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Our File No.: 74862.1

July 28, 2017

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Dear Counsel:

**Re: The Ottawa Hospital v. Gerard Dubé et al.
Court File No. 16-67028**

Please find enclosed the plaintiff's reply and defence to counterclaim of Brock Marshall, served upon you pursuant to the *Rules of Civil Procedure*.

Yours truly,



Ruth E. Promislow

Encl.
RP/gvd

Bennett Jones

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Court File No. 16-67028

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

THE OTTAWA HOSPITAL

Plaintiff

- and -

**GERARD (GERRY) DUBÉ, 1436937 ONTARIO INC. (o/a DRS
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

AND BETWEEN:

BROCK MARSHALL

Plaintiff by counterclaim

- and -

THE OTTAWA HOSPITAL

Defendant by counterclaim

REPLY AND DEFENCE TO COUNTERCLAIM OF BROCK MARSHALL

1. The Ottawa Hospital (the "**Hospital**") repeats and relies on the allegations in the Statement of Claim. Defined terms herein have the same meaning as ascribed to them in the Statement of Claim.

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2. The Hospital denies each of the allegations in the Statement of Defence and Counterclaim of Brock Marshall (the "**Defence**") except as otherwise expressly admitted in the Statement of Claim or herein.

3. With respect to paragraphs 1, 4, 28, 35-39 (among others) of the Defence, the Hospital denies that it engaged in or made defamatory or slanderous statements as alleged in the Defence, or at all, and puts Marshall to the strict proof thereof.

4. In the alternative, if the Hospital's conduct was potentially defamatory, or otherwise caused injury to Marshall's reputation, which is not admitted and is expressly denied, such alleged defamatory statements were true at the time the statements were made. The Hospital specifically pleads and relies on the defence of justification.

5. In the further alternative, if the Hospital's conduct was potentially defamatory, or otherwise caused injury to the Marshall's reputation, which is not admitted and is expressly denied, such alleged defamatory statements were confined to the Hospital's pleadings in the within action, and are therefore subject to an absolute privilege. The Hospital expressly denies that any alleged defamatory statements were made outside of its pleadings.

6. The Hospital further pleads that Marshall has suffered no damage resulting from any alleged defamatory statements.

7. With respect to paragraphs 2, 3, 11-14 (among others), the Hospital states that Marshall participated in the fraudulent scheme as set out in the Statement of Claim, including by improperly limiting competition among the Vendors.

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8. With respect to paragraphs 3, 15-19 (among others) of the Defence, the Hospital states that Marshall received gifts and Kickbacks from the Vendors in exchange for improper procurement advantages, which were not disclosed to the Hospital and that violated the Hospital's gifts policies (as detailed further in the Statement of Claim).

9. With respect to paragraph 4 of the Defence, whether Marshall made charitable donations to the Hospital is entirely irrelevant to the within action and does not excuse Marshall's unlawful actions in connection with the fraudulent scheme as described in the Statement of Claim.

10. With respect to paragraph 10 of the Defence, the Hospital denies that policies were ignored by employees of the Hospital, and such allegation does not excuse Marshall's unlawful actions in connection with the fraudulent scheme as described in the Statement of Claim.

11. With respect to paragraph 13 of the Defence, the Hospital denies that employees requested that Marshall give projects to specific defendants, and such allegation does not excuse Marshall's unlawful actions in connection with the fraudulent scheme as described in the Statement of Claim.

12. With respect to paragraphs 14, 19-20 (among others) of the Defence, the Hospital states that Marshall reviewed and approved invoices himself, and processed improper invoices without the knowledge or approval of senior employees at the Hospital.

13. With respect to paragraph 17 of the Defence, the Hospital expressly denies that Marshall advised Cameron Love that he was having renovations done on his property by Ottawa Diamond Construction Inc. or any other Hospital supplier with which Marshall had direct dealings in the course of his employment with the Hospital.

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14. With respect to paragraphs 20, 22 (among others) of the Defence, Marshall's fraudulent scheme as described in the Statement of Claim was concealed by Marshall from the Hospital. Such fraudulent scheme was obviously not reviewed or approved by the Hospital or its internal or external auditors.

15. With respect to paragraphs 23-24 of the Defence, the Hospital denies that Cameron Love "regularly failed to respect directives and/or guidelines established by Ontario's Ministry of Health and Long-Term Care". Such allegations are baseless and are clearly designed by Marshall to deflect attention away from the serious allegations and evidence of the fraudulent scheme perpetrated by Marshall against the Hospital.

16. With respect to paragraph 25 (among others) of the Defence, the Hospital denies that it condoned or approved Marshall's fraudulent conduct, or had "full knowledge of how he conducted himself in connection with the affairs of the Hospital." The Hospital was not aware of Marshall's fraudulent conduct at the relevant times. It defies logic for Marshall to assert that he relied on the Hospital in perpetrating a fraudulent scheme against the Hospital.

17. The Hospital denies that Marshall's "severance package" was unlawfully terminated. At the time the Hospital offered Marshall his early retirement package, the Hospital had no knowledge of his participation in the fraudulent scheme described in the Statement of Claim. Had the Hospital been aware of that material fact at the time, the Hospital would have terminated Marshall's employment for just cause and he would not have been entitled to any notice of termination or compensation in lieu of notice of termination, including the early retirement package. Marshall's participation in the fraudulent scheme described in the Statement of Claim constitutes after acquired cause for the termination of Marshall's employment.

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18. With respect to paragraphs 28 and 41 of the Defence, the Hospital states that any alleged negligence (which is not admitted but denied) is not a defence to fraud.
19. The Hospital denies that there is any basis for the relief claimed by Marshall in his counterclaim and puts him to the strict proof thereof.
20. The Hospital denies Marshall is entitled to punitive, exemplary or aggravated damages. The Hospital dealt with Marshall in good faith at all times, including the manner in which it made and investigated its allegations of Marshall's wrongful conduct, including his receipt of Kickbacks and participation in the fraudulent scheme described in the Statement of Claim.
21. In the alternative, the damages claimed by Marshall are grossly excessive.
22. In the further alternative, Marshall has failed to mitigate his alleged damages.
23. The plaintiff asks that this counterclaim be dismissed with full indemnity costs.

July 28, 2017

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THE OTTAWA HOSPITAL
Plaintiff/Defendant by Counterclaim

-and-

BROCK MARSHALL and others
Defendant/Plaintiff by Counterclaim
Court File No. 16-67028

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SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
OTTAWA

**REPLY AND DEFENCE TO COUNTERCLAIM
OF BROCK MARSHALL**

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