

Court File No.: 781/18

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

**BETWEEN:**

**B.W. (BRAD) BLAIR**

Applicant/Moving Party

- and -

**THE OMBUDSMAN OF ONTARIO**

Respondent/Responding Party

**MOTION RECORD OF THE RESPONDENT  
(Applicant's Motion, to be heard on January 14, 2019)**

Date: January 10, 2019

**HICKS MORLEY HAMILTON  
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Barristers & Solicitors  
77 King Street West, 39th Floor  
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Toronto, Ontario M5K 1K8

**Frank Cesario**  
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Lawyers for the Respondent/Responding  
Party

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Lawyers for the Applicant/Moving Party

AND TO: **ATTORNEY GENERAL OF ONTARIO**  
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**B E T W E E N:**

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**I N D E X**

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**TAB 1**

Court File No.: 781/18

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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B E T W E E N:

**B.W. (BRAD) BLAIR**

Applicant

- and -

**THE OMBUDSMAN OF ONTARIO**

Respondent


**AFFIDAVIT OF RAFA ABDO**

I, Rafa Abdo, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a legal assistant at the law firm of Hicks Morley Hamilton Stewart Storie LLP, the lawyers for the Respondent.
2. I have personal knowledge of the matters set out below.
3. I have reviewed the Applicant's Motion Record with respect to the Applicant's motion to expedite this application, which is scheduled to be heard on January 14, 2019.
4. The Applicant's Motion Record includes several pieces of correspondence but does not include the letter from Mr. Frank Cesario (counsel for the Ombudsman) dated December 20, 2018, which was sent to the Divisional Court and to counsel for the Applicant and the Ontario Attorney General's office. This

letter summarizes the Ombudsman's position in response to the Applicant's motion.  
A copy of Mr. Cesario's December 20, 2018 letter is attached as Exhibit "A".

SWORN before me at the )  
City of Toronto )  
in the Province of Ontario )  
this 9<sup>th</sup> day of January, 2019 )

  
\_\_\_\_\_  
A Commissioner for Taking Affidavits )  
Mitchell Smith )

  
\_\_\_\_\_  
RAFA ABDO

**B.W. (BRAD) BLAIR**

-and-

**THE OMBUDSMAN OF ONTARIO**

Applicant

Respondent

**Court File No.: 781/18**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto

**AFFIDAVIT OF RAFA ABDO**

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Lawyers for the Respondent



**TAB A**

**THIS IS EXHIBIT "A" REFERRED TO IN THE  
AFFIDAVIT OF RAFA ABDO  
SWORN BEFORE ME THIS 9<sup>TH</sup> DAY OF JANUARY, 2019.**

  
\_\_\_\_\_  
A Commissioner For Taking Affidavits

*Mitchell Smith*



Hicks Morley Hamilton Stewart Storie LLP  
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FRANK CESARIO  
 frank-cesario@hicksmorley.com  
 Direct: 416.864.7355

Toronto  
 Waterloo  
 London  
 Kingston  
 Ottawa

File No. 1151-90  
 December 20, 2018

**SENT BY E-MAIL** ([Victoria.Karalus@ontario.ca](mailto:Victoria.Karalus@ontario.ca))

Ms. Victoria Karalus  
 Ontario Divisional Court  
 130 Queen Street West  
 Toronto, Ontario M5H 2N5

Dear Ms. Karalus:

**Re: B. W (Brad) Blair v. The Ombudsman of Ontario (the "Ombudsman")  
 Court File # 781/18**

We act for the Ombudsman in this application. I am writing in response to Mr. Falconer's letter of yesterday requesting "case management" so that the hearing in this case can be "expedited". This is also further to your email of this morning.

The Ombudsman does not agree that this case should be expedited or be given special treatment. There is no urgency for this case to be heard ahead of other cases in the Court's queue, for the reasons set out below.

At the outset, and as alluded to in Mr. Falconer's letter, I note that I wrote to him yesterday to briefly state this position, and a copy of my letter to him is attached for the Court's reference.

Mr. Blair's request for an expedited hearing is based on the premise that it is important for the hearing of this case to occur prior to the completion of the Integrity Commissioner's inquiry and prior to Mr. Taverner taking up the role of OPP Commissioner, presumably because Mr. Blair seeks to have the Ombudsman prevent that from occurring. But this fundamentally misunderstands the Ombudsman's role. The Ombudsman is an Officer of the Legislature and only has those powers bestowed under the *Ombudsman Act*. Following an Ombudsman's investigation, under section 21 of the *Ombudsman Act*, the Ombudsman's authority is limited to making a report and recommendations. The Ombudsman does not have the statutory authority to stop or prevent Mr. Taverner from becoming OPP Commissioner, or to direct the Ontario Government or Cabinet as to whom they can, or cannot, appoint as OPP Commissioner.



There is therefore no basis in law or in practical reality for this case to be expedited, or for it be tied in any way to the timing of the Integrity Commissioner's inquiry or to the timing of a permanent OPP Commissioner taking up his or her role.

It also bears noting that the Applicant seeks an investigation into potential political interference in the selection of the next OPP Commissioner, yet an inquiry on that issue is currently being conducted by the Integrity Commissioner. The Applicant cannot reasonably claim that his need for an investigation is urgent when the appropriate Officer of the Ontario Legislature has commenced an inquiry into the very matter at the heart of his Application. On this subject, Mr. Falconer's letter appears to underplay the role of the Integrity Commissioner. The Integrity Commissioner has a significant ambit under section 30 and 31 of the *Members' Integrity Act, 1994*, and therefore it is not correct to state that the Integrity Commissioner's review will be a "narrow review".

Lastly, while Mr. Falconer's letter states that this case should be expedited because the Ombudsman should be required to investigate "political interference" in the hiring process for the OPP Commissioner and the impact on the "independence" of the OPP, those are not the functions of the Ombudsman. As set out in section 14 of the *Ombudsman Act*, the Ombudsman's function is to investigate decisions, recommendations, acts or omissions in the course of public administration. Mr. Blair's complaint does not engage that function. Moreover, even when the Ombudsman has jurisdiction over a complaint and decides to exercise his discretion to investigate a complaint, it is not up to the complainant to dictate the scope and focus of an investigation. In fact, as an office of last resort, the Ombudsman usually defers action – even on matters that are within his remit – until all other complaint resolution avenues have been exhausted. There is therefore even less reason to expedite this case, because this is not the type of complaint that the Ombudsman was created to investigate.

Considering the scope of the issues raised in this application, going to the jurisdiction of the Ombudsman, it is also important to consider that sufficient time will be required to respond to this unusual application and there is no basis or necessity to prejudice the Ombudsman's ability to respond to this application by rushing it to a hearing.



The Ombudsman therefore respectfully requests that this case proceed in the normal course and on the normal timelines through the Divisional Court's process.

Yours very truly,

A handwritten signature in black ink, appearing to be "Frank Cesario", written in a cursive style.

Frank Cesario

FJC/ra

c: Julian Falconer, Falconers LLP (By E-mail)  
Attorney General of Ontario (By Fax 416.326.4181)

**B.W. (BRAD) BLAIR**

-and-

**THE OMBUDSMAN OF ONTARIO**

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