

DRAFT # 1

Court File No.:

ONTARIO
SUPERIOR COURT OF JUSTICE
(at Welland)

B E T W E E N:

NIAGARA PENINSULA CONSERVATION AUTHORITY
and CARMEN D'ANGELO

Plaintiffs

-and-

ED SMITH

Defendant

AMENDED STATEMENT OF CLAIM

TO: THE DEFENDANT

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff(s). 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(s) or, where the plaintiff(s) do(es) not have a lawyer, serve it on the plaintiff(s), and file it, with proof of service, in this court office, **WITHIN TWENTY DAYS** after this statement 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 FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

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: December , 2016

Issued by _____
Registrar

Address of Court Office:
102 East Main Street
Welland, Ontario
L3B 3W6

TO: **ED SMITH**
140 Dalhousie Avenue
St. Catharines, Ontario
L2N 4X4

**THIS ACTION IS BROUGHT UNDER THE SIMPLIFIED PROCEDURE
PURSUANT TO RULE 76 OF THE RULES OF CIVIL PROCEDURE**

CLAIM

1. The Plaintiffs each claim against the Defendant:
 - a) general damages for defamation and / or malicious falsehood in the amount of \$75,000.00;
 - b) aggravated and /or punitive damages in the amount of \$25,000.00;
 - c) prejudgment and postjudgment interest pursuant to the *Courts of Justice Act*, R.S.O. 1990, c.C. 43, as amended;
 - d) costs of this action on the substantial indemnity scale, plus H.S.T.;
 - e) Such further and other relief as this Honourable Court may deem just and proper.

2. The Plaintiff, Niagara Peninsula Conservation Authority (“the NPCA”), was established in 1959 under the *Conservation Authorities Act*. The NPCA’s mandate is to implement programs for the conservation, restoration, development and management of natural resources in the Niagara region. The NPCA manages over 2,870 hectares of sensitive natural areas, including 39 designated Conservation Areas offering recreational and education opportunities for people in Niagara. The head office of the NPCA is located in Welland, Ontario.

3. The NPCA is a registered charitable organization. The NPCA raises funds through its own charitable foundation from individuals, corporate sponsors and service clubs for restoration projects, education, Conservation Area enhancements and community events. The NPCA's reputation and goodwill in the community is of paramount importance to the conduct of its affairs in general and its fund-raising efforts in particular.
4. The Plaintiff, Carmen D'Angelo ("Mr. D'Angelo"), is an individual who was employed by the NPCA as Chief Administrative Officer at the time of publication of the statements complained of as described below. Mr. D'Angelo also operates a consulting business under the registered business name, "D'Angelo Performance Management".
5. The Defendant, Ed Smith, is an individual who resides in the Niagara Region.
6. In or about October 2016, the Defendant began to publically distribute, by email and other means, a written report entitled, "*A Call For Accountability at the Niagara Peninsula Conservation Authority*" ("the Report"). The Defendant continues to publish the Report and to speak about it at public meetings and in media interviews.
7. The Report is unsigned and does not identify the individual or individuals who wrote it.
8. The Plaintiffs state that the Defendant, either alone or with others, wrote, edited and / or approved the Report.

9. The Report contains the following statements of and concerning the NPCA and Mr. D'Angelo on pages 3 and 5, and in particular concerning a contract that the NPCA entered into with Mr. D'Angelo's consulting business:

"In October 2013, the current CAO of the NPCA (Carmen D'Angelo) was a sitting Board member representing Hamilton.

According to the minutes of the Board meeting of Nov. 20, 2013, Carmen requested a four month 'leave of absence' from the Board, effective October 17, 2013 to February 17, 2014 in order to complete the 'HR restructuring' project as per the NPCA Strategic Plan (ref A)".

Mr. D'Angelo was awarded an untendered, unsolicited contract in the name of his company, DPM Consulting for which he was paid \$41,000.00. (ref B) . . .

External to his work at the NPCA, Carmen D'Angelo heads a consulting company called DPM Consulting (ref I), the same company that was awarded the \$41,000.00 HR restructure work.

In a request with Service Ontario to verify the registration of DPM with the government they returned no match from their database (ref J).

The online site "Zoom info" lists Carmen D'Angelo as the 'head' of DPM. An Australian address is given for this company and the Australian Business Registry shows DPM earning \$17.5 million AUD in annual revenues (ref K). . . .

If DPM Consulting is not an Ontario registered business is it legal for it to operate here?

If DPM Consulting is a foreign registered company is the government agencies contracting with them aware?

Is HST paid to the CRA? Was HST paid to Carmen D'Angelo and not remitted to the government?"

10. The Report includes as an Exhibit a business Profile of Mr. D'Angelo purportedly printed from the website of an internet business known as "Zoom Info". The Profile describes Mr. D'Angelo as the "Head" of an Australian company known as DPM Consulting, with clients in Australia and around the world.
11. The Plaintiffs plead that this Zoom Info Profile of Mr. D'Angelo is a forgery.
12. Mr. D'Angelo did not create this Profile or post it on the Zoom Info website. He was not aware of the existence of this Profile until receiving a copy of the Report. He does not have, and has never had, any affiliation to this Australian company. His consulting business is not registered in Australia. Rather, his consulting business is registered with the Ontario provincial government under the business name "D'Angelo Performance Management".
13. The Plaintiffs plead that the forged Profile of Mr. D'Angelo was created by the Defendant, or by others with his knowledge, to incite public controversy and ill-will towards Mr. D'Angelo and the NPCA. The Defendant knew that the Profile was forged at the time of publication of the Report.
14. The Plaintiffs state that, when read in conjunction with the forged Profile of Mr. D'Angelo, the statements from the Report as set out above in their plain and ordinary meaning, including their express and implied meanings, meant and were understood to mean:
 - a) Mr. D'Angelo's consulting business is not properly registered in Ontario. Instead, he operates his consulting business through a foreign company registered in Australia;

- b) there is good reason to believe that Mr. D'Angelo operates his business illegally in Ontario, and/or that he is evading the payment of H.S.T. on monies paid to him by the NPCA;
- c) the NPCA entered into a contract with Mr. D'Angelo's questionable foreign company, without regard to whether his company operates legally and / or whether he is evading the payment of H.S.T. on monies paid to him by the NPCA.

15. These statements and meanings are false and defamatory of Mr. D'Angelo and the NPCA.

16. The Report also contains the following statements of and concerning the NPCA and Mr. D'Angelo on pages 5 and 8. These statements are made under the headings, "DPM Consulting (Carmen D'Angelo's company)" and "\$50,000 Untendered contract: CSM /VMC":

"In September 2015, DPM was hired by the Niagara Regional Police (NRP) Services Board to conduct an NRP public survey (ref I). . . .

Carmen D'Angelo presented an unsolicited proposal for the NRP survey via Regional Councillor Andy Petrowski. As a result he is awarded a contract from NRP in excess of \$40,000.00. A few months earlier (May 15, 2015) Councillor Petrowski's company (CSM /VMC) presented an unsolicited proposal to the NPCA (which Mr. D'Angelo heads) and was awarded a contract in excess of \$50,000.00 (ref L). . . .

Does this pass the test for conflict of interest? Arm's length? Is it legal? . . .

In May 2015, the NPCA received an unsolicited proposal from Cornerstone Sponsorship Management (CSM) 'to raise funds for the NPCA' (ref L).

The cost to engage CSM for their contract was more than \$50,000.00 and in accordance with the NPCA tender policy (ref Q) a tender was required. This never happened, a contract was awarded sole source to CSM (ref L). . . .

The NPCA awarded a large untendered contract to a company with direct ties to a Regional Councillor: does this pass the conflict of interest / arm's length test?"

17. These statements in their plain and ordinary meaning, including their express and implied meanings, meant and were understood to mean:

- a) the NPCA and Mr. D'Angelo circumvented proper tendering procedures in awarding a contract to a company with direct ties to Regional Councillor Petrowski. In exchange, Regional Councillor Petrowski used his position with the Niagara Regional Police Services Board to award a contract to Mr. D'Angelo's consulting business;
- b) in this regard, the NPCA and Mr. D'Angelo improperly exchanged political favours with Regional Councillor Petrowski;
- c) in this regard, the NPCA and Mr. D'Angelo have engaged in corruption and / or have committed fraud.

18. These statements and meanings are false and defamatory of Mr. D'Angelo and the NPCA.

19. Further, on or about October 27, 2016 and October 28, 2016, the Defendant exchanged a series of e-mails with Brian Heit, who is a Regional Councillor for the Regional Municipality of Niagara. The subject matter of this e-mail exchange was an upcoming meeting of Regional Council to vote on the

possible hiring of Mr. D'Angelo as the new Chief Administrative Officer of the Regional Municipality of Niagara.

20. As part of this exchange, the Defendant sent an e-mail to Mr. Heit on October 28, 2016 at 12:11 a.m. of and concerning Mr. D'Angelo. The objective of this e-mail was to interfere with Mr. D'Angelo's prospects of being hired by the Regional Municipality of Niagara. This e-mail stated as follows:

"what if you were to find out that he is the subject of a police investigation . . . Is that enough for you guys to make a reasonable case to at least defer this?"

21. Mr. Heit responded to the Defendant with an e-mail on October 28, 2016 at 12:34 a.m. to the effect that if members of Regional Council were to learn that Mr. D'Angelo was the subject of a police investigation, it could be enough to harm his prospects of getting the job or could at least defer the decision on his hiring.

22. The Defendant then sent an e-mail to Mr. Heit of and concerning Mr. D'Angelo on October 28, 2016 at 6:46 a.m. stating that the Report has been provided to the Police, and the Police believe that Mr. D'Angelo and others at the NPCA have engaged in corruption and have committed fraud. This e-mail states in part as follows:

"I have sent my entire report to 2 police departments... Tuesday last week I sent it to Peel Police Fraud squad . . . [the police officer] got back to me with the fact that if I was filing a complaint with his dept and I was presenting these documents they would definitely be investigating, he said there is fraud here and there is corruption here and it has to do with our elected officials and that can be especially bad, he encouraged me to take it to NRP . . . On Wednesday last week I took it to the fraud squad of NRP . . . they have the document now . . . but they told me that they would not even be able to look at it for two days and that I

should not expect to hear anything back from them before Monday next week. I don't know what they will decide."

23. The statements by the Defendant to Mr. Heit in the above e-mails in their plain and ordinary meaning, including their express and implied meanings, meant and were understood to mean:
- a) Mr. D'Angelo is the subject of an ongoing police investigation;
 - b) Mr. D'Angelo and the NPCA have engaged in corruption and / or committed fraud;
 - c) A police officer in the Fraud Unit of the Peel Regional Police has read the Report and has determined that Mr. D'Angelo and the NPCA have engaged in corruption and committed fraud;
 - d) Mr. D'Angelo and Board members and staff at the NPCA have committed a criminal offence.
24. These statements and meanings are false and defamatory of Mr. D'Angelo and the NPCA.
25. The Defendant requested and authorized that Mr. Heit re-publish the information contained in the Defendant's e-mails to members of Regional Council with the predominant motive of harming Mr. D'Angelo's prospects of being hired as the new Chief Administrative Officer of the Regional Municipality of Niagara.
26. Mr. Heit re-published the information provided by the Defendant in an e-mail

to members of Regional Council on October 29, 2016 at 4:30 p.m.. This e-mail referenced the Report published by the Defendant and stated in part as follows:

“The following information has come to my attention which is disturbing and I feel compelled to request a delay in appointing a new CAO.

A 45 page report has been compiled and is in the hands of the Standard, The Globe and Mail, a Niagara Reporter and is being reviewed by the Fraud Department of the NRP to see whether charges are in order. . . .

There are allegations of Conflict of Interest & or Fraud by members of the Board of the NPCA, Councillors, staff and the current CAO of the NPCA. . . .

Before Council make a costly, damaging and embarrassing mistake, I believe it is in the Regions Best Interests to hold off making [sic] a decision on an individual that I shouldn't even know you are recommending on Monday. . . .

Regards

Regional Councillor

Brain Heit’

27. Notwithstanding these e-mails, the vote of Regional Council proceeded as scheduled, and Mr. D’Angelo was offered and accepted the position as Chief Administrative Officer with the Regional Municipality of Niagara in November 2016. He resigned from his position as Chief Administrative Officer of the NPCA to accept this position.
28. The statements complained of as set out above were calculated to disparage the NPCA in the conduct of its affairs and undertaking and to injure its reputation and goodwill in the community.

29. The statements complained of were calculated to disparage Mr. D'Angelo in respect of his profession, calling, trade or business, and to injure his reputation and goodwill in the community.

30. The publication of the statements complained of by the Defendant was malicious and done with the intent to injure the Plaintiffs by reason of the facts alleged above and the following facts:

- a) the Defendant published the statements knowing that they were false or with reckless disregard to their truth or falsity;
- b) the Defendant published the Report knowing it contained a forged Profile of Mr. D'Angelo, or alternatively without taking any steps to confirm the accuracy of the Profile;
- c) the Defendant continued to distribute the Report even after being advised by the NPCA through its legal counsel that it contains a forged document;
- d) after being advised that the Report contains false statements and a forged document, the Defendant made public statements to the effect that the Report is accurate, thereby reinforcing the defamatory statements and legitimacy of the forged document contained therein;
- e) the Defendant included a forged document in the Report with the specific objective of inciting public controversy and ill-will toward the Plaintiffs;

- f) the Defendant made the statements complained of with the deliberate intent to cause harm to Mr. D'Angelo, including his employment prospects with the Regional Municipality of Niagara;
- g) the statements complained of impute the commission of a criminal offence by Mr. D'Angelo and Board members and staff of the NPCA.

31. The Plaintiffs state that due to the publication of the statements complained of, their reputations and goodwill have been injured and they have been brought into scandal, ridicule, hatred and contempt in the eyes of the readers of the Report.

32. For the reasons described above, the Plaintiffs plead that the Defendant acted in a high-handed, arrogant, deceitful, vindictive and malicious manner in publishing the statements complained of giving rise to an award of aggravated and punitive damages. The Plaintiffs rely on the particulars of malice in support of this claim.

33. The Plaintiffs plead and rely on the provisions of the *Libel and Slander Act*, R.S.O. 1990, c.L.12, as amended.

The Plaintiffs propose that the trial in this action be heard in the City of Welland.

DATE: December , 2016

BRODERICK & PARTNERS LLP.

Barristers & Solicitors

P.O. Box 897

Niagara Falls, Ontario

L2E 6V6

Phone: (905) 356-2621

Fax: (905) 356-6904

ROBERT BURNS (LSUC 35795B)

Lawyer for the Plaintiffs herein