

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

DAVID HARTLESS

Applicant

- and -

**KEN LEENDERTSE and
HAMILTON POLICE SERVICE**

Respondents

AFFIDAVIT

I, Ken Leendertse, of the City of Hamilton, in the Province of Ontario,
MAKE OATH AND SAY THAT:

1. I am a Police Officer holding the rank of Deputy Chief of Police with Hamilton Police Service. I am currently employed in the position of Deputy Chief of Police for the Community Policing Bureau. As such, I have personal knowledge of the matters hereinafter deposed to, save and except where such knowledge is based upon information and belief.

2. I am advised by Chief of Police Brian Mullan, and do verily believe, that on December 6, 2006, he received an e-mail from W.J. (Bill) Dennis, Chief Superintendent, Regional Commander – Western Region Ontario Provincial Police (O.P.P.). regarding one of our officers, Police Constable David Hartless (“Hartless”). The e-mail outlined the concerns of O.P.P. Inspector D.G. McLean in respect of the actions of Hartless in Caledonia. On December 6, 2006, I was advised that the O.P.P. was not willing to formally complain about Hartless’ activity at that time.

**Attached hereto and marked Exhibit “A” is a true copy
of e-mail correspondence from W.J. (Bill) Dennis to
Brian Mullan, dated December 6, 2006.**

3. On or about December 6, 2006, Chief of Police Brian Mullan instructed me to speak to Hartless in relation to the e-mail of December 6, 2006.
4. On December 13, 2006, I asked Hartless to attend my office for a meeting. Hartless and I discussed the issues in Caledonia and I told him that his actions, even though off-duty, reflected on him as a police officer. I advised him to be careful of his actions and words in the future.
5. On February 19, 2007, Chief Mullan provided me with an e-mail directed to Chief Mullan from O.P.P. Commissioner Julian Fantino. In that e-mail, Commissioner Fantino indicated that he was “formally taking exception” to

Hartless' latest "mean spirited and totally false accusations directed at the OPP".

Attached hereto and marked Exhibit "B" is a true copy of e-mail correspondence from O.P.P. Commissioner Julian Fantino to Brian Mullan, dated February 19, 2007.

6. On February 19, 2007, I ordered an Internal Investigation into potential misconduct by Hartless.
7. On February 19, 2007, I sent an e-mail to Hartless, which is attached as Exhibit "E" to the Affidavit of David Hartless, sworn April 2, 2007, and contained at Tab 7 of the Application Record, advising him of the Internal Investigation and ordering him to "cease and desist" any further e-mails concerning the situation in Caledonia.
8. On February 19, 2007, very soon after sending the e-mail order, I received a telephone call from Tom Andrew, Executive Officer, Hamilton Police Association. Mr. Andrew took exception to my use of the words "are bringing discredit to our Police Service" in the e-mail order. As such, on February 19, 2007, after speaking to Mr. Andrew, I unsend the e-mail order and re-sent the e-mail order with new, less definitive wording ("may bring discredit to our Police Service") and I also added a sentence at the end of

the e-mail ordering Hartless not to send any further email about this situation until the matter could be properly investigated.

Attached hereto and marked Exhibit "C" is a true copy of e-mail correspondence from Ken Leendertse to David Hartless, dated February 19, 2007.

9. On or about February 23, 2007, the Internal Investigation was assigned to the Halton Regional Police Service. The reason for the assignment of the investigation to an outside police service was that, given that the complaint was made by the Commissioner of the O.P.P., it would be prudent that the matter be investigated by an arm's length, independent agency to ensure fairness and transparency for all parties.

10. On or about April 4, 2007, Hartless commenced an Application in the Superior Court of Justice for, among other things:
 - (a) an interim injunction suspending the operation of the February 19, 2007 Order pending the hearing of the Application, and
 - (b) a declaration that the February 19, 2007 Order was a contravention of section 2(b) of the *Canadian Charter of Rights and Freedoms*; and
 - (c) an Order pursuant to section 24(1) of the *Canadian Charter of Rights and Freedoms* setting aside the February 19, 2007 Order.

11. On April 10, 2007, in order to obviate the need for an interim injunction, I rescinded the February 19, 2007 Order pending a final determination in respect of the Internal Investigation.

**Attached hereto and marked Exhibit "D" is a true copy
of e-mail correspondence from Ken Leendertse to David
Hartless, dated April 10, 2007.**

12. The purpose of the February 19, 2007 Order was to prevent Hartless from committing potential further misconducts until a final determination was made in respect of the Internal Investigation by the Halton Regional Police Service. As Deputy Chief of Police, I was motivated by the protection of the reputation of the police force in light of a complaint made by the Commissioner of the O.P.P. in relation to the actions of one of our officers.
13. The Order of February 19, 2007 was made in good faith, with a view not only to the potential for damage to the reputation of our police service, but also for the protection of Hartless given the consequences that he might face if the complaint against him was substantiated. The Order of February 19, 2007 was not made for any ulterior purpose, including the silencing of Hartless' criticism of the O.P.P., as set out in paragraph 41 in the Affidavit of David Hartless, sworn April 2, 2007.

14. I make this Affidavit in response to an Application for a declaration that my Order of February 19, 2007 is a contravention of section 2(b) of the *Canadian Charter of Rights and Freedoms* and for no other or improper purpose.

SWORN BEFORE ME at
the City of Hamilton, in the
Province of Ontario, this
13th day of June, 2007

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KEN LEENDERTSE



A Commissioner etc.

This is Exhibit " A " to the
Affidavit of KEN

LEENDERTSE

Sworn before me at the
CITY of HAMILTON

in the PROVINCE
of ONTARIO

this 13th day of JUNE

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M. V. [Signature]
A Commissioner, etc.