

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

BETWEEN:

**JEAN-MARIE DIXON**

Moving Party/Plaintiff

- and -

**HER MAJESTY THE QUEEN IN RIGHT OF ONTARIO, and  
ASSOCIATION OF LAW OFFICERS OF THE CROWN**

Respondents/Defendants

**FACTUM OF THE MOVING PARTY  
JEAN-MARIE DIXON**

**PART I — OVERVIEW OF SUBMISSIONS**

1. Jean-Marie Dixon seeks orders against the defendants, Her Majesty the Queen in right of Ontario (“Crown” or “Ontario Government”) and the Association of Law Officers of the Crown (“ALOC”) relating to her pay and benefits; advanced costs and/or funding of her civil action; the Court’s appointment of competent counsel for Ms. Dixon; and a declaration and/or order that Crown, its employees, agents, servants, and representatives shall forthwith cease and desist from subjecting Ms. Dixon to anti-Black racism, including discriminatory and harassing conduct.<sup>1</sup>

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<sup>1</sup> Notice of Motion, Motion Record at Tab 1

## PART II – THE FACTS

### A. Background

2. Ms. Dixon is 53 years old. She is a dark-skinned Black female. Ms. Dixon has always been a sole support parent, and is the primary income provider for herself, her son, and their two dogs.<sup>2</sup>

3. Ms. Dixon commenced her legal career, with the Ontario Public Service (“OPS”), in 2002. Since then, Ms. Dixon has been subjected to anti-Black racism, anti-Black animus, misogynior, racial discrimination and racial harassment, since joining the OPS.<sup>3</sup>

4. Ms. Dixon is a member of the Association of Law Officers of the Crown (“ALOC”), a defendant in the herein civil proceeding. ALOC has retained the law firm, Goldblatt Partners (Goldblatt) to represent ALOC and its members on all grievance matters, irrespective of the subject matter or issue. Goldblatt also represents ALOC on the herein civil proceeding.<sup>4</sup>

5. Ms. Dixon has been without employment income since April 2019 and is impecunious. Despite the Crown, its counsel Lenczner Slaght, and the judge who presided on her September 2019, motion for the reinstatement of her pay and benefits asserting that if she returned to work at the Ontario Human Rights Commission (“OHRC”), her employment income and benefits would be reinstated, when she returned as instructed to do, and physically attended at the OHRC, the Crown barred her from the workplace and refused to reinstate her pay.<sup>5</sup>

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<sup>2</sup> Affidavit of Jean-Marie Dixon affirmed May 13, 2022 [“**Dixon Affidavit**”] at para 2, Tab 2 of the Motion Record at p 14

<sup>3</sup> Dixon Affidavit at paras 1, 3-5, 21-37, 40-44, 50-54, 57-58, 60-80, 114-123, 129-150, Motion Record at pp 14-15, 19-27, 30-36, 45-50, 52-58, Exhibits A, E-J, S-Y, EE-OO, UU-AAA at pp 98, 109-110, 112-137, 212-417, 525-272, 972-1020

Affidavit of Angela Oh sworn May 20, 2022 [“**Oh Affidavit**”] at Tab 1 of the Crown’s Responding Motion Record [“**RMR**”], Exhibit C at pp 165-366

<sup>4</sup> Dixon Affidavit at para 4, Motion Record at pp 15

<sup>5</sup> Dixon Affidavit at paras 7-9, 42-44, Motion Record at pp 16-17, 26-27, Exhibits G and H at pp 123-124, 126-137

6. Ms. Dixon submits that there is an inequitable power, resource, and financial imbalance between her and the defendants in their favour; that her claims as set out in the Statement of Claim issued February 25, 2019, which commenced the herein proceeding, raise serious issues to be tried; and that the Crown and ALOC continue to subject her to anti-Black racism, including tortious conduct, while coddling, protecting and defending OPS employees and management, and gaslighting Ms. Dixon's lived experiences of being subjected to racial abuse based on the intersectionality of her race, colour, ancestry, sex, and perceived/real disability.

7. Ms. Dixon asserts that her experiences of being subjected to racism, white supremacy, tortious conduct, racial discrimination and harassment, and violence are not unique to her, and that these atrocities, are commonplace, systemic, and entrenched in the OPS (and society at large) against racialized staff and management, particularly, Black women.

## **B. Income and Expenses**

8. In December 2015, based on her pay as a CC3 Crown counsel, which was to increase for several more years based on her year of call and the tariff for ALOC lawyers, Ms. Dixon purchased her dream home.<sup>6</sup>

9. Ms. Dixon's new home was perfect for her in terms of its layout and in terms of its location. She grew up in a small, all white town, and despite moving to Toronto in 1995, this was the first time in her life that she would be living in a racially and socioeconomically diverse area, which pleased her immensely.<sup>7</sup>

10. As Ms. Dixon does not have employment income, she can no longer afford the

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<sup>6</sup> Dixon Affidavit at para 151, Motion Record at p 59

<sup>7</sup> Dixon Affidavit at para 152, Motion Record at p 59

necessities of life for herself and her family:<sup>8</sup>

- a) Ms. Dixon has no RRSPs.
- b) Despite biweekly mortgage payments of approximately \$5,000 per month, Ms. Dixon now owes about \$1,190,000.00, on her home residence due to having refinanced her mortgage three times.
- c) As of April 13, 2022, Ms. Dixon owes \$22,339.48 in outstanding property taxes on her home residence.
- d) The mortgage owing on Ms. Dixon's rental property is \$342,541.30.
- e) As of March 7, 2022, Ms. Dixon owed \$6,111.06 in outstanding property taxes on her rental property.
- f) Ms. Dixon has had to borrow money from friends to meet financial obligations.
- g) Ms. Dixon has had to place purchases on her credit cards and withdraw cash from her line of credit/credit cards to meet her financial obligations.
- h) Ms. Dixon owes approximately \$25,000 on her personal line of credit.
- i) Ms. Dixon owes approximately \$46,717.90 on her credit cards.
- j) Ms. Dixon had to sell stocks, she planned to own indefinitely until their value increased significantly, to pay for the necessities of life.
- k) In 2019, Ms. Dixon had to skip two home mortgage payments (the maximum allowable) to not default on her home/primary mortgage.
- l) In 2022, Ms. Dixon had to skip two home mortgage payments (the maximum allowable) to not default on my home/primary mortgage.
- m) In 2022, Ms. Dixon applied to TD Visa for interest payment relief and was given a three-month forbearance.
- n) Ms. Dixon presently receives \$8,318.80 in disability income.
- o) Ms. Dixon's living expenses per month are approximately \$13,889.57.
- p) Ms. Dixon's living expenses exceed her income by over \$5,000 per month.
- q) Ms. Dixon owes approximately \$158,488.58 more on her home than she did when she purchased it six years ago.

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<sup>8</sup> Dixon Affidavit at para 159, Motion Record at pp 60-62, Exhibit DDD at pp 1075-1091

r) Ms. Dixon's abusers continue to receive their full pay and salary increases.

11. Ms. Dixon's forced reliance on credit has kept her in a cycle of subsistence living, wherein, significant amounts of her fixed disability income is going to pay of perpetually compounding interest. For example, on Ms. Dixon's TD Visa card, in 2021, she was making payments on average of \$1,900 per month, with no dent in the \$20,000 balance owed.<sup>9</sup>

12. Ms. Dixon's Equifax credit score has fallen from an excellent rating of 773 in 2018, to a fair rating of 623 in 2022.<sup>10</sup> Ms. Dixon's credit score will continue to fall as she can no longer sustain paying the ever-increasing interest accruing on her credit cards and line of credit.<sup>11</sup> Further, interest rates and inflation are rising, which will further negatively impact Ms. Dixon's ability to pay for the necessities of life and pay her debts.<sup>12</sup>

13. The Crown will drag on litigation against Ms. Dixon for years. For example, in the case of *McKinnon v. Ontario (Ministry of Correctional Services)*<sup>13</sup> a matter before the Human Rights Tribunal of Ontario ("HRTO"), Michael Kinnon who was subjected to twenty-three-year battle with the Crown, wherein it demonstrated a flagrant disregard and contempt for him, his family and HRTO's orders.<sup>14</sup> Accordingly, based on this the above and their delay regarding her grievances, it is anticipated that the Crown (and ALOC) will have Ms. Dixon's matter drag on for years.

### **Legal Representation as a Black Woman**

14. Finding legal representation as a Black woman, to address the anti-Black racism and

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<sup>9</sup> Dixon Affidavit at para 163, Motion Record at p 63

<sup>10</sup> Dixon Affidavit at para 164, Motion Record at p 63, Exhibit FFF at pp 1105-1115

<sup>11</sup> Dixon Affidavit at para 165, Motion Record at p 64

<sup>12</sup> Dixon Affidavit at para 167, Motion Record at p 64

<sup>13</sup> *McKinnon v. Ontario (Ministry of Correctional Services)* 2011 HRTO 263 (CanLII)

<sup>14</sup> Dixon Affidavit at paras 168-169, Motion Record at pp 64-65, Exhibit GGG at pp 1117-1121

misogynoir the defendants have subjected Ms. Dixon to has not been fruitful.<sup>15</sup>

15. Based on Ms. Dixon's lived experiences; communications she has had with other Black people, her own observations of their experiences and that of other Black people; and reading of Canadian caselaw; and her assessment of social science research and articles, Ms. Dixon verily believes that structural and individual anti-Black racism, and white supremacy — which include keeping Black people, unemployed or underemployed, and diverting money from the necessities of life/savings to fight anti-Black racism — have resulted in her (and other Black people) not being able to retain and afford competent, knowledgeable, effective, and zealous counsel to represent her.<sup>16</sup>

16. For example, on December 1, 2020, federal Black employees filed a class action lawsuit in the Federal Court of Canada. The lawsuit is seeking to address systemic racism and discrimination in the Public Service of Canada and is seeking general pecuniary and non-pecuniary damages in the amount of \$2.5 billion. Because of the incredible cost of funding this type of litigation, a GoFundMe Account was established to raise money for the class action. Due to racism, the Black community has limited disposable income, and thus are not able to finance ordinary, let alone expensive litigation. Accordingly, while the GoFundMe Account was originally seeking to raise a sizable portion of the cost of the litigation, the amount was reduced to a paltry \$100,000. Distressingly, as of March 6, 2022, the GoFundMe Account has only raised \$11,078, and \$11,979 as of May 12, 2022.<sup>17</sup>

17. Aside from class actions, general litigation is very costly. For example, the Government of Ontario, i.e., taxpayers, are “facing a \$3.4 million legal tab” in the second

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<sup>15</sup> Dixon Affidavit at para 170, Motion Record at p 65

<sup>16</sup> Dixon Affidavit at para 171, Motion Record at p 65

<sup>17</sup> Dixon Affidavit at para 172, Motion Record at pp 65-70, Exhibit HHH at p 1123

failed disciplinary case against judge Donald McLeod over his advocacy work on behalf of Black Canadians.” Moreover, the \$3.4 million does not include the full costs of the other separate proceeding that the Ontario Judicial Council brought against Justice McLeod.<sup>18</sup>

18. The public inquiry into the Red Hill Valley Parkway is another example of the prohibitive cost of legal and quasi-legal proceedings. The City of Hamilton has retained Lenczner Slaght to represent them. An online article about the inquiry indicates that the costs, which was, initially estimated to be \$7 million, is now, based on costs incurred since December 2021, expected to be somewhere between \$18 million and \$20 million; and that of the \$13 million plus that has accrued thus far, \$12 million of this amount is going to lawyers.<sup>19</sup>

### **Experiences with Lawyers**

19. Finding counsel who will take on a case involving anti-Black racism has proven to be a difficult, painful, and unproductive experience: at times after having gone into a lengthy and triggering retelling of her experience of being subjected to anti-Black, counsel would advise Ms. Dixon that they cannot assist her; other times, having just provided her name, Ms. Dixon was informed there was a conflict of interest. Over the years, Ms. Dixon has encountered ambivalence, anger, fear, disinterest, and abuse, even from well-known, esteemed, and respected human rights counsel/law firms regarding her workplace experiences and her legal proceedings.<sup>20</sup>

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<sup>18</sup> Dixon Affidavit at para 173, Motion Record at p 66, Exhibit III at pp 1125-1127: Toronto Star article, entitled, *Ontario faces \$3.4 million bill in second failed prosecution of Black judge over his Black advocacy* dated July 29, 2021, and Mayor Patrick Brown’s letter to the Attorney General, Doug Downey, dated July 30, 2021, denouncing the proceeding against Justice McLeod.

<sup>19</sup> Dixon Affidavit at para 174, Motion Record at pp 66-67, Exhibit JJJ at pp 1129-1130: article regarding the public inquiry into the Red Hill Valley Parkway, entitled, *Costs of Red Hill Judicial Inquiry Continue to Mount* dated April 6, 2022.

<sup>20</sup> Dixon Affidavit at paras 176-187, Motion Record at pp 67-74

## **C. Necessity of Funding**

### **Public Interest**

20. Ms. Dixon's matter raises issues of national importance that the courts have not yet addressed:

- a) The right of non-unionized Black and racialized employees to access the courts when the state has violated their common law and *Charter* rights.
- b) The right of non-unionized and unionized Black employees and employees belonging to other oppressed and marginalized groups to access the courts when other forums for accessing justice, such as internal workplace systems and processes, and external labour and human rights systems and processes have been ineffective in upholding their right to be free from discrimination and harassment, and their right to security of the person; and
- c) Whether collective agreements get their force from labour and employment statutes or from the act of a group of employees who by operation of law are prohibited from unionizing, coming together under the umbrella of a corporation they call an "association" and then entering into an employment agreement with an employer, as if they are a certified trade union.<sup>21</sup>

### **Significance**

21. Ms. Dixon's matter is of great significance as it will shape and advance the law and jurisprudence on anti-Black racism and misogynoir in the civil law context; as well as tort, human rights, and employment/labour law as they apply to these issues.<sup>22</sup>

22. The timing of Ms. Dixon's matter is also significant — The United Nations has deemed

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<sup>21</sup> Dixon Affidavit at paras 188-196, Motion Record at pp 74-77

<sup>22</sup> Dixon Affidavit at para 197, Motion Record at p 77



2015 to 2024 the “International Decade for People of African Descent (African Decade). In proclaiming this African Decade, the international community is recognizing “that people of African descent represent a distinct group whose human rights must be promoted and protected” and that states should ensure access to justice and the right to development.<sup>23</sup>

23. In February 2017, the Ontario government formally recognized the African Decade, thereby committing to combat racism, racial discrimination, xenophobia, and related intolerance that affect people of African descent.<sup>24</sup>

### **Merit and Anticipated Impact**

24. Ms. Dixon’s matter is a meritorious case, of public importance, and is likely to impact the lives of many people, as it relates to Black and racialized lawyers, as well as employees from other marginalized, vulnerable and oppressed groups who are prohibited per the provisions of the *Labour Relations Act, 1995* (“*Labour Relations Act*”) from unionizing, but belong to associations that are governed by a collective agreement between an employer and an association, wherein they have no standing.<sup>25</sup>

25. Ms. Dixon’s matter is likely to clarify the Supreme Court of Canada’s decision in *Weber v. Hydro*<sup>26</sup> as it applies to lawyers and other workers whom by operation of law are prohibited from unionizing; address the Ontario Court of Appeal’s decisions in *Rivers v. Waterloo Regional Police Services Board*<sup>27</sup>; and clarify the issue of bifurcated proceedings that arise from lawyers and other similarly situated employees, who are prohibited from

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<sup>23</sup> Dixon Affidavit at para 198, Motion Record at pp 77-80, Exhibit LLL at pp 1134-1145: copy of the United Nations General Assembly, *Programme of activities for the implementation of the International Decade for People of African Descent* dated December 1, 2014.

<sup>24</sup> Dixon Affidavit at para 199, Motion Record at p 80, Exhibit MMM at p 1147: copy of the Ontario government’s News Release entitled, *Ontario Recognizing the United Nations’ Decade for People of African Descent* dated February 21, 2017.

<sup>25</sup> Dixon Affidavit at paras 200-201, 203-206, Motion Record at pp 81-82

<sup>26</sup> *Weber v. Hydro* [1995] 2 SCR 929

<sup>27</sup> *Rivers v. Waterloo Regional Police Services Board*, 2019 ONCA 267 (CanLII)

unionizing, being required to use different forums to address the actionable conduct of their association and their employer.<sup>28</sup>

### **Quality**

26. Ms. Dixon's position that the Crown, ALOC and their respective employees/members, servants, and legal representatives have subjected her to anti-Black racism and adverse differential treatment is supported by plentiful demonstrative evidence.<sup>29</sup> The timing of Ms. Dixon's case, and her personal and societal location provide an opportunity for the advancement of anti-Black racism jurisprudence, equity, and racial justice, thus making her matter an ideal case for advanced costs, and/or funding.<sup>30</sup>

27. Moreover, given the legitimately held fear Black lawyers and other racialized employees hold about their colleagues and managers subjecting them to reprisal for raising issues of racism/white supremacy in their workplaces/spaces, it is unlikely that there is anyone better placed to bring the issues raised by Ms. Dixon's matter forward.<sup>31</sup> Ms. Dixon's matter is well-situated to advance the case of anti-Black racism, racism in general, ableism, and misogynoir to the potential benefit of Black, Indigenous, and People of Colour, and other individuals who have been subjected to abuse in their workplace based on their immutable and *Charter/Code* protected characteristic(s).<sup>32</sup>

### **Equal Standing with Canada's Best Law Firm/Lawyers**

28. Ms. Dixon needs to be able to retain dependable, competent, and results driven counsel who are not afraid of litigating against the Crown and ALOC and their respective counsel. As well, it is necessary for Ms. Dixon to be able to afford counsel who will not expect

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<sup>28</sup> Dixon Affidavit at para 202, Motion Record at p 81

<sup>29</sup> Dixon Affidavit at para 207, Motion Record at p 82

<sup>30</sup> Dixon Affidavit at para 208, Motion Record at pp 82-83

<sup>31</sup> Dixon Affidavit at para 209, Motion Record at p 83

<sup>32</sup> Dixon Affidavit at para 210, Motion Record at p 83

her to do the legal work or provide substandard work, and who will act as a buffer between her and the defendants and their respective counsel.

29. The Crown and ALOC have retained influential, powerful, and leading litigation and employment/labour law firms to represent them on Ms. Dixon's matter — Lenczner Slaght and Goldblatt. Together the defendants have a total of six lawyers (publicly) representing them (though there is likely more lawyers working behind the scenes).

30. Ms. Dixon's matter is of utmost importance to the Crown hence it has retained outside counsel, Lenczner Slaght, to represent it on her civil action — a firm “widely recognized as Canada's leading litigation practice.” A firm that has “successfully represented clients' interests in some of the most complex, high-profile cases in Canadian legal history.” A law firm that “focuses exclusively on litigation and advocacy... [and that has] extensive courtroom experience.” A law firm housed with “expert litigators”.<sup>33</sup>

31. Likewise, Ms. Dixon's matter is of utmost importance to ALOC, as evidenced in its actions since the commencement of her civil action.<sup>34</sup>

#### **D. Unsuccessful Attempts at Securing Funding**

32. Ms. Dixon has unsuccessfully attempted to secure sources of funding and support from various organizations, including specialty companies/third-party plaintiff financing organizations who finance litigation upfront in return for a percentage of any future damage amounts awarded, as well as from federal and provincial government funding programs.<sup>35</sup>

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<sup>33</sup> Dixon Affidavit at paras 211-225, Motion Record at pp 83-88, Exhibit NNN at pp 1149-1156: copy of Tom Curry's online Lenczner Slaght Profile; Exhibit OOO at pp1158-1161: copy of the Lenczner Slaght's online information about the firm, entitled, “*Why would you want Lenczner Slaght on your side?*” and the firm's recent posting for an EDI Manager

<sup>34</sup> Dixon Affidavit at paras 226-230, Motion Record pp 88-91, Exhibit PPP at pp 1163-1169: copy of Goldblatt's online information about the law firm and its research group.

<sup>35</sup> Dixon Affidavit at paras 232-234, Motion Record at pp 91-95, Exhibit QQQ at pp 1171-1193: copy of Ms. Dixon and Ms. Nelson's *Application for Test Case Funding* submitted to Legal Aid Ontario in 2019; Exhibit RRR at pp

## PART III – ISSUES

33. There are six issues on this Motion:
- i. Does this Court have jurisdiction to order advanced costs?
  - ii. Does Ms. Dixon's matter meet the tests for advanced costs?
  - iii. Is it appropriate for this Court to order advanced costs against the Crown, or ALOC or both defendants?
  - iv. Is it appropriate for this Court to make an order that the Crown reinstate Ms. Dixon's pay and benefits retroactive to September 24, 2019?
  - v. Is it appropriate for this Court to make an order that ALOC make ongoing payments to Ms. Dixon's in lieu of her terminated employment income retroactive to September 24, 2019?
  - vi. Is it appropriate for this Court to appoint Counsel to represent Ms. Dixon in her civil proceeding?

## PART III – LAW AND ARGUMENT

### **E. Issue I: Does the Court have jurisdiction to order advanced costs?**

34. Canadian courts' discretion to order advanced costs, also referred to as interim costs, is inherent in the nature of equitable jurisdiction as to costs.

35. In Ontario, the courts' jurisdiction to order advanced costs as been expressly set out in the *Ontario Courts of Justice Act*.<sup>36</sup>

36. Accordingly, this Court has jurisdiction to order advanced costs against both the Crown and ALOC.

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1195-1210: copy of Ms. Dixon and Ms. Nelson's Application for funding under the Canadian government's *Court Challenges Program*

<sup>36</sup> *Ontario Courts of Justice Act*, R.S.O. 1990, c. C.43 at ss. 96, 131(1)

## F. Issue II: Does Ms. Dixon’s matter meet the test for advanced costs?

37. Advanced costs may be made at an early stage of a proceeding to help fund the litigation of a party with few resources but a good case.

### Advanced Costs Test

38. In *British Columbia (Minister of Forest) v Okanagan Indian Band* (“*Okanagan*”)<sup>37</sup> and *Little Sisters Book and Art Emporium v Canada (Commission of Customs and Revenue)* (“*Little Sisters*”)<sup>38</sup>, the Supreme Court of Canada established a three-part test for advanced costs. The party seeking the order must demonstrate that:

- i. They are unable to fund the litigation (impecuniosity);
- ii. The claim to be adjudicated is *prima facie* meritorious; and
- iii. Their matter involves issues of public importance.<sup>39</sup>

39. Further, in *Okanagan*, the Court held that “[c]oncerns about access to justice and the desirability of mitigating severe inequality between litigants also feature prominently in the rare cases where interim costs are awarded. An award of costs of this nature forestalls the danger of a meritorious legal argument will be prevented from going forward merely because a party lacks financial resources to proceed.”<sup>40</sup>

### Impecuniosity and Public Interest Litigants

40. On March 18, 2022, in *Anderson v Alberta* (“*Anderson*”)<sup>41</sup>, a matter regarding a First Nations government seeking advanced costs from the governments of Alberta and Canada, the Supreme Court of Canada referencing *Okanagan* and *Little Sisters*, reiterated the three-

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<sup>37</sup> *British Columbia (Minister of Forest) v. Okanagan Indian Band* [*Okanagan*], 2003 SCC 71

<sup>38</sup> *Little Sisters Book and Art Emporium v. Canada (Commission of Customs and Revenue)* [*Little Sisters*], 2007 SCC 2 (CanLII), [2007] 1 SCR 38

<sup>39</sup> *Okanagan* at para 40 and *Little Sisters* at para 37

<sup>40</sup> *Okanagan* at para 31

<sup>41</sup> *Anderson v. Alberta*, 2022 SCC 6 (CanLII)

part test for advanced costs, and articulated new “impecuniosity” criteria for awarding such costs to public interest litigants seeking to have “litigation funded by the public purse.”<sup>42</sup>

41. The Court quoting from *Okanagan* and *Little Sisters* noted that in cases where an applicant is seeking to have their litigation funded by the public purse, courts must be mindful of the constraints of their institutional role [which] confine a court’s discretion to grant such an award to narrow circumstances, and that such costs must be a “last resort” reserved for the “rare and exceptional” wherein refraining from awarding advance costs would be to “participate in an injustice” against both the litigant and the public.<sup>43</sup>

42. Advanced costs are intended to give a public interest litigant the basic assistance necessary for the litigation to proceed. Underlying policy considerations include access to justice where a party is seeking a ruling respecting their constitutional rights and other issues of broad public significance, or a member of a vulnerable and historically oppressed group seeks access to the courts in a case of public importance but lacks the financial resources to proceed.<sup>44</sup>

43. Importantly, the Court expressed that an applicant can still satisfy the impecuniosity requirement for an advanced costs to fund litigation even where they have access to some financial resources, noting that the impecuniosity part of the test should be considered from the perspective of the applicant and its governing priorities; that it may be impecunious if its resources ought to be directed to other “pressing needs”; and that “pressing needs are not defined by the bare necessities of life.” The Court held that in appropriate cases, “a First Nation government may succeed in demonstrating impecuniosity despite having access to

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<sup>42</sup> The impecuniosity analysis only applies to the Crown where advanced costs award would be funded from the public purse; and not ALOC where advanced costs would be funded from membership association dues.

<sup>43</sup> *Anderson* at paras 19, 23

<sup>44</sup> *Anderson* at para 23

resources whose value equals or exceeds its litigation costs.”<sup>45</sup>

44. Further, the Court asserted that “judicial notice may be taken of the systemic and background factors affecting Indigenous peoples in Canadian society.” Quoting from its decision in *R. v. Ipeelee*<sup>46</sup>, the Court reaffirmed that courts:

must take judicial notice of such matters as the history of colonialism, displacement, and residential schools and how that history continues to translate into lower educational attainment, lower incomes, higher unemployment, higher rates of substance abuse and suicide, and of course higher levels of incarceration for Aboriginal peoples.<sup>47</sup>

45. The Court noted that in the context of the impecuniosity analysis “pressing needs” connotes necessity and is to be considered from the perspective of the applicant, who sets their own priorities and is best suited to identify their needs.<sup>48</sup>

46. Noteworthy, the Court asserted that an applicant genuinely cannot afford to pay for the litigation where, it cannot meet its pressing needs while also funding the litigation<sup>49</sup>; that “pressing needs” includes expenditures on housing, utilities, food, healthcare, etc.,<sup>50</sup>; and that in assessing “pressing needs” courts may have regard to what the applicant has prioritized in the past.<sup>51</sup>

### **Impecuniosity Analysis**

47. The Court then set out a new four-part analysis for determining whether a public interest applicant meets the threshold of “impecuniosity”:

- i. Identify the applicant’s pressing needs;

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<sup>45</sup> *Anderson* at para 4

<sup>46</sup> *R. v. Ipeelee*, 2012 SCC 13, [2012] 1 S.C.R. 433, at para 60

<sup>47</sup> *Anderson* at para 36

<sup>48</sup> *Anderson* at paras 38-40

<sup>49</sup> *Anderson* at para 40

<sup>50</sup> *Anderson* at paras 44, 56

<sup>51</sup> *Anderson* at para 44

- ii. Determine what resources are required to meet those needs;
- iii. Assess the applicant's financial resources; and
- iv. Identify the estimated costs of funding the litigation.<sup>52</sup>

48. Importantly, the Court noted that “[i]t follows from our jurisprudence that in some cases a finding of impecuniosity can be made even where the applicant does not adduce detailed evidence, either because the applicant does not have any available financial resources, as in *Okanagan*, or because it is obvious that its financial resources would be outstripped by the nature and extent of its pressing needs as compared with its estimated litigation costs.”<sup>53</sup>

### **Applying the Advanced Costs Test / Impecuniosity Analysis to Ms. Dixon's Case**

49. Ms. Dixon's Affidavits and other court materials demonstrate that she meets the criteria set out in *Anderson* for advanced costs, namely:

- i. She is impecunious. She genuinely cannot afford to pay for the litigation, and no other realistic option exists for bringing the issues to trial — in short, the litigation will be unable to proceed if an advanced costs order is not made.
- ii. Her claim is *prima facie* meritorious. Her claim is of sufficient merit that it is contrary to the interests of justice for the opportunity to pursue the case to be forfeited just because she lacks financial means.
- iii. Her matter involves issues of public importance. That is, the issues raised in the litigation transcend her individual interests, are of public importance, and have not been resolved in previous cases.

### **Applying the “Impecuniosity” Analysis to Ms. Dixon's Circumstances**

50. Ms. Dixon's Affidavits and other court materials demonstrate that she meets the

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<sup>52</sup> *Anderson* at para 5

<sup>53</sup> *Anderson* at para 47



threshold for “impecuniosity” established in *Anderson*, namely:

- i. She has “pressing needs” for which her disability income in the amount of \$8,318.80 per month does not cover. Indeed, just her housing costs accounts for 82 percent of her disability income. Her “pressing needs” exceed \$14,076.65<sup>54</sup> per month, and include:
  - a. Mortgage payments in the amount of \$5,047.67 per month.
  - b. Property taxes in the amount of \$619.67 per month, which have not been for several years and are in arrears more than \$22,339.48.
  - c. Property insurance in the amount of \$207.09 per month.
  - d. Repairs and maintenance in the amount of \$167.00 per month.<sup>55</sup>
  - e. Utilities in the amount of \$742.34 per month.
  - f. Household expenses in the amount of \$1,971.53 per month.
  - g. Transportation expenses in the amount of \$633.95 per month.<sup>56</sup>
  - h. Health care in the amount of \$892.91 per month.<sup>57</sup>
  - i. Payments towards her credit cards, line of credit, and banking fees in the amount of \$3,388.55<sup>58</sup> per month.
  - j. Personal expenses in the amount of \$406.00 per month.<sup>59</sup>
  - k. Credit card debts in the amount of \$46,717.90.

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<sup>54</sup> In error, noted in Ms. Dixon’s Motion Record at p 1077, Exhibit DDD as \$13,889.57.

<sup>55</sup> This amount does not include items that Ms. Dixon has not been able to afford due to being impecunious, such as the installation of curtains/blinds, window and ceiling repairs, fencing, eavestrough cleaning, furniture, annual generator maintenance, tree trimming and lawn maintenance.

<sup>56</sup> Ms. Dixon’s Jeep is 19-years-old and has not been driveable/functioning since February 2022.

<sup>57</sup> This amount does not include psychologist appointments which Ms. Dixon was forced to end as she cannot afford to pay the \$225 per session.

<sup>58</sup> In error noted in Ms. Dixon’s Motion Record at p 1077, Exhibit DDD as \$3,201.47.

<sup>59</sup> These are actual monies paid in 2021, and do not reflect what Ms. Dixon past prioritizations or funds spent. For example, Ms. Dixon’s hair type requires regular care/treatment to retain its health, accordingly, in the past she would go to the hairdressers biweekly and spend approximately \$500 per month on her hair.

- I. Line of credit debt in the amount of \$25,143.20.
  - m. Mortgage on her home residence in the amount of \$1,190,277.49.<sup>60</sup>
  - n. Mortgage on rental property in the amount of \$342,541.30.
  - o. Property taxes owing on rental property in the amount of \$6,111.06.
  - p. Approximately \$25,000.00 on her personal line of credit.
  - q. In 2021, Ms. Dixon's monthly expenses totaled \$14,076.65.<sup>61</sup>
  - r. In 2021, Ms. Dixon has a monthly funds shortfall of \$5,757.85.<sup>62</sup>
  - s. In 2019 and 2022, Ms. Dixon was forced to skip two home mortgage payments (the maximum allowed) to not default on her mortgage.
  - t. In 2022, Ms. Dixon applied to TD Visa for interest payment relief and was given a three-month forbearance.
  - u. Her Equifax credit score has fallen from an excellent rating of 773 in 2018, to a fair rating of 623 in 2022.
- ii. Ms. Dixon's financial documents demonstrate that to meet her most basic "pressing needs", she needs \$14,076.65 per month, which is approximately \$6,000.00 more per month than she is currently receiving in disability payments.
  - iii. Ms. Dixon's materials establishes that she is genuinely impecunious and does not have the financial resources to even meet her "pressing needs", let alone fund costly and necessary litigation against the Crown and

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<sup>60</sup> Ms. Dixon's mortgage which totalled \$1,040,000.00 when she purchased her home December 2015, is \$1,190,277.49 as of March 2022.

<sup>61</sup> In error noted in Dixon Affidavit at para 159(p), Motion Record at pp 60, 1077, Exhibit DDD as \$13,889.57.

<sup>62</sup> In error noted in Ms. Dixon's Motion Record at p 1077, Exhibit DDD as \$5,570.77.

ALOC.<sup>63</sup> Indeed, the record before this Court demonstrates that:

- a. Ms. Dixon’s financial resources are “outstripped by the nature and extent of [her] pressing needs as compared with [her] estimated litigation costs” — her liabilities exceed her assets.<sup>64</sup>
- b. She has been in significant long-term debt.<sup>65</sup>
- c. She does not have any unrestricted revenue sources that can be used towards litigation.<sup>66</sup>
- d. Ms. Dixon attempts at securing resources/funding from individual members and organizations of the Black community (and others) were unsuccessful — as has been the experience of federal Black workers attempting to raises funds for their lawsuit against the government.<sup>67</sup>
- e. Requests for third-party plaintiff financing were unsuccessful.<sup>68</sup>
- f. Her application for funding under Legal Aid Ontario’s *Test Case Funding Program* and the federal government’s *Court Challenges Program* were unsuccessful.<sup>69</sup>
- g. The Crown and ALOC are providing significant support, legal representation, and financial resources to individuals who have subjected Ms. Dixon to vile and damaging anti-Black racism, racial abuse, and tortious conduct with no expectation that they contribute financially — which given the circumstances is highly discriminatory and abusive.<sup>70</sup>

iv. Based on the costs of other recent and current legal proceedings<sup>71</sup>; and

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<sup>63</sup> *Anderson* at para 48

Dixon Affidavit at paras 151-169, Motion Record at pp 59-66, Exhibits BBB, CCC, DDD, EEE, FFF, GGG, HHH at pp 1022-1068, 1070-1073, 1075-1087, 1093-1103, 1105-1115, 1117-1121, 1123

<sup>64</sup> Dixon Affidavit at paras 151, 153-154, 156, 157-159, Motion Record at pp 59-62, Exhibit DDD at pp 1075-1087

<sup>65</sup> Dixon Affidavit at paras 159-165, Motion Record at pp 61-64, Exhibits EEE and FFF at pp 1093-1103, 1105-1115

<sup>66</sup> Dixon Affidavit at para 159(0), Motion Record at p 62

<sup>67</sup> *Anderson* at para 50

Dixon Affidavit at paras 232, 233(b)(c)(d)

<sup>68</sup> Dixon Affidavit at para 173, 233(a), Motion Record at pp 66, 91, Exhibit HHH at pp 1123

<sup>69</sup> Dixon Affidavit at para 233(g)(h), Motion Record at pp 91-92, Exhibits QQQ at pp 1171-1193, 1195-1210

<sup>70</sup> *Anderson* at paras 5, 21, 23, 28, 41

<sup>71</sup> Dixon Affidavit at paras 168-169, Motion Record at pp 64-65, Exhibit GGG at pp 1117-1121

with regards to the circumstances of Ms. Dixon's matter: the issues, namely, anti-Black racism, misogynoir, and white supremacy<sup>72</sup>; the firms and number of lawyers representing the Crown and ALOC against Ms. Dixon<sup>73</sup>; the Crown's and ALOC's historical conduct regarding proceedings involving anti-Black/Indigenous racism<sup>74</sup>; the disdain and defiance the Crown and ALOC have exhibited regarding the *Huggins Report*<sup>75</sup>, the *Third Party Review — Anti-Black Racism Final Report*<sup>76</sup>, the *Ontario Public Service Third Party Review of Inclusive Workplace Policies and Programs*<sup>77</sup> and the Crown's specious and reckless apology to Black employees<sup>78</sup>; the large number of witnesses; the voluminous materials, the requirement for experts, and the numerous stages in the litigation (motions, discovery, trial etc.) that the litigation is likely to take years to complete and exceed \$5 million in cost.<sup>79</sup>

**G. Issue III: Is it appropriate to order advanced costs against the defendants?**

51. It is submitted that it is appropriate to award advanced costs against Ms. Dixon's employer, the Crown, and her association, ALOC.

52. The *Labour Relations Act* applies to "trade unions", which are defined as "an

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<sup>72</sup> Dixon Affidavit at paras 2-150, 235, Motion Record at pp 14-58, 96, Exhibits A-AAA at pp 98-1020

<sup>73</sup> Dixon Affidavit at paras 211-231, Motion Record at pp 83-91, Exhibits NNN, OOO, PPP at pp 1147-1156, 1158-1161, 1163-1169

<sup>74</sup> Dixon Affidavit at paras 45-65, 76-80, 115-116, 124, 127-128, 168-169, Motion Record at pp 64-65, Exhibits K-BB, FF-HH, PP-TT, GGG at pp 152-488, 529-541, 586-970, 1117-1121

Oh Affidavit at paras 4, 8-9, 28, 32-34, 80, 81, 83, 98-100, Motion Record at pp 2-9, 20, 23-24, Exhibits D-H, NN, VV at pp 378-764, 927-930, 950

Dixon Suppl Affidavit at para 3(i)(m)(n)(o), SMR at pp 4-7, Exhibits A, C, D at pp 17-18, 26-28, 30-116

<sup>75</sup> Dixon Affidavit at paras 108-110, Motion Record at pp 43-44, Exhibit DD

<sup>76</sup> Dixon Affidavit at para 127, Motion Record at p 51, Exhibit RR at pp 597-771

<sup>77</sup> Dixon Affidavit at para 127, Motion Record at p 51, Exhibit SS at pp 774-946

<sup>78</sup> Dixon Affidavit at para 127, Motion Record at p 51, Exhibit QQ at p 593-594

<sup>79</sup> Dixon Affidavit at paras 168-169, 174, Motion Record at pp 64-65, 67, Exhibits GGG, III, JJJ at pp 1117-1121, 1125-1127, 1129-1130

organization of employees formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national, or international trade union, a certified council of trade unions and a designated or certified employee bargaining agency”. The Act defines a “collective agreement” as an agreement in writing between an employer or an employer’s organization, on one hand, and a trade union that...containing provisions respecting terms or conditions of the employment or the rights, privileges or duties of the employer...[and] the trade union or the employees.”

53. Ms. Dixon’s matter presents novel issues that have not previously been heard by the courts — whether ALOC being a corporation and is not a trade union<sup>80</sup> under the *Labour Relations Act*, and thus not certified by the Ontario Labour Relations Board, this Court is a proper forum for the adjudication of Ms. Dixon’s complaints? Of importance, the *Labour Relations Act* specifically excludes persons deemed to exercise managerial functions and members of the architectural, dental, land surveying, legal or medical profession from being deemed to be an employee. As such, Ms. Dixon asserts that her matter is properly before this Court; however, the Crown asserts otherwise. Accordingly, granting advanced costs to Ms. Dixon will allow her to respond to the Crown’s *Weber* motion, and is likely to resolve the issue of whether labour law and/or employment law governs lawyers and other professionals whom by operation of the *Labour Relations Act* are foreclosed from unionizing.

### **The Crown**

54. In responding to Ms. Dixon’s Motion, the Crown has not submitted any evidence regarding its current finances, its historical and ongoing expenditure of public funds in litigating against Ms. Dixon in these proceedings, her Human Rights Applications, the three outstanding Grievances, the WDHP and WVP investigations, or the retention of Faisal

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<sup>80</sup> *Labour Relations Act* at s 2

Bhabha to investigate her Twitter Account. Nonetheless, it is understood that the Ontario government has access to unlimited human and financial resources, which is funded by the public purse. Ms. Dixon's abusers, including OPS management have benefited from the use of public monies without any transparency or accountability to enable, perpetuate, gaslight, support, and defend racism against Ms. Dixon and other Black and racialized employees.

## **ALOC**

55. ALOC's Financial Statement dated June 30, 2021, indicates that it has \$788,017 in cash; \$1,103,885 in short term investments; \$2,036,946 in long term investments; \$1,785,843 in property and equipment; and \$2,500,000 to fund future potential litigation and bargaining.<sup>81</sup>

56. One of the purposes of ALOC collecting association dues from its members — which over the years Ms. Dixon has paid into — is to pay for potential litigation and bargaining. ALOC's Financial Statement indicates that unlike Ms. Dixon, it has sufficient readily available funds to meet its liquidity requirements, as well as money available to pay \$1,000,000 into court to fund Ms. Dixon's litigation.<sup>82</sup>

57. It is respectfully submitted, that for the Court to decline to exercise its discretion to award advanced costs in the case at bar, would not only be an injustice against Ms. Dixon personally, but also against the Black community and the public generally.

## **H. Issue IV: Should the Court order Ms. Dixon's pay and benefits be reinstated?**

### **Jurisdiction of this Court to Order the Reinstatement of Ms. Dixon's Pay and Benefits**

58. On September 13, 2019, the Crown, and its counsel, Lenczner Slaght made oral and

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<sup>81</sup> Dixon Suppl Affidavit at para 11, SMR at p 11, Exhibit M at pp 157-178

<sup>82</sup> Dixon Suppl Affidavit at para 11, SMR at p 11, Exhibit M at p 175

written submissions to Paul Schabas J. indicating that Ms. Dixon has many options available to her for the reinstatement of her pay and benefits, including returning to work. The stance of the Crown and Lenczner Slaght was reflected in Paul Schabas J.'s Endorsement dated September 23, 2019, wherein he held that Ms. Dixon's "motion fails because she has other avenues that should be followed to seek the relief she is asking of the Court."

59. Egregiously, when Ms. Dixon returned to work on September 24, 2019, the Crown refused to reinstate her pay and benefits, and on October 18, 2019, when she physically attended work at the OHRC, she was informed that she should not be there, and received a letter from Lawrence Helpert — the individual whom had been threatening her with discipline, including job abandonment if she did not return to work — indicating that she is "not medically fit to return to work...[and] will remain on an authorized unpaid leave of absence...".<sup>83</sup>

60. It is submitted that the Supreme Court of Canada's decision in *Weber* only applies to employees who are members of trade unions, and thus does not apply to Ms. Dixon. In the alternative, it is submitted that even if *Weber* applies to Ms. Dixon, pursuant to ss 1, 6(1)(2), 8, and 31 of the *Arbitration Act*<sup>84</sup> this Court is empowered to order the reinstatement of her pay and benefits.

61. Per s 101 of the *Courts of Justice Act*<sup>85</sup>, the Superior Court of Justice may grant an interlocutory injunction or mandatory order where it appears convenient to a judge of the court to be just or convenient to do so; and that such an order may include such terms as are considered just.

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<sup>83</sup> Dixon Affidavit at paras 136, 143-150, Motion Record at pp 53-58, Exhibits XX, AAA at pp 989-990, 1004-1020

<sup>84</sup> *Arbitration Act*, 1991, S.O. 1991, c. 17

<sup>85</sup> *Courts of Justice Act*, R.S.O. 1990, c. C.43 at s 101

## Injunction Test

62. In *RJR MacDonald Inc. v. Canada (Attorney General)* (“RJR MacDonald”)<sup>86</sup> the Supreme Court of Canada established a three-part test for granting an injunction:

- i. Is there a serious issue to be tried?
- ii. Will the moving party suffer irreparable harm if the interlocutory injunction is not granted?
- iii. Which party will suffer the greater harm from the granting or refusing of the remedy sought pending a decision on the merits?

63. In *Canadian Pacific Ltd. v. Brotherhood of Maintenance of Way Employees*<sup>87</sup>, the Supreme Court of Canada affirmed the residual jurisdiction of courts to grant relief not available under a statutory labour scheme. See also, *Gill v. McIntosh Limousine Services Ltd. et al.*<sup>88</sup> wherein Cameron J. asserts that notwithstanding that the applicants request for relief before the Ontario Labour Relations Board, which is currently hearing their request, that this Court has the jurisdiction to hear the applicants’ motion. See also, the O’Leary J. reasonings in *National Ballet of Canada v. Glasco* (ON SCDC)<sup>89</sup>; and Swinton J. reasonings in *National Ballet of Canada v. Glasco* (ON SC)<sup>90</sup>.

## Serious Issues to be Tried

64. This first branch of the injunction test is a low threshold. At this stage the court is making a preliminary assessment as to the merits. As set out by the Supreme Court of Canada in *R.J.R. MacDonald*: “Once satisfied that the application is neither vexatious nor

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<sup>86</sup> *RJR MacDonald Inc. v. Canada (Attorney General)*, [1994] 1SCR 311 (“RJR MacDonald”)

<sup>87</sup> *Canadian Pacific Ltd. v. Brotherhood of Maintenance of Way Employees*, [1996] 2SCR 495 at p 501

<sup>88</sup> *Gill v. McIntosh Limousine Services Ltd. et al.*, [2001] O.T.C. 401 (SupCt) at para 2

<sup>89</sup> *National Ballet of Canada v. Glasco* 2000 CanLII 2094 (ON SCDC)

<sup>90</sup> *National Ballet of Canada v. Glasco* 2000 CanLII 22385 (ON SC)



frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial.”<sup>91</sup>

65. Ms. Dixon’s court materials demonstrates that the relief she seeks is neither vexatious nor frivolous. Ms. Dixon seeks that her inalienable rights as a member of the human-race be respected and protected.

#### **Will Ms. Dixon Suffer Irreparable Harm if Her Income and Benefits are not Reinstated?**

66. At this stage of the test, the Court must determine whether Ms. Dixon will suffer irreparable harm if her motion for injunctive relief is refused. “Irreparable” harm refers to the nature of the harm suffered. Irreparable harm includes harm that cannot be quantified in monetary terms, and harm that cannot be cured.

67. The evidence as set out in Ms. Dixon’s materials establishes that Ms. Dixon will suffer irreparable harm if an order is not made for the reinstatement of her pay, and the continuation of her benefits pending the disposition of her legal proceedings on their merits.

68. Ms. Dixon is impecunious. However, in addition to financial ruin and homelessness, Ms. Dixon will suffer irreparable psychological and physical harm if her income and benefits are not reinstated. Ms. Dixon’s home is the place she plans to retire. It is a unique home, and a place of solitude from the racial abuse she experiences as a Black woman. If repossessed, it cannot be replaced. Ms. Dixon is in the twilight years of her profession, as such, she cannot afford to be in a situation where she cannot make ends meet.

#### **Who will Suffer the Greater Harm from the Granting or Refusing of an Injunction?**

69. At this stage of the test, the Court must decide whether Ms. Dixon or the Crown will

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<sup>91</sup> *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311

suffer more harm, respectively, from the denial or the granting of an injunction, and may also consider the harm that refusing an injunction might have on a third party, for example, Ms. Dixon's son.

70. Ms. Dixon does not have unlimited human or financial resources and is impecunious. Conversely, the Crown has access to unlimited human and financial resources. It can afford to litigate matters indefinitely.<sup>92</sup>

71. The Crown will suffer no hardship or inconvenience whatsoever if Ms. Dixon's pay and benefits are reinstated. Further, this is an appropriate relief, given that Ms. Dixon returned to work as it was indicated to her to do by the Crown, its counsel, Lenczner Slaght, and "judge" Paul Schabas for her to do for the reinstatement of her pay and benefits.

72. Additionally, the Crown should not be permitted to rely upon the results of its own misconduct to defeat the tenure of the law. For example, in *Pitawanakwat v. Canada*<sup>93</sup> the Federal Court of Canada held that a human rights tribunal erred in law in reinstating the Applicant to equivalent employment outside his province, and that the refusal to reinstate the Applicant to his original workplace was:

a way or means, however well intended, of enfeebling the proper impact of rights conferred by the *Canadian Human Rights Act*, on those such as the principal applicant, who have been discriminated against by removal from employment on a prohibited ground of discrimination.

73. It is respectfully submitted, given the circumstances of Ms. Dixon's case, and the record before this Court, to refrain from awarding advanced costs to Ms. Dixon would be to participate in an injustice against Ms. Dixon personally and the Black community generally.

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<sup>92</sup> Dixon Affidavit at paras 168-169, Motion Record at p 64-65, Exhibit GGG at pp 1117-1121

<sup>93</sup> *Pitawanakwat v. Canada* [1994] FCJ No. 552 at p 15

**I. Issue V: Should ALOC be ordered to make payments to Ms. Dixon in lieu of her pay?**

74. It is submitted that it is appropriate for this Court to make an order that ALOC make ongoing payments to Ms. Dixon's in lieu of her terminated employment income retroactive to September 24, 2019, when she returned to work.

75. As asserted by the Crown in its responding materials, "Ms. Dixon's employment relationship with the Crown is governed by the terms of a collective agreement between the Crown and [ALOC and it] is the exclusive bargaining agent for all civil counsel employed by the Crown."<sup>94</sup>

76. Ms. Dixon has asked ALOC on numerous times to bring a motion for the reinstatement/continuation of her pay and benefits, and ALOC has refused to do so — she has no power to compel ALOC to bring a motion or do anything else on her behalf; she has no standing to grieve the Crown's breach of the Collective Agreement or any of their misconduct against her, nor does Ms. Dixon have standing in the arbitration process/grievances to bring her request for any award before the arbitration adjudicator. The reality is that the Crown and ALOC have unfettered power over Ms. Dixon's claims and rights in all aspects of the grievance procedures/processes.

77. At all times, prior to and after the Crown terminated Ms. Dixon's pay and benefits, ALOC as the "exclusive bargaining agent for civil counsel employed by the Crown" had the ability to bring a motion within the arbitration/grievance process for the continuation and/or reinstate of her pay and benefits but did not, and has not done so. ALOC should not be rewarded for its racist and abusive conduct against Ms. Dixon. Accordingly, not only is it appropriate for this Court to order that ALOC make ongoing biweekly payments to Ms. Dixon

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<sup>94</sup> Oh Affidavit at paras 6, 10-11, RMR at pp 2-3

commencing September 24, 2019, to the conclusion of her legal matters, it is the just and equitable thing to do. It is respectfully submitted that to refrain from making such an order, would be to participate in an injustice.

**J. Issue VI: Should the Court Appoint Counsel to Represent Ms. Dixon?**

78. It is submitted that this Court should appoint Counsel to represent Ms. Dixon in these proceedings for the following reasons:

- i. This Court has jurisdiction to appoint representative counsel; and
- ii. It is appropriate to appoint Counsel in the circumstances of these proceedings.

**Jurisdiction of this Court to Appoint Counsel**

79. The “inherent jurisdiction of superior courts permits them to make orders necessary for the administration of justice and the maintenance of the rule of law and the Constitution. It included those residual powers required to permit the courts to fulfill the judicial function of administering justice according to law in a regular, orderly and effective manner.”<sup>95</sup>

80. In assessing whether it is appropriate to appoint Counsel, courts have also considered the following: (i) the vulnerability and resources of the individual or group sought to be represented; (ii) any social benefit to be derived from the representation of the individual or group; and (iii) the balance of convenience and fairness.<sup>96</sup>

81. Courts have established that the vulnerability and resources of the party that is proposed to be represented is an important factor that weighs in favour of the appointment of counsel.<sup>97</sup>

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<sup>95</sup> *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43 (CanLII), [2013] 3 SCR 3 at paras 21, 26

<sup>96</sup> *Canwest Publishing Inc. / Publications Canwest Inc.*, (“*Canwest Publishing*”) Re, 2010 ONSC 1328 at para 21

<sup>97</sup> *Canwest Publishing* at para 21

82. As set out in Ms. Dixon materials the issue of anti-Black racism and white supremacy in in the legal profession has made it impossible for her to retain competent counsel.

83. The appointment of Counsel on Ms. Dixon's case will make the litigation more efficient, and uphold access to justice for Ms. Dixon, Black OPS workers, the Black community, and other racialized/vulnerable groups.

#### **PART IV — ORDERS / DECLARATIONS REQUESTED**

84. Ms. Dixon requests the following:

- (i) An order that the defendant Crown pay into court \$4 million in advanced costs and/or for the funding of the plaintiff, Jean-Marie Dixon's civil lawsuit, including, responding to the Crown's Rule 21 motion to dismiss her action.
- (ii) An order that the defendant ALOC pay into court \$1 million in advanced costs and/or for the funding of the plaintiff's civil lawsuit, including, responding to the Crown's Rule 21 motion to dismiss Ms. Dixon's action.
- (iii) A declaration and/or order that the Crown or one of its servants forthwith pay Jean-Marie Dixon, all outstanding pay, ALOC arbitration awards/settlements, and merit increase amounts dating back to September 24, 2019, when Ms. Dixon returned to work at the OHRC.
- (iv) A declaration and/or order that the Crown or one of its servants forthwith reinstate Ms. Dixon's pay and benefits at the amount payable based on her year of call and in keeping with her merit awards history per her return to work at the OHRC on September 24, 2019, until the completion of her civil action, Grievances, and human rights proceedings.
- (v) In the alternative to paragraph (3), an order that ALOC forthwith provide to Ms. Dixon the amount equivalent to all outstanding pay, ALOC arbitration awards/settlements, and merit increase amounts dating back to her return to work at the OHRC on September 24, 2019.

- (vi) In the alternative to paragraph (4), an order that ALOC forthwith provide to Ms. Dixon, on a biweekly basis that reflects the OPS pay schedule, ongoing monies equivalent to what her biweekly pay would be based on her year of call and in keeping with her merit awards history per her return to work at the OHRC on September 24, 2019, until the completion of her civil action, Grievances, and human rights proceedings.
- (vii) An order appointing competent Counsel to represent Ms. Dixon, whom have knowledge of and competency in anti-Black racism, misogynoir, white supremacy, the operation of the OPS; an effective and established team of research, administrative, and support staff; and a demonstrated commitment to antiracism, particularly as it pertains to Black women/people; and have the capacity and wherewithal to take on and run a highly contentious lawsuit that has numerous witness, and voluminous materials.
- (viii) A declaration and/or order that the Crown, its employees, agents, servants, and representatives shall forthwith cease and desist from subjecting the plaintiff, Jean-Marie Dixon, to anti-Black racism, including discriminatory and harassing conduct.
- (ix) Such further and other relief as this Honourable Court determine just and permit.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED,**

July 5, 2022

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