

Court File No.

16-67028

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE OTTAWA HOSPITAL

Plaintiff

-and-

**GERARD (GERRY) DUBÉ, 1436937 ONTARIO INC. (o/a D.R.S. CONSTRUCTION),
LARRY ST. PIERRE, FEDERAL ELECTRIC (1976) LIMITED,
GUY ADRIAN LAPIERRE, G.A.L. POWER SYSTEMS OTTAWA LTD.,
ROCH ST-LOUIS, PRO MANAGEMENT CONSTRUCTION INC.,
OTTAWA DIAMOND CONSTRUCTION INC., FRANK J. MEDWENITSCH,
and BROCK MARSHALL**

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 lawyers 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.

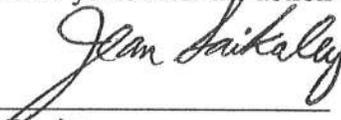
IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$2,500.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$400.00 for costs and have the costs assessed by the court.

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: January 5, 2016

Issued by: _____


Local Registrar

Address of Court Office:
161 Elgin St., 2nd floor
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- TO: GERARD (GERRY) DUBÉ**
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Tel: 613-446-5605
- AND TO: 1436937 ONTARIO INC. (o/a DRS CONSTRUCTION)**
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- AND TO: LARRY ST. PIERRE**
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- AND TO: FEDERAL ELECTRIC (1976) LIMITED**
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- AND TO: GUY ADRIAN LAPIERRE**
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2558 Carp Rd., Carp, Ontario K0A 1L0
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- AND TO: ROCH ST-LOUIS**
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- AND TO: PRO MANAGEMENT CONSTRUCTION INC.**
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AND TO: OTTAWA DIAMOND CONSTRUCTION INC.
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AND TO: FRANK J. MEDWENITSCH
17 Stone Park Lane, Ottawa, Ontario K2H 9P4
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AND TO: BROCK MARSHALL
104 Tower Road, Nepean, Ontario K2G 2G2
Tel: 613-723-9037

CLAIM

1. The plaintiff, The Ottawa Hospital (the "**Hospital**"), claims from all the defendants, jointly and severally:

- (a) damages, the particulars of which amounts will be provided prior to trial, for fraud, conversion, fraudulent misrepresentation, deceit, conspiracy, unjust enrichment and breach of contract;
- (b) damages, the particulars of which amounts will be provided prior to trial, arising out of the detection, investigation and quantification of the losses suffered by the plaintiff;
- (c) punitive damages in the amount of \$250,000;
- (d) an accounting of property belonging to the plaintiff that has come into each of the defendants' hands, including an accounting of all assets, effects, trust accounts or jointly held assets, or any improper disposition thereof, and of all money had or received by the defendants or any person on their behalf and of all dealings and transactions between the defendants, the plaintiff and/or the plaintiff's contractors and suppliers;
- (e) a declaration that the plaintiff is entitled to trace the monies fraudulently obtained from the plaintiff into and through any financial institution, accounts or deposit facilities in the name of the defendants and into or through any assets purchased by the defendants with the plaintiff's monies and to cause them to disgorge same;

- (f) an interlocutory and permanent injunction restraining the defendants from disposing of any of their assets, including those held by any other person on their behalf, wherever so located;
 - (g) pre-judgment and post-judgment interest on all amounts awarded to the plaintiff pursuant to sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
 - (h) costs of this action on a substantial indemnity basis, plus applicable goods and services taxes thereon; and
 - (i) such further and other relief as this Honourable Court may deem just.
2. In addition, the Hospital claims from the defendants Frank Medwenitsch and Brock Marshall (collectively, the "**Former Employees**"):
- (a) damages, the particulars of which amounts will be provided prior to trial, for breach of fiduciary duty;
 - (b) a declaration that the liability of the Former Employees herein arises out of fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity for the purposes of section 178(1)(d) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3; and
 - (c) such further and other relief as this Honourable Court may deem just.

THE PARTIES

The Plaintiff

3. The Hospital is an Ontario non-share corporation and a multi-site, academic health science centre. It operates on three campuses: the Civic Campus, the Riverside Campus and the General Campus.

The Former Employee Defendants

4. Frank Medwenitsch ("**Medwenitsch**") was a Hospital employee from 1989 until his resignation in October 2015. From 2004 onwards, Medwenitsch was the Director, Capital Projects in the Hospital's Planning Department. In that position, his responsibilities included overseeing the implementation of construction projects at the Hospital, inclusive of procuring and coordinating the work of consulting professionals, general contractors, electrical and mechanical contractors. Medwenitsch was the custodian of a large annual budget for the Hospital's construction and planning projects and had signing authority of \$100,000. A group of project managers reported directly to Medwenitsch in his role as Director.

5. Brock Marshall ("**Marshall**") was a Hospital employee from 1988 until his retirement in 2015. Most recently, Marshall was the Director of Engineering and Operations in the Hospital's Planning Department. In that position, his responsibilities included overseeing maintenance, infrastructure and the implementation of minor construction projects at the Hospital, inclusive of procuring and coordinating the work of general contractors, electrical and mechanical contractors. In February 2015, the Hospital offered Marshall an early retirement package and he accepted. He ceased work in April 2015, though his salary was to be continued until August

2016. At the time the Hospital offered Marshall his retirement package, the Hospital had no knowledge of his participation in the fraudulent scheme described herein.

The Defendant Vendors and Principals

6. 1436937 Ontario Inc. is a company incorporated pursuant to the laws of Ontario. It operates as D.R.S. Construction ("**DRS**"). The defendant Gerard Dubé ("**Dubé**") is a registered officer and director of DRS. Dubé and DRS have worked on numerous capital and maintenance projects with the Former Employees for the Hospital since at least 2000. In 2011, DRS was selected for the Hospital's list of pre-qualified general contractors for projects up to \$250,000.

7. Federal Electric (1976) Limited ("**Federal Electric**") is a company incorporated pursuant to the laws of Ontario. The defendant Larry St. Pierre ("**St. Pierre**") is the President and a registered director and officer of Federal Electric. In 2011, Federal Electric was selected for the Hospital's list of pre-qualified electrical contractors for projects up to \$7.5 million. Federal Electric is directly contracted and also subcontracted for various work on Hospital capital and maintenance projects.

8. G.A.L. Power Systems Ottawa Ltd. ("**G.A.L. Power**") is a company incorporated pursuant to the laws of Ontario. The defendant Guy Adrian Lapierre ("**Lapierre**") is a registered director and officer of G.A.L. Power. G.A.L. Power supplies and maintains generators and fuel systems to the Hospital, among other things.

9. Pro Management Construction Inc. ("**Pro Management**") and Ottawa Diamond Construction Inc. ("**Ottawa Diamond**") are companies incorporated pursuant to the laws of Ontario, both having the same mailing address. The defendant Roch St-Louis ("**St-Louis**") is the sole registered director and officer of Pro Management and the operator of Ottawa Diamond. St-

Louis has also been known to operate under another purported business name: MS Enterprises. Both Pro Management and Ottawa Diamond Construction have supplied subcontractor work to DRS for Hospital projects.

10. Collectively, DRS, Federal Electric, G.A.L. Power, Pro Management and Ottawa Diamond are referred to herein as the "**Vendors**". Collectively, Dubé, St. Pierre, Lapierre and St-Louis, being the named defendant principals of the respective Vendors, are referred to herein as the "**Principals**".

HOSPITAL POLICIES

11. The Hospital has a Code of Conduct setting out expected employee behaviours that are in keeping with the Hospital's core values. In addition, as a member of the Broader Public Sector, the Hospital has policies in place to ensure the Hospital's compliance with Ontario's Broader Public Sector statutes and regulations, including the Hospital's Purchasing Policy, Tendering Policy and Gifts Policy.

Code of Conduct

12. The Code of Conduct requires that employees report conflicts of interest, whether involving themselves or other employees, to their direct reports or to Human Resources, if the complaint involves the employee's direct manager.

Tendering Policy

13. Pursuant to the Hospital's Tendering Policy, the Hospital endeavours to solicit formal competitive invitational or open bidding processes for the procurement of all goods, services and construction in excess of \$25,000. The following minimum guidelines are established to promote competitive bidding for goods services and construction:

- (a) For goods, services and construction with an annual expenditure less than \$25,000, formal bids are not required, however, where possible and practical, bids will be requested from a minimum of three suppliers;
- (b) For goods, services and construction with an annual expenditure of between \$25,000 and \$100,000, bids will be in writing from a minimum of three suppliers where possible; and
- (c) For goods, services and construction with an annual expenditure of greater than \$100,000, a formal pre-qualification process or a formal tendering process will be issued electronically.

14. The thresholds are based on cumulative value, so that, for instance, a contract worth \$40,000 annually but contracted for three years has a cumulative value of \$120,000 and requires a formal electronic process.

15. The Tendering Policy also provides for the pre-qualification of suppliers. The pre-qualification selection committee members are required to adhere to the Purchasing Policy, discussed below.

Purchasing Policy

16. The Hospital's Purchasing Policy provides direction for acquisition of equipment, supplies and services. It requires a conflict of interest declaration, to be made in good faith, confirming no conflicts of interest, including non-monetary potential conflicts of interest or relationships that may relate to purchasing decisions.

17. All potential conflicts of interest must be declared. Hospital employees must disclose all offerings (financial or operational) received or to be received from any third party contractor/vendor, when part of a procurement process. The Purchasing Policy states expressly that the Hospital "supports a zero tolerance approach with respect to conflicts of interest pre, during and post the procurement process. No individual is to influence any aspect of the submission previous to or during the tender process."

Gifts Policy

18. The Hospital's Gifts Policy prohibits Hospital employees from accepting gifts "which could influence their decision on any hospital business, including procurement." Gifts of any value must be reported to the employee's supervisor immediately upon receipt. When the gift exceeds nominal value (i.e. greater than \$25), the supervisor must advise the employee that the gift cannot be accepted and must redirect the gift, as appropriate.

19. The Hospital's Gifts Policy allows for vendor/supplier sponsored entertainment, but only in limited circumstances, including:

- (a) Employees must report all vendor events to their immediate supervisor, prior to attending. The employee's request to attend can be denied if the Hospital is in contract negotiations with the vendor; and
- (b) Employees should consider the following: i) the reason for the gift, ii) whether it is appropriate, iii) the employee's role at the Hospital and how the acceptance of the gift might be perceived by others, and iv) whether an obligation or reciprocity is implied for either party in the transaction.

20. Employees who fail to comply with the Gifts Policy are subject to disciplinary action up to and including dismissal.

VENDOR AGREEMENTS

21. The various Requests for Proposals issued by the Hospital include terms and conditions with which vendors must comply. Pursuant to those terms, the Vendors were required to declare any relationship with any Hospital staff that may be considered a conflict of interest. By submitting responses to Requests for Proposals, the Vendors warranted that no actual or potential conflict of interest exists with respect to the submission of the proposal of the performance of the contemplated contract to be awarded. In addition, when they were successful bidders, the Vendors and their Principals were required to sign conflict of interest declarations. None of the Vendors or their Principals ever declared any conflicts of interest relating to the Former Employees.

22. Further, the Hospital's standard purchase orders include conditions requiring all contract personnel working at the Hospital to abide by the Hospital's policies and procedures. All contract personnel working at the Hospital are required to attend the Hospital's "Contractor Orientation Program", which sets out the Hospital's policies and procedures. Also thereunder, all changes in delivery date, price, quantity or quality of goods ordered must be approved by a Hospital buyer.

THE FRAUDULENT SCHEME AND CONSPIRACY

Overview of the Defendants' Scheme

23. The Former Employees provided the Vendors with improper procurement advantages at the Hospital, including providing a) advanced and draft copies of procurement documents, b)

information about bids by competitors and c) internal Hospital communications about Hospital projects.

24. The Former Employees also allowed the Vendors and their Principals to have significant influence over tenders at the Hospital, including the ability to limit competition through a) nominating the Vendors' own preferred competitors, b) excluding other viable competitor bids c) placing unduly restrictive terms in the tender documents and d) inviting limited bidders, on a select and strategic basis, to manipulate the tender process.

25. The Former Employees knowingly allowed and approved improper invoices from the Vendors for work either not performed, partially performed or not yet complete. The Former Employees also knowingly allowed and approved inflated pricing by the Vendors. The Hospital suffered losses resulting from inflated pricing caused by a) the uncompetitive pricing process, b) improper supervision, overhead and profit charges, and c) subsequent change orders that were not subject to adequate checks and balances. The Vendors' invoices misrepresented or overstated their overhead and profit earned, misrepresented the true costs of subcontractors and generally overcharged the Hospital for their services. The misrepresented invoices are inconsistent with and not supported by the Vendors' books and records and are not accounted for properly in documentation provided to the Hospital by the Vendors.

26. In return for these improper procurement advantages, the approval of over-payments and other benefits, the Vendors and their Principals provided the Former Employees with hospitality gifts, trips and payments, none of which were disclosed to or approved by the Hospital, contrary to the express Hospital policies cited above.

27. At all material times, the Principals were the ultimate owners and directing minds of the Vendors and perpetrated the fraudulent scheme described herein by using the Vendors as vehicles for their fraudulent conduct and to obtain personal benefits. The Hospital pleads that the Principals, in perpetrating the fraudulent scheme described herein, are personally responsible for their own tortious conduct. In addition, the Hospital pleads that the Vendors are liable for such tortious conduct, both directly and vicariously.

Examples of Vendor Kickbacks to Hospital Employees

28. In return for improper procurement advantages and other favoritism provided to the Vendors, as detailed further below, the Vendors and their Principals provided gifts, trips and payments to the Former Employees, none of which were disclosed to the Hospital prior to acceptance. Those benefits, which were intended as kickbacks, included but were not limited to the following items (the "**Kickbacks**"). The full particulars of other Kickbacks resulting from the Scheme are not yet known to the Hospital, but are in the knowledge of the defendants.

29. Beginning in at least 2009, the Vendors and their Principals paid for the Former Employees to attend multiple fishing trips, none of which were disclosed to the Hospital prior to acceptance, including;

- (a) In June 2009, G.A.L. Power and/or Lapierre contributed for Medwenitsch and various project managers from his department to attend a fishing trip and stay at the Fairmont Kenauk Resort in Montebello, Québec;
- (b) In July 2015, Federal Electric and/or St. Pierre hosted Medwenitsch and others at St. Pierre's cottage for a fishing trip, barbeque and drinks;

(c) In late July 2015, Federal Electric and G.A.L. Power contributed for Medwenitsch and a project manager from Medwenitsch's department to attend a lavish fishing trip that included flights to Vancouver, a luxury hotel stay in Vancouver, fishing licenses and a second leg of the trip in San Francisco, which included spouses, then on to Napa Valley. St. Pierre and Lapierre attended as well.

30. From 2014 up until around the time of Medwenitsch's suspension from the Hospital in 2015, Federal Electric employed Medwenitsch's daughter, Katrina Haucke (formerly Katrina Medwenitsch), as an accounting and administrative assistant. Medwenitsch arranged for the employment without his daughter's knowledge or involvement. Federal Electric then benefited from inflated Hospital purchase orders to partially cover the costs of employing Medwenitsch's daughter. On August 19, 2014, Medwenitsch sent the following text message to Federal Electric: "\$1280 of the \$6300 picks up Katrina – the remainder goes towards the project".

31. From 2009 to 2010, G.A.L. Power employed Medwenitsch's other daughter, Stephanie Medwenitsch, as a "client appreciation representative". At the time of pleading, it is unknown to the Hospital whether G.A.L. Power also benefited from inflated Hospital purchase orders to partially or fully cover the costs of employing Medwenitsch's daughter.

32. In addition to DRS, Dubé owned and operated an automotive business called Canadian Classic Cars. In at least the years 2012 to 2014, Dubé sold or arranged for the sale of multiple cars to Marshall and his family below cost or at no cost. Dubé then provided or arranged for the provision of ongoing services for Marshall's cars, either below cost or at no cost.

33. In or around May 2015, Pro Management and/or DRS performed work at Medwenitsch's cottage and home, including the installation of windows, replacement and reconfiguration of a deck, installation of river stone and moving a gazebo, all below cost or at no cost.

34. Similarly, in or around June 2015, Pro Management and/or Ottawa Diamond performed work at the home of an employee in Medwenitsch's department, who reported to Medwenitsch, which work included the installation of a fan, a door and tile, below cost or at no cost.

35. In 2013, Pro Management and/or Ottawa Diamond performed work at Marshall's home, including painting and roof work, below cost or at no cost. Similarly, in May 2014, Pro Management and/or Ottawa Diamond, with instructions from Dubé, performed painting at Marshall's daughter's home, below cost or at no cost. In addition, from at least 2012 to 2014, DRS, Pro Management and/or Ottawa Diamond provided materials and performed additional work at Marshall's home and hobby farm, including painting, exterior wood work, interior drywall, roofing and window repair, all below cost or at no cost.

36. While engaged with Hospital projects and tendering, the Vendors and their Principals paid for and provided tickets for the Former Employees to attend various sport events, including hockey games, which were not disclosed to the Hospital prior to acceptance.

37. The Hospital pleads that any partial payments from the Former Employees for these Kickbacks, if received by the Vendors or their Principals, were illicit and were not carried on the books and records of the Vendors or reported by the Vendors for tax purposes.

Examples of Procurement Advantages and Other Benefits Provided to the Vendors

38. The following are examples of the improper procurement advantages and other benefits provided to the Vendors by the Former Employees. The full particulars of other improper

procurement advantages and other benefits to the Vendors resulting from the Scheme are not yet known to the Hospital, but are in the knowledge of the defendants.

A. Improper Influence over Bidding and Tendering

39. During the procurement process, the Former Employees permitted the Vendors and their Principals to exclude viable competitors and choose who would be invited to bid. For instance:

- (a) In 2015, during procurement of the Riverside Campus Generator and Fuel System Technical Standards & Safety Authority (TSSA) Compliance project, Medwenitsch invited G.A.L. Power to choose how the tender would be run, permitting G.A.L. Power to choose the other bidders, and also arranging for the intentional exclusion of another competitor. The excluded fourth competitor would have bid significantly less than the winning G.A.L. Power bid. Later in 2015, a similar situation occurred with G.A.L. Power's winning bid for the General Campus Fuel Oil Replacement Project;
- (b) In May 2015, Medwenitsch allowed Dubé to choose the bidders to invite for painting at the General Campus. Medwenitsch then provided the draft request for proposals for the work to Dubé for his "review and comments". Once the request for proposals was public, Dubé provided it to St-Louis for review and pricing. As discussed further below, the project was ultimately awarded to DRS with further assistance from an employee who reported to Medwenitsch, and the project was then subcontracted to Pro Management.

40. The Vendors and their Principals also received tips from the Former Employees regarding bid prices and scopes of projects. Quotes and bids were prepared with limited

competition and the Former Employees then arranged for and approved the expansion of the Vendors' work through change orders. For example, in June 2015, Medwenitsch manipulated a bid process to ensure that DRS was the low bidder and was awarded a fireproofing project at the Hospital's General campus. Before issuing, Medwenitsch provided the draft notice of project and request for quotes to DRS and asked for Dubé's feedback. Once the request for quotes was finalized and issued, Medwenitsch invited four bidders, including DRS. When the initial four quotes were emailed to Medwenitsch, DRS was only the second lowest bidder. Medwenitsch provided competitors' quotes to DRS, before a winner was announced. Then to change the bidding results, Medwenitsch emailed the actual lowest bidder, purported to be still awaiting another bid, and then instigated an increase in the lowest bidder's quote. Due to Medwenitsch's manipulations, the fireproofing project was ultimately awarded to DRS for over \$88,000. However, Medwenitsch then allowed for additional payments to DRS on the project and had the purchase order amended accordingly.

41. The Former Employees, the Vendors and their Principals also conspired to circumvent the Hospital's Tendering Policy by improperly sole-sourcing work. For example:

- (a) Medwenitsch provided significant amounts of work to DRS directly under the pretext of "small projects", intentionally circumventing the Hospital's Tendering Policy. In November 2014, after a bidding process, Medwenitsch had a purchase order issued for DRS in the amount of \$15,000 for small project requests to be made over half a year. However, the initial maximum of \$15,000 was quickly exceeded. In May 2015, Medwenitsch approved of increasing the purchase order by \$25,000 and extending the contract to April 2018, without further tendering or bidding. Later that month, Medwenitsch approved two additional increases to the

purchase order of \$10,000 each, so that the purchase order to DRS ultimately totaled \$60,000, without further tendering or bidding. Though DRS's winning bid did not provide for supervision, overhead or profit charges, DRS's subsequent invoices for small projects included such charges improperly and were nonetheless allowed by Medwenitsch. Medwenitsch also improperly characterized subsequent Hospital work as "small projects", so that the work would be provided directly to DRS; and

- (b) Medwenitsch ensured that G.A.L. Power was used as the sole-source for the Hospital's generators and their maintenance, while knowingly allowing G.A.L. Power to charge inflated prices for its goods and services.

B. Improper Influence over Pricing

42. The Hospital pleads that the Former Employees, the Vendors and their Principals conspired to inflate both the amount of work provided to the Vendors and the price charged to the Hospital for that work. Rather than acting in the Hospital's best interests to obtain the best pricing from the Vendors, the Former Employees acted in their own interests and in the interests of the Vendors, working directly with the Vendors and their Principals to manipulate pricing and bidding. For example:

- (a) In June 2015, Medwenitsch texted another pre-qualified Hospital general contractor with the following message about a meeting with Dubé regarding DRS's pricing: "I have 4 of my guys coming up this aft along with Gerry [Dubé] and a couple of his guys – pop on over as I wanted to bounce something off Gerry

[Dubé] and you so that the two of you don't consistently beat yourself up on pricing!"; and

- (b) In May 2015, St. Pierre provided Medwenitsch with a draft letter from Federal Electric regarding a quote to submit for subcontractor work on a parking rehab project at the Civic Campus. Medwenitsch instructed St. Pierre to "add three and submit", thereby manipulating the bid price. As directed, Federal Electric modified the quote, increasing it by over \$3,000, before ultimately submitting the bid to the general contractor on the project. When the general contractor questioned Federal Electric's quote, Medwenitsch threatened to have the Hospital issue a purchase order directly to Federal Electric, instead. As a result, the general contractor incorporated Federal Electric's inflated quote into its ultimate quote for the project, while also adding overhead and profit charges.

Medwenitsch knowingly approved the inflated quote.

- 43. In its role as general contractor, DRS was at times entitled to charge either a supervision fee or overhead and profit, but not both. Nonetheless, DRS often charged both and the Former Employees knowingly approved payment of those double charges.

C. Improper Approval of Purported DRS Invoices

- 44. In 2014, Dubé, Medwenitsch and St-Louis conspired and colluded together to essentially extort Marshall, in order to obtain Marshall's approval to pay numerous unsupported and improper DRS invoices that dated back to 2010. The conspiracy was conducted over several months, as follows.

45. First, in October 2014, St-Louis sent Medwenitsch and Dubé a draft email for their review and approval. The draft email was addressed to Marshall and requested Marshall's payment for work done by St-Louis at Marshall's hobby farm and home. It is unknown to the Hospital whether Marshall made the requested payment.

46. In December 2014, DRS contacted Medwenitsch about purported outstanding DRS invoices. Medwenitsch asked Marshall to process payment of the DRS invoices, since the purported invoices supposedly related to Marshall's projects. When Marshall denied knowledge of the outstanding DRS invoices, Medwenitsch purported to investigate, then alleged "there is over \$430K owed to DRS going back 3 years!! Plus another \$100K plus done on your house and farm?!". Marshall responded to Medwenitsch "Shocking, can I call you?".

47. Marshall then emailed Dubé, stating "I am absolutely shocked by this email. I paid you in cash the amounts you had requested for the work done on my farm and home. This is devastating to me both personally and professionally".

48. Dubé responded to Marshall and Medwenitsch and noted that DRS paid for materials for the work at Marshall's hobby farm and home and had been paid in cash. Dubé also stated that St-Louis indicated all was settled with Marshall's account.

49. Medwenitsch then emailed Marshall "are you in a position to process the outstanding invoices now?! This all may go away if we clean up these outstanding invoices". As a result of the extortion and in order to avoid further disclosures of the benefits he had received from the Vendors, Marshall agreed to process improper and overstated DRS invoices, before even receiving copies or reviewing the purported invoices.

50. A few weeks later, in January 2015, Medwenitsch wrote to Marshall again, regarding "more skeletons" and alleging that an additional \$500k of unpaid DRS invoices related to work authorized under Marshall's watch. Marshall responded that he was not aware of the work and that the DRS invoices were invalid, were for projects not awarded to DRS and were for work that "nobody recalls ever happening". During January 2015, the Hospital was unable to find documentation supporting the purported outstanding DRS invoices and the Hospital questioned whether the invoices were actually ever previously submitted to the Hospital. However, at the end of January 2015, Medwenitsch claimed to have found a large number of DRS invoices, along with purchase orders, in the office of a departed employee. With additional pressure from and involvement of Medwenitsch, Marshall ultimately assisted in the approval for a portion of the stale, purported DRS invoices, while knowing of their illegitimacy.

D. Other Improper Involvement with Responses to Requests for Proposals

51. Medwenitsch instructed one his direct reports, Eileen Wilson ("**Wilson**"), to prepare and submit a response to a Hospital requests for proposals on behalf of DRS. As discussed above, in June 2015, Medwenitsch provided DRS with an advanced draft of a Hospital request for proposal relating to painting at the General Campus and asked for Dubé's feedback. Dubé then forwarded that advanced draft request for proposal to Wilson and wrote "I was hoping you'd be able to provide us with the best portfolio needed to be #1". At Medwenitsch's improper direction and insistence, Wilson then proceeded to prepare multiple internal workplace policies for DRS and ultimately entered DRS's bid submission, including those policies, for the Hospital project. The project was ultimately awarded to DRS based, in part, on the documents prepared by Wilson, at Medwenitsch's instruction.

MEDWENITSCH'S SUSPENSION AND ADMISSIONS

52. In August 2015, the Hospital discovered the defendants' fraudulent scheme set out herein (the "Scheme"). Medwenitsch was confronted about the discovery on August 18, 2015 and suspended with pay that same day. He retained counsel and then met with the Hospital again on September 29, 2015. In those meetings, Medwenitsch made the following denials and admissions:

- (a) When asked if he went on a 2015 fishing trip with Hospital suppliers, Medwenitsch initially denied the allegations and purported that he was instead "visiting family and friends". When subsequently confronted with email evidence confirming the booking of the fishing trip, he only then admitted going on the trip with some of the Vendors and their Principals. At the time of the initial admission, Medwenitsch was unable to provide details of the costs of the trip and simply indicated that he had paid cash to Federal Electric, for which no receipt had been given;
- (b) After denying attending other trips with Hospital suppliers, Medwenitsch subsequently also admitted attending other fishing trips in 2013, 2014 and 2015 with other Hospital suppliers, in some instances free of charge. Those trips were not previously disclosed to the Hospital and were accepted in contravention of the Hospital's Gifts Policy;
- (c) After denying further personal dealings with suppliers, when confronted with documents to the contrary, Medwenitsch then admitted for the first time that Hospital suppliers, including DRS, had done work at his cottage and home;

- (d) After denying further personal dealings with suppliers, when confronted with documents to the contrary, Medwenitsch only then admitted sending text messages whereby he arranged to have his daughter work for Federal Electric and requested in writing that the supplier add the cost of such employment to an invoice to be rendered to the Hospital. Medwenitsch admitted offering to issue a Hospital purchase order to the supplier to help cover the cost of his daughter's employment;
- (e) After denying further dealings with Hospital suppliers, when confronted with documents to the contrary, Medwenitsch admitted having a tree cut down by a pre-qualified Hospital contractor at his personal residence. He claimed to have paid cash and produced a purported, unsigned receipt, but his explanation was not consistent with text messages between him and the contractor, wherein he indicated that a Hospital project change order would include the costs of the tree removal; and
- (f) Medwenitsch admitted that costs were misallocated between Hospital projects and that he instructed some of the Vendors to misallocate costs to other accounts, regardless of which projects actually incurred the costs.

53. On October 5, 2015, shortly after making the above denials and admissions, Medwenitsch delivered a resignation letter to the Hospital. The Hospital accepted Medwenitsch's resignation, but did so expressly without prejudice to the Hospital's position that the Hospital had just cause for the termination of Medwenitsch's employment.

DEFENDANTS ARE LIABLE TO THE HOSPITAL

Fraud, Deceit, Conspiracy and Conversion

54. The Hospital pleads that the defendants perpetrated the Scheme, as set out above, in order to obtain a secret profit for their own benefit, to the detriment of the Hospital.

55. The defendants are liable in conversion because their Scheme caused the occurrence of 1) the payment of money to someone other than the rightful owner of that money, and 2) the payment of the monies were not authorized by their rightful owner, the Hospital. The Scheme constituted wrongful interference with the plaintiff's possession over the plaintiff's own funds. The defendants interfered with the goods of the Hospital in a manner inconsistent with the Hospital's right of possession. The Hospital suffered damages as a result.

56. The predominant purpose of the defendants' unlawful conduct was to cause injury to the Hospital. In addition, the defendants' conduct was directed towards the Hospital and the defendants knew in the circumstances that injury to the Hospital was likely to and did result from their conduct. The defendants are therefore liable for both predominant purpose conspiracy and unlawful act conspiracy.

57. The Former Employees fraudulently misrepresented that the payments and project awards were properly made to the Vendors by knowingly and deceitfully manipulating the procurement process and approving improper invoices. The Vendors proceeded to retain improper and inflated payments for their own secret benefit, without the plaintiff's knowledge or consent.

58. If the conflicts of interest and Vendor gifts had been properly declared to the Hospital pursuant to Hospital policies, and honestly recorded by the defendants, the plaintiff would have

discovered and stopped the Scheme. Further, but for the fraudulent misrepresentations by the defendants that the payments and project awards were properly made to the Vendors, the plaintiff would have discovered and stopped the Scheme. At no time did the defendants disclose to the plaintiff that they were profiting by conspiring and colluding together and making misrepresentations to the Hospital, or that they were using Hospital funds when no legitimate services were provided for value or when services were improperly procured or overstated.

59. The Hospital pleads that the defendants conspired and colluded with each other to perpetrate the Scheme against the Hospital. The defendants agreed amongst themselves to assist each other in defrauding the plaintiff. The full particulars of the conspiracy and agreement to defraud the Hospital are in the knowledge of the defendants.

Unjust Enrichment

60. The defendants unjustly benefitted from the Scheme at the expense of the Hospital and there is no juristic reason for them to have so benefited. The defendants are thereby in breach of constructive trust and are liable to make restitution to the Hospital and to disgorge all such unjust benefits to the Hospital.

Vendor Breaches of Contractual Duties

61. The Hospital was induced by the defendants' Scheme to pay substantially more than contractually owed and substantially more than the value of the goods and services provided by the Vendors. The Vendors' deliberate and intentional course of falsified invoicing and sub-standard goods and services constitutes breach of contract.

62. The Vendors and their Principals also breached their general duties to act honestly in the negotiation and performance of their contractual obligations. By participating in the Scheme and

actively misleading and deceiving the Hospital (as the Vendors' contractual counter-party), about the Vendors' true costs, profits and overhead, among other things, the Vendors and their Principals breached the requirements of honest, candid, forthright, and reasonable contractual performance and negotiation. In addition, the Vendors' dealings with the Former Employees was a breach of the Vendors' duties to act honestly. The Vendors failed to record the Kickbacks in their books, records and tax filings.

Former Employee Breaches of Fiduciary and Contractual Duties

63. The plaintiff pleads that the Former Employees breached their fiduciary duties to the Hospital to honestly carry out their employment.

64. In their positions, the Former Employees had access to the plaintiff's confidential information, including procurement information and procurement procedures. The Former Employees also enjoyed substantial autonomy, possessing power and discretion that they could exercise unilaterally, in a manner affecting the plaintiff's interests. The plaintiff was therefore particularly vulnerable to the improper use of the Former Employees' discretion and power. As a result, the Former Employees owed the Hospital fiduciary duties.

65. As fiduciaries, the Former Employees were bound to act in and demonstrate good faith towards the plaintiff. Instead, the Former Employees used their positions of trust with the plaintiff to manipulate the Hospital's procurement processes, approve inappropriate payments to the Vendors, and conceal their secret benefits and conflicts of interest.

66. It was an implied term of the Former Employees' employment that they would act in their employment with the plaintiff only in furtherance of the business interests of the plaintiff and not

for their own personal gain. It was also an express term of the Former Employees' employment that they abide with the Hospital's Code of Conduct and other policies.

67. By their involvement in the fraudulent Scheme, the Former Employees breached their fiduciary, implied and express contractual duties to the plaintiff, thereby causing the plaintiff damages.

RELIEF SOUGHT

General Damages

68. The plaintiff seeks damages as pleaded herein for the entire amount of the fraudulent Scheme. The plaintiff also seeks damages as pleaded herein against the defendants for investigative and other costs, the full particulars of which are not available at this time.

69. The plaintiff pleads that it is entitled to damages, as set out in paragraphs 1-2 above, the full particulars of which will be provided prior to trial, as a result of the fraud, conversion of funds and breaches described herein.

70. The plaintiff seeks damages as pleaded herein against the defendants for the entire amounts of the overpayments to the Vendors. The plaintiff pleads that it has suffered damages comprised of over payments to the Vendors, which it would not have paid were it not for the defendants' acts and omissions described herein, and further sums, the full particulars of which are not available at this time. Such damages are a direct result of the defendants' acts and omissions described herein.

71. At least a portion, if not all, of these outstanding proceeds of the Scheme are located in the defendants' Ontario bank accounts and invested in the defendants' Ontario assets.

Punitive Damages

72. The defendants perpetrated the deliberate and intentional Scheme over a significant period and they bear, both collectively and individually, a high degree of blameworthiness for their fraudulent conduct. They gained advantage and profit by intentionally abusing competitive bidding processes. The defendants' acts and omissions described herein constitute callous and deceitful conduct and a flagrant disregard for the rights of the plaintiff. As a result, the plaintiff is entitled to recover punitive damages in the amount of \$250,000.

Injunction and Accounting

73. The plaintiff pleads that it is entitled to an interlocutory and permanent injunction restraining the defendants from disposing of any of their assets, wherever so located, and an accounting of all assets, effects and property including any trust accounts or jointly held assets, or any improper disposition thereof, and of all money had or received by the defendants or any person on their behalf and of all dealings and transactions between the defendants, the plaintiff and/or the plaintiff's contractors and suppliers.

Bankruptcy

74. The plaintiff pleads that the liability of the Former Employees arises out of their fraud, embezzlement, misappropriation and/or defalcation while acting in a fiduciary capacity and the plaintiff relies accordingly upon the provisions of section 178 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. D-3.

Place of Trial

75. The plaintiff proposes that this action be tried in the City of Ottawa, Ontario.

Date: January 5, 2016

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The Ottawa Hospital

THE OTTAWA HOSPITAL

-and-

GERARD DUBÉ et al

Plaintiff

Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Ottawa

STATEMENT OF CLAIM

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Lawyers for the plaintiff,
The Ottawa Hospital

Court File No. 16-67028

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

THE OTTAWA HOSPITAL

Plaintiff

-and-

GERARD (GERRY) DUBÉ, 1436937 ONTARIO INC. (o/a D.R.S. CONSTRUCTION), LARRY ST. PIERRE, FEDERAL ELECTRIC (1976) LIMITED,
GUY ADRIAN LAPIERRE, G.A.L. POWER SYSTEMS OTTAWA LTD.,
ROCH ST-LOUIS, PRO MANAGEMENT CONSTRUCTION INC.,
OTTAWA DIAMOND CONSTRUCTION INC., FRANK J. MEDWENITSCH,
and BROCK MARSHALL

Defendants

INFORMATION FOR COURT USE

- 1. This proceeding is an: action application
- 2. Has it been commenced under the *Class Proceedings Act, 1992*? yes no

3. If the proceeding is an action, does Rule 76 (Simplified Procedure) apply? yes no
 Note: *Subject to the exceptions found in subrule 76.01(1), it is MANDATORY to proceed under Rule 76 for all cases in which the money amount claimed or the value of real or personal property claimed is \$100,000 or less.*

4. The claim in this proceeding (action or application) is in respect of:
 (Select the one item that best describes the nature of the main claim in the proceeding.)

| | | | |
|---|-----|---|-------|
| Bankruptcy or insolvency law | [] | Motor vehicle accident | [] |
| Collection of liquidated debt | [] | Municipal law | [] |
| Constitutional law | [] | Partnership law | [] |
| Construction law (other than construction lien) | [] | Personal property security | [] |
| Construction lien | [] | Product liability | [] |
| Contract law | [] | Professional malpractice (other than medical) | [] |
| Corporate law | [] | Real property (including leases; excluding mortgage or charge) | [] |
| Defamation | [] | Tort: economic injury (other than from medical or professional malpractice) | [x] |
| Employment or labour law | [] | Tort: personal injury (other than from motor vehicle accident) | [] |
| Intellectual property law | [] | Trusts, fiduciary duty | [] |
| Judicial review | [] | Wills, estates | [] |
| Medical malpractice | [] | | |
| Mortgage or charge | [] | | |

CERTIFICATION

I certify that the above information is correct, to the best of my knowledge.

Date: January 5, 2016

Signature of lawyer
(if no lawyer, party must sign)