



Court File No.:

Electronically issued : 01-Nov-2021  
Délivré par voie électronique : 01-Nov-2021  
Peterborough  
B E T W E E N .

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**DARLENE COOK**

Plaintiff

- and -

**PETERBOROUGH HOUSING CORPORATION**

Defendant

**STATEMENT OF CLAIM**

TO THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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IF YOU PAY THE PLAINTIFF'S CLAIM, and \$2000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 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: \_\_\_\_\_

Issued by: \_\_\_\_\_  
(Local Registrar)

Address of court office:

**Superior Court of Justice**  
470 Water Street  
Peterborough, ON K9H 3M3

**TO: Peterborough Housing Corporation**  
526 McDonnell Street  
Peterborough, ON  
K9H OA6

THIS ACTION IS BROUGHT AGAINST YOU UNDER THE SIMPLIFIED PROCEDURE PROVIDED IN RULE 76 OF THE RULES OF CIVIL PROCEDURE.

**CLAIM**

1. The Plaintiff claims against the Defendant:
  - (a) damages for lost base salary during the reasonable notice period in the amount of \$301,419.80, representing 24 months' pay in lieu of reasonable notice of termination;
  - (b) damages for loss of comprehensive benefits during the reasonable notice period, the particulars of which will be provided prior to or at trial or summary judgment;
  - (c) damages for loss of OMERS pension plan contributions during the reasonable notice period, the particulars of which will be provided prior to or at trial or summary judgment;
  - (d) damages for unpaid vacation pay and vacation pay over the statutory notice period, the particulars of which will be provided prior to or at trial or summary judgment;
  - (e) punitive damages in the amount of \$50,000.00;
  - (f) pre-judgment interest on the aforementioned amounts pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, s. 128;
  - (g) post-judgment interest on the aforementioned amounts pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, s. 129;
  - (h) costs of this action on a substantial indemnity basis, together with applicable *Harmonized Sales Tax* thereon in accordance with the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended; and
  - (i) such further and other relief as counsel may advise and this Honourable Court may permit.

## Parties

2. The Plaintiff, Darlene Cook (Ms. Cook”), is a 67-year-old Ontario resident. Ms. Cook worked for the Defendant for an impressive 21 years until on or about September 20, 2021, at which time her employment with the Defendant was constructively terminated without cause, notice, or any pay in lieu of such notice.
3. The Defendant, Peterborough Housing Corporation (the “Defendant”), is a government agency that provides social and affordable housing in the Peterborough area. The Defendant owns and manages approximately 1200 units of senior, single, and family units and also administers rent supplement programs for 200 subsidized housing units. Additionally, it provides property management services to other non-profit organizations. The Defendant’s head office is in Peterborough, Ontario.

## Background

4. At all times during her tenure, Ms. Cook was employed by the Defendant as its Chief Executive Officer, General Manager. Ms. Cook states that this was a senior executive position with significant responsibilities in which she was responsible for managing the Defendant’s entire operations. In this capacity, Ms. Cook was charged with a broad range of duties, including but not limited to managing over 1400 social and affordable housing units with an annual budget of over \$11,000,000.00.
5. Ms. Cook’s annual compensation package was commensurate with her executive position and consisted of the following:
  - (a) base salary of \$150,709.90;
  - (b) participation in the Defendant’s comprehensive group benefits plan;
  - (c) participation in the Defendant’s OMERS pension plan; and
  - (d) 6 weeks’ paid vacation and 2 weeks’ earned lieu time per annum.

6. Ms. Cook states that she was a loyal, dedicated, and hardworking employee who made a significant contribution to the Defendant's organization. Ms. Cook states that she received numerous awards for her dedicated service during her time with the Defendant and is well-respected locally, provincially, nationally, and internationally for her accomplishments and leadership with the Defendant.

### **Constructive Dismissal**

7. In or around February 2021, the City of Peterborough (the "City") decided to remove the Defendant's affordable housing units from its control and place them in a new City-owned entity. In addition to this change, 6 of the Defendant's public housing sites will be demolished. This change would have also reduced the number of social and affordable housing units that Ms. Cook was responsible for managing from 1,300 to 665. Ms. Cook states that these changes would have resulted in an approximate 40% reduction in her managerial responsibilities and would have stripped her of fundamental decision-making powers.
8. Additionally, Ms. Cook states that the Defendant made significant changes to her duties and responsibilities. Specifically, Ms. Cook was stripped of key responsibilities pertaining to strategic planning, development, revitalization, and growth of the Defendant's housing portfolio. Ms. Cook states that these responsibilities went to the heart of her employment and position with the Defendant.
9. Ms. Cook states further that the Defendant dissolved its Board of Directors and replaced it with a transitional Board of Directors made up of 5 elected officials, 3 of whom publicly disparaged Ms. Cook at City Council meetings and Peterborough Regional Liaison Group meetings over the last several months. Ms. Cook states that these disparaging public remarks, made by individuals who she would have reported to, created an extremely toxic and poisoned work environment.
10. In or around June 2021, Ms. Cook wrote and delivered a letter to the Defendant expressing her concern regarding the changes it was implementing to her position and employment. Shockingly, the Defendant failed to respond to or even acknowledge Ms. Cook's letter. Ms.

Cook states that she was confused and distressed by the Defendant's failure to address the concerns raised in her letter, particularly given her 21 years of loyal and dedicated service.

11. Ms. Cook states that she was left humiliated as a result of the changes implemented by the Defendant to her position and job duties. After learning of these changes and being subjected to a poisoned work environment fostered by the Defendant, Ms. Cook visited her treating physician who ordered that she commence a medical leave of absence from her position with the Defendant.
12. Ms. Cook remained on a medical leave of absence until on or about September 20, 2021. At that time, Ms. Cook had no choice but to advise the Defendant that she was treating her employment as having been constructively terminated.
13. Ms. Cook pleads that her managerial responsibilities, strategic planning duties, and role leading the Defendant's development operations were fundamental terms of her employment, and that there were no terms of employment, express or implied, which allowed the Defendant to change her position and remove her primary duties.
14. Ms. Cook further pleads that there were no terms of employment, express or implied, which allowed the Defendant to treat her in the reprehensible way that it did, including the creation and exacerbation of a poisoned work environment.
15. Given its conduct, the Defendant breached the fundamental terms of Ms. Cook's employment and made it impossible for her to continue in her job. The Defendant therefore left Ms. Cook with no option but to treat her employment as being constructively terminated.

#### **Damages for Constructive Dismissal**

16. Ms. Cook states that the conditions of her employment with the Defendant did not contain any terms that limit her termination entitlements or that would rebut the common law presumption of reasonable notice of termination. Therefore, Ms. Cook states that it was an express and/or an implied term of her employment with the Defendant that her employment could only be terminated upon the provision of reasonable notice or payment in lieu thereof, or for just cause.

17. Ms. Cook specifically pleads that the Defendant did not have just cause to terminate her employment, nor has cause been alleged by the Defendant. Accordingly, Ms. Cook's termination entitlements must be determined in accordance with the common law.
18. Ms. Cook pleads that, in the circumstances, as well as her 21 years of service, age of 67, and senior executive position, she is entitled to 24 months' notice of termination or pay in lieu of such notice. Ms. Cook pleads that she is entitled to all components of her annual compensation plan for the duration of the 24-month notice period.

### **Punitive Damages**

19. The Defendant was under a legal duty to perform its contractual obligations to Ms. Cook honestly and in good faith. Ms. Cook pleads that the Defendant's conduct in constructively terminating her employment was reckless and failed to meet even minimum standards of honest contractual performance.
20. Specifically, the Defendant implemented significant changes to Ms. Cook's position, which also had the effect of significantly reducing her standing within its organization. When Ms. Cook raised concerns regarding these changes, the Defendant refused to respond to our even acknowledge her correspondence. Further, the Defendant subjected Ms. Cook to a poisoned work environment and failed to take any steps whatsoever to address this situation once Ms. Cook notified it of same.
21. Given the Defendant's actions and inaction as described above, Ms. Cook pleads that the manner in which the Defendant terminated her employment constitutes a separate and independent actionable wrong which must be censured by this Honourable Court. Ms. Cook therefore seeks punitive damages against the Defendant in the amount of \$50,000.00.

### **Mitigation and Place of Trial**

22. Ms. Cook has taken, and continues to take, diligent steps to mitigate her damages.
23. The Plaintiff requests that the trial of this action be held in the City of Peterborough, in the Province of Ontario.

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Date:

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**DARLENE COOK**

v.

**PETERBOROUGH HOUSING CORPORATION**

Plaintiff

Defendant

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
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**STATEMENT OF CLAIM**

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