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File No. 854-426
June 2, 2023

**SENT BY E-MAIL TO: james@ismklaw.ca
WITH PREJUDICE**

James S. M. Kitchen
203-304 Main Street S.
Suite 224
Airdrie, AB T4B 3C3

Dear Counsel:

**Re: North York General Hospital ats Wanh Porter
Court File No.: CV-22-00679996-0000**

We are writing with respect to the adjournment of Ms. Porter's examination for discovery on May 12, 2023.

As you know, during her examination, Ms. Porter was asked several questions with respect to her claim that she was unable to receive the COVID-19 vaccine due to her religious beliefs. In response to a specific question regarding Ms. Porter's view on the safety of the vaccine, she answered by reading an excerpt from the Bible, rather than providing first-hand evidence responsive to the particular question posed.

I objected on the record to Ms. Porter providing answers by reading directly from the Bible on the basis that it is improper for a witness to refer to, or read directly from, documents (including the Bible and religious teachings) when answering questions, without first being invited to refer to, or read from, such documents. Further, as the examining party, I explained that North York General Hospital ("NYGH") is entitled to be provided with Ms. Porter's first-hand evidence regarding her religious beliefs, rather than being referred to, and read excerpts from, the Bible.

Based on our exchange prior to the adjournment of Ms. Porter's examination for discovery, I understood your position to be that the Bible is distinct from other documents given its religious significance, and accordingly, Ms. Porter was permitted to read directly from the Bible when providing answers to questions. The parties were unable to come to a resolution on the issue and were required to adjourn the examination.

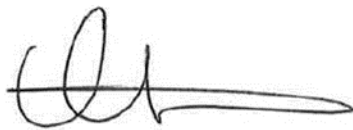
It remains NYGH's position that Ms. Porter is not permitted to provide answers by reading directly from the Bible. First, courts have stated that it is improper to place a document before a witness unless being invited to do so by the examining lawyer.¹ The Bible being a religious text does not itself provide a reasonable justification to depart from this principle.

Second, courts have emphasized the importance of spontaneous answers and unprompted responses to questions asked during examinations.² Examinations are intended to provide the examining party with an opportunity to specifically test the witness' evidence and recollection of the facts, as well as their anticipated performance as a witness at trial.³ Ms. Porter's answering of questions by way of reading directly from the Bible effectively disentitles NYGH from obtaining first-hand evidence regarding the nature, and sincerity, of her religious beliefs. Specifically, rather than answer a question related to her views on the safety of the COVID-19 vaccine, Ms. Porter began reading an excerpt from the Bible. By answering in this manner, Ms. Porter prevented NYGH from obtaining first-hand evidence regarding her religious beliefs, and testing how such beliefs allegedly prevented her from receiving the COVID-19 vaccine.

Based on the above, NYGH requests that Ms. Porter reattend examinations for discovery, and provide answers responsive to the questions asked without reading from documents (including, without limitation, the Bible, or other religious teachings), unless invited or directed to do so. Should Ms. Porter insist on answering questions by reading directly from the Bible, we will seek instruction to bring a motion for directions, and rely on this letter in support of a request for substantial indemnity costs.

Please advise as to how your client intends to proceed.

Yours very truly,



Elisha C. Jamieson-Davies

EJD/mf

¹ *Madonis v. Dezotti*, 2010 ONSC 2180, at para 28; *Royal Bank of Canada v. Bodanis*, 2016 ONSC 2929, at para 70; *Shukla v. Fenton*, 2021 ONSC 1340, at para 32.

² *Botiuk v Campbell*, 2011 ONSC 1632, at para 44; *Marc Andrew Arnold v John James Arnold et al.*, 2019 ONSC 6097, at para 19.

³ *Spurr v Brawn*, 2005 BCSC 1663, at para 15; *NEP Canada ULC v MEC Op LLC*, 2016 ABQB 186, at para 40.

**JAMES S.M. KITCHEN
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WITH PREJUDICE

June 5, 2023

VIA EMAIL

Elisha Jamieson-Davies
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Dear Ms. Jamieson-Davies,

RE: Porter v NYGH, CV-22-00679996-0000 – Examination for Discovery of the Plaintiff

I write in response to your letter of June 2. The Plaintiff rejects your request she reattend for examination on the condition she not ever read from the Bible while providing her answers.

In your letter, you mischaracterize the situation as being one in which Mrs. Porter attempted to answer your questions by *only* reading from the Bible. At no time in the examination of the Plaintiff that occurred on May 12, 2023 did Mrs. Porter answer a question *only* by reading from the Bible. The reason the examination did not proceed is because you immediately objected to Mrs. Porter's answer when she attempted to read a verse as *part* of her answer and to *help explain* her answer, and you did not let Mrs. Porter *finish* her answer. You are apparently of the belief that Mrs. Porter was not going to provide any "first-hand" evidence after she read the verse(s) she was attempting to read. Based on all her answers up to that point, you lack any reason to hold such a belief.

Neither did Mrs. Porter provide unresponsive answers to your questions about her views on the safety of COVID vaccines, from whom she sought guidance regarding the vaccines, or why she did not rely on guidance from Hospital staff regarding the safety of the COVID vaccines. You may have expected non-religious answers to various questions, but given the issues in the case, it is not to be wondered at that many answers to your questions were and will be religious in nature.

As is to be expected in a case involving a religious former employee claiming she was wrongfully terminated as a result of religious discrimination (i.e. refusal to accommodate), the Plaintiff's reasons for her decisions, and where and how she sought guidance, are of a religious nature. Inevitably, those religious reasons and beliefs are inextricably intertwined with the authoritative religious text that informs all aspects of her daily life (in this case, the Bible). In providing responsive, spontaneous answers, it is hardly surprising Mrs. Porter read a verse or two (or, at least, attempted to before you objected).

I suggest to you that permitting Mrs. Porter to read verses from the Bible and then provide her explanation and application of those verses to her beliefs and decisions *positively* contributes to your client's testing (and right to test) the "first-hand" evidence of the Plaintiff and how she presents as a witness.

To be clear, it is not the Plaintiff's position that she be entitled to *only* read from the Bible in response to questions, nor that she be entitled to read into the record gratuitously long portions of the Bible (such as entire books). Her position is that she be entitled to read a few verses *as part* of her answers when appropriate. The transcript of examination of May 2 will demonstrate the reading of Scripture was in no way frustrating your right and ability to test the Plaintiff's evidence regarding her religious beliefs and why she decided to do or say what she did.

Regarding whether the Plaintiff is permitted, within reason and when relevant, to refer to or read from the Bible in providing her answers, the Plaintiff's position is that she is permitted to do so in this case, regardless of whether the Bible is truly a "document", which it may or may not be. If you continue to refuse to proceed with examination unless the Plaintiff commits to never reading from the Bible when providing answers, then I see no other way forward except your bringing a motion for directions from the Court.

While such a motion may have general value insofar as judicial guidance will be generated about a novel issue, the Plaintiff suggests it is unnecessary and certainly premature in this case. If, in fact, your concern is obtaining first-hand evidence regarding Mrs. Porter's religious beliefs and how and whether those beliefs informed her actions, your concerns are unfounded.

Should you bring a motion for directions, the Plaintiff will also seek substantial indemnity costs in the event she is successful, and, in the alternative, that each party bear its own costs in light of this issue having not been previously addressed by the Courts and the precedent generated will serve the interests of the public and the administration of justice.

The Plaintiff remains interested in exploring a resolution that will permit examination to proceed. In the event the Defendant intends to file a motion, I ask you provide me with notice.

Regards,



James S.M. Kitchen
Barrister & Solicitor
Counsel for Wanh Porter



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File No. 854-426
June 13, 2023

**SENT BY E-MAIL TO: james@ismklaw.ca
WITH PREJUDICE**

James S. M. Kitchen
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Airdrie, AB T4B 3C3

Dear Counsel:

**Re: North York General Hospital ats Wanh Porter
Court File No.: CV-22-00679996-0000**

We have had an opportunity to review your June 5, 2023 correspondence with our client, North York General Hospital ("NYGH").

NYGH maintains its position that Ms. Porter is not entitled to provide answers by reading directly from the Bible on the basis that: 1) courts have stated it is improper to place a document before a witness unless being invited to do so by the examining lawyer;¹ and 2) courts have emphasized the importance of spontaneous answers and unprompted responses to questions asked during examinations in order to provide the examining party with an opportunity to specifically test the witness' evidence and recollection of the facts.²

Without prejudice to NYGH's position as set out above and in my letter dated June 2, 2023, NYGH is prepared to propose the following resolution regarding Ms. Porter's reattendance for discoveries: Ms. Porter will be permitted to supplement her answers with a few verses from the Bible (of reasonable length) where appropriate, but only after she provides a spontaneous and responsive answer to the question being asked.

We believe the above proposal is a reasonable manner of proceeding with Ms. Porter's examination for discovery without the need for court direction given that: 1) we have not been referred to any Ontario caselaw refuting the principle that it is improper to place a

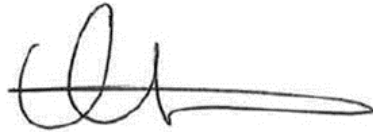
¹ *Madonis v. Dezotti*, 2010 ONSC 2180, at para 28; *Royal Bank of Canada v. Bodanis*, 2016 ONSC 2929, at para 70; *Shukla v. Fenton*, 2021 ONSC 1340, at para 32.

² *Botiuk v Campbell*, 2011 ONSC 1632, at para 44; *Marc Andrew Arnold v John James Arnold et al.*, 2019 ONSC 6097, at para 19; *Brawn*, 2005 BCSC 1663, at para 15; *NEP Canada ULC v MEC Op LLC*, 2016 ABQB 186, at para 40.

document before a witness unless being invited to do so; and 2) Ms. Porter will be able to *supplement* her answers with a few Bible verses once she has provided her independent and contemporaneous evidence to the question asked, thereby addressing the concerns of both parties.

Please advise as to whether your client is agreeable to the above.

Yours very truly,

A handwritten signature in black ink, consisting of a stylized 'E' followed by a long horizontal line that tapers to a point on the right.

Elisha C. Jamieson-Davies

EJD/mf

**JAMES S.M. KITCHEN
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WITH PREJUDICE

June 15, 2023

VIA EMAIL

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Dear Ms. Jamieson-Davies,

RE: Porter v NYGH, CV-22-00679996-0000 – Examination for Discovery of the Plaintiff

I write in response to your letter of June 13. Mrs. Porter appreciates your efforts in attempting to arrive at a resolution regarding the issue of reading from the Bible while providing answers to questions.

While you have consented to Mrs. Porter reading verses as part of her answers, from time to time, you have proposed she only be permitted to do so at the end of an answer, not in the midst of an answer. You provided no explanation as to how such a restriction makes any sense, improves the discovery process, or prevents any identifiable prejudice to your client. Such a proposal seems to be the imposition of a restriction for the sake of imposing a restriction.

The Plaintiff will not consent to this restriction.

As should be apparent in a case where the central claim is Christian discrimination and where the Plaintiff was plainly religiously motivated in her actions, *spontaneous* answers from the Plaintiff will inevitably involve explanations of her beliefs and how those beliefs are guided by portions of Scripture. Hearing from the Plaintiff her understanding and application of verses in the Bible that informed her decisions is both relevant and contributes to the Defendant's understanding of the Plaintiff's case against it. There is no purpose and little value in reading Bible verses at the end of an answer, as you have proposed.

The Plaintiff's position remains the same: there is no impropriety or prejudice to the Defendant arising from Mrs. Porter occasionally reading from Scripture while providing the very answers you seek—answers about what she believes, why she believes it, and how and why those beliefs were the motivation for any particular action she took or decision she made. The Plaintiff therefore proposes the Defendant simply resume its questioning of her with the understanding that, while she *will* read Bible verses, she will provide spontaneous answers to questions and not read unreasonably lengthy portions of Scripture.

Regards,

A handwritten signature in black ink, appearing to be 'JK', written in a cursive style.

James S.M. Kitchen
Barrister & Solicitor
Counsel for Wanh Porter

RE: Re: North York General Hospital ats Wanh Porter

From Justin Choy <Justin-Choy@hicksmorley.com>
To james@jasmklaw.ca, JL Wells<jody@jasmklaw.ca>
CC Elisha Jamieson-Davies<elisha-jamieson-davies@hicksmorley.com>, Miki Fong<Miki-Fong@hicksmorley.com>
Date Monday, June 26th, 2023 at 2:27 PM

Hi James,

In order to move this matter along efficiently, in good faith and without unnecessary expense for either party, North York General Hospital ("NYGH") is prepared to have Ms. Porter reattend examinations for discovery with the following general conditions in place: Ms. Porter will be permitted to supplement her spontaneous answers to questions with a few verses from the Bible where appropriate, and such verses will not be unreasonable in length.

This proposed resolution is made without prejudice to NYGH's position as set out in our letters dated June 2 and 13, 2023 that Ms. Porter is not entitled to provide answers by reading directly from the Bible on the basis that: 1) courts have stated it is improper to place a document before a witness unless being invited to do so by the examining lawyer; and 2) courts have emphasized the importance of spontaneous answers and unprompted responses to questions asked during examinations in order to provide the examining party with an opportunity to specifically test the witness' evidence and recollection of the facts.

While NYGH is willing to make a second attempt at discovery with only general conditions in place, NYGH reserves the right to adjourn the examination and bring a motion for directions, if Ms. Porter fails to provide independent and spontaneous answers to the questions being asked, or if counsel/Ms. Porter unreasonably interferes with the discovery.

Please confirm that your client is agreeable to the above so that we can start canvassing dates.

Best,

Justin and Elisha