



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

(Court Seal)

ANDREW BERTHOFF

Plaintiff

-and-

**THE PIPERS AND PIPE BAND SOCIETY OF ONTARIO, ANDREW B. GILES, KEVIN SHAND, MICHELE CURTIS, JAMIE BLACKLOCK, JOHN ALLEN, WENDY BASKERVILLE, MALCOLM BOW, BRAD DAVIDSON, DON ELLIOT, MICHAEL GREY, CHARLES HENRY MACDONALD, JIM MCGILLIVRAY, BRIAN ROBERTSON, JULIE STEWART
and DYLAN WHITTEMORE**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES,

-2-

LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date _____ Issued by _____
Local Registrar

Address of Superior Court of Justice
court office: 330 University Avenue
Toronto, Ontario M5G 1R7

TO: **THE PIPERS AND PIPE BAND
SOCIETY OF ONTARIO**
2030 Bristol Circle, Suite 210
Oakville, Ontario L6H 0H2

AND TO: **ANDREW B. GILES**
9225 Heron Road
Ashburn, Ontario L0B 1A0

AND TO: **KEVIN SHAND**
569 Leyton Crescent
London, Ontario N6G 1S9

AND TO: **MICHELE CURTIS**
32 Billington Crescent
Hamilton, Ontario L8T 4R1

AND TO: **JAMIE BLACKLOCK**
139 Blind Line
Orangeville, Ontario L9W 3H2

-3-

AND TO: **JOHN ALLEN**
89 Bowles Drive
Ajax, Ontario L1T 4B6

AND TO: **WENDY BASKERVILLE**
87 Lacasse Street
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AND TO: **MALCOLM BOW**
41 Elora Street North
Alma, Ontario N0B 1A0

AND TO: **BRAD DAVIDSON**
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AND TO: **DON ELLIOT**
1 Rockingham Court
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AND TO: **MICHAEL GREY**
108 Head Street
Dundas, Ontario L9H 3H9

AND TO: **CHARLES HENRY
MACDONALD**
4214 Wakefield Crescent
Mississauga, Ontario, L5C 4L9

AND TO: **JIM MCGILLIVRAY**
Box 04000 Stn Main, Aurora,
Ontario, L4G 3H7

-4-

AND TO: **BRIAN ROBERTSON**
15403 County Road # 8
Oldcastle, Ontario, NOR 1L0

AND TO: **JULIE STEWART**
32 Bing Crescent
Stoney Creek, Ontario, L8E 3Z4

AND TO: **DYLAN WHITTEMORE**
84 Westmeadow Drive #3
Kitchener, Ontario N2N 3P1

-5-

CLAIM

1. The Plaintiff, Andrew Berthoff (“**Mr. Berthoff**”), makes this claim for:
 - (a) An Order declaring that the Directors (as defined herein) acted in bad faith and in an unfair and unreasonable manner in breach of section 51 of the *Not-for-Profit Corporations Act, 2010*, S.O. 2010, c. 15 (the “**NFPA**”) and The Pipers and Pipe Band Society of Ontario (the “**PPBSO**”) Rule Book dated May 10, 2023 (the “**Rule Book**”) when suspending the Plaintiff’s membership in the PPBSO;
 - (b) An Order pursuant to section 191 of the NFPA setting aside the decision of the PPBSO to suspend Mr. Berthoff’s membership in the PPBSO, reinstating his membership, and prohibiting the Defendants from suspending or terminating his membership at any subsequent time;
 - (c) An Order declaring that the Individual Defendants (as defined herein) have and continue to exercise their powers as directors, officers, controlling minds, and/or trustees of the PPBSO in a manner that is oppressive, malicious, and unfairly prejudicial to, and that unfairly disregards the interests of Mr. Berthoff within the meaning of section 174 of the NFPA;
 - (d) An Order pursuant to section 174 of the NFPA appointing an inspector to investigate the conduct of and steps taken by the Individual Defendants in suspending Mr. Berthoff’s membership and to report the findings of such investigation in a final report to the Court;

-6-

- (e) Special and consequential damages in the sum of \$200,000 caused by:
 - (i) a failure of the Individual Defendants to conduct the affairs of the PPBSO in good faith and in a manner consistent with the laws and rules applicable to them and the reasonable expectations of its members;
 - (ii) negligence of the Individual Defendants in the performance of their duties as directors, officers, controlling minds, and/or trustees in respect of the affairs of the PPBSO; and
 - (iii) breach of fiduciary duties of the Individual Defendants in the performance of their duties in respect of the affairs of the PPBSO;
- (f) Punitive damages in the amount of \$300,000;
- (g) Pre-judgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (h) Post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (i) The costs of this proceeding, plus all applicable taxes and disbursements; and
- (j) Such further and other relief as to this Honourable Court may seem just.

-7-

The Parties

2. The Defendant, PPBSO, is a not-for-profit corporation incorporated pursuant to the laws of the Province of Ontario with its registered office in Oakville, Ontario. The PPBSO serves pipers, drummers, and pipe bands in Ontario and is the governing body overseeing solo player and pipe band competitions within the province.

3. Mr. Berthoff is an individual residing in the City of Toronto, in the Province of Ontario. He is an accomplished and widely respected piper and has been a member of the PPBSO in good standing from 1988 to 2024. He is also an accredited adjudicator of the PPBSO and in this capacity has judged bagpiping and pipe band competitions internationally.

4. The individual defendants (the “**Individual Defendants**”), Andrew B. Giles, Kevin Shand, Michele Curtis, Jamie Blacklock, John Allen, Wendy Baskerville, Malcolm Bow, Brad Davidson, Don Elliot, Michael Grey, Charles Henry Macdonald, Jim McGillivray, Brian Robertson, Julie Stewart, and Dylan Whitemore are and were the directors and controlling minds of the PPBSO at all material times (collectively, the “**Directors**”).

Background and Mr. Berthoff’s Opinion Piece

5. Since 1995 Mr. Berthoff has been editing and publishing an electronic magazine named pipes|drums.

6. pipes|drums is not affiliated with the PPBSO or any other association and was created by Mr. Berthoff to provide relevant news, reviews, and journalistic features to members of the piping and drumming community.

-8-

7. On or about October 25, 2023, Mr. Berthoff published an opinion piece in pipes|drums regarding the Royal Scottish Pipe Band Association (the “**RSPBA**”) which indicated that the RSPBA altered the rules of the 2023 World Pipe Band Championships and without explanation, dismissed the results submitted by one of its judges (the “**Opinion Piece**”).

8. pipes|drums contains disclaimers about its independence and non-affiliation with any associations and all opinion pieces published on pipes|drums, including the Opinion Piece, are clearly marked as opinion.

9. On October 27, 2023, Mr. Berthoff received an email (the “**Initial Email**”) from then president of the PPBSO and Director, Michael Grey (“**Mr. Grey**”), stating that at “yesterday’s meeting of the PPBSO’s board of directors it was unanimously agreed that [the Opinion Piece was] at odds with expectations” in the PPBSO’s Adjudicators’ Code of Conduct (the “**Adjudicator’s Code**”) and the PPBSO’s Expectations of Membership Policy (the “**Member’s Code**”).

10. The Initial Email did not contain any explanation of how Mr. Berthoff allegedly breached the Adjudicator’s Code or the Member’s Code.

11. On November 4, 2023, Mr. Berthoff responded to the Initial Email (the “**Response Email**”), copying individuals who he believed to be Directors as well as members of the PPBSO’s Music Committee (the “**Music Committee**”) listed on the PPBSO’s website, who, pursuant to the Adjudicator’s Code, are, along with the Directors, responsible for administering sanctions under the Adjudicator’s Code. Among other things, Mr. Berthoff requested particulars of how the Opinion Piece contravened the Adjudicator’s Code or the Member’s Code, raised concerns about

-9-

Mr. Grey's personal bias against and dislike of him, and pointed out Mr. Grey's potential conflict of interest in the matter.

Scheduling of the Discipline Committee Meeting

12. On November 17, 2023, Mr. Berthoff received an email from Director and PPBSO Secretary Michele Curtis ("**Ms. Curtis**"). The email stated, among other things, that:

- (a) the Initial Email was simply a "reminder" sent on behalf of the "entire Board of Directors [of the PPBSO]" of the Adjudicator's Code and Member's Code, and that no action was being taken by the Directors with respect to the Opinion Piece;
- (b) the Response Email constituted a "potential" violation of the Adjudicator's Code and Member's Code, and accordingly, the Directors called for the formation of a discipline committee (the "**Discipline Committee**") to review the matter and "hopefully come to some sort of fair resolution"; and
- (c) Mr. Grey did not attend the meeting of the Directors at which the decision was made to form the Discipline Committee, and he would not be involved in future discussions to avoid any potential conflict of interest.

13. Ms. Curtis' email listed certain provisions of the Adjudicator's Code and the Member's Code to be discussed at the meeting but gave no explanation as to how or why these provisions were relevant to the Response Email.

-10-

14. Ms. Curtis' email was one of many communications that Mr. Berthoff had with various Directors whereby they backtracked on the claim that the Opinion Piece breached the Adjudicator's Code or the Member's Code (presumably since they recognized that this claim was not supported by any evidence) and instead asserted that it was the Response Email that "potentially" breached these codes.

15. A meeting with Mr. Berthoff and the Discipline Committee was scheduled for November 24, 2023.

16. On November 17, 2024 and November 22, 2024, Mr. Berthoff wrote to Ms. Curtis and other Directors requesting particulars of how he allegedly violated the Adjudicator's Code or Member's Code to be provided to him in advance of the meeting. Mr. Berthoff did not receive a response to his questions.

17. On November 23, 2023 Kevin Shand ("**Mr. Shand**"), a Director and PPBSO Vice President, wrote to Mr. Berthoff to advise that the Discipline Committee meeting had to be rescheduled due to an unnamed representative of the Music Committee having to withdraw for personal reasons.

18. Mr. Shand wrote to Mr. Berthoff on November 28, 2023 to ask about his availability on December 1, 2023 for a meeting with the "new full [discipline] committee" (the "**Reconstituted Discipline Committee**"). Mr. Berthoff agreed to attend and reiterated his request for an explanation of how he had allegedly breached the Adjudicator's Code or the Member's Code. Mr. Berthoff also asked for an agenda for the meeting and who would be attending. Once again, Mr. Berthoff was not provided with this information that he reasonably requested.

-11-

19. On November 29, 2024, Mr. Shand confirmed to Mr. Berthoff that the formation of the Reconstituted Discipline Committee “has nothing to do with the [Opinion Piece]” and the issue was the Response Email. In particular, Mr. Shand stated that “[i]f one of our members takes a previously private matter, makes it public, and blasts another member’s and a band’s integrity in front of any group, but especially their mutual high ranking peer groups, then we can’t sit back and do nothing.”

20. Mr. Berthoff was advised at the meeting of the Reconstituted Discipline Committee that the fact that the Response Email was sent to one individual, who was listed on the PPBSO’s website as a member of the Music Committee but had apparently since resigned, was the crux of his alleged violation of the Member’s Code in making the matter “public”. Since Mr. Berthoff relied upon information on the PPBSO’s website to send the Response Email to individuals who were purportedly on the Music Committee, which committee has a clear mandate under the Adjudicator’s Code that was put at issue by Mr. Grey, it is not clear how Mr. Berthoff could be at fault for the PPBSO’s delinquency in updating their website.

The Reconstituted Discipline Committee Meeting

21. On December 1, 2023, Mr. Berthoff attended the Reconstituted Discipline Committee meeting and was informed that the Initial Email did not represent the views of the Directors and that it was sent without the authority of the Directors, a fact which is supported by communications that Mr. Berthoff and his counsel had with various Directors.

22. On December 7, 2023, Mr. Shand emailed Mr. Berthoff thanking him for his contribution to a “positive discussion” at the Reconstituted Discipline Committee meeting. Mr. Shand cited

-12-

provisions of the Member's Code, to "remind" Mr. Berthoff of these expectations. Mr. Shand offered an apology to Mr. Berthoff on behalf of the Directors about "any miscommunication..." and, "the confusion that resulted from the original messages and their method of delivery, and stated that his email was a retraction of these earlier positions. Mr. Shand said that Mr. Berthoff's offer to retract the Response Email was appreciated and that the Reconstituted Discipline Committee intended to send "this file (and any other communications you wish) over to the PPBSO Music Committee (as per the rules of the society and its remit for the [Adjudicator's Code]".

23. Mr. Berthoff was encouraged by this meeting and Mr. Shand's email which seemed to indicate that the parties could reach an amicable resolution and put any disputes behind them.

Appointment of Andrew Giles as PPBSO's President and Nullification of the Outcome of the Reconstituted Discipline Committee Meeting

24. On or about December 9, 2023, Andrew Giles ("Mr. Giles") became President of the PPBSO.

25. On January 23, 2024, to Mr. Berthoff's surprise, Mr. Giles wrote Mr. Berthoff advising that the Reconstituted Discipline Committee failed to follow the procedures in the Rule Book, and thus the outcome of its meeting was declared a nullity. Mr. Giles advised that another Discipline Committee was being formed (the "**Second Reconstituted Discipline Committee**") to address the Response Email.

26. Mr. Giles did not provide any information about the "outcome" of the meeting or how the PPBSO's own committee apparently failed to follow its own rules and procedures. Based on the continuing subsequent mistreatment of Mr. Berthoff by Mr. Giles and other Directors, and the

-13-

Directors' abject disregard for the laws and rules that apply to them, it is clear that Mr. Giles' priority was to nullify the "outcome" of the Reconstituted Disciplinary Committee meeting, which was presumably too reasonable and fair towards Mr. Berthoff for Mr. Giles' liking.

27. The meeting between Mr. Berthoff and the Second Reconstituted Discipline Committee took place on January 29, 2024.

28. At the meeting, Mr. Berthoff reiterated his agreement to deliver a retraction of the Response Email. Since the meeting took place virtually and was recorded, Mr. Berthoff subsequently requested a copy of the recording, but none was provided to him.

Mr. Berthoff's Letter of Regret is not Accepted and Disciplinary Actions are Imposed

29. On February 1, 2024, as requested by the Second Reconstituted Discipline Committee, Mr. Berthoff sent a letter of regret to Mr. Giles regarding the Response Email (the "**Letter of Regret**").

30. That same day, Mr. Giles acknowledged receipt of the Letter of Regret and requested that Mr. Berthoff send it to all original recipients of the Response Email and copy him. In this email, Mr. Giles raised no concerns whatsoever with the content or adequacy of the Letter of Regret.

31. On February 2, 2024, Mr. Berthoff followed Mr. Giles' request by copying the email addresses of the recipients from the "To:" line of the Response Email and pasting them to the "To:" line of the Letter of Regret.

32. On February 13, 2024 Mr. Giles emailed Mr. Berthoff, stating that the Second Reconstituted Discipline Committee had decided that the Letter of Regret was not sufficient as it

-14-

had not been sent to Mr. Grey and a Director, Malcolm Bow. Mr. Berthoff replied to Mr. Giles explaining that he had cut and pasted all the recipients from the Response Email as the recipients to his Letter of Regret to conform to Mr. Giles' request.

33. On the same day, Mr. Giles informed Mr. Berthoff that the Second Reconstituted Discipline Committee unanimously agreed upon a suspension, for one year, effective immediately on February 13, 2024, with reinstatement being contingent on a full retraction of the Response Email and an apology being sent to all recipients of the Response Email (the "**Suspension**"). Mr. Giles indicated that the Suspension was based on the Response Email allegedly having breached the requirement in the Member's Code to "Support the policies of the organizers, and not bring the PPBSO into disrepute..." but provided no reason as to how this could be the case.

34. The following day, Mr. Berthoff submitted notice to Mr. Giles of his intention to appeal the Suspension pursuant to the Rule Book.

35. On February 22, 2024, counsel on behalf of Mr. Berthoff submitted a letter to Mr. Giles and other Directors with formal grounds for his appeal of the Suspension (the "**Appeal**"). The Appeal outlined the numerous reasons that the Suspension should and could not stand, including, without limitation, that the Member's Code which was exclusively relied upon for the Suspension clearly did not apply to the Response Email, and that the Second Reconstituted Discipline Committee had breached the laws and rules applicable to them throughout the disciplinary process against Mr. Berthoff.

-15-

Publication of Article in Piping Press

36. On February 23, an article was published in an online magazine called Piping Press (the “**Article**”) which revealed private, confidential, and identifying information, some of which was inaccurate and misleading, about the PPBSO’s disciplinary process against Mr. Berthoff. Counsel for Mr. Berthoff wrote to Mr. Giles and other Directors that same day advising them of the Article and requesting that they take immediate steps to protect the confidentiality and integrity of the PPBSO’s disciplinary process by requesting to the Article’s author that it be deleted.

37. At the time the Article was published, only Mr. Berthoff, the Directors, and the non-Director members of the various discipline committees should have had knowledge of the disciplinary proceedings against Mr. Berthoff, as Mr. Berthoff had not discussed it with anyone apart from his legal counsel.

38. The same day, Mr. Giles responded to counsel for Mr. Berthoff and refused to take any responsibility for the Directors’ obvious breach of their duties or to commit to take steps to rectify this breach. In his email, Mr. Giles effectively admitted that one or more Directors had leaked this confidential information resulting in the publication of the Article, in a blatant disregard of their fiduciary duties to Mr. Berthoff as a member of the PPBSO, and a flagrant disrespect for the integrity of their own disciplinary processes, particularly while the Appeal was still pending.

39. On February 26, 2024, counsel for Mr. Berthoff wrote to Mr. Giles and other Directors reiterating Mr. Berthoff’s concerns with the Article and reminding them their fiduciary duties, including with respect to confidentiality. To Mr. Berthoff’s knowledge, none of the Directors took any steps to rectify this improper disclosure.

-16-

40. Mr. Giles and other Directors' cavalier attitude towards this illegal and damaging disclosure and breach of their fiduciary duties was simply one of many examples of their conduct that betrayed their malice, bias, and bad faith towards Mr. Berthoff, all leading towards Mr. Berthoff's predetermined and unjustified punishment by them.

Decision Regarding the Appeal

41. On March 11, 2024, Mr. Giles wrote to Mr. Berthoff directly (not including his legal counsel) advising that the Directors, having met on March 9, 2024 and March 11, 2024 to review the Appeal, had voted unanimously to uphold the Suspension (the "**Appeal Decision**").

42. Despite requests from Mr. Berthoff's legal counsel, he was never provided with the names of the Directors who attended the meetings purportedly held on March 9, 2024 and March 11, 2024 and of those in attendance who voted in favour of the Appeal Decision, nor was he provided with reasons explaining how the Appeal Decision was reached with regard to the alleged breaches of the PPBSO's codes, which he was entitled to receive.

43. On April 2, 2024, legal counsel for Mr. Berthoff wrote to Mr. Giles and included all individuals who Mr. Berthoff believed to be the Directors of the PPBSO based on a corporate profile report, excluding Mr. Grey on the basis that Ms. Curtis had advised that he had recused himself from the matter. In this email, legal counsel forwarded previous correspondence that only certain Directors were included on to ensure that all PPBSO Directors were made aware of their colleagues' egregious mistreatment of Mr. Berthoff and disregard of the laws and rules that apply to them, and once again asking that the Appeal Decision be rescinded. Unfortunately, not one of

-17-

the Directors made any effort to rectify this unfair and illegal mistreatment of Mr. Berthoff. Legal counsel included the full list of these Directors on subsequent correspondence.

Mr. Berthoff's Exclusion as an Adjudicator

44. Mr. Giles, Jim McGillivray (“**Mr. McGillivray**”), and the other Directors have maliciously and unjustifiably deprived Mr. Berthoff of judging opportunities with the PPBSO since the Suspension, notwithstanding that PPBSO accredited judges are not required to be PPBSO members, and in fact, historically there have been many PPBSO accredited judges who were not PPBSO members.

45. On May 20, 2024, Mr. Giles wrote to two representatives of the Alliance of North American Pipe Band Associations (the “**ANAPBA**”) reminding them of Mr. Berthoff's Suspension (which he had apparently disclosed to them before) in an effort to bully and intimidate them into similarly excluding Mr. Berthoff from judging at their competitions, and once again, providing no justification for this request for “reciprocity”. Since the PPBSO and the ANAPBA are independent organizations, and neither PPBSO membership nor PPBSO accreditation are required to judge at ANAPBA competitions, it is clear and obvious that Mr. Giles' objective was to further marginalize, exclude, and humiliate Mr. Berthoff as much as possible.

46. On April 20, 2024 and May 1, 2024, Mr. McGillivray and Mr. Giles, respectively, sent emails to a list of PPBSO accredited judges in which they advised of Mr. Berthoff's Suspension and made false, misleading, and damaging statements about Mr. Berthoff.

-18-

47. In his email, Mr. Giles asserted that the “Board has, *to the best of its ability*, adhered to the law and our own rules and has sought legal advice on how to proceed throughout this process” (our emphasis added). This statement is particularly galling, since on several occasions, counsel for Mr. Berthoff explained to Mr. Giles and the other Directors the laws and rules that apply to them and exactly how the various discipline committees and the Directors had breached them, and in response, the Directors continued to blatantly and flagrantly disregard these laws and rules. In the circumstances, it is impossible for the Directors to assert that they could not possibly have known what laws and rules applied to them and what their duties and responsibilities are.

48. While Mr. Berthoff was not included as a recipient in these communications, certain recipients felt obligated to forward these emails to Mr. Berthoff and some recipients even responded expressing concerns about Mr. Berthoff’s mistreatment by the Directors, among other things, and forwarded these responses to Mr. Berthoff.

49. Mr. Giles, Mr. McGillivray, and the other Directors have consistently demonstrated their malice and bias towards Mr. Berthoff by making up unwritten rules that only apply to Mr. Berthoff and spreading falsehoods to external pipe band associations in an attempt to solidify Mr. Berthoff’s complete and utter exclusion from any opportunities to judge at competitions. As with the Appeal Decision, at no time was Mr. Berthoff provided with any reasons for his exclusion.

Appeal to the Ombudsman of the PPBSO

50. On April 29, 2024, counsel for Mr. Berthoff wrote to the Ombudsman of the PPBSO, Jim Scott, (“**Mr. Scott**”), requesting his assistance in reviewing Mr. Berthoff’s complaint regarding the Suspension and the Appeal Decision in accordance with section A-5 of the Rule Book.

-19-

51. After a lengthy review, Mr. Scott asked to speak directly with Mr. Berthoff. During these discussions, Mr. Scott gave Mr. Berthoff the impression that he would be recommending that the Directors reinstate Mr. Berthoff as a member of the PPBSO and put this dispute behind them.

52. On or around July 3, 2024, Mr. Scott told Mr. Berthoff that the Directors declined to follow his recommendations, and due to the aggressive language used by Mr. Giles at a meeting that he attended, he had decided to resign as Ombudsman.

The Suspension and the Decision are Arbitrary, a Nullity, and in Breach of the NFPA and the Rule Book and therefore Cannot Stand

(i) The Decision is Arbitrary as the Member's Code Does Not Apply

53. The Suspension and Appeal Decision cite Mr. Berthoff's alleged breaches of the Member's Code as the reason for the disciplinary proceedings and ultimate suspension of his membership.

54. The Member's Code is clearly not applicable in the circumstances.

55. The introduction of the Member's Code clearly defines its scope and application as follows:

...It is expected that all Members of the PPBSO will abide by this policy *while attending, performing or otherwise participating in PPBSO sanctioned events.*
[emphasis added]

56. Mr. Berthoff very clearly did not send the Response Email in connection with or while attending, performing, or participating in a PPBSO sanctioned event, and accordingly, there is no basis for the Suspension or the Appeal Decision.

(ii) The Suspension is a Nullity per section A-4.8 of the Rule Book due to the Second Reconstituted Discipline Committee's failure to adhere to the Rule Book

-20-

57. As a member of the PPBSO, Mr. Berthoff had a reasonable expectation that any disciplinary charges brought against him would be dealt with by the Directors in a fair and reasonable manner in accordance with the statutory provisions in the NFPA and the express procedural requirements in section A-4 (Discipline of Members) of the PPBSO's own Rule Book.

58. Section A-4.1 of the Rule Book provides as follows:

A-4.1 Discipline Committee. A Discipline Committee shall be established to be composed of the President, Vice President and Secretary of the Society plus one member of the Music Committee and one other Society member to be appointed by the President.

59. In contravention of section A-4.1, the Second Reconstituted Discipline Committee was comprised of the President of the PPBSO and three PPBSO members. A fifth individual, Sharon Duthart ("**Ms. Duthart**") who is an employee of the PPBSO, also attended the meeting of the Second Reconstituted Discipline Committee. Despite Mr. Berthoff's inquiries about why Ms. Duthart was in attendance, he was never advised if she was or was not part of the Second Reconstituted Discipline Committee.

60. Demonstrating a continuing and complete lack of transparency and accountability, at no point did anyone at the PPBSO inform Mr. Berthoff about who was on the Second Reconstituted Discipline Committee, who would attend the meeting, or why the composition of the committee did not conform to the mandatory requirements in the Rule Book

61. Section A-4.5 of the Rule Book provides as follows:

A-4.5 Notice to Member to be Disciplined. No such disciplinary action may be taken against any member without prior written notice to the member which shall:

-21-

1. Set out clearly the date, place and time of the meeting of the Discipline Committee;
2. Set out the nature of the charges which the member is required to answer;
3. Contain a warning that in the event of the failure of the member to attend, the meeting may proceed in his or her absence;
4. Be received by the Member at least 7 days prior to the meeting

62. While the subject line of the email that Mr. Giles sent to Mr. Berthoff on January 23 is identical to the specific name of section A-4.5 (Notice to Member to be Disciplined) in the Rule Book (indicating at the very least that Mr. Giles must have been aware of the rules that he and the other Directors were required but persistently failing to follow), the committee acted in breach of items 2 and 4 of this very same section (A-4.5), which provides that no “disciplinary action may be taken against any member without prior written notice to the member which shall... [s]et out the nature of the charges which the member is required to answer” and “[b]e received by the Member at least 7 days prior to the meeting”, respectively.

63. In his email of January 23, Mr. Giles alleged that the Response Email breached the provision in the Member’s Code requiring that members “[c]onduct themselves in a manner that is not detrimental to any *members, member bands, members of member bands, judges, contest/games/festival organizers and other participants in PPBSO sanctioned events where Members and Member Bands appear*” [our emphasis added]. While the email contains excerpts of the Response Email, there is no explanation as to how it allegedly breached this provision. Such an explanation was necessary for Mr. Berthoff to understand the nature of the charges against him that he was being required by the Second Reconstituted Discipline Committee to answer.

-22-

64. This failure of the Directors to inform Mr. Berthoff of the nature of these charges, in breach of their obligation to do so, meant that Mr. Berthoff was unfairly and improperly subjected to trial by ambush, revealing the obvious bias and bad faith conduct against him.

65. The Suspension inexplicably cites a different provision in the Member's Code than the provision originally cited by Mr. Giles in his email of January 23. The provision cited in the Suspension provides that Members are expected to "[s]upport the *policies of the organizers*, and not bring the PPBSO into disrepute. This includes all statements whether written or verbal, made in public or through any public platform" [our emphasis added]. In addition to unfairly and improperly raising new charges in the Suspension without the required notice to do so, the Second Reconstituted Discipline Committee again failed to provide any information about how the Response Email allegedly breached this newly raised provision. These actions contravened not only the Rule Book but they were also in breach of the NFPA.

66. The Directors also breached even the most simple and basic timing requirements in the Rule Book. Mr. Giles emailed Mr. Berthoff on January 23, 2024 advising him of that the Second Reconstituted Meeting was to be held on January 29, 2024, which contravened section A-4.5 item 4 of the Rule Book requiring such notice be given at least 7 days before the meeting.

67. Fortunately, the PPBSO's own Rule Book specifically and clearly prescribes what happens when a discipline committee of the PPBSO does not follow its own rules and procedures that are clearly set out in the PPBSO's Rule Book. Section A-4.8 of the Rule Book states:

A-4.8 Failure to Follow Procedure. Any action of the Discipline Committee taken not in accordance with the above shall be a nullity.

-23-

68. Even one of the numerous breaches of the Second Reconstituted Discipline Committee of the Rule Book meant that the Suspension was a nullity. Despite the Appeal very clearly outlining these obvious and egregious breaches, the Directors doubled down on their unsupportable, unfair, and malicious position against Mr. Berthoff when coming to the Appeal Decision.

(iii) *The Suspension and Appeal Decision are in breach of the NFPA*

69. Section 51 of the NFPA sets out the basic procedures that must be followed when a corporation governed by the NFPA disciplines one of its members, and provides as follows:

Power to discipline or terminate a member

51 (1) The articles or by-laws may provide that the directors, the member or any committee of directors or members have power to discipline a member or to terminate their membership. If the articles or by-laws provide for such a power, they must set out the circumstances and the manner in which that power may be exercised.

Good faith requirement

(2) Any disciplinary action or termination of membership must be done in good faith and in a fair and reasonable manner.

Fair and reasonable procedure

(3) For the purposes of subsection (2), a procedure is fair and reasonable if,
(a) a member is given at least 15 days notice of a disciplinary action or termination with reasons; and
(b) the member is given an opportunity to be heard, orally, in writing or in another format permitted by the corporation's articles or by-laws, not less than five days before the disciplinary action or termination of membership becomes effective, by the person with authority to impose or revoke the disciplinary action or termination.

Notice

(4) A notice required under this section may be given by any method reasonably intended to give actual notice.

-24-

Application to court

(5) A member of a corporation who claims to be aggrieved because they were disciplined or because their membership was terminated may apply to the court under section 191.

70. In violation of section 51(3)(a) of the NFPA, the Suspension was effective immediately, which contravened the 15-day statutory notice requirement.

71. The Suspension lacks any reasons connecting the disciplinary action to Mr. Berthoff's alleged breaches of the Adjudicator's Code or Member's Code as is required under section 51(3)(a) of the NFPA. Various Directors provided Mr. Berthoff with an ever-changing narrative about which of the PPBSO's codes or provisions in them may "potentially" have been breached, and at no time did Mr. Berthoff ever receive an explanation as to *how* the Response Email or any of his conduct breached these codes or provisions, which he was entitled to be informed of.

72. Mr. Berthoff pleads that due to the breach of the fair and reasonable procedure requirements in section 51(3)(a), the Suspension was not rendered in good faith nor in a fair and reasonable manner as required pursuant to section 51(2).

73. Section 51(5) of the NFPA provides recourse to Mr. Berthoff to apply to the Court under section 191 of the NFPA.

74. Section 191 of the NFPA provides as follows:

Compliance or restraining order

191 On the application of a complainant or a creditor of a corporation, the court may make an order directing the corporation or any director, officer, employee, agent, auditor, trustee, receiver, receiver-manager or liquidator of the corporation to comply with this Act, the regulations or the articles or by-laws of the corporation

-25-

or restraining any such person from acting in breach of them and may make any further order that it thinks fit.

75. Mr. Berthoff pleads that the Directors breached the NFPA due to the manner in which they exercised their power to discipline him. As a result, pursuant to section 191 of the NFPA, the Plaintiff pleads that this Court ought to set aside the Suspension and Appeal Decision and reinstate Mr. Berthoff's membership in good standing.

The Directors' Misconduct

76. Mr. Berthoff pleads that the Directors are the controlling minds and alter ego of the PPBSO.

77. At all material times, the Directors owed a fiduciary duty to act in the best interest of the PPBSO and its members, including Mr. Berthoff.

78. The Directors breached their fiduciary duty to the PPBSO and Mr. Berthoff as one of its members by acting in a manner that was oppressive, intentionally malicious, in bad faith, and unfairly prejudicial through their following acts and omissions:

- (a) erroneously relying on the Member's Code to justify their imposition of the Suspension when it was clear on the face of the Member's Code that it was not applicable to Mr. Berthoff's alleged impugned conduct;
- (b) knowingly breaching the provisions of the PPBSO's own Rule Book by failing to act in accordance with the procedural requirements stipulated therein;
- (c) non-compliance with the NFPA by failing to carry out the disciplinary action against Mr. Berthoff in good faith and in a fair and reasonable manner;

-26-

- (d) blatantly and intentionally disregarding the principles of natural justice by depriving Mr. Berthoff of any reasonable opportunity to participate in the disciplinary process by failing to explain the nature of the charges against him, including in relation to the alleged breaches of the PPBSO's own codes;
- (e) requiring Mr. Berthoff to take remedial actions that were a constantly shifting target and designed to lead to the predetermined result of the Suspension;
- (f) failing to conduct the disciplinary process in a transparent manner;
- (g) failing to provide reasons for the Suspension or the PPBSO Decision;
- (h) failing to give adequate consideration to the Appeal by unanimously voting to uphold the PPBSO Decision despite its various flaws being highlighted in the Appeal;
- (i) removing Mr. Berthoff from the list of PPBSO accredited judges on the PPBSO's website and depriving Mr. Berthoff of PPBSO judging opportunities without any justification;
- (j) contacting representatives of external pipe band associations in their capacities as PPBSO Directors in an effort to ensure that Mr. Berthoff is deprived of any and all judging opportunities, notwithstanding that Mr. Berthoff is not required to be a PPBSO member or a PPBSO adjudicator to fulfil these assignments;

-27-

- (k) conducting the affairs of the PPBSO in a manner that brings the PPBSO into disrepute; and
- (l) conducting the affairs of the PPBSO in a manner which raises serious concern regarding the integrity and fairness of the PPBSO's internal processes and governance.

79. In the circumstances, Mr. Berthoff pleads that the Directors ought to be held personally liable to Mr. Berthoff on a joint and several basis.

Mr. Berthoff's Position

80. The NFPA and the PPBSO's own Rule Book set out the laws, rules, and procedures that the Directors were required to follow throughout the disciplinary process against Mr. Berthoff.

81. As a member of the PPBSO, Mr. Berthoff had a reasonable expectation that the Directors and the members of any committees of the PBSO would follow and respect these laws, rules, and procedures. At no point in time was Mr. Berthoff's expectation met. Throughout the disciplinary proceedings against him, the Directors acted in bad faith in an unfair and unreasonable manner, contrary to the Rule Book and the NFPA.

82. Prior to April 2, 2024, Mr. Berthoff and his legal counsel wrote to the Directors who were involved with the disciplinary proceedings asking for the information that he was entitled to receive, explaining how they were in breach of the laws and rules applicable to them, and asking for the Suspension to be set aside on this basis.

-28-

83. On April 2, 2024, counsel for Mr. Berthoff wrote to the PPBSO Directors with extensive particulars of the breaches and misconduct that had been carried out against him by their colleagues to date in the hopes that common sense would prevail, and they would decide to reinstate Mr. Berthoff as a member in good standing to rectify these issues. Unfortunately, despite numerous communications between Mr. Berthoff's counsel and the Directors, including from that date onwards, none of the Directors agreed to this proposed simple and fair resolution.

84. Mr. Berthoff states that the conduct of the PPBSO and the Directors as alleged herein was motivated by a personal animus held by Mr. Giles and Mr. Grey against Mr. Berthoff, further underscoring the oppressive, punitive, malicious, and bad faith nature of this conduct.

Damages

85. As a result of the foregoing, Mr. Berthoff has sustained economic damages, as well as a loss of opportunity and reputational harm.

86. Despite their obligations of confidentiality, the Directors took steps to publicize the Suspension to publications such as Piping Press, and to various other external individuals and organizations involved in piping and drumming.

87. Mr. Berthoff is an adjudicator who was on the PPBSO's list of accredited judges on its website. Upon rendering the Suspension, the Directors removed Mr. Berthoff's name from the list of accredited judges without any explanation or justification to do so.

88. Mr. Berthoff pleads that the Directors publicized the Suspension and removed his name from the list of accredited judges to harm his reputation within the piping and drumming

-29-

community. This harmed Mr. Berthoff's reputation and disincentivized other organizations from hiring him to judge at their competitions.

89. Prior to the Suspension, Mr. Berthoff was in communication with piping and drumming organizations in other Canadian provinces, the United States, and New Zealand. Since then, such business enquiries came to an abrupt stop.
90. Mr. Berthoff states that the Directors have also made attempts to lobby other piping and drumming organizations to remove his name from their list of esteemed judges.
91. Mr. Berthoff pleads that he planned his retirement from a career in communications in 2023 to devote more of his time to judging piping and drumming competitions. The Director's conduct has stripped Mr. Berthoff of these business opportunities causing him to sustain economic damages and irreparable reputational harm, the full particulars of which will be provided prior to trial.
92. Mr. Berthoff states that the conduct of the Defendants is to a degree of maliciousness and heavy-handedness as to warrant an award of punitive damages.

Service Outside Ontario and Place of Trial

93. This Statement of Claim may be served outside of the Province of Ontario without a court order pursuant to Rule 17.02(g) and (i) of the *Rules of Civil Procedure*.

-30-

94. The Plaintiff pleads and relies upon the *Not-for-Profit Corporations Act, 2010*, S.O. 2010, c. 15; the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194; the *Courts of Justice Act*, R.S.O. 1990, c. C.43; and any other authority not otherwise specifically stated herein.

95. The Plaintiff proposes that this action be tried in the City of Toronto.

(Date of issue)

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ANDREW BERTHOFF
Plaintiff

-and-

THE PIPERS AND PIPE BAND SOCIETY OF ONTARIO et al.
Defendants

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

STATEMENT OF CLAIM

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RCP-F 4C (September 1, 2020)