This would include an annual speaking lecture to new recruits as well as training courses for frontline supervisors and others.

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The Defendants' restrictions have prevented Skof from speaking at PDC and has harmed the image and reputation of the Plaintiffs and interfered with their ability to communicate with their members during these important stages in the members' careers.

38. More recently, Skof had been participating in presentations of the OPS "Fatigue Management Strategy". This program is a critical component in the overall Wellness initiative that is being delivered to the membership. The Defendants' restrictions have prevented Skof from delivering these presentations, where participation of the membership in this program is critical to its success and the health of the membership.

39. There have been important OPSB budget meetings held at Ottawa City Hall since Skof's suspension. As a result of the Defendants' restrictions, Skof has been barred from attending and speaking at these public meetings which are vitally important to his members and the standard of police services in Ottawa generally. In the month following Skof's suspension, there were three OPSB meetings that involved the tabling, review, debate and approval of the OPS 2019 budget. Skof typically attends these public meetings every year and expresses his views to Board members and media about the OPA's position on budget priorities.

40. For seven years running, Skof has also participated in Ottawa's annual St. Patrick's Day Parade as the President of the OPA. This would involve driving in the parade in an OPS vehicle. In 2019, he could not participate due to the Defendants' restrictions. This has harmed the public image of Skof and the OPA.

BREACH OF *CHARTER* RIGHTS

Subsection 2(d) - Freedom of Association

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41. Although precluded from joining trade unions falling within the scope of Ontario's *Labour Relations Act, 1995*, police officers have historically formed associations and worked collectively to protect and improve their livelihoods. These police associations are expressly recognized for purposes of labour relations and collective bargaining under Part VIII of the *Police Services Act*. The Plaintiff OPA has been representing Ottawa police officers since 1962.

42. Subsection 2(d) of the *Charter* guarantees and protects the freedom of employees - including police officers - to act in common to achieve shared goals related to workplace issues and the terms and conditions of their employment.

43. Freedom of association under subsection 2(d) of the *Charter* guarantees the right to engage in a process of meaningful, good faith bargaining with employers, to seek to negotiate terms and conditions of employment into a collective agreement, and to engage in lawful collective action to advance shared workplace goals.

44. Freedom of association also includes the right of employees to independently choose or elect the representative(s) who will speak or act on their behalf, free from the influence of or interference by management. This right is protected under subsection 2(d) of the *Charter* and international legal instruments that are binding in Canada, such as article 3.1 of the International Labour Organisation's *Convention on Freedom of Association and Protection of the Right to Organise (No. 87)*, 68 UNTS 257.

45. The Defendants adopted and employed a strategy or policy that deliberately disregarded these fundamental rights of the Plaintiffs, or that failed to make adequate provision for their protection and exercise.

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46. The Association President's mandate includes speaking and acting on matters of fundamental importance to the OPA and its members, and providing representation and advocacy on behalf of individual police officers. By freely electing the Plaintiff Skof as Association President, OPA members chose him to act as their spokesperson and representative in collective bargaining and consultations with the Board, grievance and disciplinary matters, and urgent matters involving Professional Standards Section or SIU investigations.

47. By suspending the Plaintiff Skof and barring him from accessing or entering OPS buildings or facilities, the Defendants have substantially impeded his ability to engage in meaningful collective action and representation on behalf of OPA members. The Defendants' action thereby unduly prejudices the administration of the OPA, undermines its members' choice to be represented by Skof as Association President, and impinges their collective right to good faith negotiation and consultation.

48. The Defendants have violated the Plaintiffs' rights and freedoms under subsection 2(d) of the *Charter* by substantially interfering with the administration of the OPA and undermining its members' freedom to choose a representative to speak, negotiate, or otherwise act on their behalf in respect of specific workplace issues and the advancement of their shared workplace goals.

Subsection 2(b) - Freedom of Expression

49. Communicating regarding workplace issues, providing representation, and advocating on behalf of members is expressive activity protected under subsection 2(b) of the *Charter*.

50. The OPA and its members engage in *Charter*-protected expression through

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their elected President, the Plaintiff Skof, who acts as internal representative and public spokesperson and advocate on behalf of the OPA and its members.

51. Skof's ability to make representations and advocate on OPA members' behalf is contingent on his ability to attend and be present at OPS buildings and facilities for meetings and consultations with OPA members, OPS management, and the Board. This includes both formal, scheduled meetings such as collective bargaining sessions or disciplinary hearings, but also informal and impromptu meetings with members in need or in the event of critical incidents, such as those involving the engagement of the Professional Standards Section or SIU.

52. By barring the Association President from attending or being present at OPS buildings and facilities, the Defendants impede his ability to engage with OPA members, OPS management, and the Board and substantially interfere with the collective right of all OPA members to collectively express their views and make representations for the purposes of advancing their workplace goals through their elected representatives.

53. Barring the Association's President from attending or being present at OPS buildings and facilities denies OPA members the power to pursue their goals and infringes freedom of expression guaranteed by subsection 2(b) of the *Charter* by limiting and restricting the nature and manner of expression they may engage in.

54. All members of the public in Ottawa enjoy the democratic freedom to attend meetings of their elected City Council and their subordinate bodies such as the Ottawa Police Services Board. Members of the public may attend OPSB meetings to listen to the Board's debates and discussions and make representations to the Board. Barring Skof from attending the Board's public meetings infringes the Plaintiffs' freedom of expression guaranteed by subsection 2(b) of the *Charter*. This violation is

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particularly egregious as it relates to the democratic function and decision-making of the City of Ottawa regarding police services in the municipality.

55. The restriction prohibiting Skof from attending public Board meetings is completely unprecedented and has never been applied before to another member of the OPS as a condition of suspension. Barring Skof from the Board's meetings occurred less than two weeks before the crucial OPSB budget meetings took place in February 2019. Skof and the OPA have been highlighting over the last few years that Ottawa has a much lower population-to-police-officer ratio than many other Canadian cities. Skof wanted to attend the Board budget meetings to express the view that Ottawa policing is understaffed. In the Plaintiffs' view, the annual hiring target should be 150 police officers, rather than the 30 approved by the Board.

56. The Plaintiffs' criticisms of the Board's OPS budget are well known. The Defendant Bordeleau barred Skof from attending the OPSB public meetings at least in part to impair his ability to express his opinions on the budget and other policing matters.

Section 1

57. The Defendants' conduct interferes with and infringes the Plaintiffs' constitutionally protected rights of freedom of expression and association contrary to subsections 2(b) and 2(d) of the *Charter*. These breaches of the Plaintiffs' rights are not rationally connected to any purpose, are not minimally impairing, and cannot be demonstrably justified under section 1 of the *Charter*.

International Law

58. The Plaintiffs also rely upon international legal obligations and customary and

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conventional international law binding in Canada to support the alleged breach of subsections 2(b) and 2(d) of the *Charter*.

59. In particular, the Plaintiffs rely on that body of international law which requires governments to guarantee freedom of association and freedom of expression to workers and unions including, but not limited to: *International Covenant on Civil and Political Rights*, 999 UNTS 171, articles 19 and 22; *International Covenant on Economic, Social and Cultural Rights*, 999 UNTS 171, article 8; International Labour Organization, *Freedom of Association and Protection of the Right to Organise*, 1948 (No. 87), 68 UNTS 257, articles 1-4; International Labour Organization, *Declaration on Fundamental Principles and Rights at Work and its Follow-up* (1998), 37 ILM 1233, preamble and article 2(a); and *Charter of the Organization of American States*, Can. TS 1990 No. 23, articles 45(c) and (g).

60. The Defendants' conduct fails to comply with international law and conventions, including international human rights treaties ratified by Canada and the standards established and set out therein, and undermines and erodes the rights of police officers to organize and act collectively through freely chosen representatives.

MISFEASANCE IN PUBLIC OFFICE

61. The Defendant Bordeleau was at all material times a holder of public office, exercising the powers attached thereto and under the *Police Services Act*.

62. The Defendant Bordeleau had a duty to act in accordance with the laws of Canada and owed the Plaintiffs a duty of care to ensure that their legal rights and fundamental freedoms would not be infringed.

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63. The Defendant Bordeleau failed in his duty to uphold and protect the Plaintiffs' *Charter* rights, deliberately infringing their freedoms of expression and association as guaranteed under subsections 2(b) and (d) of the *Charter*.

64. The Defendant Bordeleau's conduct was a deliberate and unlawful exercise of a public function that was malicious and/or done in bad faith and with full awareness of or recklessness to the fact that it was illegal and likely to harm or injure the Plaintiffs and OPA members.

65. In this regard, the Plaintiffs repeat and rely upon the facts as set out above, and emphasize that the Defendant Bordeleau had already rescinded a previous attempt to prevent Skof from representing OPA members, after a grievance was filed and the impact of such interference was expressly brought to his attention.

66. The Defendant Bordeleau acted in a bad faith and arbitrary manner by subsequently suspending Skof and issuing a new directive that would have the same result as before, this time interfering with Skof's ability to represent OPA members by barring him from all OPS buildings and facilities.

67. These measures were calculated to injure and carried out for that purpose, and this tortious conduct did indeed cause harm to the Plaintiffs. The primary purpose of the Defendant Bordeleau's abuse of authority and unlawful interference with the Plaintiffs' constitutional rights was to neutralize and/or impair Skof's ability to advocate for his members and undermine his leadership and reputation in the eyes of his members and the community at large.

68. The Defendant Bordeleau is liable for this misfeasance in public office.

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REMEDIES

69. As a result of the conduct set out above, the Plaintiffs have suffered losses at the hands of the Defendants, and are entitled to appropriate remedies and damages for the above torts, legal breaches, and *Charter* violations.

Declaration and Injunctive Relief

70. The Plaintiffs seek a declaration that: (i) the Defendants' conduct infringes and is inconsistent with subsections 2(b) and 2(d) of the *Charter*, and that these violations cannot be justified under section 1; and (ii) that the conduct of the Defendant, Chief Charles Bordeleau, amounts to misfeasance in public office.

71. The Plaintiffs also seek interim or interlocutory relief, including an Order suspending the restrictions imposed on the activities of Association President Skof and restraining, enjoining, and prohibiting the Defendants from taking any similar or further measures to impede or infringe the Plaintiffs' *Charter* rights to speak and act as representatives on behalf of OPA members.

Damages

72. The Plaintiffs plead and rely upon the *Charter*, and state that they are additionally entitled to damages that this Honourable Court considers appropriate and just in the circumstances. Specifically, the Plaintiffs seek damages under subsection 24(1) for violation of the Plaintiffs' constitutional rights and fundamental freedoms, in order to compensate for their suffering and loss of dignity, vindicate these fundamental freedoms, and to deter violations of a similar nature in the future, in the amount of \$250,000.

73. By knowingly and deliberately breaching the Plaintiffs' *Charter* rights and engaging in unlawful conduct likely to cause harm to Skof, the OPA, and its members

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in the course of exercising a public function, the Defendant Bordeleau is liable for damages for misfeasance in public office in the amount of \$250,000.

Liability of the Chief and the Board

74. The Plaintiffs state that by virtue of subsection 50(1) of the *PSA*, the Board is responsible for the torts and *Charter* violations of the Defendant Chief of Police, Charles Bordeleau, as pled above.

75. The Plaintiffs propose that this action be tried at the City of Ottawa.

Dated this 22nd day of March, 2019.

Paul Champ, LSO# 45305K
Bijon Roy, LSO# 50528K

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Solicitors for the Plaintiffs

Court File No.

**MATTHEW SKOF and
OTTAWA POLICE ASSOCIATION**

- and -

**CHARLES BORDELEAU and
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Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE**

STATEMENT OF CLAIM

CHAMP & ASSOCIATES

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