

Court File No. CV-19-00629090-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

SHANAAZ GOKOOL

Plaintiff

- and -

DYING WITH DIGNITY CANADA

Defendant

STATEMENT OF DEFENCE

1. The Defendant admits the allegations contained in paragraphs 3 and 34 of the Plaintiff's Statement of Claim.
2. The Defendant has insufficient knowledge to either admit or deny the allegations contained in the first two sentences of paragraph 2 of the Plaintiff's Statement of Claim.
3. The Defendant denies all other allegations contained in the Plaintiff's Statement of Claim, and further denies that the Plaintiff is entitled to the relief claimed in paragraph 1 of the Statement of Claim.

The Parties

4. The Defendant, Dying with Dignity Canada ("DWDC"), is a not-for-profit organization incorporated pursuant to the laws of Canada. DWDC's head office is located in Toronto, Ontario.
5. DWDC is dedicated to improving quality of dying, protecting end-of-life rights, and helping Canadians avoid unwanted suffering. DWDC advocates in support of the constitutionally-protected right of Canadians to medical assistance in dying ("MAID"), provides personal support to persons seeking medical assistance in dying,

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educates Canadians about their end-of-life options and rights, and supports healthcare practitioners who assess for and provide medically assisted dying.

6. DWDC has grown in size and influence since its inception in 1980. DWDC's success as an organization is the result of the dedication, hard work, and sacrifice of its volunteers, staff, and board members, current and former.

7. DWDC's staff and board members come from diverse backgrounds and life experiences but share a common commitment to DWDC's mission and to the promotion of social justice more broadly. Many of DWDC's board members volunteer or act as board members for other social justice-oriented organizations, including the First Nations Health Authority, Canadian Doctors for Prevention of Gun Violence, the BC Civil Liberties Association, the Institute for Canadian Citizenship, Canadians for Choice, and the New Israel Fund.

8. The Plaintiff, Shanaaz Gokool, is a former employee of DWDC. Most recently the Plaintiff held the position of Chief Executive Officer ("CEO"). The Plaintiff's employment was terminated on a without cause basis effective July 23, 2019 in accordance with the express terms of her employment agreement for compelling business reasons.

9. DWDC strongly denies that it wrongfully dismissed, discriminated against, or acted improperly towards the Plaintiff.

The Plaintiff's Employment with DWDC

10. On June 14, 2014, the Plaintiff commenced employment with DWDC in the position of Chief Operating Officer ("COO"). The Plaintiff was hired by and reported directly to DWDC's then CEO, Wanda Morris. The Plaintiff received a base salary of \$67,000.00 annually.

11. The Plaintiff joined DWDC at a time of growth for the organization in terms of its membership, media presence, and public influence. However, DWDC's financial resources remained limited. DWDC is funded entirely by donations. As a result, for most

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of its history DWDC has operated on a limited budget and in a state of financial uncertainty. In 2014, DWDC had a small complement of paid staff and relied heavily on volunteers and hands-on contributions from board members.

12. In or around June 2014, Ms. Morris advised DWDC's board that she intended to resign her position in approximately one (1) year's time. As such, DWDC began searching for her successor.

13. In the course of the next year, two (2) significant events occurred that would shape the outlook of DWDC as an organization:

- (a) On January 16, 2015, the Canada Revenue Agency ("CRA") revoked DWDC's charitable status; and
- (b) On February 6, 2015, the Supreme Court of Canada released its decision in *Carter v. Canada (Attorney General)* ruling that the provisions of the *Criminal Code* prohibiting physician-assisted dying were unconstitutional. The Court suspended its declaration of invalidity for one (1) year to allow Parliament time to enact alternate legislation.

14. The implications of the Supreme Court's decision for MAID in Canada and for DWDC's outlook were positive. The *Criminal Code* prohibition against MAID had long been a barrier to DWDC's fundraising efforts. Many would-be donors were not prepared to give to the organization to the extent that MAID violated Canadian law. This obstacle to securing donations was now about to be removed. In addition, given DWDC's experience, knowledge, and public presence, the organization was well-positioned to be a leading advocate in the development of an alternate policy regime around MAID in Canada.

15. The loss of DWDC's charitable status, however, threatened the organization's already tenuous funding. In the months that followed the CRA's decision, DWDC developed a plan to address the issue. Given the rules at the time regarding political activities for charities and the need for DWDC to focus on advocacy work in the

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wake of *Carter v. Canada (Attorney General)*, DWDC chose not to appeal the CRA's decision. Instead, DWDC planned to separate the organization into two (2) parts: a client-support program that would operate as a charity; and a social justice advocacy organization, that would not.

16. In June 2015, Ms. Morris resigned from DWDC. Ms. Morris left the organization in a time of uncertainty, but on solid footing having developed a plan to address the loss of DWDC's charitable status, having implemented balanced budgets in every year of her employment as CEO, and having steadily improved the organization's donor base.

17. In her last full year of employment, Ms. Morris's total taxable earnings, including salary and bonus, were \$107,825.00. At the time that she resigned, Ms. Morris had been DWDC's CEO for approximately six (6) years. Ms. Morris's salary when she began working as CEO was approximately \$60,000.00 per annum.

The Plaintiff's Tenure as CEO

18. In her capacity as COO, the Plaintiff had proven herself to be a skilled advocate and fundraiser who was knowledgeable in matters of public policy. However, the Plaintiff lacked senior management experience and had little knowledge of corporate governance, finance and accounting, and human resources.

19. So, while the Plaintiff was best-positioned in the organization to become CEO, both the Plaintiff and the board felt some reluctance about her taking on the role. Nevertheless, the Plaintiff accepted the position on an interim basis, commencing in or around June 2015. The Plaintiff transitioned to a permanent position in November 2015. The Plaintiff's starting salary was \$78,000.00 annually.

20. The Plaintiff's starting salary as CEO was set by DWDC's board in consultation with Ms. Morris, who relied on comparator data from similar charitable organizations to make her recommendation. The Plaintiff did not at any time raise concerns about this starting salary with DWDC.

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21. In her first two years as CEO, the Plaintiff participated in a number of important initiatives and helped guide DWDC on a path of continued growth in terms of its membership, media presence, and public influence. Financially, DWDC continued to struggle, recording a modest budget surplus in 2016 and a budget deficit in 2017.

22. However, in 2017 and 2018, two (2) significant events occurred that improved DWDC's financial outlook:

- (a) in July 2017, DWDC learned that one of its donors, Dave Jackson, had passed away and that he had made a \$7.75 million dollar bequest to the organization (the "Jackson Bequest"). The bequest would not be received by DWDC until the following calendar year; and
- (b) in November 2018, the CRA confirmed that it would reinstate DWDC's charitable status.

23. The Jackson Bequest was the result of a collective effort on the part of DWDC's staff, board members, and volunteers, including Ms. Morris, members of DWDC's British Columbia chapters, and the Plaintiff – the latter having met with Mr. Jackson on at least one occasion. The Jackson Bequest dramatically changed the financial outlook of the organization.

24. The reinstatement of DWDC's charitable status was, to a significant degree, the consequence of political factors beyond the organization's control.

Negotiation of Revised Employment Agreement and \$165,000.00 per Annum Base Salary

25. The Plaintiff received four (4) separate salary increases over the course of her four (4) year tenure as CEO:

- (a) Effective January 2017, the Plaintiff's salary increased to \$88,000.00 per annum;

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- (b) Effective January 1, 2018, the Plaintiff's salary increased to \$98,000.00 per annum;
- (c) On March 1, 2019, the board approved the Plaintiff's retroactive salary increase from \$98,000.00 to \$130,000.00 per annum for the period June 1, 2018 to December 31, 2018; and
- (d) On April 29, 2019, the Plaintiff's salary was increased to \$165,000.00 per annum retroactive to January 1, 2019.

26. In addition, the Plaintiff received \$45,000.00 in bonuses over the course of her tenure as CEO.

27. In May 2018, the Plaintiff executed a fixed-term employment contract for the period January 1, 2018 to February 15, 2019 (the "2018 Agreement"). The 2018 Agreement stipulated, *inter alia*, that the Plaintiff would receive a review by August 15, 2018 and a second review no later than January 31, 2019.

28. In the spring of 2018, Jim Cowan became the Chair of DWDC's board. Shortly thereafter, Mr. Cowan met with the Plaintiff to discuss her performance review and compensation. Mr. Cowan asked the Plaintiff to prepare a performance review template on the understanding that once the performance review was completed, DWDC and the Plaintiff then would review her compensation. Despite being specifically asked to provide a performance review template, the Plaintiff did not do so.

29. Contrary to the Plaintiff's allegations, at all times Mr. Cowan clearly communicated that DWDC would retroactively adjust the Plaintiff's salary once the performance and compensation review process was complete.

30. In November 2018, having not received a performance review template from the Plaintiff, Mr. Cowan asked another board member, Eva Kmiecic, to prepare a template, which she prepared shortly thereafter. Mr. Cowan provided the template that Ms. Kmiecic had prepared to the Plaintiff in November 2018. Mr. Cowan asked the Plaintiff to make recommendations regarding the form and content of the template.

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While she initially indicated that she intended to make suggestions and edits to the template, the Plaintiff never did so.

31. In November 2018, the board approved a salary increase for DWDC staff that was made retroactive to June 1, 2018. The Plaintiff herself had advocated for this salary increase.

32. In January 2019, having still not received the Plaintiff's feedback regarding the performance review template, Mr. Cowan prepared a draft performance appraisal based on the duties and responsibilities set out in the Plaintiff's 2018 Agreement.

33. On January 9, 2019, Mr. Cowan provided the appraisal to the Plaintiff. The only change that she made was to expand the period under review. On the same date, Mr. Cowan sent the performance appraisal document to all board members and, after discussion with the Plaintiff, to several senior staff members and relevant external stakeholders. The Plaintiff submitted her completed appraisal form on February 7, 2019.

34. The Plaintiff's completed performance appraisal was largely positive, lauding the Plaintiff for her contributions to the organization. However, the appraisal did identify that the Plaintiff had a "tense relationship with some board members" and that she had failed to share updated policy and bylaw documents with board members despite repeated requests to do so. Board members also noted that they did not receive financial statements and reports on a timely basis.

35. Having completed the performance review process, DWDC and the Plaintiff began negotiating the Plaintiff's compensation.

36. On February 13, 2019, DWDC offered to increase the Plaintiff's salary to \$130,000.00 retroactive to July 1, 2018, together with a 2018 bonus of \$25,000.00.

37. That day, the Plaintiff responded by accepting DWDC's offer of the retroactive salary increase and bonus for 2018. However, the Plaintiff counter-offered regarding her 2019 salary, seeking an increase to \$165,000.00 per annum effective January 1, 2019.

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38. On February 14, 2019, DWDC made a counter-offer that included \$150,000.00 base salary, subject to a 12% holdback payable upon completion of mutually agreed upon targets, plus eligibility for an additional bonus for exceeding her targets.

39. By letter dated February 21, 2019, the Plaintiff advised DWDC of her position regarding the organization's latest offer. The Plaintiff asserted that the holdback provision "does not meet current employment legislative standards". The Plaintiff communicated a counter-offer, proposing, *inter alia*, an annual salary of \$165,000.00 for 2019 and a termination provision that provided a minimum severance amount of twelve (12) months' base salary and benefits continuation.

40. On February 28, 2019, the Plaintiff advised DWDC that she would be away from work for one (1) month for a combination of vacation time, attendance at a conference in Belgium, and sick leave. The contract negotiations were suspended until the Plaintiff returned to work.

41. In late March 2019, the Plaintiff advised that she was able to return to work commencing the week of April 1, 2019.

42. On March 29, 2019, after learning of the Plaintiff's expected return to work on April 1st, Mr. Cowan provided the Plaintiff with a draft employment contract for her review. The employment contract included an annual salary of \$165,000.00, retroactive to January 1, 2019.

43. On April 8, 2019, the Plaintiff emailed Mr. Cowan and the Executive Committee proposing various amendments to the language and substance of the contract, including proposing that the termination provisions be amended to increase the minimum and maximum amounts of notice of termination.

44. On April 15, 2019, DWDC advised that it would agree to certain of the Plaintiff's proposed changes, but rejected others, including the Plaintiff's proposal regarding the termination provisions.

45. On April 22, 2019, after a further exchange of proposals, the Plaintiff wrote to Mr. Cowan advising as follows:

While I am disappointed that we could not find common ground with regards to the termination clause in the agreement, I do appreciate that the executive committee has considered all of my requests.

With all things considered, I would like to sign the agreement with the agreed upon changes from the email sent by you on April 15th.

Please advise as to next steps and the time lines in which board agreement may be reached so we can conclude these negotiations.

46. The Board approved the Plaintiff's employment contract on April 23, 2019.

47. On April 29, 2019, Mr. Cowan and another board member met with the Plaintiff to review and execute the Plaintiff's employment contract and to deliver a summary of responses to the Plaintiff's performance appraisal.

Terms and Conditions of the Plaintiff's Employment Agreement

48. The terms and conditions of the Plaintiff's employment were set out in the employment contract executed by the Plaintiff on April 29, 2019 (the "Employment Agreement").

49. Section 5.1 of the Employment Agreement provided, in part, that DWDC could terminate the Plaintiff's employment on a without cause basis by providing the entitlements set out in section 5.4 of the Employment Agreement.

50. In the event of the Plaintiff's termination without cause, Section 5.4 provided, in part, that:

(c) [DWDC] shall provide notice or pay in lieu of notice equal to one month's Base Salary for each year or part year of continuous service (calculated from July 2014) to a total maximum of 12 months' Base Salary, *provided that*, in no event will the [Plaintiff] receive less than six (6) months'

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Base Pay (the "Notice Period"), less applicable statutory deductions, in complete satisfaction of all contractual, statutory or common law notice requirements in law or in equity.

(d) [DWDC] will continue medical and dental benefits over the Notice Period or until the date the [Plaintiff] secures alternate employment, whichever shall first occur provided that, however, if [DWDC] cannot continue any particular Benefit pursuant to the terms of the relevant plan or policy, then [DWDC's] obligations shall be limited to the minimum requirements of the ESA.

To the extent that the minimum standards of the ESA require any notice of termination, termination pay, severance pay or continuation of any benefits or entitlements greater than that provided for in this Agreement, then such minimum standards shall be deemed to be incorporated into this Agreement and shall prevail to the extent greater.

51. In order to receive the termination amounts in excess of the Plaintiff's minimum entitlements under the Ontario *Employment Standards Act, 2000* ("ESA"), the Plaintiff was required to execute a Release in favour of DWDC.
52. DWDC pleads and relies on the terms of the Employment Agreement. DWDC pleads that the Employment Agreement is valid and enforceable.
53. DWDC specifically denies the allegation, contained at paragraph 50 of the Statement of Claim, that the Plaintiff executed the Employment Agreement "under duress".
54. DWDC pleads that it did not exert any undue or illegitimate pressure on the Plaintiff in order to induce her to sign the Employment Agreement.
55. The Plaintiff is a sophisticated party who engaged in lengthy and detailed negotiations regarding the terms of her contract. After two-and-a-half (2.5) months of negotiations, the parties agreed to the terms of the Employment Agreement on April 22, 2019. The Plaintiff signed the Agreement one (1) week later. DWDC pleads that the Plaintiff had more than enough time to review and consider the Employment Agreement

before signing it. DWDC pleads that the Plaintiff was given adequate time to obtain independent legal advice in relation to the Employment Agreement.

56. DWDC pleads that the Plaintiff successfully negotiated the variation of terms of her Employment Agreement, including her salary of \$165,000.00 per annum. DWDC pleads that the Plaintiff attempted to negotiate a variation of the termination provisions in the Employment Agreement, but was unsuccessful in that regard.

57. DWDC pleads that the Plaintiff did not at any time object to or protest the terms of her Employment Agreement. DWDC pleads that the Plaintiff did not take any steps to avoid the contract after she executed it.

58. DWDC pleads that the salary negotiations were conducted fairly, professionally, and in good faith, and resulted in the Plaintiff receiving the exact salary that she had requested.

59. DWDC pleads that there is plainly no merit to the Plaintiff's allegation that she signed the Employment Agreement "under duress".

Hiring and Compensation Decisions made by the Plaintiff, not the Board

60. DWDC vehemently denies all of the Plaintiff's allegations of improper conduct, discrimination, and systemic discrimination.

61. The Plaintiff's allegations of discrimination as they relate to alleged differences between her compensation and that of other DWDC employees omit a number of critical facts, including that:

- (a) the Plaintiff herself interviewed, hired, and set the salaries of the COO and the Director of Major Gifts. DWDC's board did not interview either of these employees before they were hired, and had not even met Mr. Dunkin; and
- (b) the Plaintiff was given a retroactive salary increase that resulted in her earning an annual salary that was far greater than the salaries

of the COO and the Director of Major Gifts. Since the increase was retroactive, there was no period of time for which the Plaintiff received a lower salary than either the COO or the Director of Major Gifts.

62. The Plaintiff's starting salary as CEO was higher than the starting salary of her predecessor, Ms. Morris, who came to DWDC with prior senior executive and board experience. Moreover, the Plaintiff's starting salary was selected with reference to similarly-situated not-for-profit organizations.

63. Contrary to the Plaintiff's allegations, DWDC's board encouraged the Plaintiff to recruit a qualified COO. In 2018, the Plaintiff recruited and hired a COO without input from DWDC's board. The Plaintiff ultimately decided to terminate the COO's employment shortly thereafter.

64. In November 2018, the Plaintiff interviewed and hired another COO, Cameron Dunkin. The Plaintiff engaged an external recruiting firm, Phelps Group, that was responsible for recruiting candidates and conducting initial interviews. Phelps Group ultimately referred Mr. Dunkin to the Plaintiff. The Plaintiff interviewed Mr. Dunkin and made the decision to hire him. The Plaintiff chose Mr. Dunkin's starting salary. Mr. Dunkin did not meet with a single member of DWDC's board before he was hired.

65. Similarly, the Plaintiff interviewed, hired and set the salary of the Director of Major Gifts, Allison Jeffrey. Ms. Jeffrey was not interviewed by DWDC's board prior to being hired. When pro-rated downwards to reflect her part-time status, Ms. Jeffrey's actual earnings were approximately \$100,000.00 per annum.

66. The Plaintiff set the salaries of Mr. Dunkin and Ms. Jeffrey in the midst of the Plaintiff's own compensation negotiations. The Plaintiff, a sophisticated negotiator, was able to leverage the salaries of her subordinates in her own compensation negotiations, which ultimately resulted in the Plaintiff receiving the exact salary that she had requested.

The Plaintiff's Relationship with DWDC's Board

67. While the Plaintiff was a skilled advocate, she struggled with managerial responsibilities and corporate governance. The Plaintiff had difficulty appreciating and respecting the boundaries between her own role as CEO and the role of the board.

68. Not long after becoming CEO, the Plaintiff began dealing with the board in a manner that was highly problematic. Examples of the Plaintiff's problematic dealings with the board include:

- (a) Failing to develop and implement management and governance policies, despite being specifically directed to do so by the board;
- (b) Selectively reporting to and seeking input from certain board members while excluding others. In 2018 and 2019, a number of departing board members stated during exit interviews that the Plaintiff's habit of playing favourites was a source of tension and difficulty for them;
- (c) Making disparaging comments about certain board members to DWDC staff and to the board members that the Plaintiff favoured; and
- (d) Failing to respect the decision-making authority and processes of the board. This issue arose frequently in the context of nominating new board members. The power to appoint new board members ultimately resided with the board itself, not the CEO. The Plaintiff resisted this limit to her authority. The Plaintiff was an ex officio member of the Governance Committee, which was responsible for recruiting and selecting board members. The Plaintiff repeatedly attempted to circumvent the Committee's processes by selecting individuals for the board and retroactively going through the nomination process. In 2017, the Plaintiff blocked the nomination of a potential board member by failing to forward her resume to the

Governance Committee. In 2018, the Plaintiff attempted to prevent the board from appointing a new Vice-Chair. When the Plaintiff's efforts failed, the Plaintiff refused to work with the newly appointed Vice-Chair.

69. The Plaintiff's difficulty working with and respecting the board's authority became more evident and worsened over time. With the significant influx of money into the organization following the Jackson Bequest, DWDC sought to implement a more organized, rule-governed management structure. The Plaintiff struggled to accept these developments.

70. During the May 2018 board retreat, the Plaintiff's managerial and governance problems were discussed. As a result of these discussions, the board and the Plaintiff agreed to find a mutually acceptable executive coach to help address the needs of the Plaintiff and DWDC. The Plaintiff later unilaterally hired, at her own expense and without input from the board, a personal coach, Dave Farthing, who lacked executive coaching experience.

71. At all times, the board encouraged the Plaintiff to find the support and resources she needed to improve in the managerial and governance aspects of her position. In addition to encouraging the Plaintiff to retain an executive coach, another DWDC board member recommended that the Plaintiff enrol in executive leadership courses. While the Plaintiff expressed some interest in this recommendation, the Plaintiff never enrolled in these courses.

Events Leading to Termination of the Plaintiff's Employment

72. Shortly after the conclusion of the Plaintiff's 2019 contract negotiations, the Plaintiff sent a lengthy letter to the board setting out a number of grievances and concerns.

73. The letter, dated May 14, 2019, purported to challenge the organization's governance structure but was in substance a complaint about the Plaintiff's compensation. Mr. Cowan responded to the Plaintiff's concerns by letter dated May 20,

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2019. In his letter, Mr. Cowan emphasized that DWDC took the Plaintiff's concerns seriously, requested time to address those concerns properly, and agreed to the Plaintiff's request to have her personal coach, Mr. Farthing, attend part of DWDC's annual retreat, to be held later that week.

74. After receiving Mr. Cowan's responding letter, the Plaintiff asked to give a presentation about her concerns to the board at the annual retreat. DWDC agreed to the Plaintiff's request. DWDC, with the Plaintiff's full support, also engaged the services of Don McCreesh, a governance expert, to facilitate a session at the retreat and to make recommendations aimed at improving the organization's governance structure and practices.

75. At the retreat, the Plaintiff made her presentation to the board at a session which was also attended by Mr. Farthing and Mr. McCreesh. At the conclusion of the retreat, the board agreed, *inter alia*, to dissolve the Executive Committee, a group that the Plaintiff had criticized in her letter, and to establish a Human Resources Committee.

76. In addition, following the May 2019 retreat, DWDC agreed to the Plaintiff's recommendation to implement a reconciliation/mediation process in order to resolve any continuing workplace issues. The board planned to discuss this and other governance changes in a special board teleconference scheduled for July 17, 2019.

77. On July 16, 2019, several board members received a document prepared by Mr. Dunkin that outlined numerous significant issues with the Plaintiff's workplace conduct. At the time, most board members were unaware of the serious issues that Mr. Dunkin identified.

78. The issues that Mr. Dunkin identified in his document of July 16, 2019 included the following:

- (a) The Plaintiff disparaged active board members in the presence of DWDC staff on an almost daily basis. The Plaintiff would routinely comment that certain board members were incompetent, highlight what she perceived to be their mistakes and deficiencies, and curse

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- loudly about board members from her office while her door was open, within earshot of DWDC staff;
- (b) The Plaintiff attempted to obstruct Mr. Dunkin's work with the board. The Plaintiff instructed Mr. Dunkin not to answer emails from certain board members. The Plaintiff also specifically instructed Mr. Dunkin to not comply with board directions;
 - (c) The Plaintiff was unwilling to relinquish responsibility or allow staff to work independently. The Plaintiff would delegate tasks to certain staff, only to re-assume responsibility for them later on. For instance, the Plaintiff re-assigned five (5) of Mr. Cameron's direct reports to herself. By July 2019, Mr. Dunkin had only three (3) remaining direct reports and significantly diminished responsibilities; and
 - (d) The Plaintiff had contributed to a tense and negative work atmosphere. The Plaintiff's management style was overbearing and aggressive. The Plaintiff micromanaged DWDC staff to the point of causing them stress and anxiety. The Plaintiff insisted on reviewing and overseeing even the most minor tasks that DWDC staff completed. The Plaintiff would interrogate staff members about the work that they performed or mistakes they had made. Overall, the workplace atmosphere was increasingly characterized by anxiety, fear, and negativity.

79. In addition, several other DWDC staff members approached the board in mid-July 2019 and raised similar concerns. Several DWDC staff members advised the board that they were experiencing significant stress and considering resignation as a result of the Plaintiff's workplace conduct.

80. The board learned that DWDC staff had attempted to intervene on their own behalf. In January 2018, two (2) staff members, acting on behalf of several other

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employees, arranged a meeting with the Plaintiff in which they raised their concerns with the Plaintiff's management style and conduct. Despite this intervention, the Plaintiff's conduct did not improve.

81. In or around March 2019, several staff approached Mr. Dunkin and asked him to speak with the Plaintiff on their behalf. In early April 2019, Mr. Dunkin met with the Plaintiff and raised a number of the staffs' issues concerning the Plaintiff's conduct. The Plaintiff did not resolve these issues.

82. On the basis of this information, the board concluded that the Plaintiff's relationship with the board and with DWDC staff had been irreparably damaged by the Plaintiff's conduct and behaviour. As a result, the board determined that it was in the best interest of DWDC to terminate the Plaintiff's employment.

83. However, DWDC did not take the position that it had just cause to terminate the Plaintiff.

84. Instead, on July 23, 2019, DWDC advised the Plaintiff that her employment was being terminated on a without cause basis. DWDC offered the Plaintiff her full contractual termination entitlements in accordance with the express terms of the Plaintiff's Employment Agreement.

85. The Plaintiff refused to sign the Release required by the express terms of the Agreement, and as such was provided with her minimum termination entitlements pursuant to the ESA. DWDC accidentally ended the Plaintiff's benefits prematurely, but corrected the error as soon as it was discovered.

No Discrimination

86. DWDC strongly denies the Plaintiff's allegations of direct and systemic discrimination. DWDC denies that any of its decisions or actions over the course of the Plaintiff's employment, including in relation to her compensation and the decision to terminate her employment, were in any way related to any protected grounds under the *Ontario Human Rights Code*.

87. The Plaintiff's discrimination allegations are based both upon misstatements of fact and speculation as to motives. At its core, the Plaintiff's discrimination allegations are an exercise in attributing improper motives and unconscious bias to the good faith conduct of individuals and groups that the Plaintiff happened, at times, to disagree with.

88. DWDC pleads that there is simply no merit to any of the Plaintiff's allegations of improper treatment or discrimination.

No Damages

89. DWDC denies that the Plaintiff has suffered any damages for which it is liable at law.

90. DWDC pleads that the Plaintiff's entitlements upon termination are limited to the amounts specified in the termination provisions of the Employment Agreement.

91. DWDC pleads that the Employment Agreement is valid and enforceable

92. The Plaintiff refused to execute the Release required under her Employment Agreement in order for her to receive all of her contractual entitlements upon termination.

93. As such, DWDC pleads that the amounts provided to the Plaintiff on termination constitute her full entitlement to notice of termination and that no further amounts beyond what have already been provided are owed to the Plaintiff.

94. DWDC therefore denies that it wrongfully dismissed the Plaintiff or otherwise breached its obligations to the Plaintiff as alleged in the Statement of Claim.

95. DWDC strongly denies that it breached the provisions of the Ontario *Human Rights Code*, and specifically denies that it discriminated against the Plaintiff in any way.

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96. DWDC specifically denies the Plaintiff's allegation that its holdback proposal violated the ESA and further denies that the Plaintiff was subjected to a reprisal for asserting what she believed to be her rights under the ESA.

97. DWDC pleads that there is no merit to the Plaintiff's claims for bad faith, moral, and punitive damages. At all times, DWDC acted reasonably, professionally, and in good faith. DWDC therefore denies that it acted in any manner that would give rise to bad faith or punitive damages.

98. DWDC therefore denies that any damages are due and owing to the Plaintiff.

99. In the alternative, DWDC pleads that the damages claimed are excessive, remote, and not recoverable at law.

100. In the further alternative, DWDC pleads that in respect of any alleged damages that were suffered by the Plaintiff (which are expressly denied), the Plaintiff has failed to mitigate such alleged damages. In the event that the Plaintiff has mitigated any such damages, any income earned from alternate sources following the termination of her employment will reduce the amount of damages she claims to have suffered.

101. DWDC requests that this action be dismissed with costs payable on a substantial indemnity basis.

102. DWDC agrees with the Plaintiff's proposal that this action be tried in the City of Toronto, Ontario.

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December 2, 2019

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RCP-E 18A (July 1, 2007)

SHANAAZ GOKOOL

(Plaintiff)

-and- **DYING WITH DIGNITY CANADA**

(Defendant)

Court File No.: CV-19-00629090-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

STATEMENT OF DEFENCE

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