



Court File No.

Electronically issued : 15-Nov-2018
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Ottawa

D E L I V E R E D .

**ONTARIO
SUPERIOR COURT OF JUSTICE**

ANGELIQUE EAGLEWOMAN

Plaintiff

- and -

LAKEHEAD UNIVERSITY

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 of America, the period is sixty days.

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

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL

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FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$2000 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

Date: _____

Issued by: _____

Registrar
Court House,
161 Elgin Street
Ottawa, Ontario

TO: Lakehead University
Office of the President
955 Oliver Road
Thunder Bay, ON P7B 5E1

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CLAIM

1. The Plaintiff, Angelique EagleWoman, claims against the Defendant, Lakehead University, the following:
 - a. on the basis of constructive dismissal:
 - i. damages equivalent to the salary and benefits that she would have earned during the thirty-six (36) month period remaining on her contract as Dean of the Faculty of Law from July 1, 2018 to June 30, 2021 (approximately \$824,550);
 - ii. the future salary and benefits that she would have earned as a tenured full Professor in the Faculty of Law from July 1, 2021 to age 71, less any mitigation income earned during this period (approximately \$915,000);
 - iii. damages in the amount of \$86,000 for the additional salary that she could have earned had her contract as Dean been renewed for another five-year term;
 - iv. moral and aggravated damages in the amount of \$200,000;
 - v. punitive damages in the amount of \$500,000;
 - b. on the basis of breach of section 5 of the Ontario *Human Rights Code* (the "*Code*"):
 - i. damages in the amount of \$75,000 for harm to dignity, feelings and self-respect;
 - ii. damages in the amount of \$11,083 for lost earnings between May 1, 2016 and July 31, 2017;

- iii. damages in the amount of \$61,000 for legal costs and disbursements incurred to respond to HRTO File No. 2016-26149-I
- c. pre- and post-judgment interest in accordance with the *Courts of Justice Act*, as amended;
- d. the costs of this action on a substantial indemnity basis, including HST; and,
- e. such further and other relief as this Honourable Court may deem just and expedient.

THE PARTIES

2. The Plaintiff is a 48-year-old law professor and scholar of Indigenous law, who is a member of the Sisseton-Wahpeton Oyate Tribe. She was employed as the Dean of the Bora Laskin Faculty of Law at Lakehead University from May 1, 2016 to June 29, 2018. In this position, the Plaintiff was recognized to be the first Indigenous law dean in Canada.

3. Prior to commencing employment with the Defendant, the Plaintiff was employed as a law professor and legal scholar at the University of Idaho College of Law. She had also previously served as a pro tempore Tribunal Judge in four Tribal Court systems and as General Counsel for the Sisseton-Wahpeton Oyate in Dakota, United States of America. She holds a Bachelor of Arts in Political Science, a Juris Doctor (JD) degree from the University of North Dakota Law School, and an LLM in American Indian and Indigenous Law from the University of Tulsa College of Law. The Plaintiff currently resides in St. Paul, Minnesota, United States of America.

4. The Defendant is a university located in Thunder Bay, Ontario with a satellite campus in Orillia, Ontario. It has undergraduate programs, graduate programs, and operates the Bora Laskin Faculty of Law. The Defendant has over 8,000 enrolled undergraduate and graduate students.

5. The Bora Laskin Faculty of Law was launched in September 2013 with the enrollment of its first class of students. There are approximately 60 students in each year.

6. The Defendant's first application to establish a law school was rejected. The Province and the Federation of Law Societies of Canada decided that Ontario already had sufficient legal infrastructure and a new law school was not required. The Defendant submitted a second application that centred around Indigenous programming as a main focus for the law school. It was argued that this law school would be unique in Canada and would produce lawyers capable of analyzing the law from an Aboriginal perspective. This application was approved.

7. The Law Faculty's JD program is a three-year undergraduate program of study. The Defendant promotes the Faculty of Law as focusing on law related to Aboriginal Peoples. The Defendant's law school is one of two in Canada that has a mandatory, full year course in Aboriginal Law, as recommended by Canada's Truth and Reconciliation Commission.

8. The Defendant promotes the Bora Laskin Faculty of Law as offering a culturally supportive environment to all Aboriginal students. The Defendant has entered into an Aboriginal Protocol Agreement with local Aboriginal community leaders to "establish a strong, meaningful and respectful working relationship" in order to support a law program inclusive of First Nations and Metis perspectives of law, culture, and language. To that end, an Aboriginal Advisory Committee was created.

BACKGROUND

9. On December 1, 2015, the Plaintiff was appointed as Dean of the Defendant's Faculty of Law for an initial term of five (5) years and two months, from May 1, 2016 to June 30, 2021.

10. The Plaintiff's appointment was made following an extensive recruitment process by the Defendant to replace the Faculty of Law's Founding Dean, who resigned in June 2015. In its call for applications, the Defendant emphasized that it was seeking a legal educator and scholar with experience relevant to Aboriginal northern and rural legal issues and interests.

11. In August 2015, the Plaintiff was contacted by an external consulting group hired by the Defendant and invited to apply for the job as Dean. She submitted her application in September 2015 and interviewed for the position in mid-October 2015. During her interview, the Plaintiff was advised that there would be an opportunity after the first three years of her contract to seek to have her contract renewed for a further term. The Plaintiff indicated that, if selected for the position, she would be planning to stay in the Dean's role for ten years and thus would seek renewal of her contract for a second term.

12. The Plaintiff was advised that she was the finalist for the position in early November 2015, and received an offer of employment on December 1, 2015. When her appointment was announced in January 2016, she was celebrated by the Defendant and others, including the Minister of Aboriginal Affairs, as the first Indigenous law school dean in Canadian history.

13. To take on the position, the Plaintiff and her then 12-year old son were required to relocate from Pullman, Washington in the United States to Thunder Bay. This was an expensive and socially difficult transition for the Plaintiff and her son (who was starting seventh grade in the Fall of 2016), but one that the

Plaintiff believed to be worthwhile in light of this significant opportunity.

EMPLOYMENT CONTRACT

14. The Defendant provided a letter to the Plaintiff on December 1, 2015 that outlined the terms and conditions of the Plaintiff's employment (the "Employment Contract").

15. As Dean of Law, the Plaintiff's duties included providing academic, administrative, operational, and budgetary management for the law school. She hired and provided supervision to Faculty members and staff, including providing annual performance reviews and other human resources functions. She managed the Faculty of Law's budget and developed annual budget proposals. She was responsible for fulfilling the Faculty of Law's accreditation reporting obligations to the Law Society of Upper Canada (as it then was) and the Federation of Law Societies. As a member of the senior administrative leadership team for Lakehead University, she participated in the university's governance, including sitting on the Senate, Provost Council, Dean's Council, Ogimaawin Aboriginal Governance Council and other committees and subcommittees. The Dean was also responsible for positioning the Faculty of Law strategically in a competitive marketplace for funding, research opportunities and student recruitment. Another important aspect of the Dean's role was to build and maintain ties with government and the professional legal community.

16. The Dean was expected to continue scholarly activities and research. However, she was not expected to teach classes, although that would change.

17. The Plaintiff was to report directly to the Provost and Vice-President (Academic), a position held by Dr. Moira MacPherson. Remuneration for the Dean's position included:

- base annual salary of \$210,000;

- a pension and comprehensive benefits plan;
- a research budget of up to \$10,000 per annum;
- professional expense reimbursement of \$1,450;
- travel and moving expenses; and
- vacation and administrative leave.

18. The Employment Contract had an option for renewal of the Plaintiff's appointment as Dean beyond the initial Term, subject to mutual agreement and successful completion of a review process. At the conclusion of the Plaintiff's appointment as Dean, the Plaintiff would have the right of entry into the Defendant's Faculty Association bargaining unit at the rank of full Professor with tenure in the Faculty of Law, with salary at the top of the salary range.

19. The Employment Contract included a provision stating that the Defendant could terminate the Plaintiff's appointment as Dean without cause prior to the expiry of her Term, upon providing her with notice of termination or pay in lieu thereof (or a combination of same), plus benefits, for a period consisting of the lesser of twelve (12) months or the remainder of her term. Termination of the Plaintiff's appointment as Dean would not affect her right to remain at the Faculty as a tenured full Professor and faculty member.

20. The Plaintiff's base salary as Dean was later increased to \$219,500 per annum effective August 1, 2017, after she learned and raised concerns about the fact that her non-Indigenous male predecessor had been paid a higher salary than her for the same work.

BREAKDOWN OF THE EMPLOYMENT RELATIONSHIP

21. The Plaintiff commenced her employment as Dean with enthusiasm for her role and dedication to the law school's focus on Aboriginal and Indigenous Law, Natural Resources and Environmental Law and Sole/Small Town Practice.

22. Unfortunately, the Plaintiff's attempts to carry out her duties as Dean and to fulfill the law school's mandate were continuously met by barriers erected by the Defendant. The Defendant's conduct served to undermine the Plaintiff's authority and effectiveness as Dean and created a poisoned environment, making her continued employment impossible.

a. Ongoing micro-management

23. From the commencement of the Plaintiff's employment, she was asked to report to Dr. McPherson on all interactions, communications, and emails with faculty members. Frequently, the Plaintiff's decisions on how to respond to communications would be overridden by Dr. McPherson and she would be required to substitute Dr. McPherson's responses for those of her own.

24. This micro-managing intensified when, in November 2016, the Defendant inserted a consultant, Janet Schmidt, into the chain of command between the Plaintiff and Dr. McPherson—without any notice to the Plaintiff. The Plaintiff was told by Dr. McPherson that Ms Schmidt was brought in to provide coaching and instruction to the Plaintiff on how to communicate with faculty and staff and to help draft and edit the Plaintiff's correspondence.

25. One of Ms Schmidt's critiques of the Plaintiff focused on the Plaintiff's preference for using formal titles. The Plaintiff explained that it was her view that titles, such as Professor and Director, set a tone for professionalism within the law school environment and were especially important for establishing respect for women and racialized and Indigenous people in positions of authority. Despite the Plaintiff's explanation for this preference, Ms Schmidt, a white woman who was not a lawyer or an academic, insisted that she did not

agree with titles, and thought it was better to adopt a more informal approach of using first names. This served to discredit the Plaintiff's leadership style and devalued her years of experience in various law schools and her status as a pathbreaking Indigenous legal scholar.

26. Ms Schmidt was later authorized by Dr McPherson to bypass the Plaintiff in responding directly to faculty and staff. This was not only demeaning to the Plaintiff, it undermined her authority and conveyed the message to others in the Faculty that the Defendant did not support her. This made it increasingly difficult for the Plaintiff to manage faculty members and staff.

27. In March 2017, the Defendant moved Scott McCormack, the University's ombudsperson, into the position of Interim Director of Student Services & Skills at the law school. This decision was made without consulting the Plaintiff and again served to undermine her authority.

28. After Mr. McCormack's transfer into this role, the Plaintiff would often be asked by the Defendant to seek Mr. McCormack's perspective on curriculum, faculty, and staffing, and to discuss all decision-making with him. She was frequently asked to share drafts of her correspondence with Mr. McCormack for his input. She was also aware of meetings that were held with Mr. McCormack where he was asked to report to Dr. McPherson and Dr. Barnett on the law school's operations, including the Plaintiff's performance in her role as Dean. This conveyed to the Plaintiff that the Defendant valued and respected Mr. McCormack's views, opinions, and experience above those of the Plaintiff.

29. The Plaintiff was upset by the Defendant's decisions to effectively subject her to regular oversight and monitoring. She had never been treated so disrespectfully in her entire professional career. The Plaintiff was distressed and began to reconsider her future with the Defendant. However, she felt that she had no option but to continue given that she had made such a significant decision to uproot her professional and family life and re-locate to a new city and country.

b. Failure to provide the Plaintiff with resources and support needed to carry out the Law School's mandate

30. The Defendant failed to provide appropriate resources to allow the Plaintiff to hire and retain a full complement of nine faculty members. This was a requirement of the law school's accreditation and the lack of a full complement placed stress on the Plaintiff and was a regular point of contention with the Federation of Law Societies of Canada.

31. The Plaintiff wanted to hire and retain a second Indigenous Law Scholar as a faculty member who could teach the Indigenous law curriculum. Despite the Defendant's advertisement and promotion of the Faculty of Law as providing a curriculum with an emphasis on Aboriginal law, this was not a priority for the Defendant.

32. During her employment, the Plaintiff prepared budget submissions for the University Executive Team, to be incorporated into the full budget submissions for the Defendant's Board of Governors. The budget amounts proposed by the Plaintiff would have allowed for the hiring of additional staff and faculty to deliver the law school curriculum. The Plaintiff had also sought funding to hire a law librarian, a position that the Federation of Law Societies had been asking the Faculty of Law to create to in order to meet accreditation requirements.

33. The Plaintiff's budget proposals were significantly edited and reduced by Dr. McPherson and then given back to the Plaintiff to submit. This effectively stripped the Plaintiff of any authority over preparing independent budget proposals for consideration by the Defendant's Senior Executive Team.

34. The revisions to the Plaintiff's budget proposals formed part of the Defendant's systematic under-resourcing of the Faculty of Law. The Bora Laskin Faculty of Law generated significant revenues for the Defendant through the

higher tuition of law students and the related grants from the provincial government. Yet the Faculty of Law's approved budget only represented approximately 65% of the school's revenues. Dr McPherson advised the Plaintiff that the law school did not deserve any more funds because it was receiving a pro rata per student share of the Defendant's overall revenues. The Plaintiff challenged this position and explained that the JD is a professional degree with external regulatory and accreditation requirements, and the Faculty of Law necessarily required more funds than undergraduate bachelor of arts faculties. Although the Defendant had very little experience with law schools or JD programs, Dr McPherson did not agree or respect the Plaintiff's years of experience in other academic institutions with law schools.

35. The Defendant's previous Dean of Law had also complained that the Faculty of Law was under-funded and did not have adequate resources.

36. The under-resourcing created enormous strain on the Plaintiff as she was continually forced to do less with more.

37. The Plaintiff also wanted the Defendant to implement cultural competency training, which would have been consistent with the law school's mandate and its advertisement of the program as culturally supportive and welcoming to Aboriginal law students and faculty. The Defendant repeatedly refused this request.

38. As a result of a shortage of permanent faculty members, the Plaintiff was required to step in to teach courses on top of performing her regular duties as Dean. The Plaintiff was required to teach courses during every semester except for her first semester in the Fall of 2016. This increased workload impacted the Plaintiff's health and well-being and made it more difficult for the Plaintiff to carry out her decanal responsibilities.

c. Differential pay

39. Several months after her arrival, the Plaintiff learned that the Law Faculty's Founding Dean—a white man—had received a base salary of \$219,500 per annum, \$9,500 more than the Plaintiff's annual salary in this position.

40. When the Plaintiff learned about this differential treatment in pay, she felt devalued as a woman and an Indigenous scholar.

41. After raising this salary discrepancy with the Defendant in October 2017, the Plaintiff's salary was ultimately adjusted retroactive to August 1, 2017 to match that of her predecessor. The Plaintiff did not receive any retroactive compensation for the period between May 1, 2016 and July 31, 2017.

d. Hostile work environment and reverse-discrimination allegations

42. Within the first few months of assuming her new position as Dean of the Faculty of Law, the Plaintiff encountered open hostility and resentment from a small segment of the faculty, staff, and students. She was given the impression that she was not deserving of the position of Dean and was not hired on merit.

43. By micromanaging the Plaintiff and undermining her authority in the ways described further above, the Defendant made it even more difficult for her to command the respect of her faculty and staff.

44. One staff member who was particularly unwelcoming towards the Plaintiff on her arrival was the Office Administrator of the Lakehead University Community Legal Clinic, Amanda Trevisanutto. During the Plaintiff's encounters with Ms Trevisanutto, she often found her behaviour to be unprofessional and disrespectful. On one occasion, Ms Trevisanutto declared that she felt she did not have to listen to the Plaintiff, as she did not consider the Plaintiff to be her boss.

45. The Plaintiff decided not to renew Ms Trevisanutto's contract and to terminate her employment without cause on June 28, 2016.

46. In November 2016, Ms Trevisanutto filed an application to the Human Rights Tribunal of Ontario, naming both the Plaintiff and Defendant as respondents. In it, Ms Trevisanutto alleged that the Plaintiff and Defendant had discriminated against her based on race, sex and age as a young white woman. In particular, Ms Trevisanutto alleged that the Plaintiff displayed a dismissive attitude towards her and decided to terminate her employment because she did not have an Aboriginal background. In support of this allegation, Ms Trevisanutto pointed to the fact that the Plaintiff had gone to great lengths to attract and retain Aboriginal faculty, staff and students and had sought to retain employees with cultural competency.

47. Similar allegations of discrimination were made against the Plaintiff by another staff member, Annet Maurer, following her departure from the law school in December 2016. In a civil action commenced by Ms Maurer against the University in February 2017, she took issue with the Plaintiff's management style and alleged that the Plaintiff had discriminated against her based on her status as a white woman. She asserted that discrimination could be inferred based on certain factors, including the fact that the Plaintiff had published academic articles describing oppression she had experienced and that the Plaintiff had expressed her support for an Indigenous-focussed law school.

48. The Defendant failed to meaningfully consult with the Plaintiff in contesting these allegations of discrimination from staff members. The Defendant also did not take active steps in the law school to counter the resentment and hostile attitudes towards the Plaintiff and her appointment as Dean.

49. Although the Plaintiff was not named personally in Ms Maurer's claim, the Plaintiff pleads that she ought to have received consultation and support from the Defendant regarding the allegations against her. No meaningful consultation or support was provided. The Defendant settled the case with Ms Maurer without consulting with the Plaintiff, which was not only disrespectful, it undermined her professionally as a lawyer and the chief executive of the law school.

50. For Ms Trevsianutto's claim, the Defendant retained legal counsel to represent both the Plaintiff and the University. However, the Defendant gave unilateral instructions to legal counsel and failed to consult with or seek instructions from her at critical stages during the application process. In particular, the Defendant and its counsel failed to consult with or seek instructions from the Plaintiff prior to preparing and filing the respondents' documents and will-say statements in January 2018. In fact, the Plaintiff has never seen the will-say statement which the Defendant prepared and purportedly filed on her behalf with the Human Rights Tribunal of Ontario. The Defendant's conduct in this regard damaged the relationship of confidence and trust with the Plaintiff and forced her to retain her own independent legal counsel.

51. The Defendant settled Ms Trevsianutto's human rights claim without consulting the Plaintiff as an individual respondent to the case, or as the chief executive of the Faculty where Ms Trevsianutto had worked. This was demeaning to the Plaintiff and the Defendant would not have treated another Dean that way.

e. Lack of support with managing faculty

52. In the Fall of 2017, two particular faculty members, Frances Chapman and Daniel Dylan, became uncooperative and openly defiant of the Plaintiff's authority as Dean.

53. Dr. Chapman refused to meet with the Plaintiff starting in or around September 2017, even though the Plaintiff was her direct supervisor. When Dr. McPherson was made aware of this issue, she failed to support the Plaintiff in her efforts to engage Dr. Chapman in an appropriate manner.

54. Professor Dylan was also openly hostile towards and uncooperative with the Plaintiff during Faculty meetings. Dr. McPherson and the Acting Provost, Dean Barnett, were made aware of this situation, but failed to allow the Plaintiff to address the behaviour in an appropriate manner.

55. In November 2017, the Plaintiff sought permission from both Dr. McPherson and Dr. Barnett to send an email to faculty members attempting to de-escalate tensions prior to the December 2017 Faculty Council meeting. She was initially denied permission to do so, but was later allowed to send an edited version of this email after further emails and telephone calls expressing her extreme distress.

56. In November 2017, the Plaintiff had asked the then President and Vice-Chancellor for a culturally relevant Indigenous mediation process to allow her to voice her sense of powerlessness and to address the discriminatory behaviour she had been experiencing within the Law Faculty. This request was denied.

57. On a number of occasions, the Plaintiff also made requests for the Defendant to implement cultural competency/interaction training to improve the environment within the Law School. She emphasized that such training was necessary to address ongoing tensions within the law school and to respond to the Truth and Reconciliation Commission's Call to Action No. 28. These requests were all denied.

58. Tensions with faculty members came to a head for the Plaintiff during the Faculty Council meeting that she attended on January 25, 2018. In this

meeting, several faculty members challenged the creation of an Operations Advisor position and the fact that Mr. McCormack was going to be placed in this role. Even though this was a decision that had been made by Dr. McPherson, the Plaintiff was the one who was verbally attacked for it. This meeting ended with one of the faculty members, Mr. Daniel, yelling at the Plaintiff and storming out.

59. Following this Faculty Council meeting, the Plaintiff was very upset. The Acting Provost was shocked by the conduct of Mr Daniel and agreed his conduct was inappropriate. The Plaintiff advised the Acting Provost that the work environment was having a significant impact on her health and well-being and that she was going to be starting counselling as a result. She took the following day off as a sick day.

60. On January 29, 2018, the Plaintiff followed up with the Acting Provost by email to emphasize her concerns about the work environment again. She explained that she continued to face severe stress and anxiety and was having trouble sleeping. She noted that she had been dealing with a hostile work environment for months and had not received adequate support from the Defendant in dealing with this situation. She indicated that she was waiting for the Defendant's response and wanted to know what options she had to ensure a safe and healthy work environment going forward.

61. Unfortunately, no appropriate response or support from the Defendant was forthcoming. The Plaintiff later learned that the Acting Provost had carried on communications directly with Mr. Daniel without consulting the Plaintiff. The Plaintiff asked to review the communications between the Acting Provost and Mr. Daniel but this was denied. The Plaintiff was Mr Daniel's direct supervisor, yet she was cut out of the loop on these communications, further undermining her authority and respect within the Faculty of Law, and putting her at a disadvantage when dealing with Mr Daniel.

62. The stress of this ongoing situation continued to impact on the Plaintiff's health, requiring her to take several days off for medical reasons and then go down to a four day per week modified schedule starting at the end of February 2018.

CONSTRUCTIVE DISMISSAL

63. The Defendant's ongoing micro-management, failure to provide the Plaintiff with the tools, resources and support needed to succeed in her role, and failure to address the hostile work environment ultimately led to the complete deterioration of the working relationship.

64. As a result of the Defendant's actions (and inactions), the Plaintiff was forced to leave her employment with the Defendant on April 30, 2018.

65. The Plaintiff's employment contract included an implied term that she would be treated with civility, decency, respect, and dignity. The Plaintiff pleads that the Defendant's conduct, as described above, breached this term.

66. The Plaintiff pleads that a reasonable person in her circumstances would have found the Defendant's cumulative conduct to be untenable and to demonstrate that it no longer intended to be bound by the employment contract.

DAMAGES

a. Salary & benefits for remainder of term as Dean

67. As a result of the constructive dismissal, the Plaintiff claims damages equivalent to the salary and benefits that she would have continued to receive for the remainder of her term as Dean, from July 1, 2018 (the last day that she was paid by the Defendant) until June 30, 2021, in accordance with her Employment Contract.

68. The Plaintiff pleads that these damages for loss of income as Dean are not subject to mitigation due to the fixed term nature of the contract. In the alternative, the Plaintiff pleads that the damages for loss of income as Dean are not subject to mitigation for the duration of the 12-month notice period in section 10.02 of the Employment Contract.

69. The Plaintiff would have earned a base salary of approximately \$658,500 and benefits, inclusive of pension and pension growth, valued at approximately \$166,050 during the thirty-six (36) months remaining on her contract as Dean.

b. Loss of Dean's salary for an additional 5-year term

70. Had she not been constructively dismissed, there was a reasonable possibility that the Plaintiff's contract as Dean would have been renewed for a second term. She had intended to stay on for two terms when she accepted the position, and she communicated this intention to the Defendant at the time of hire.

71. The Plaintiff seeks damages for the lost opportunity to have her Dean's contract renewed for an additional five-year term. Had her contract been renewed, the Plaintiff would have earned \$21,500 more per year than the salary for a full tenured Professor, for a period of five years. The Plaintiff claims that damages for this lost opportunity, after applying a contingency reduction of 20% for the possibility that this contract might not have been renewed, are \$86,000.

c. Loss of future salary & benefits as tenured Professor, to age 71

72. Following the expiration of the Plaintiff's term as Dean (and, if her contract had not been renewed for another term), the Plaintiff would have been entitled, pursuant to section 9 of the Employment Contract, to assume a

position as a tenured full Professor in the Faculty of Law and a member of the Lakehead University Faculty Association (“LUFA”) bargaining unit.

73. The Plaintiff would have enjoyed substantial job security as a tenured full Professor in the LUFA bargaining unit. She would have been entitled to hold this position until her retirement, subject only to termination for cause in accordance with the provisions of the collective agreement.

74. The average age of retirement for professors in Canada is 71.

75. In accordance with terms of her contract, the Plaintiff’s salary as a Professor would have been paid at the ceiling of the salary range. Under the current collective agreement, that annual salary is \$198,000.

76. The Plaintiff claims damages equivalent to the future salary and benefits that she would have earned as a tenured full Professor in the Faculty of Law from July 1, 2012 to her expected retirement at age 71, less any mitigation income earned during this period. The Plaintiff claims that these damages, after mitigation and contingencies for future mitigation, are approximately \$915,000.

d. Moral and aggravated damages

77. The Plaintiff pleads that Defendant breached its duty to act in good faith and to deal with her fairly by following a course of conduct that rendered the Plaintiff’s ongoing employment untenable and demonstrated that the Defendant no longer intended to be bound by the Employment Contract.

78. In particular, the Defendant acted in bad faith by micro-managing the Plaintiff, unduly monitoring and scrutinizing her role as Dean, repeatedly undermining her authority, and failing to take meaningful action to address the hostile work environment. The Defendant was also aware that it was not providing sufficient resources to the Faculty of Law to maintain the required

complement of full-time faculty, causing the Plaintiff to assume a completely unreasonable workload.

79. By at least January 2018, the Defendant was aware that these circumstances were causing the Plaintiff to experience mental and emotional distress, yet it failed to take any reasonable steps to address the situation. The Defendant's bad faith treatment was also deeply humiliating and professionally embarrassing to the Plaintiff and has caused a significant setback in her career.

80. The Defendant's micro-managing, regular monitoring and constant oversight reflected a paternalistic and even colonial attitude towards the Plaintiff and conveyed the message to her and others that perhaps she was hired for reasons other than her abilities, experience and reputation as a scholar and academic leader. Making decisions without consulting the Plaintiff was not only professionally disrespectful, it was culturally insensitive to an Indigenous person whose cultural practices valued and attached significance to dialogue and consensual decision-making. This treatment harmed the Plaintiff's dignity as an Indigenous person and an individual who was highly regarded and respected in the academic world.

81. The Plaintiff seeks moral and aggravated damages in the amount of \$200,000.

e. Punitive damages

82. The Defendant publicized the Plaintiff's appointment as Dean to promote the Defendant's purported commitment to Indigenous law and Indigenous communities. The Defendant advertised the fact that it had appointed Canada's first Indigenous law Dean.

83. The Plaintiff was invited to speak at numerous events and conferences across the country, including giving keynote speeches at conferences for the Indigenous Bar Association, Council of Canadian Law Deans and the Advocates Society. The high level of interest in the Plaintiff's appointment was also

leveraged into media exposure, including television and radio interviews and opinion pieces in the *Globe and Mail*. The Defendant's philanthropy office took advantage of the Plaintiff's profile by featuring her at numerous events for university donors.

84. The Defendant benefitted from the publicity surrounding the Plaintiff's appointment through national exposure, heightened credibility with Aboriginal communities, and increased Aboriginal student enrolment. But the Defendant never gave the Plaintiff the authority or respect that her position as Dean entailed, and failed to address the discriminatory work environment through cultural competency training or other proactive measures. This failure to act was completely inconsistent with the Defendant's public pronouncements of being culturally supportive of Indigenous people at the law school.

85. Together, these actions and inactions were outrageous and exploited the Plaintiff and her Indigenous background. A significant award of punitive damages is required to punish the Defendant for its misrepresentations to the Plaintiff and the broader Aboriginal community.

86. The Plaintiff seeks punitive damages in the amount of \$500,000.

BREACH OF THE *HUMAN RIGHTS CODE*

87. The treatment experienced by the Plaintiff during her employment with the Defendant constitutes discrimination based on intersectional grounds of race, colour, ancestry and sex, contrary to section 5 of the Ontario *Human Rights Code*.

88. The Plaintiff pleads that:

- a. She is a woman of Indigenous ancestry.
- b. She was subject to adverse treatment in the form of:

- i. micro-aggressions and hostility demonstrated towards her by staff, faculty, and students, which the Defendant refused to take appropriate steps to prevent and address;
 - ii. ongoing micro-management and questioning of her judgement, abilities, and leadership style;
 - iii. not receiving meaningful representation in responding to Ms Trevisanutto's human rights application, and being forced to retain legal counsel of her own; and
 - iv. receiving a lower salary than that of her non-Indigenous male predecessor for the same role.
- c. Her race and sex were a factor in this adverse treatment, given that it differed from the Defendant's treatment of her predecessors and other employees who did not share the Plaintiff's *Code*-protected characteristics.

89. The individual discrimination experienced by the Plaintiff formed part of a pattern of broader systemic discrimination within the law school against Indigenous Peoples. The Defendant's failure to take steps to address and eradicate this systemic discrimination exacerbated the Plaintiff's experience of discrimination and the resulting harm to her dignity, feelings, and self-respect.

90. As a result of the discrimination experienced while working for the Defendant, the Plaintiff experienced emotional distress, anxiety, and fatigue.

91. The Plaintiff seeks damages in the amount of \$75,000 under section 46.1 of the *Code* for harm to her dignity, feelings, and self-respect.

92. The Plaintiff seeks damages in the amount of \$61,000 under section 46.1 of the *Code* as compensation for legal costs that she incurred in hiring her own legal counsel to respond to Ms Trevisanutto's human rights application. She pleads that she would not have incurred these costs, but for the discrimination she experienced. She further pleads that she entitled to reimbursement of these costs, pursuant to the Defendant's Indemnification policy.

93. The Plaintiff also seeks damages in the amount of \$11,083 under section 46.1 of the *Code* as compensation for the salary that she should have earned between May 1, 2016 and July 31, 2017, but for the discrimination she experienced.

94. Thunder Bay would be the natural venue for this action. However, given the close relationship and connections between the Defendant and the judiciary in the Northwest Region, the Plaintiff proposes that this action be tried at the City of Ottawa.

Dated this 15th day of November, 2018.

Paul Champ, LSUC #45305K
Christine Johnson, LSUC #622261

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ANGELIQUE EAGLEWOMAN

-and -

Court File No.

LAKEHEAD UNIVERSITY

Plaintiff

Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

STATEMENT OF CLAIM

CHAMP & ASSOCIATES

Equity Chambers
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