

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

PAUL WOODS

Plaintiff

and

LONDON HEALTH SCIENCES CENTRE

Defendant

STATEMENT OF DEFENCE

1. The Defendant, the London Health Sciences Centre (“LHSC”) denies the allegations in the Statement of Claim except as expressly admitted below.

Overview

2. When a COVID-19 outbreak infected over a dozen LHSC staff in November 2020, the Plaintiff, Dr. Woods, then LHSC’s President and Chief Executive Officer, issued a statement blaming hospital staff for failing to follow public health guidelines. He described the conduct of hospital staff as “unacceptable” and stated that “we must set ourselves to a higher standard when it comes to living and modeling public health guidelines both inside and outside our workplace”. His statement was poorly received by staff, who viewed it as an unhelpful and heavy-handed attack on

front-line health care workers who had provided extraordinary service and made significant personal sacrifices during the pandemic.

3. As a result, there was a pronounced negative reaction among hospital staff, physicians, and stakeholders when it emerged in early January 2021 that Dr. Woods had travelled to the United States on at least five occasions after public health authorities issued guidance against non-essential travel. It quickly became clear that Dr. Woods had lost the moral authority to lead the hospital and his employment was terminated.

4. Rather than accepting responsibility for his own choices, Dr. Woods has attempted to shift the blame to LHSC's volunteer Board of Directors. Dr. Woods claims that a media statement issued by LHSC harmed his reputation by implying that he misled the Board about his travel, when he had disclosed some aspects of that travel to the Chair of the Board.

5. To the extent that Dr. Woods' reputation has been harmed, it is a result of his own poor judgment and hypocrisy. It is not the role of the Board of a public hospital to approve personal travel by hospital employees, nor is there any mechanism for it to do so. Furthermore, Dr. Woods did mislead the Board by withholding important information. He told the Chair of the Board about aspects of his travel but he did not tell her that senior hospital executives had repeatedly raised concerns to him about his travel. He did not ask her for guidance about whether he should take a week-long holiday to Florida in October. And he did not inform her that he intended to travel to Michigan from December 19 to 25, 2020.

Background: Authorities Issue Guidance Against Non-Essential Travel

6. On March 11, 2020, the World Health Organization declared COVID-19 to be a pandemic.
7. Also on March 11, LHSC sent an email to all staff and physicians asking them to cancel business travel outside of Canada and to make “careful decisions” regarding personal travel.
8. On March 12, LHSC admitted its first COVID-19 patient.
9. On March 14, LHSC sent another email to all staff and physicians asking them to cancel or reschedule all out-of-country personal travel, noting “[w]e are an essential service and must be prepared as a group to do whatever we can in the face of a global pandemic”.
10. Also on March 14, the Government of Canada issued guidance advising against non-essential travel outside of Canada.
11. On March 18, the Prime Minister announced that Canada and the United States had agreed to restrict all non-essential travel across the Canada-United States land border, effective at 12:01 a.m. on March 21.

Dr. Woods Travels to Michigan and Florida

12. Dr. Woods travelled to the United States on at least five occasions after the federal government issued guidance against non-essential travel outside Canada. He did not conceal the fact of his travel and frequently informed participants on video conferences that he was in the United States. He returned from one trip to the United States with a noticeable tan. Senior hospital executives recognized the health and safety, organizational, and reputational risks arising out of

his decisions to travel and repeatedly raised these concerns with him. When faced with these objections, Dr. Woods claimed that the Chair of the Board had approved of his travel plans. As outlined below, this was not true.

13. On or around March 12, 2020, Dr. Woods travelled to Michigan to drop off a family dog in Port Huron, Michigan.

14. Dr. Woods again travelled to Michigan on Friday, March 20 and returned to Canada on March 23. Prior to travelling on that occasion, he contacted then Chair of the Board of LHSC, Amy Walby and informed her that he needed to cross the border on an urgent family matter.

15. LHSC's executive vice-presidents had difficulty reaching Dr. Woods over the weekend of March 21-22. On March 23, they learned that he had been in Michigan. The Executive Vice President and Chief Operating Officer, Neil Johnson and the Executive Vice President, General Counsel/Chief People Officer, Susan Nickle called Dr. Woods and expressed concern about the risks posed by Dr. Woods' travel to his personal health, to his personal reputation, and to the organization of his absence from the hospital during the pandemic. When confronted with these issues, Dr. Woods grew angry. Dr. Woods said his travel did not concern Mr. Johnson and Ms. Nickle, asserting that it was a personal matter. He told them not to question his judgment. Dr. Woods reiterated this position in a series of text messages.

16. Later on March 23, Dr. Woods texted Ms. Walby:

I chose to run back to the US to close out some Family Matters and try to get ready for an uncertain period Of time unable to cross the border. I have imposed a 14 day quarantine but some on my team are apparently upset. I'm upset at that.

17. Dr. Woods did not provide any detail to Ms. Walby about who had raised concerns or what the concerns were.

18. Ms. Walby expressed sympathy for Dr. Woods' situation, stating that "I have been wondering if you got the border crossing in, the fact is [...] you have a life".

19. The following day, March 24, Dr. Woods wrote a follow-up text message:

This is rattled me so badly that I talked to my bosses at Ontario Health, Tom Stewart and Bruce lauckner and asked if they viewed as some sort of bad decision that would call into question my fitness to serve and if so I was willing to step down. Tom's comment was are you f*****kidding me?

20. On March 24, the issue was raised at the daily meeting of the LHSC Executive Leadership Committee. Dr. Woods raised his displeasure with Mr. Johnson and Ms. Nickle for questioning his judgment. He informed the group that he had consulted with Dr. Tom Stewart, who assured him that he had done nothing wrong. Dr. Woods claimed that the Chair of the Board had approved of his travel and that this was the end of the matter. While it was true that the Chair of the Board was aware of this trip, it was false and misleading for Dr. Woods to claim that she had approved of his travel.

21. On March 25, Dr. Woods informed a meeting of the LHSC Board of Directors that he had crossed the border. According to the meeting minutes, Dr. Woods told the Board that the purpose of his travel was "urgent family business".

22. Dr. Woods was on sick leave from April 2 to early June, 2020. This leave was not related to COVID-19.

23. In an email to Ms. Walby on June 16, Dr. Woods adverted to LHSC's work from home policy, in the context of a trip he intended to take to Michigan. Dr. Woods claimed that Ms. Nickle had told him that it was consistent with LHSC policy for him to carry out his work from home. Dr. Woods failed to mention that Ms. Nickle had previously raised concerns about his travelling outside Canada during the pandemic. Ms. Walby responded that she was comfortable that this arrangement complied with the applicable work from home policies.

24. Dr. Woods travelled to Michigan on or around June 29 to July 3, 2020.

25. In an email to Ms. Walby on August 5, Dr. Woods raised what he termed a "guidance issue". Dr. Woods outlined his personal circumstances and explained that in light of them, he wanted to travel to Michigan to visit his immediate family. He explained that this meant he would need to work from home for three weeks at a time (one week while in the U.S. and two weeks while quarantining on return). Dr. Woods explained that this would not impair his ability to do his job because everything was being done virtually. However, he noted that there may be some "optics issues" involved in him working remotely for extended periods of time. Ms. Walby responded the following day, expressing sympathy for Dr. Woods' difficult circumstances and support for his proposal to work from home. Ms. Walby wrote that "[o]nly you can measure the costs of the CEO being away from the hospital and WFH periodically vs the personal toll of not seeing your loved ones".

26. Dr. Woods travelled to Michigan on or around August 31 to September 4, 2020.

27. On October 7, Dr. Woods ended an unrelated text exchange with Ms. Walby by suggesting that he needed some time off. Ms. Walby responded “[y]ou certainly deserve some time off!”

Dr. Woods replied:

We have the Florida condo booked and it has its own pool. Put on Hazmat suits to go in Publix and the wine store. Nothing else except a bit of paddle boarding in the ocean. Sounds like the prescription.

28. Dr. Woods misrepresents this exchange in the Statement of Claim (para. 15). He suggests that Ms. Walby endorsed his proposed travel and implied that this was a trip to Michigan to visit his immediate family. It is clear from the sequence of the text messages that Ms. Walby expressed support for Dr. Woods taking time off, not for his trip to Florida.

29. Throughout October, the State of Florida reported thousands of new COVID-19 cases every day. When Mr. Johnson and Ms. Nickle learned that Dr. Woods intended to travel to Florida, they each separately raised concerns with Dr. Woods. Dr. Woods again dismissed their concerns. He did not bring their concerns to Ms. Walby or the Board.

30. Dr. Woods travelled to Michigan on October 15. He flew to Fort Myers, Florida on October 17. He returned to Michigan on October 24 and to Canada on October 27 and quarantined for 14 days.

31. On November 19, Dr. Woods sent an email to all LHSC staff and physicians noting that there had been a “sharp and startling increase in community transmission” and rebuking LHSC staff for failing to follow public health guidelines. Dr. Woods wrote:

LHSC has recently experienced a significant increase in the number of staff and physicians who have tested positive for COVID-19. As of Monday, LHSC had 14 staff/physicians

who were off work having tested positive, with 55 under investigation and/or awaiting test results. In many of these cases, internal contact tracing has shown the spread to be caused by direct staff-to-staff transmission.

To be clear: this is unacceptable, considering the infection control safety protocols and procedures LHSC has put in place over the past eight months

...

I have said this many times over the course of the pandemic but given our current situation it bears repeating: as health-care workers we must set ourselves to a higher standard when it comes to living and modeling public health guidelines both inside and outside our workplace. Living our value of accountability means holding ourselves and each other accountable in adhering to the highest standards of personal, professional, and corporate responsibility. It means doing all we can to create a safe environment for everyone in our organization and accepting responsibility for the decisions, actions, and outcomes expected of every individual at LHSC. Willfully choosing to not adhere to our critical safety practices while at work may result in disciplinary action, up to and including termination.

32. Dr. Woods sent a follow-up email on November 27 acknowledging that the “direct language” used in his previous email had caused “some distress” to LHSC staff but reiterated that compliance with public health guidelines was necessary to ensure the health and safety of all health care workers.

33. The public health emergency caused by the COVID-19 pandemic continued and the incidence of infection increased over the month of December. Nonetheless, Dr. Woods again travelled to Michigan to visit his family on December 19. On that day, there were 17 active cases of COVID-19 at LHSC. The State of Michigan reported 3,942 new COVID-19 cases on December 19. On December 22, the provincial government announced a province-wide lockdown commencing December 26. Dr. Woods returned to Canada on December 25, 2020.

Dr. Woods' Termination

34. In December, 2020 and January, 2021, the media reported a series of stories about overseas holiday travel by public figures. In early January, LHSC received media inquiries regarding Dr. Woods' travel to the United States.

35. The LHSC Board convened an emergency conference call of its elected Board members on Friday, January 8, 2021. This was the first time that all of the elected members of the Board were made aware that Dr. Woods had travelled to the United States since March. It was decided that stability at LHSC during a period of crisis should be the paramount concern and that a change of senior leadership would be too disruptive to the critical work of providing healthcare during a public health emergency. Later that day, LHSC released a statement in which the Board expressed its support for the continued leadership of Dr. Woods.

36. The Board met again on Sunday, January 10. Board members had received significant feedback from staff, physicians, donors, and other stakeholders expressing outrage over Dr. Woods' decision to travel outside Canada. Board members heard concerns that Dr. Woods' travel was a dereliction of duty during a critical pandemic response, that his actions had exposed the hospital workers to risk of infection, and that it was hypocritical for him to have travelled and to continue to travel in light of his communications about the need for LHSC staff to hold themselves to a higher standard in following public health guidelines.

37. In light of this reaction, it became clear that this situation had affected the confidence and trust of staff, physicians and the community in Dr. Woods' ability to continue to lead LHSC.

Accordingly, on January 10, LHSC provided Dr. Woods with notice that it was terminating his employment on a without cause basis.

38. The termination notice was sent to Dr. Woods on January 10 at 7:39 p.m. The termination notice informed Dr. Woods that LHSC would be executing a communications strategy to announce his departure. The following morning (i.e., the morning of Monday, January 11) at 9:31 a.m., Dr. Woods emailed Ms. Walby to request an opportunity to review the statement prior to its release. The request was made after the Executive Committee of the Board had approved the statement and minutes before it was released.

The January 11 Statement

39. On January 11, 2021 the Board released a media statement announcing that Dr. Woods' employment had been terminated (the "**January 11 Statement**").

40. After the release of the LHSC Media Statement on January 8, certain media outlets began incorrectly reporting that the Board of LHSC had approved Dr. Woods' travel. For example, a CBC article dated January 8, 2021 stated that "Each of his trips was approved by the hospital's board".

41. In order to correct this misunderstanding, LHSC addressed the issue of Board approval in its January 11 Statement. The January 11 Statement included the following language:

While the Board was aware of Dr. Woods' personal circumstances, it had no advance notice of and did not approve his travel outside Canada. There is no process for the Board of a public hospital to approve a chief executive officer's personal travel.

42. The purpose of this statement was to correct the inaccurate reporting regarding the Board's involvement. Contrary to Dr. Woods' allegations, this statement was not intended to diminish his reputation, nor did it have any such effect.

43. After the release of the January 11 Statement, the Board became aware of the communications between Dr. Woods and Ms. Walby outlined above. In light of these communications, it became clear that the Chair of the Board had advance notice of some aspects of Dr. Woods' travel and that she had not raised any objection to his travel. While the January 11 Statement was technically true, in the sense that the full Board did not have any advance knowledge of Dr. Woods' travel plans, and had not approved them, it was incomplete. The omission of this additional context was a good faith error made by LHSC in the context of a rapidly evolving situation. LHSC promptly clarified by releasing a further media statement on January 14, 2021 (the "**January 14 Statement**"). This statement read in part:

- The Board would like to clarify that Dr. Woods did disclose aspects of his travel to the Board and the Board Chair. Dr. Woods travelled to the U.S. to visit his immediate family in March 2020. He informed the Board of the border crossing due to urgent family business and would need to quarantine.
- It was not until the Jan 8, 2021 meeting of the elected Board Directors, that they were apprised of the full extent of the CEO's travel over the course of the pandemic.
- Prior to travelling to the United States in August 2020, Dr. Woods raised the matter of his need to periodically travel (and subsequently work from home during a quarantine period) with the Chair of the Board. He asked her for guidance including whether he should bring the matter to the Board. The Chair indicated to Dr. Woods that he had her support and said that it was a personal matter that did not require Board approval.

44. The January 14 Statement also announced that Ms. Walby would be resigning as Chair of the Board to ensure that the issue of Dr. Woods' travel did not continue to distract from the important work of the hospital.

No Defamation

45. LHSC denies that it has defamed Dr. Woods. To the extent Dr. Woods' reputation has been tarnished, it comes as a result of the public's judgment of his decision to travel outside Canada during a pandemic and the contradiction between his own actions and the words he used in his communications with LHSC staff about public health guidelines. Simply put, what Dr. Woods did or did not tell the Board is irrelevant to any reputational harm he has suffered.

46. Dr. Woods alleges that in the January 11, 2021 media statement, LHSC "created the impression that Dr. Woods was not forthright and candid with the Board". The impugned language is not reasonably capable of bearing the alleged defamatory meaning. The language in the January 11 is focused on the role of the Board. The statement neither states nor implies that Dr. Woods concealed anything from the Board that he ought to have disclosed.

47. Even if Dr. Woods were correct that the January 11 Statement implied that he was not candid with the Board about his travel outside Canada, which is denied, that implication is not defamatory. It is only if Dr. Woods was under an obligation to share this information that his failure to do so would reflect poorly on him. But as LHSC clearly stated in the January 11 Statement itself, "[t]here is no process for the Board of a public hospital to approve a chief executive officer's personal travel". Personal travel decisions by LHSC employees are not a matter that is subject to approval by the Board. As Ms. Walby informed Dr. Woods, it was a personal

matter of judgment for him to make. As such, there was no reason for Dr. Woods to bring the matter to the Board and no one would think less of him whether he had done so or not.

48. In the alternative, even if Dr. Woods were correct that he ought to have been forthright and candid with the Board about his travel outside Canada, the fact is that he was neither forthright nor candid about those matters. While he disclosed some aspects of his travel plans to Ms. Walby, he did not provide her with the relevant information for her to make a reasoned judgment about the issue. Like all elected members of public hospital boards in Ontario, Ms. Walby served on the Board of LHSC in a volunteer capacity as an act of public service. The Board is tasked with overseeing governance of the hospital. In fulfilling this role, the Board depends on receiving proper advice and information from hospital staff. Ms. Walby could not reasonably be expected to make an informed judgment about whether Dr. Woods' travel plans were appropriate without being provided with the appropriate context regarding the risks associated with this proposal. Dr. Woods was fully aware of those risks, because his senior leadership team had repeatedly and forcefully brought them to his attention. Apart from the information contained in his March 23/24 text message exchange with Ms. Walby – in which he denigrated the concerns expressed by the senior leadership team – Dr. Woods entirely withheld this information from her. Apart from a vague reference to the “optics issues” associated with working from home in his August 5, 2020 email, Dr. Woods never articulated what other risks his travel would pose to the organization, nor did he ask her for advice in respect of those risks.

49. At the time that Ms. Walby expressed support for Dr. Woods' personal circumstances in August, 2020, the impact of the pandemic seemed to be abating. The incidence of new cases was falling and restrictions were loosening. Dr. Woods did not inform Ms. Walby about his trip to

Michigan over the holiday season, at a time when the pandemic was in its second wave and one month after he had chastised hospital staff for failing to adhere strictly to public health guidelines.

50. In the circumstances, Dr. Woods' claim that Ms. Walby condoned his travel is a disingenuous attempt to shift blame for his own decisions onto the volunteer Chair of the Board.

51. In the alternative, to the extent that there was anything untrue or defamatory in the January 11 Statement, which is denied, that statement was fully and promptly corrected by the January 14 Statement. The January 14 Statement was extensively reported and cured any unintentional harm that may have been caused by the January 11 Statement.

52. Dr. Woods further alleges that his reputation has been harmed because the January 11 Statement cast him in the same light as other public figures whose leisure travel have become the subject of media scrutiny. The January 14 Statement neither states nor implies anything of the sort. In any event, the reality is that Dr. Woods' situation is no different from those of others who engaged in leisure travel. during the pandemic. While his travel to Michigan could be explained in terms of his personal circumstances, his travel to Florida was a holiday.

No Bad Faith

53. LHSC has acted in good faith throughout its employment relationship with Dr. Woods, including through the process of termination.

Continuation of Salary and Benefits

54. LHSC admits that Dr. Woods is entitled to compensation for termination on a without cause basis in accordance with the terms of his employment agreement. This includes continuation of his base salary for a period of up to 12 months and continuation of certain benefits during the same period. LHSC denies that he is entitled to any other compensation in respect of his termination.

Human Rights Code Claims

55. LHSC denies that it has discriminated against Dr. Woods on the basis of family status, or at all. LHSC did not terminate Dr. Woods because his family circumstances required him to work from home. Dr. Woods' employment was terminated because he had lost the confidence of the staff and physicians and the community it serves in light of his own hypocrisy.

56. In the alternative, even if LHSC had terminated Dr. Woods on these grounds, it is a bona fide occupational requirement that the President and Chief Executive Officer of a hospital be available to be physically present at the hospital, particularly during a public health emergency.

No Damages

57. Except as expressly admitted above, LHSC denies that Dr. Woods has suffered any damages. In the alternative, the claim for damages is exaggerated and Dr. Woods has failed to mitigate his damages.

58. The Defendant asks that this action be dismissed with costs.

January 21, 2021

STOCKWOODS LLP

Barristers
Toronto-Dominion Centre
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto ON M5K 1H1

Brian Gover (22734B)

Tel: 416-593-2489
briang@stockwoods.ca

Stephen Aylward (66556E)

Tel: 416-593-2496
stephena@stockwoods.ca

Tel: 416-593-7200

Fax: 416-593-9345

Lawyers for the Defendant

TO: **WRIGHT HENRY LLP**
200 Wellington Street West
Suite 602
Toronto ON M5V 3C7

Michael D. Wright (32522T)
mwright@wrighthenry.ca

Youssef Kodsy (80036O)
ykodsy@wrighthenry.ca

Tel: 416-306-8280

Fax: 416-306-8281

Lawyers for the Plaintiff

PAUL WOODS

and LONDON HEALTH SCIENCES
CENTRE

Court File No. CV-21-00000047-0000

Plaintiff

Defendant

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at LONDON

STATEMENT OF DEFENCE

STOCKWOODS LLP

Barristers

Toronto-Dominion Centre
TD North Tower, Box 140
77 King Street West, Suite 4130
Toronto ON M5K 1H1

Brian Gover (22734B)

Tel: 416-593-2489

briang@stockwoods.ca

Stephen Aylward (66556E)

Tel: 416-593-2496

stephena@stockwoods.ca

Tel: 416-593-7200

Fax: 416-593-9345

Lawyers for the Defendant