

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

SHANAAZ GOKOOL

Plaintiff

and

DYING WITH DIGNITY CANADA

Defendant

REPLY

1. Ms. Gokool relies on the facts pleaded in her Statement of Claim. Except as is hereinafter expressly admitted, Ms. Gokool denies the allegations set out in the Statement of Defence. She offers the following specific statements in Reply to the defendant's allegations.

2. Contrary to paragraphs 10 and 19 of the Defence, Ms. Gokool's employment with DWDC commenced on July 21, 2014. She became CEO on February 16, 2016. Although she initially worked on contract, she was never the "interim CEO".

3. Contrary to paragraph 13(a) of the Defence, DWDC's charitable status was annulled – not revoked – on March 9, 2015. Revocation would have resulted in significant negative consequences for DWDC's remaining financial assets.

4. In response to paragraph 16 of the Defence, Ms. Gokool pleads that Ms. Morris' "plan" for addressing the loss of DWDC's charitable status was a complete failure. End of Life Planning Canada (ELPC), an independent charity set up by DWDC to provide education through advance care planning and personal support, ultimately closed in October 2018. Further, Ms. Gokool specifically disputes the suggestion that DWDC was on "solid footing" at the time of Ms. Morris' departure.

5. Contrary to paragraph 18 of the Defence, Ms. Gokool acquired significant senior management experience prior to joining DWDC, including serving as business director for two successful businesses with annual revenues exceeding \$2 million. As such, she had significant experience in and knowledge of corporate governance, finance and accounting, and human resources prior to becoming DWDC's CEO. In addition, she Chaired the Board of Amnesty International's Toronto Organization from 2009 to 2014.

6. Contrary to paragraph 24 of the Defence, Ms. Gokool's diligence, persistence and strategic vision were the key factors in the reinstatement of DWDC's charitable status. Her predecessor, the Board, and DWDC's external advisors all believed that it could not be done and had effectively given up even trying.

7. Contrary to paragraph 28 of the Defence, Mr. Cowan did not ask Ms. Gokool to prepare a performance review template in the spring or summer of 2018, and never suggested that addressing her compensation was contingent on the completion of a performance review. Notably, Ms. Gokool did not receive a performance review during her first three years as CEO. The subject of a performance review was first raised by Mr.

Cowan in the fall of 2018, after Ms. Gokool first voiced her concerns about systemic discrimination within DWDC and, in particular, with respect to her compensation.

8. Contrary to paragraph 34 of the Statement of Defence, Ms. Gokool never withheld any relevant information from the Board, including policies or bylaw documents. Any perception that Ms. Gokool was withholding relevant information is the result of the Board's structural issues and limitations, including poor facility with technology, poor systems for organizing and distributing Board documents, and poor communication between the Executive Committee and the Board itself.

9. Contrary to paragraphs 61(a), 64, and 65 of the Defence, Ms. Gokool did not set the salary levels for the COO or the Director of Major Gifts. The Board was responsible for setting the salaries of senior staff members, including the salaries for both these positions.

10. In response to paragraph 68(b) of the Defence, Ms. Gokool states that the information allegedly shared during these exit interviews was never disclosed to her, either as a means of offering constructive feedback or to provide her with an opportunity to share her perspective on these issues. Consequently, the Board's information is incomplete. Ms. Gokool is troubled by the Board decision to conceal these concerns from her instead of taking steps to address them in a proactive manner.

11. Contrary to paragraph 68(d) of the Defence, Ms. Gokool never blocked the nomination of a potential board member. In 2018, DWDC's then-COO inadvertently overlooked a Board application and thus failed to forward it to the Governance Committee

in a timely way. When the oversight was discovered, the COO apologised to both Ms. Gokool and the Chair of the Governance Committee for her mistake.

12. At no time did Ms. Gokool attempt to circumvent the Governance Committee's role in recruiting Board members. Directors Jim Cowan (2017), Jonathan Reggler (2017), Leigh Naturkach (2017) and Karen Ward (2017) were all appointed to the Board prior to DWDC AGMs, on initiatives led by then-Chair Jack Pasht and supported by Ms. Gokool.

13. Further, in early 2019, Ms. Gokool became concerned that the Governance Committee was unduly dismissive of applications from individuals with certain types of rights-based knowledge and expertise. For example, an application from a nurse with experience navigating reproductive rights issues was quickly discounted without regard for how her experience might be relevant to navigating forced transfers for MAID. Ms. Gokool expressed her concerns about this directly with Mr. Cowan in accordance with her obligations to DWDC.

14. Contrary to paragraph 70, Dave Farthing, the executive coach preferred by Ms. Gokool, has significant executive coaching experience and is a former CEO himself. Mr. Farthing was highly recommended to Ms. Gokool in 2018 by Bruce MacDonald, the CEO of Imagine Canada, and chosen by Ms. Gokool for his particular expertise in mediation and conflict resolution.

15. In response to paragraph 73 of the Defence, Ms. Gokool explicitly rejects the suggestion that her letter of May 14, 2019, was simply an elaborate complaint about her compensation. Ms. Gokool's letter set out her specific, detailed concerns about systemic

discrimination within DWDC and urged the Board to engage with her in a proactive mediation process to address them. Ms. Gokool resorted to writing the letter after her earlier efforts to raise her concerns by less formal means were ignored. DWDC's inability to recognize Ms. Gokool's letter as a good-faith effort to address these issues before their relationship became irreparably damaged speaks volumes about the culture within the organization and the unconscious bias that continues to taint the Board.

16. Further, Ms. Gokool finds the characterization of her letter in paragraph 73 of the Defence surprising given that at least one DWDC Board member, Leigh Naturkach, agreed as early as February 2019 that DWDC was subjecting Ms. Gokool to systemic discrimination and intervened with other members of the Board on her behalf. At the time, Ms. Naturkach acknowledged that Ms. Gokool's concerns went far beyond a pay dispute and suggested that DWDC retain the law firm Rubin Thomlinson to conduct an independent investigation, with a view to restoring the trust that had been eroded as a result of the EC's treatment of Ms. Gokool.

17. Ms. Gokool specifically denies the allegations set out at paragraphs 77-82 of the Statement of Defence. It is shocking that the Board failed to notify Ms. Gokool of Mr. Dunkin's allegations or to offer her any opportunity to respond to them before deciding to terminate her. It is also shocking that the Board did not conduct an arms-length investigation or engage with DWDC's staff as a whole before resolving to take such drastic action. The Board's kneejerk acceptance of allegations from Mr. Dunkin – a (white) man who stood to directly benefit from Ms. Gokool's termination – also speaks volumes about the unconscious bias that taints the Board.

18. In fact, Mr. Dunkin himself is responsible for fostering conflict and division among DWDC staff. In the months since his appointment as Interim CEO, at least five long-time members of DWDC's staff have resigned – four of which came after DWDC filed its Statement of Defence and then circulated it to the staff via group email from Mr. Cowan. It is notable that, by comparison, there were no resignations during Ms. Gokool's three and a half year tenure as CEO.

19. In response to paragraph 81, DWDC failed to specify that the "issues" raised with Mr. Dunkin by the staff involved concerns about pay equity and unconscious bias. When Mr. Dunkin later reported these concerns to Ms. Gokool, she was shocked and upset to learn that Mr. Dunkin had not immediately informed the staff in question that Ms. Gokool had already notified the Board of a proposal to bring in an external consultant to complete a pay equity review using an intersectional lens. Mr. Dunkin also neglected to make any mention of Ms. Gokool's plans to bring in external support to conduct anti-oppression, diversity and inclusion training for DWDC's Board, staff and volunteers.

20. Mr. Dunkin told Ms. Gokool that he subsequently conveyed this information to the staff members in question and assured Ms. Gokool that they were comfortable with her plan to address these issues. The staff members in question were later shocked to learn from Ms. Gokool's Statement of Claim that she had tried in vain to raise similar issues of systemic discrimination with the Board, and left feeling betrayed when the Board refused to follow through with Ms. Gokool's plan to conduct an organization-wide pay equity, anti-oppression, and diversity and inclusion review.

21. In response to Paragraph 82, Ms. Gokool is heartbroken that DWDC would conclude her relationship with the staff had been “irreparably damaged” without first engaging with the majority of its staff members in any way. The Board’s decision to lay responsibility for her termination at the feet of her former colleagues without ever speaking to them is further evidence of the Board’s bad faith conduct toward Ms. Gokool. Further, it is an example of the Board’s egregious ethical failings towards the organization as a whole.

22. Contrary to paragraph 86 of the Defence, Ms. Gokool maintains that she was subjected to repeat instances of discrimination and inappropriate aggression by the Board. Examples of these instances include the following:

- (a) In early 2018, Ms. Gokool was heavily criticized by certain Board members when DWDC issued a joint statement with the Canadian Association of MAID Assesors and Providers (CAMAP) in support of clinicians like Dr. Ellen Wiebe, who provided an assisted death at Louis Brier Retirement Home in Vancouver despite the home’s objections to MAID onsite. Some Board members opposed the statement, despite the fact it was in keeping with DWDC policy and received overwhelming support from the Policy and Messaging Committee, and blamed Ms. Gokool for her refusal to do their personal bidding;
- (b) In the summer of 2018, DWDC’s board established a working group to study advance requests in assisted dying. Sue Hughson, the Director leading the

group, repeatedly excluded Ms. Gokool from correspondence and discussions, and generally dismissed, excluded and minimized her subject-matter expertise;

(c) Ms. Gokool was repeatedly criticized for raising questions or concerns when Board members unilaterally decided to assume certain operational responsibilities, despite their lack of experience and expertise in those areas and despite the fact that they were clearly overstepping their governance role by doing so. Examples of this overstepping include:

(i) In May 2018, Ms. Kmiecic unilaterally called a staff meeting to discuss “good governance”. During the meeting, she informed the entire staff that the Board had approved new pay bands in the fall of 2017. This announcement, which later proved to be incorrect, caused significant confusion amongst the staff and temporarily damaged their trust in Ms. Gokool;

(ii) In the summer of 2018, Ms. Kmiecic made repeated attempts to retain and invest tens of thousands of dollars with a sole sourced marketing firm, against the advice of Ms. Gokool as well as DWDC’s senior communications and fundraising officers;

(iii) Ms. Hughson, a veterinarian from Vancouver, repeatedly sought to personally conduct focus groups on the issue of advance requests for MAID, despite the fact that this was an operational matter both

beyond the Board's governance purview and her personal expertise;
and

- (iv) On March 2019, while Ms. Gokool was on medical leave, Mr. Dubinsky used DWDC staff and resources to put together an RFP for CEO coaching services, in disregard of Ms. Gokool's privacy and with complete disrespect for her professional autonomy.

- (d) Ms. Gokool's advice and concerns about various operational and governance issues, including DWDC governance obligations related to membership and the Governance Committee's ongoing failure to clarify roles and responsibilities between Staff and Board, were repeatedly dismissed or ignored or given inadequate attention until such time as Ms. Gokool brought in (white) third-party consultants who offered concurring opinions or advice.

January 6, 2020

GILLIAN HNATIW & CO.
67 Yonge Street, Second Floor
Toronto, Ontario M5E 1J8

Gillian Hnatiw (48530C)
gillian@gillianandco.ca

David Litwin (68164W)
david@gillianandco.ca

Tel: 416.825.5659
Fax: 416.352.1526

Lawyers for the Plaintiff

TO: **HICKS MORLEY HAMILTON STEWART STORIE LLP**
77 King Street West, 39th Floor
Box 371, TD Centre
Toronto, Ontario M5K 1K8

Jeffrey E. Goodman (31074U)
jeffrey-goodman@hicksmorley.com

Brendan J. Scott (73339V)
brendan-scott@hicksmorley.com

Tel: 416.864.7038

Fax: 416.362.9680

Lawyers for the Defendant

SHANAAZ GOKOOL
Plaintiff

-and- DYING WITH DIGNITY CANADA
Defendant

Court File No. CV-19-629090

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

REPLY

GILLIAN HNATIW & CO.
67 Yonge Street, Second Floor
Toronto, Ontario M5E 1J8

Gillian Hnatiw (48530C)
gillian@gillianandco.ca

David Litwin (68164W)
david@gillianandco.ca

Tel: 416.825.5659
Fax: 416.352.1526

Lawyers for the Plaintiff