Court File No. CV-18-00605386-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Moving Party

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Non-Moving Party

AFFIDAVIT OF KELLY LYNN DONOVAN

I, Kelly Lynn Donovan, of the City of Brantford in the Province of Ontario, MAKE OATH AND SAY:

1. I am the party in this matter and as such I am familiar with the proceeding. Where the statements made herein are based on information and belief, I state the source of the information, and believe it to be true.
2. I was a police officer working for the Waterloo Regional Police Service on May 4, 2016, when I made an unprotected disclosure of wrongdoing to the board.
3. From May 9, 2016, until June 25, 2017, I faced reprisal for the disclosure.
4. There is no whistleblower protection for municipal police officers in Ontario.

5. There is a culture of fear in policing because historically police services have used discipline and harassment to punish those who speak publicly about the way the police service has treated them.
6. On June 25, 2017, I resigned from my employment with Waterloo Regional Police Service.
7. I understand the terms contained in the resignation agreement I signed on June 8, 2017 (furthermore referred to as the "resignation agreement"), as explained to me by my counsel at that time, Ms. Pamela Machado. It was made clear to me that I could talk about my experiences with Waterloo Regional Police Service, I was only restricted from bringing a new legal proceeding against them, filing a new complaint against them and I was not to discuss the existence or terms of the agreement itself. I was agreeable to those terms.
8. The intent of the resignation agreement was to prevent my participation in the $167M class action lawsuit that was filed against the Waterloo Regional Police Services Board on May 30, 2017, for systemic gender discrimination, sexual harassment and sexual assault.
9. The Waterloo Regional Police Services Board has now, on two separate occasions, violated the resignation agreement.
10. The Waterloo Regional Police Services Board has brought a proceeding against me in the Human Rights Tribunal of Ontario and have asked that I no longer be able to speak about my experiences in policing or advocate for change, and they are asking that I pay them significant damages and remove any comments about them from the public domain. This is essentially a "strategic lawsuit against public participation (SLAPP)."
11. Attached hereto and marked as **Exhibit "A"** is a copy of my resignation agreement, (redacted as per the Waterloo Regional Police Services Board).

MY PERSONAL SITUATION

12. I worked for the Waterloo Regional Police Service from December, 2010, until June 25, 2017. Prior to 2016, I had nothing but positive documentations in my personnel file and in 2015 I was named a Woman of Distinction by the YWCA of Cambridge, Ontario.
13. I hold a Bachelor of Science Degree in Statistics from the University of Western Ontario.
14. In February, 2011, I was in very close proximity to a traumatic training accident on the firing range at the Ontario Police College which was the catalyst for my post-traumatic stress disorder ("PTSD) with which I was diagnosed in December, 2016.
15. My PTSD is triggered often which sends me into a deep depression.
16. I have shared custody of my three children and I do not receive support payments from their father.
17. I own my own home and live in Brantford, Ontario. I am preparing my home for sale because I have not been able to earn an income to afford the bills to remain in my home.
18. I now operate my own business called Fit4Duty – The Ethical Standard and I provide consulting, training and ethical reporting lines to corporations. In 2017, my gross income was just over $1,600.00.
19. I have no income other than what I am able to earn through my business.

MY RESIGNATION

20. Between 2015 and 2016, I had witnessed misfeasance by officers within the Waterloo Regional Police Service when conducting internal investigations.
21. In May 2016, there was no internal policy or provincial legislation which would have allowed me to make a disclosure of wrongdoing. The WRPS internal policy only permitted "members of the public" to be "complainants." Prior to 2014, members of the service could take a complaint to their supervisor, that was removed from the new procedure.

22. Attached hereto and marked as **Exhibit "B"** is a copy of the WRPS Complaints procedure that was valid up until April, 2014.
23. Attached hereto and marked as **Exhibit "C"** is a copy of the WRPS Complaints procedure effective April, 2014.
24. The *Police Services Act, R.S.O. 1990, c. P.15*, subsection 58(2) states that a member of a police force, if that police force or another member of that police force is the subject of the complaint cannot make a complaint to the Independent Police Review Director.
25. I had made my concerns known publicly at an association meeting and I did not have their support.
26. On May 4, 2016, I made a presentation to the Waterloo Regional Police Services Board to disclose inconsistencies and corrupt practices occurring within the police service when conducting internal investigations. I ran out of time before I could read all of my material.
27. Attached hereto and marked as **Exhibit "D"** is a copy of my delegation to the board and an email stating I wished to return in July, 2016, to finish reading my material.
28. On May 9, 2016, I faced reprisal in the form of a modification of my job duties, I was limited to administrative duties, I was placed under investigation by the professional standards unit for six Police Service Act violations and I was directed by chief Bryan Larkin to not present myself in front of the board without his permission.
29. On May 9, 2016, I made a second disclosure to the board by way of email to inform them of the reprisal I was facing. This email was shared with the chief.
30. Attached hereto and marked as **Exhibit "E"** is the email I sent the board on May 9, 2016.

31. On May 31, 2016, I was served another notice of investigation for having sent the email to the board, two additional charges were added to my investigation and I was then directed by the chief to have no communication, direct or indirect, with members of the board.
32. In June, 2016, I filed both workplace harassment and human rights complaints.
33. From May, 2016, until February, 2017, I was not served a notice of hearing for the professional standards investigation (despite the six-month requirement) and my human rights matter continued to be deferred in order for the service to proceed with discipline.
34. The outcome of my workplace harassment investigation by a lawyer hired by the service was that I was not being harassed.
35. The outcome of an investigative review completed by York Regional Police Service was that the criminal investigation I had mentioned in my delegation to the board was proper, I disagreed.
36. I filed a complaint against the Waterloo Regional Police Services Board with the Ontario Civilian Police Commission and they decided it was not in the public interest to conduct an investigation into the conduct of board members.
37. I filed a complaint against the York Regional Police Service with the Office of the Independent Police Review Director about the conduct of the York Regional Police investigator, and they decided it was not in the public interest to conduct an investigation into the conduct of that investigator. I was told at that time to take the matter up with my board, although I was still on a no contact order with members of the board.
38. In December, 2016, I was diagnosed with post-traumatic stress disorder. In February, 2017, I was too ill to return to work.

39. In May, 2017, I entered into discussions with my counsel, Ms. Pamela Machado, to resign from my employment. During settlement negotiations, I made it clear to my counsel that I would not agree to a non-disclosure clause limiting me from speaking about my experiences.

40. Attached hereto and marked as **Exhibit "F"** is a series of email communication between myself and Ms. Pamela Machado regarding the resignation agreement. I waive solicitor/client privilege in order for these relevant emails to be admitted to record.

41. I voluntarily resigned from my employment with the Waterloo Regional Police Services Board on June 25, 2017.

EXPRESSIONS MADE AFTER JUNE 25, 2017

42. On July 16, 2017, I released a research paper I had written detailing the need for better protection for municipal police whistleblowers. In this report, I cite cases from the Royal Canadian Mounted Police, Calgary Police Service, Edmonton Police Service, services across Canada, even the New York Police Department. The report was an educational paper researching the history of the police complaints system in Ontario and the need for better legislation. In this report, I made public expressions of matters of public interest. The intention of the report is cited in the "Executive Summary" as "This report will provide insight into current legislation governing municipal police officers in Ontario and point out deficiencies."

43. Attached hereto and marked as **Exhibit "G"** is the email sent to all police services boards across Ontario with the "Report of Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers" attached.

44. The Waterloo Regional Police Service was aware that I had released this report, as I had emailed a copy to the board executive assistant, Madeleine Widmeyer, on July 17, 2017, and CTV News asked them for a comment and the chief acknowledged on a publicly broadcast news clip that he was aware of the report.
45. I received hundreds of emails, text messages and social media messages praising me for my courage to speak out about the issues contained in my report.
46. I was interviewed by CBC Radio and I stated to Craig Norris, CBC Reporter, that the issues in my report were not directed at Waterloo Regional Police but rather all police services across Canada.
47. I have also spoken to 570 News, CTV News Kitchener, Stand Up Speak Up Podcast and Revolution Radio about my experiences as a police officer making an unprotected disclosure of wrongdoing and my recommendations to strengthen legislation. When I have spoken to media, I have referenced matters of public interest and I have not made any slanderous statements about the board.
48. Attached hereto and marked as **Exhibit "H"** is a list of comments I received in the weeks following the release of my report.
49. On August 11, 2017, I received a response from the Honourable Ralph Goodale which concluded by saying "Thank you again for writing me on this important matter and sharing a copy of your report with me."
50. Attached hereto and marked as **Exhibit "I"** is the letter dated August 11, 2017, from the Honourable Ralph Goodale.
51. On September 13, 2017, I received a response from Marie-France Lalonde, Minister of Community Safety and Correctional Services.

52. Attached hereto and marked as **Exhibit "J"** is the September 13, 2017, letter from Minister Lalonde.

53. On September 22, 2017, I wrote a response to Minister Lalonde because I was not satisfied with her letter of September 13th. In it, I state *"I have been contacted by dozens of officers from cross Ontario who have fallen victim to the systemic misfeasance or who have been injured during their careers and not provided adequate support but rather been subjected to tyranny and oppression which has had many of them on the verge of suicide."* I did not receive a response to this letter.

54. Attached hereto and marked as **Exhibit "K"** is my letter dated to September 22, 2017, to Minister Lalonde.

55. Since July, 2017, I have made presentations to the Ottawa Police Service, Durham Regional Police Service and I returned to present to the Waterloo Regional Police Services Board in September, 2017. In these presentations, I have discussed such issues as diversity in policing and improved transparency and governance.

56. Attached hereto and marked as **Exhibit "L"** is a 570 News article that was published after my delegation to the Waterloo Regional Police Services Board on September 6, 2017.

57. Attached hereto and marked as **Exhibit "M"** is my delegation presented to the Ottawa Police Services board on September 25, 2017.

58. I have attended conferences hosted by the Conference Board of Canada, Canadian Institute and the Institute of Public Administrators of Canada to raise awareness of the need for whistleblower programs.

59. My health improved during the fall and winter of 2017/2018 and although I remained under the care of my family physician, psychiatrist and psychologist I stopped taking my

prescribed medication. During this time, my psychologist visits were paid for by the Workplace Safety and Insurance Board, as I no longer had benefits coverage with the board.

60. January 17, 2018, would have been the deadline for the Waterloo Regional Police Services Board to file an allegation of contravention of settlement with the Human Rights Tribunal of Ontario if they were alleging that my report had violated the resignation agreement. There was no such allegation filed by the board on this date.

61. In February, 2018, I was given the opportunity to present to the standing committee on justice policy at the Ontario Legislature to debate Bill 175, the "Safer Ontario Act," which was a bill to replace the current *Police Services Act, R.S.O. 1990, c. P.15*. During my 5-minute presentation I shared my experiences with the committee. Nothing stated in this session had not been publicly stated in my report of July, 2017.

62. In March, 2018, I re-attended the Ontario Legislature to present to the standing committee on justice policy to debate Bill 175 on behalf of the National Women in Law Enforcement Association. I was welcomed and thanked after both of my attendances at the Ontario Legislature. Preparing and delivering both of these addresses were very stressful and difficult for me.

BREACH OF CONTRACT

63. In January, 2018, I had learned that chief Bryan Larkin stated in a sworn affidavit filed in Ontario Superior Court of Justice, Court File No. CV-17-2346-00, that a female constable who had filed a human rights complaint against the service and had voluntarily resigned in 2017 was paid a "monetary settlement." I was the only female constable who had filed a

human rights complaint against the service and voluntarily resigned in 2017. I believed the "non-identifying" factors used by chief Larkin were sufficient to identify me.

64. I believed this to be a violation by chief Bryan Larkin of the terms of the resignation agreement. This caused me to feel re-traumatized due to the fact that chief Bryan Larkin had not respected my rights under our agreement and was using my case in his defence of the class action lawsuit filed by many of my former female colleagues.

65. My health deteriorated into the spring of 2018, I was put back on my prescribed medication and I had suicidal thoughts. I began to have significant difficulties managing my day to day activities and operating my business, which is my only source of income, became extremely difficult.

66. I was informed in February, 2018, by the Waterloo Regional Police Association President Mark Egers that the association was filing a grievance on behalf of all of its members whose privacy was breached in that same affidavit filed by chief Larkin. As I am no longer a member of the association, I proceeded with my own allegation.

67. On May 9, 2018, I filed a statement of claim against the board and the chief, alleging a breach of contract (the resignation agreement), in the Ontario Superior Court of Justice, Court File No. CV-18-00001938-0000. The board filed a motion to dismiss this proceeding and that motion is being heard in February, 2019.

STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION ("SLAPP")

68. On June 28, 2018, I was served, by email, with the board's HRTO Form 18, Contravention of Settlement, (the proceeding). The following week, I received, by Purolator courier, approximately 400-pages of material in support of the board's Form 18. Much of it was strategically chosen expressions that only mention Waterloo Regional Police.

69. The Human Rights Tribunal of Ontario has scheduled a hearing for this proceeding to advance on February 22, 2019.

70. The board has stated the filing of their Form 18 was not in retaliation to my statement of claim, however, all dated documents contained in the 400-page package were all printed from my company website in June, 2018.

71. I learned that the board was alleging I had violated the resignation agreement as far back as July 17, 2017, when I released my report as they state is was a "complaint." This report was not directed to any one in particular and no request to intervene, investigate or otherwise was made to any official body.

72. The board is alleging that my delegation to the Durham Regional Police Services board and attendances at the Ontario Legislature were violations of my agreement.

73. The board is alleging that publication of documents I received lawfully through the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56, ("MFIPPA") is also a violation of the resignation agreement.

74. I write several blog posts about, not only policing, all workplaces in Canada and how they can improve. The board is alleging that those posts which mention the Waterloo Regional Police Services Board are violations of my resignation agreement.

75. Attached hereto and marked as **Exhibit "N"** and in the interest of transparency, are all of my previous blog posts to show the Honourable Court that I have not targeted the Waterloo Regional Police Service in my attempt to expose workplace issues.

76. The essence of the proceeding is that the board is alleging that every time I speak publicly about Waterloo Regional Police Service (make an expression), I am making a "complaint"

about the Waterloo Regional Police Service, and that by discussing the treatment I received leading up to my resignation date, I am denying that I resigned voluntarily.

77. The board has alleged that a letter I sent to Minister Yasir Naqvi in January, 2018, was a new complaint against the board. In fact, the letter was a complaint about the Ontario Civilian Police Commission and the Office of the Independent Police Director. The letter references the many complaints that have been received by those two oversight bodies and not acted upon. The letter was a call to action to the Minister to provide better oversight of the two oversight bodies under his authority. It was not a new complaint about the board, and it did not contain any information that had not been disclosed prior to my resignation date.

78. Attached hereto and marked as **Exhibit "O"** is the full letter to Minister Yasir Naqvi dated January 8, 2018.

79. I did not agree to a non-disclosure clause, and as such I have been under the belief that unless I make untrue, slanderous, or defamatory statements, I can lawfully make an expression of a matter of public interest, of course respecting my Oath of Secrecy when I exercised the duties of a police officer. I have maintained a clear understanding of the rules placed upon me by the resignation agreement.

80. I have not filed a complaint against the Waterloo Regional Police Service, or any employee, director, agent, or otherwise. I have not filed a proceeding against the Waterloo Regional Police Service, or any employee, director, agent, or otherwise for matters up until my resignation date of June 25, 2017. I believe I have respected the terms of the resignation agreement entirely.

81. I have not joined the ongoing class action lawsuit against the Waterloo Regional Police Service, which was the intention of my resignation agreement.
82. I have not embellished or lied about anything that happened up until June 25, 2017. The information I discuss publicly is not to cause damage to any person's reputation, it is to draw attention to the behaviour, harassment and silencing that our current laws allow of people like myself who make unprotected disclosures.
83. I am also restricted from discussing the existence of the resignation agreement, so only when I have been asked, I have stated that the terms of the resignation agreement are strictly confidential.
84. I have not denied that I resigned voluntarily.
85. I believe the proceeding filed by the board is in retaliation for my statement of claim filed against the board in May, 2018, and is an attempt to unduly limit expression on matters of public interest.
86. The board has asked the Tribunal for an order that I have engaged in an ongoing series of contraventions although there is no explanation for the delay in submitting their Form 18, more than five months beyond the deadline. The board has relied on a "series of violations" to have the Tribunal allow their proceeding.
87. The board requesting that I "cease and desist from any further violations of the resignation agreement" is an attempt by the board to have me be silenced from speaking about my experiences with Waterloo Regional Police Service. Not having agreed to a non-disclosure clause in the original agreement, this is an attempt by the board to silence me by implying a non-disclosure clause after the fact and is unconstitutional.

88. The board requesting that I redact allegations against the WRPSB from my book and to remove from the public domain any other allegations she has made against the WRPSB contrary to the resignation agreement is another attempt by the board to silence me by implying that the resignation agreement restricted me from discussing the treatment I received while employed by the WRPSB. In the absence of a non-disclosure agreement or allegation of defamatory statements, this request by the board is in violation of Ontario Regulation 421/97, MEMBERS OF POLICE SERVICES BOARDS – CODE OF CONDUCT;

    a. Section 9. Board members shall discharge their duties in a manner that respects the dignity of individuals and in accordance with the *Human Rights Code* and the Canadian Charter of Rights and Freedoms.

89. I learned in August, 2018, that the board has appealed my Workplace Safety and Insurance Board ("WSIB") claim (which was filed prior to my resignation) in January, 2018, which is an additional violation of the resignation agreement by the board of APPENDIX "B" FULL AND FINAL RELEASE contained in the resignation agreement wherein the board agreed *"not to commence, maintain, or continue any action, cause of action or claim, request, complaint, demand or other proceeding, against any person, corporation or entity in which any claim could arise against DONOVAN for contribution or indemnity."* See APPENDIX "B" of **Exhibit "A."**

90. The alleged breach by the board in January, 2018, with chief Larkin's affidavit might be an arguable issue, but it is clear that appealing my WSIB claim that was in place prior to my resignation is a clear breach of the resignation agreement, and the motivation for the board to have done that is questionable considering they knew my illness was attributable

to my employment with the board and publicly state that their officers' wellbeing is their concern.

91. Attached hereto and marked as **Exhibit "P"** is an article titled "It's OK to talk about it: Waterloo Police on new PTSD plan," CBC News, July 17, 2017.

92. Without continued support from the WSIB, I would have no means of continuing treatment for my post-traumatic stress disorder which has intensified since the actions of chief Bryan Larkin in January, 2018.

93. I have not been able to solicit new business due to the stress and increased PTSD symptoms.

94. The board has harassed me with their filing of the proceeding and appeal of my WSIB claim and caused me additional stress and I have incurred a tremendous amount of debt since I have been unable to work due to the voluminous materials being filed against me that I have had to respond to on my own.

95. The continued reprisal I face and the fact that the board is also trying to remove the only medical support I have at this time to deal with my PTSD sends a clear message that they will continue to use all available means to ensure that I am no longer a public critic of their actions and decisions.

PUBLIC INTEREST

96. I believe the information contained in my report, attached as Exhibit "G", to be of public interest and my intention was to raise awareness to improve legislation in Ontario for protection for municipal police officers and more accountability and transparency within police services.

97. Since July, 2017, I continue to receive emails and telephone calls from officers across Canada and members of the public who state that the issues I discuss in my report are important and in the public interest.

98. Attached hereto and marked as **Exhibit "Q"** are letters I received to support the fact that the expressions I have made are in the public interest.

99. When I read about the suicide of Krista Carle, former RCMP member, in July, 2018, I fell into a deep depression. I feel that without the intervention by the Court into an issue that happens too often, police services using all available means to silence anyone who speaks out against their policies or procedures, and use legal means to eliminate any care available to them, there will continue to be more suicides of police officers.

100. Attached hereto and marked as **Exhibit "R"** is a CBC News article titled "Ex-Mountie Krista Carle, who helped bring to light abuse and harassment in RCMP, has died."

101. Attached hereto and marked as **Exhibit "S"** is a CBC News article titled "OPP launching internal review of officer suicides."

102. In my report, contained in Exhibit "G" I discuss what the issues contained therein are doing to the police culture and the wellbeing of police officers in Ontario. Those same sentiments were stated in 2012, by then Ontario Ombudsman, André Marin.

103. Attached hereto and marked at **Exhibit "T"** is "In the Line of Duty" Ombudsman Report, October, 2012.

104. On page 83 of my report, attached as Exhibit "G", I discuss the two police whistleblowers in Montreal who exposed corrupt practices within the force's internal affairs department. After the release of this report, in December, 2017, the chief of Montreal police Philippe Pichet was suspended after the release of a report by Quebec's

former deputy justice minister Michel Bouchard, examining Montreal's internal investigations department.

105. Attached hereto and marked as **Exhibit "U"** is CBC News article titled "Montreal police Chief Philippe Pichet suspended, replaced by SQ Director," December 6, 2017.

106. Attached hereto and marked as **Exhibit "V"** is the "Rapport d'enquête administrative sur la Division des affaires internes du Service de police de la Ville de Montréal". Page 5 of the report shows a quote by the Montreal Police Union:

a. "…considers it crucial to take the means to restore the confidence of its members and the pubic in the internal affairs and management of the Service de Police de la Ville de Montréal." (Translated).

107. Even as far back as 1992 here in Ontario, reports have been written about inconsistencies and corrupt practices when conducting internal investigations.

108. Attached hereto and marked as **Exhibit "W"** is the Conclusion of The Ontario Civilian Commission on Police Services "Report on an inquiry into administration of internal investigations by the Metropolitan Toronto Police Force."

109. I believe it is extremely concerning and a matter of public interest that police services take this type of action against a former employee who speaks publicly about her experiences, the deficiencies and offers ways to improve the current culture.

CULTURE OF FEAR

110. The culture of fear exists in the policing profession because of what police services have been able to do to anyone who has spoken up in the past.

111. In January, 2018, Sergeant Jessica McInnis of the Toronto Police Service faced discipline after filing a human rights complaint against the Toronto Police Service.

This is **Exhibit "A"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Lou Donald

Commissioner for Taking Affidavits

Mary Louise Donald, a Commissioner, etc.,
County of Brant, for the Government of Ontario,
Ministry of the Attorney General.

Dated June 8, 2017

RESIGNATION AGREEMENT

BETWEEN:

The Regional Municipality of Waterloo Police Services Board

(the "Board")

-and-

The Waterloo Regional Police Association

(the "Association")

-and-

Kelly Donovan

("Donovan")

WHEREAS Donovan and the Board currently have an employer-employee relationship;

AND WHEREAS Donovan has notified the Board that she will be resigning her employment with the Board effective on or about June 25, 2017;

AND WHEREAS the Board wishes to recognize the past service and contributions of Donovan upon her resignation from the Board;

AND WHEREAS Donovan and the Board wish to fully resolve and settle the two outstanding matters between them, namely: (a) the application filed by Donovan with the Human Rights Tribunal of Ontario ("HRTO") on or about June 6, 2016 and having HRTO File No. 2016-24566-I (the "Application"); and (b) the Board's investigation into whether Donovan engaged in misconduct in or about May 2016 sufficient to warrant formal charges against Donovan under the *Police Services Act* (the "Potential *PSA* Charges");

NOW THEREFORE IN CONSIDERATION OF the above and the mutual covenants outlined below, the parties agree as follows in full and final settlement of all matters related to Donovan's

employment with or cessation of employment with the Board, and all other outstanding matters between them:

1. Donovan hereby confirms that she is freely and voluntarily resigning her employment with the Board effective on or about June 25, 2017. Donovan acknowledges and agrees that this employment resignation decision is irrevocable. Accordingly, without limiting the generality of the foregoing, the parties acknowledge and confirm that effective June 25, 2017, Donovan will cease to be an employee of the Board for any and all purposes at law whatsoever. Donovan further waives any and all seniority and recall rights she may have under the applicable Uniform Collective Agreement between the Board and the Association.

2. [redacted]

3. By no later than July 15, 2017, the Board will pay to Donovan all outstanding Annual Leave pay, Statutory Holiday pay and Overtime pay, if any, accrued and still owing to Donovan as of the date of her employment resignation.

4. Donovan hereby withdraws and discontinues her Application. Donovan further undertakes to forthwith file with the HRTO any documentation necessary for the HRTO to close its file in respect of the Application.

5. The Board hereby confirms that, as a result of Donovan's employment resignation effective June 25, 2017 and consistent with section 90(1) of the *Police Services Act*, it will take no further action in respect of the Potential *PSA* Charges.

6. Subject to the terms herein, this Resignation Agreement is without prejudice or precedent in any other matter. Further, this Resignation Agreement is entered into by the Board without admission of any contravention of the Uniform Collective Agreement or any

statute (including, without limitation, the *Police Services Act* and/or the *Human Rights Code*), and all such allegations are specifically denied.

7. [redacted]

8. [redacted]

9. [redacted]

10. Donovan will execute and return to the Board a Full and Final Release in the form of the attached Appendix "A" to this Resignation Agreement. Without limiting the generality of the foregoing, Donovan also undertakes and confirms, without time limitation, that she will not commence any future proceeding against the Board of any kind whatsoever (whether by way of human rights application, grievance, OCPC or OIPRD complaint under the *Police Services Act*, or otherwise) that in any way relates to or arises out of the period prior to June 26, 2017.

11. The Board will execute and return to Donovan a full and final Release in the form of the attached Appendix "B" to this Resignation Agreement. Without limiting the generality of the foregoing, the Board also undertakes and confirms, without time limitation, that it will not commence any future proceeding against Donovan of any kind whatsoever that in any way relates to or arises out of the period prior to June 26, 2017, except where such proceeding relates to the prohibited and/or unlawful disclosure of operational police information acquired by Donovan in the course of her employment.

12. Without limiting the generality of the foregoing, Donovan also undertakes and confirms, without time limitation, that she will not commence any future proceeding against the Association of any kind whatsoever (whether by human rights application, grievance, OCPC, or OIPRD complaint under the *Police Services Act*, or otherwise) that in any way relates to or arises out of the period prior to June 26, 2017.

13. [redacted]

14. [redacted]

15. If any undertaking, provision or clause contained in this Resignation Agreement is found to be void or unenforceable, in whole or in part, it shall not affect or impair the validity or enforceability of any other undertaking, provision or clause contained herein.

16. Except where disclosure is required by law, or where disclosure is to Donovan's immediate family members or to persons providing professional financial/legal advice (all of whom agree to be bound by this non-disclosure and confidentiality clause), the parties undertake and agree that they will keep the terms and existence of this Resignation Agreement in absolute and strict confidence at all times, without time limitation, and not disclose its contents to any third party, person or entity. For added certainty, and without limiting the generality of the foregoing, the parties undertake and agree that they will not publicize, discuss, disclose or communicate in any way with any person, entity or organization, in any form whatsoever, the contents or terms of all or any part of this Resignation Agreement. If asked, the parties (and anyone subject to the terms

of this non-disclosure and confidentiality clause) will indicate only that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential.

DATED at the City/Town of Cambridge Ontario this 8TH day of June, 2017.

SIGNED AND WITNESSED
in the presence of:

Witness Signature
Print Name: Molly Kimpel

KELLY DONOVAN

DATED at the City/Town of Cambridge, Ontario this 8th day of June, 2017.

SIGNED AND WITNESSED
in the presence of:

Witness Signature
Print Name: GARY V. MELANSON

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD
Per: Bryan Larkin, Chief of Police

DATED at the City/Town of Ontario this day of June, 2017.

SIGNED AND WITNESSED
in the presence of:

Witness Signature
Print Name: Tim Reparon V.P.

THE WATERLOO REGIONAL POLICE ASSOCIATION
Per: Mark Egers, President

APPENDIX "A"
FULL AND FINAL RELEASE

I, **KELLY DONOVAN**, in consideration of the terms and conditions set out in the attached Resignation Agreement dated June 8th, 2017, do hereby release and forever discharge **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** and the **WATERLOO REGIONAL POLICE ASSOCIATION**, its and their officers, agents, directors, commissioners, servants, employees, attorneys, related and affiliated entities, parent and subsidiary entities, predecessors, successors and assigns (the "Releasees") from any and all actions, causes of action, complaints, applications, including, without limitation, Human Rights Tribunal of Ontario ("HRTO") Application No. **2016-24566-I** filed on or about June 6, 2016, appeals, requests, covenants, contracts, claims, grievances, under any terms of employment, whether express or implied, and demands whatsoever, whether arising at common law, by contract, including pursuant to the applicable Uniform Collective Agreement between **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** and **THE WATERLOO REGIONAL POLICE ASSOCIATION**, by statute, including without limitation, the *Human Rights Code*, R.S.O. 1990, c. H.19, the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sch. A, the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1, the *Pension Benefits Act*, R.S.O. 1990, c. P.8, the *Police Services Act*, R.S.O. 1990, c. P. 15 or the *Employment Standards Act, 2000*, S.O. 2000, c. 41, and any amended or successor statutes and sections, or otherwise, which I have ever had, now have or which my heirs, executors, administrators and assigns, or any of them hereafter can, shall or may have by reason of my employment with or the resignation of my employment with **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** effective on or about June 25, 2017, or which arises out of or in any way relates to the matters giving rise to my HRTO Application No. **2016-24566-I**.

AND FOR THE SAID CONSIDERATION, I further agree not to commence, maintain, or continue any action, cause of action, claim, request, complaint, demand or other proceeding, against any person, corporation or entity in which any claim could arise against the Releasees or any one of them for contribution or indemnity.

AND IT IS FURTHER AGREED that, while I do not retract my allegations pursuant to the Ontario *Human Rights Code*, in the event that I should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding, or make any complaint against the Releasees or anyone connected with the Releasees for or by reason of any cause, matter or thing, including the matters arising out of or in any way relating to my HRTO Application No. **2016-24566-I**, this document may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint. Further, I acknowledge and agree that, in light of this settlement, any complaint filed under the *Human Rights Code*, the *Police Services Act* or *Employment Standards Act, 2000*, or any other legislation, which in any way relates to my employment would be frivolous, vexatious and an abuse of process. Subject to the terms of the attached Resignation Agreement, I further agree that I have no claim for disability benefits and I will not institute any action against any carrier or the Releasees which relates to said benefits. I further agree that this settlement can be relied upon as a complete bar to any such action or complaint.

AND IT IS FURTHER AGREED that for the aforesaid consideration, I will pay the appropriate authorities any taxes or any Employment Insurance repayments or any interest, fines, penalties or other charges of any kind whatsoever under any statutory provision, federal or provincial, that may be claimed or levied against me as a result of the payment of the amounts referred to in the attached Resignation Agreement dated June 8th, 2017, and I hereby agree to indemnify and save harmless the Releasees from any and all claims or demands under the *Income Tax Act* of Canada, the *Employment Insurance Act* of Canada, and/or the *Income Tax Act* of the Province of Ontario, and/or under any other statute, federal or provincial, for or in respect of any failure on the part of the Releasees to withhold income tax, or any other source deductions, or remit Employment Insurance repayments from all or any part of the said consideration and any interest or penalties relating thereto and any costs or expenses incurred in defending such claims and demands.

AND I HEREBY DECLARE that I fully understand the terms of settlement as set out in the attached Resignation Agreement dated June 8th, 2017, that the terms thereof constitute the sole consideration for this Release and that I voluntarily accept the amounts stated therein for the purpose of making full and final compromise, adjustment and settlement of all claims aforesaid.

AND I HEREBY CONFIRM that I have obtained independent legal advice with respect to the details of the attached Resignation Agreement dated June 8th, 2017, and this Release, and I confirm that I am executing this Release freely and voluntarily.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 8th day of June, 2017, in the City of Cambridge, Ontario.

SIGNED AND WITNESSED
in the presence of:

M. Kimpel
Witness Signature
Print Name: Molly Kimpel

KELLY DONOVAN

APPENDIX "B"
FULL AND FINAL RELEASE

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD, in consideration of the terms and conditions set out in the attached Resignation Agreement dated June 8th 2017, does hereby release and forever discharge **KELLY DONOVAN** ("**DONOVAN**") from any and all actions, causes of action, complaints, applications, appeals, requests covenants, contracts, claims, grievances, under any terms of employment, whether express or implied, and demands whatsoever, whether arising at common law, by contract, including pursuant to the applicable Uniform Collective Agreement between **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** and **THE WATERLOO REGIONAL POLICE ASSOCIATION**, by statute, including without limitation, the *Human Rights Code*, R.S.O. 1990, c. H.19, the *Labour Relations Act, 1995*, S.O. 1995, c. 1, Sch. A, the *Occupational Health and Safety Act*, R.S.O. 1990, c.O.1, the *Pension Benefits Act*, R.S.O. 1990, c. P.8, the *Police Services Act*, R.S.O. 1990, C. P.15 or the *Employment Standards Act, 2000*, S.O. 2000, c. 41, and any amended or successor statutes and sections, or otherwise, which it has ever had, now has or which it hereafter can, shall or may have reason of **DONOVAN**'s employment with or the resignation of her employment with **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** effective on or about June 25, 2017, or which arises out of or in any way relates to the matters giving rise to **DONOVAN'S** HRTO Application No. 2016-24566-I.

AND FOR THE SAID CONSIDERATION, THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD further agrees not to commence, maintain, or continue any action, cause of action or claim, request, complaint, demand or other proceeding, against any person, corporation or entity in which any claim could arise against **DONOVAN** for contribution or indemnity.

AND IT IS FURTHER AGREED that, in the event that **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** should hereafter make any claim or demand or commence or threaten to commence any action, claim or proceeding, or make any complaint against **DONOVAN** for or by reason of any cause, matter or thing relating to **DONOVAN'S**

employment or resignation, including the matters arising out of or in any way relating to **DONOVAN'S** HRTO Application No. 2016-24566-I, this document may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint. Further, **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** agrees that, in light of this settlement, any complaint filed under the *Human Rights Code*, the *Police Services Act*, or *Employment Standards Act, 2000*, or any other legislation, which in any way relates to **DONOVAN'S** employment would be frivolous, vexatious and an abuse of process.

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD further declares that it fully understands the terms of settlement as set out in the attached Resignation Agreement dated June 8th, 2017, that the terms thereof constitute the sole consideration for this Release and that **THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD** voluntarily accepts the terms therein for the purpose of making full and final compromise, adjustment and settlement of all claims aforesaid.

IN WITNESS WHEREOF THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD have hereunto set their hand and seal this 8th day of June _____, 2017, in the City of Cambridge, Ontario.

SIGNED AND WITNESSED
in the presence of:

Gary V. Melanson
Witness Signature

Print Name: GARY V. MELANSON

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD
Per: Bryan Larkin, Chief of Police

This is **Exhibit "C"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Commissioner for Taking Affidavits

Mary Louise Donald, a Commissioner, etc.,
County of Brant, for the Government of Ontario,
Ministry of the Attorney General.

Complaints		
Edition:		Number: 2009-88-HR
Effective Date: 2009-11-17	Expiration Date: None	Reevaluation Date:
Related Documents:		Responsibility to Update: Policing Standards
Security/Special Instructions:		Originator: Quality Assurance

A. **Subject**

1. This is the Procedure for accepting, investigating and resolving complaints which occurred before October 19th, 2009. For all other complaints, members are to refer to Standing Order 2009-088. Specifically, the Chief is responsible for:

    a. complaints received from a member of the public about a policy or service provided by the Service; and

    b. complaints received about the conduct of a Waterloo Regional Police Service police officer, except for complaints about the Chief of Police or a Deputy Chief of Police (complaints about the Chief or a Deputy are directed to the Police Services Board for investigation and resolution).

B. **References**

1. Police Services Act and Regulations
2. Statutory Powers Procedures Act
3. Uniform Collective Agreement

C. **Forms**

1. *Commission Review Waiver*
2. *Complaint Form*
3. *Informal Resolution Contact Sheet*

D. **Definitions**

1. For the purposes of this Procedure:

    a. *Act* - means the Police Services Act and amendments thereto;

    b. *Board* - means the Waterloo Regional Police Services Board;

    c. *Commission* - means the Ontario Civilian Commission on Police Services;

    d. *complaint* - means a complaint about a policy or service provided by the Waterloo Regional Police Service or about the conduct of a Waterloo Regional Police Service police officer;

    e. *conduct* - includes both misconduct and unsatisfactory work performance as outlined in the Act and Regulations;

    f. *member* - means a sworn officer of the Waterloo Regional Police Service;

    g. *member of the public* - means a citizen;

    h. *Regulations* - means the *Regulations* of the Police Services Act and amendments thereto;

    i. *supervisor* - means an officer of the confirmed rank of Sergeant or higher;

    j. *verbal warning* - means a warning given verbally to a *member* and recorded on an Informal Resolution Contact Sheet by a *supervisor* for misconduct or unsatisfactory work performance; and

    k. *written warning* - means a warning given in writing to a member and recorded on an Informal Resolution Contact Sheet by a *supervisor* for misconduct or unsatisfactory work performance.

E. **Policy**

1. The Service is committed to the principle that fair, open, prompt, thorough and efficient response to complaints is a cornerstone to establishing and maintaining a positive community-police relationship.

2. Any *member of the public* may make a complaint about:

    a. a policy of the Service.

    b. a service provided by the Service.

3. Any *member of the public* or a *supervisor* may make or initiate a complaint about the conduct of a *member* of the Service.

4. Conditions for accepting complaints or withdrawals of complaints from a *member of the public;*

a. complaint/withdrawal is ABOUT OUR SERVICE (i.e., a policy, service or a *member* of the Waterloo Regional Police). When required, inform complainants to attend at the appropriate police service;

b. complaint received from a *member of the public* who was DIRECTLY AFFECTED;

c. complaint/withdrawal received in WRITING and SIGNED by the complainant; and

d. complaint/withdrawal DELIVERED personally to any division by the complainant or their agent, or RECEIVED by mail, facsimile or from the Commission.

5. The Act provides for an immediate resolution of a conduct complaint that is obviously conduct that is not of a serious nature.

   The Service supports an immediate resolution of a complaint of conduct that satisfies all parties involved and minimizes the use of resources. Subsequently, an Informal Resolution Contact Sheet was developed to facilitate immediate informal resolution. An Informal Resolution Contact Sheet may be used if all of the following conditions are met:

   a. before or during an investigation into a complaint of *conduct;*

   b. the *conduct* appears to be obviously conduct that is not of a serious nature;

   c. The *supervisor* or unit commander believes the complaint can be resolved by:

      i. an explanation of a policy or service;

      ii. an exchange of information;

      iii. an officer apology;

      iv. a *verbal warning* to the officer; and

      v. a *written warning* to the officer;

   d. there is no need to proceed with a progressive discipline problem; and

   e. the complainant and officer consent to the proposed resolution.

6. Complaints shall be processed according to the Complaints Policy flowchart (see Appendix A.)

7. The Chief shall refer all complaints about the Chief of Police or a Deputy Chief to the *Board.*

8. File and retain complaints according to the File and Retain Table.

9. Forward all original complaint withdrawals to the appropriate unit commander.

10. Hearings will be coordinated by the Professional Standards Commander on the direction of the Chief of Police.

11. A committee comprised of the Professional Standards Commander, a Deputy and all superintendents will review resolutions and dispositions to ensure region-wide consistency and fairness. The committee will meet when required and at a minimum, bi-annually.

F. **Member**

1. Appropriately inform *members of the public* when encountering a complaint (see sections E.2., E.3. and E.4.).

2. Direct complainants to a *supervisor*.

3. If the complaint is received by mail, facsimile or from the Commission, forward it directly to the Professional Standards Commander.

G. **Supervisor**

1. Classify the complaint as a policy or Service *complaint* or a *conduct complaint.*

a. Policy or Service *Complaint*

i. Complete the Complaint form, or assist the complainant to complete the form (type or neatly print). If the complaint is a separate written and signed document, attach it to the Complaint form.

ii. Ensure any ambiguities or inconsistencies are clarified by the complainant.

iii. Attach any pertinent documents to the Complaint form.

iv. DO NOT express a personal opinion to the complainant on the outcome of the complaint.

V. Provide a copy of the Complaint form to the complainant and explain the Complaint Procedure and its various steps.

vi. Provide and explain the Commission Review Waiver form to the complainant. Attach it to the Complaint form if the complainant wishes to complete it.

vii. Obtain a *complaint* number from Professional Standards.

viii. Forward the original Complaint form and original Commission Review Waiver form if completed, with any attachments, to your unit commander and copy(s) to the Professional Standards Commander.

b. *Conduct Complaint*

Stage 1 - Informal Resolution Contact Sheet

1. Gather the necessary information surrounding the complaint. Ensure the acceptance/withdrawal conditions outlined in sections E.2., E.3. and E.4. (a) are met.

ii. Ensure the substance of the complaint meets the conditions set out in Section E. 5. (a), (b), (c) and (d).

iii. If the above conditions are not met, go to *Stage 2* below.

iv. Discuss with the complainant, the Informal Resolution Contact Sheet process whereby the complaint can be immediately resolved pending their consent and the officer's consent to the resolution.

v. If the complainant agrees to proceed, make the necessary arrangements and attempt to resolve the complaint as soon as possible. If the complainant wishes to proceed with a more formal route, go to *Stage 2* below.

vi. If the complainant and officer consent to the proposed resolution (i.e., resolution achieved), complete the Informal Resolution Contact Sheet and forward it to the subject officer's unit commander.

vii. If the complainant or officer do not consent to the proposed resolution (i.e., resolution not achieved), go to *Stage 2* below.

c. *Stage 2 - Complaint Requires Full Review and Final Report*

1. Gather the necessary information surrounding the complaint, including a determination of the date of the incident. Ensure the acceptance/withdrawal conditions are met (see Sections E.2., E.3. and E.4.).

ii. Ensure a preliminary investigation is conducted.

iii. Take all reasonable steps to ensure that evidence that might otherwise be lost is secured. Arrange for photographs and/or video if required (i.e., if the complaint involves evident physical injuries or damage to property).

iv. Complete the Complaint form, or assist the complainant to complete the form (type or neatly print). If the complaint is a separate written and signed document, attach it to the Complaint form.

v. Ensure any ambiguities or inconsistencies are clarified by the complainant.

vi. Attach any pertinent documents (such as a copy of a method of release) to the Complaint form.

vii. DO NOT express a personal opinion to the complainant on the outcome of the complaint.

viii. Provide a copy of the Complaint form to the complainant and explain the complaint procedure and its various steps.

ix. Provide and explain the Commission Review Waiver form to the complainant. Attach it to the Complaint form if the complainant wishes to complete it.

x. Ensure a report on the evidence and preliminary investigation, if any, is forthwith prepared.

xi. Obtain a *complaint* number from Professional Standards.

xii. Forward the original Complaint form and original Commission Review Waiver form if completed, with any attachments, to your unit commander and copy(s) to the Professional Standards Commander.

H. Unit Commander

1. Forward all original Informal Resolution Contact Sheets to the Professional Standards Commander.

2. Forward all original *complaint* withdrawals to the Professional Standards Commander with your recommendations.

3. Policy or Service *Complaint*
   a. Forward the original Complaint form and original Commission Review Waiver form if completed, with any attachments, to the Chief within five (5) days of the determination that the complaint is about a policy or service. If the complaint affects the area under your command, submit any documentation that will assist in a review.

   b. Maintain a file of each policy or Service *complaint* forwarded to the Chief.

   c. When directed by the Chief, coordinate the review and submit a written report to the Chief.

4. *Conduct Complaint*
   a. All *complaints* concerning the conduct of the Chief or Deputy, are delivered to the Chair of the Board within three (3) days of the determination that the complaint is a conduct complaint.

   b. Maintain a master file in respect of each *conduct complaint* received.

   c. Record all time limits set out in the Act to ensure compliance.

   d. Do not commence a review of a *conduct complaint* until a completed Commission Review Waiver Form is received from the complainant or the thirty (30) day waiting period is expired.

   e. Within five (5) days of commencing the review, consider:

      i. Whether the *complaint* is frivolous or vexatious or made in bad faith in accordance with the Act.

      ii. Whether the facts upon which the complaint is based occurred more than six months before the day of the *complaint* in accordance with the Act.

      iii. Whether the complainant was not directly affected by the conduct that is the subject of the complaint in accordance with the Act.

   f. In the event that you decide not to deal with a *complaint* for any of the reasons described above, forthwith notify the complainant and officer in writing and send the original Complaint form and copy of notifications to the Professional Standards Commander.

   g- If a review is to be conducted, at your discretion either:

      i. take responsibility for the review and assign your own investigators to conduct the investigation and complete a final report; or

ii. forward the complaint to the Professional Standards Commander for the investigation and final report.

h. If you are conducting the review, notify the subject officer in writing of the *complaint*, unless such notice would prejudice the investigation.

i. Upon the review of a final report, and:

i. if you are of the opinion that the complaint is unsubstantiated, ensure the complainant and the officer are notified in writing in accordance with Act;

ii. if you are of the opinion that there was misconduct or unsatisfactory work performance but that is was not of a serious nature, you may proceed with the informal resolution process outlined in the Act; and

iii. if you are of the opinion that the officer's conduct may constitute misconduct or unsatisfactory work performance of a serious nature, send the final report to the Professional Standards Commander for a hearing along with:

A. a recommendation that a hearing be held;

B. a Complaint of Offence; and

C. a request that a Notice of Hearing be prepared.

j. Assist the Professional Standards Commander as required.

I. Professional Standards Commander

1. Maintain a master file in respect of each policy or Service *complaint* and *conduct complaint* received, and assign a *complaint* number to assist in tracking *complaints*.

2. When receiving a *complaint* requiring a review, coordinate the investigation and assign investigators as required.

3. Make recommendations and submissions to the Chief in accordance with the Act.

4. Follow the direction of the Chief and ensure notifications and procedures outlined in the Act are completed and recorded.

5. Coordinate hearings on the direction of the Chief.

6. Chair the committee to review resolutions and dispositions for consistency.

7. Maintain and forward reports on *complaint* statistics to the Chief as outlined in By-law No. 97-2.

J. Chief of Police

1. Policy *or Service Complaint*

a. Follow the procedures in By-law No. 97-2.
b. If action is to be taken, consider:

i. sending *complaints* about a policy to the unit commander of the originating branch of the policy, requesting investigation and a written report; and

ii. sending *complaints* about a service to an appropriate Unit Commander, requesting investigation and a written report.

2. *Conduct Complaint*

a. When required, direct the Professional Standards Commander whether or not:

1. the subject officer will be notified of the *complaint;*

ii. to continue with a *complaint* when a withdrawal is received;

iii. the complainant is directly affected;

iv. the *complaint* is more than six months old;

v. the *complaint* is frivolous or vexatious or made in bad faith;

vi. to cause the *complaint* to be investigated by another police service in accordance with the Act; and

vii. to initiate an informal resolution process during the investigation in accordance with the Act.

b. Upon the review of a final report, and:

i. if of the opinion that the *complaint* is unsubstantiated, ensure the complainant and the officer are notified in writing in accordance with Act;

ii. if of the opinion that there was misconduct or unsatisfactory work performance but that is was not of a serious nature, you may direct the Professional Standards Commander to proceed with the informal resolution process outlined in the Act; and

iii. if of the opinion that the officer's *conduct* may constitute misconduct or unsatisfactory work performance of a serious nature, direct the Professional Standards Commander to initiate a hearing in Accordance with the Act. Assign a hearing prosecutor and presiding or hearing officer.

c. If the report received includes a statement that the officer is suspected of or charged with an offence under the laws of Canada or a Province or a Territory, or is suspected of misconduct under the Act, consider whether to invoke the suspension provisions of the Act.

d. If six (6) months have elapsed since the facts on which the *complaint* is based first came to the attention of the Service, do not proceed with a hearing or serve a Notice of Hearing unless the Board is of the opinion that it was reasonable, under the circumstances, to delay the hearing or serving the Notice of Hearing.

e. In the event that a Crown Attorney has been consulted with respect to the *complaint*, you may proceed to deal with the part of the *complaint* that constitutes misconduct under the Act or unsatisfactory work performance, unless the Crown Attorney directs otherwise.

f. If informal resolution fails [as above in 2(b)], impose a penalty and/or action in accordance with the Act with consideration to the officer's oral or written reply. If the officer refuses to accept the penalty and/or action, direct the Professional Standards Commander to initiate a hearing in accordance with the Act. Assign a hearing prosecutor and presiding or hearing officer.

g. When receiving a Commission's appeal decision, direct the Professional Standards Commander to take action as directed by the Commission.

h. If the *complaint* involves more than one police service, liaise with the other police chief(s) and, in accordance with the Act, decide upon the investigation methods and costs.

K. Hearing Prosecutor

1. Upon the receipt of a Complaint of Offence, decide whether or not a hearing will be conducted.
2. Prepare and sign the Notice of Hearing.
3. Arrange through the police officer's *supervisor* to effect service upon the subject police officer a true copy of the Notice of Hearing, together with a statement of particulars.
4. Ensure the investigators prepare a brief similar to the preparation of a case for criminal court.
5. Arrange to have the necessary witness(es) present at the trial.
6. Upon confirmation of the penalty and/or action from the Chief, ensure that the penalty and/or action is carried out.
7. Forward the complete file to the Professional Standards Commander.

L. Presiding or Hearing Officer

1. Ensure the evidence is recorded.
2. Ensure the hearing is conducted in an efficient, orderly manner.
3. If misconduct or unsatisfactory work performance is proved on clear and convincing evidence, ensure the prosecutor gives a history of the police officer's service.
4. Award the penalty and/or action.
5. Ensure the subject officer and Chief are served with a copy of the disposition of the hearing.

M. Subject Police Officer

1. Notify the presiding or hearing officer, in writing and before the date of the hearing, of the name(s) of police service witness(es) to be called in order that they can be notified to attend.

APPENDIX A

COMPLAINTS POLICY

Nq>! for Coniptainfs AixxJT CNef or a Oeptay

SKXt

CP Memo*
Ccr^pfcjrt
Mode To; iWatod P; fCtassned P;

Rotoy CT
$e*vtc*
CwnpkSnT? ^_-

r No

Ye
***

Informs
BdUtoftContoti**
-.. Shee*?cestote?
..-■

The Ser.Yce is eerfvrrifIttrd to iter cmcpto *ttxfi* to* open D*oenpt ttotousjn and Atiiclent rospornfr to contotairto is <*t* cornerstone to eatafcWtogand fttaWabng a poJrti'w commcrtfy-pcAfce rektifcnfito

The Ac! oro/dei for on iTroedfcare rescrtuTton *cfia* eoretoct co^to^[1] tte* it ctjvicMdy covJLi-i iterf nd Of o serfcxa natim The tar step ft the prccen b to eo«id« or- Wcyrnof ffc?JWfcrik*> Contact Sheet a nx?/ be used *1* cfl cf The fctorvirg £c*xJtk>» cxe mef.

1. A supervisor betovas fro COA be
   ■sody rasoVed by;
   - on wtorerton cf a pofcy cr wtoe
   - on exchange of ^crmation ^oiTicmc*Topoto^
   - Lwfcof vvar^g footeer
   - rotten warwg to CrtiCOt
2. Thro ft no w«Jto proceed wTtoo Etognsudya- dts<dp*ter
   ■ Htnto* W^v« Fras* Wentoy g hited $ 1

^ AttnGT>wgmfrg

to

11. Compete Ccrrcfoint foffn and Waver [tCpftoncrf). Cttfdto O^nptojtftf No. From **| T^^StonOoroa** ^►j ?. forward Cda^s) To Apptocttfe j I** CorrYTYjndef and Cejjtfil To ftdcng Storxtond* Commartist

? Comptote iWoenned fescajJtofv
: Ccrtod SUtot and forward : To Sufcfecl **Uhrt Cornrncsr»da-**

tin* Cowrwictat To FbrVtoftS Orto^ Wwrrot TJ»so*jton Cefttocl a»et to fotey^g iscndo^Corrmonde ^ ShO C* **100553

; Conduct CcrrpioW *j*
LMdkmMVMAMIM.MIIJ

AWto^Do^Deoto ^if ...
.....1“

1 «w To

H.
on Sfc
. More than Sfc Moato; j

4

to Further Action

Ctorrto*P»^^ WectV Affected

tfrVcHou* Vkwjffouscr; Mode h>. Bod Forth \

RswwTopee
ttXAt
Concixt
od

Aw<FVrkerit C* Pervjff* to Urtl CchYrondef or Fc<fcye£ $^rtoaidj Commcder

■ Notice to Suttect Cffcef. Ur*MS **fcmollgcjtor r**

£<&&£*c*\o;
flbtoil
Ftopat

Sto To Page 2;

INOtty CdlTf5torton^
ordOfTteet
liOJ
Yp*
jSetd **Tc*** £«toi
Courptoa **ahd** orm axs
-! **n** opyr^
rtoffltea#fc«sto
ft3f»cr>g !
iWidtGdfwwiJw
I

, -' ^rxj *of* Ppoc«i Ltotea ftotfied" ■, Sy
Comniwbn **Contototwt** & An
App#dfry

yof
Se
orr
pkd
Pcfcp
cotvptofrt
I

towo«3 OrigJrxji Ccrrp*^ rtoVhtoCWATtNh SCW
ahtf Sc CmflAny
CtoCvrpo Ppotottort to A$dd frs to Cariptoint!

Tote
ICf
NOi
Tote Action *or* NoACton

New/
Contototto r C<
Oi**p**ton
p
pod
ttor
C4
ifcnto
oe
f

,'trd o' ^oce«s Uniew tWwf - 5y Pc*ce Serrto« Qoard Of A Itop^Fbrf«r/Wwr

Mol Fo?Abod Chtof or a Deputy

From

RfWST i»pOit

L^iLi^kxY LtJtocP.

*ftrt

NCW/ Cocrpsctnont OrHfC*t£ *f

End of Ptooswi Unless teamed By Ccnwhsic^ O' An ACped 9yt CorfiDiaFnorr

r^ct Ssfiogs & frforrnd fleaofcttco "Xtopcw*?./

vw

Ncf*y Corrp*o*i arTi and Otter

Attempt InfOcr** Resciirton sc Wave* j Signed. 30 £Xv3 Opesd <x *Or*> Dtoctan *f* rom Cwrntotn

/OaYpsrtnont end Otter Cownt to Ftepc«s(Kj ResoMtrrt

M e

OtttcOfSyft Repty *Qntj*01 h

Chief Or tJrtf Corrmcandet to hTpo^ftjfV^onp. 'er /jetton

teHotlHoorog

N &

: Demote Prosecutor one Pr«**>g or hoortrg Off»c- Pf

wmen Notice To C<xriq*3r<ite rx^dOftee r

Ofec*Mu»

HnWKeo rtng

Awaf Corrmte&ons CMectton ftttx to in^pcrtrg f^ntr^

lirpesse ftenotttes W*eSS{ttef A«XK*S To Commsst^

** %

-•■•"Cfeof end's Coftmctefl Evtter»C* 7X

M e

Tdte Action « Qrac te<i fty the C<xnrr*K*c n

< End of Pttess

/ £nd of Procrw Unless i Notlted fy* CtxnrrtMfcYi Of An Asceaf ft/ Compwnanf

IA´toApoeeff o O^fttrrrfCcuft

This is **Exhibit "F"** referred to in the affidavit of Kelly Lynn Donovan

sworn on September 12, 2018.

Mary Louise Donald

Commissioner for Taking Affidavits

Mary Louise Donald, a Commissioner, etc.,
County of Brant, for the Government of Ontario,
Ministry of the Attorney General.

From: **Machado Law** pamela@pmachadolaw.com
Subject: Reply from WRPS
Date: May 8, 2017 at 7:17 PM
To: Kelly Donovan donovandih@gmail.com
Cc: Machado Law pamela@pmachadolaw.com

PM

Their counsel has advised that he has instructions to accept our counterproposal as set out below. It will obviously have to be put into writing into a settlement agreement that has a release and confirms the withdrawal of the Ontario Human Rights Tribunal matter, etc.

The only clarifications that we discussed were: (1) that the confidentiality clause should have the usual exception so that you can consult legal counsel and/or financial advisors regarding the settlement terms; and (2) that it contains the standard term that should either party be asked about the terms of the settlement, it is agreed that both parties will respond with words to the effect of "all matters between the parties were settled to their mutual satisfaction – the terms of which are confidential". Can you confirm that the above is acceptable?

Once we have that information, he will ask Don Jarvis to do up the usual paper work required to paper the agreed upon settlement and the withdrawal of the Human Rights complaint.

Please let me know what you think.

On a side note; FOI REQUEST

He advised me that WRPS has received an FOI request that includes references to you. They are generally not permitted to reveal the maker of the request or that a request has been made unless it is required to assist them in responding and/or relates to an on-going matter (e.g., our settlement) – he believed both are the case here, and so does not intend to release absent your consent.

An individual, purporting to act for a public accountability organization regarding whistleblowers, has made a request for amounts paid to York Regional Police (there is none), Don Jarvis's firm and to Bernardi all relating to the on-going matters specifically involving you. I thought this may be the law firm dealing with the class action, however, when one of their lawyers called me this evening out of the blue to ask me whether your matter had settled as they have "heard rumblings" it had, and I asked about this FOI, she had no clue. Seemed odd to me that she wouldn't and that she would call out of the blue like that.

They have asked the requester whether they have the consent of the third parties involved (notwithstanding that the requestor identified you and the accounts by name) and without such they will likely not be confirming or denying the existence of the records to protect the identity of their employees. If the requestor provides them with the consent or indicates they want them to seek the third party consent then they would do so and deal with the request in the normal course.

Please let me know your thoughts.

Thanks

Pamela Machado,
Barrister & Solicitor

Machado Law Professional Corporation
420 Main Street East, Suite 624
Milton, Ontario
L9T 8G3

Tel: (289) 383-2130
Fax: (289) 878-7311

pamela@pmachadolaw.com
www.pmachadolaw.com
Follow me on Twitter @PMachadoLaw

Please consider the environment before printing this e-mail

This communication is privileged and may contain confidential information intended only for the person(s) to whom it is addressed. Any disclosures,copying, other distribution of this communication or taking action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or distributing its contents to anyone.

From: donovandih@gmail.com
Subject: Re: Reply from WRPS
Date: May 8, 2017 at 7:29 PM
To: Machado Law pamela@pmachadolaw.com

Hi Pamela,

What exactly does that mean about the confidentiality clause? Does that mean I'm not able to discuss what happened to my career in policing? Are you able to spell it out to me in laymen's terms? As I said, I won't agree to never discuss details of my delegation etc.

I appreciate your help.

As for the FOI request, I do not have an outstanding FOI request and I have not been asked to give any kind of third party consent. My FOI request was fulfilled. As for the class action, I have not had any contact with anyone regarding that suit and as I said in my 'counter-offer' I would not participate if my terms were accepted by the wrps.

On a side note, for reasons related to my OMERS, it is beneficial to me if the date of my resignation could fall near the end of June. Perhaps I have holiday time and stat time that would carry me over to then?

Thanks,
Kelly

Sent from my iPhone

On May 8, 2017, at 7:17 PM, Machado Law <pamela@pmachadolaw.com> wrote:

> Their counsel has advised that he has instructions to accept our counterproposal as set out below. It will obviously have to be put into writing into a settlement agreement that has a release and confirms the withdrawal of the Ontario Human Rights Tribunal matter, etc.
>
> The only clarifications that we discussed were: (1) that the confidentiality clause should have the usual exception so that you can consult legal counsel and/or financial advisors regarding the settlement terms; and (2) that it contains the standard term that should either party be asked about the terms of the settlement, it is agreed that both parties will respond with words to the effect of "all matters between the parties were settled to their mutual satisfaction – the terms of which are confidential". Can you confirm that the above is acceptable?
>
> Once we have that information, he will ask Don Jarvis to do up the usual paper work required to paper the agreed upon settlement and the withdrawal of the Human Rights complaint.
>
> Please let me know what you think.
>
> On a side note; FOI REQUEST
>
> He advised me that WRPS has received an FOI request that includes references to you. They are generally not permitted to reveal the maker of the request or that a request has been made unless it is required to assist them in responding and/or relates to an on-going matter (e.g., our settlement) – he believed both are the case here, and so does not intend to release absent your consent.
>
> An individual, purporting to act for a public accountability organization regarding whistleblowers, has made a request for amounts paid to York Regional Police (there is none), Don Jarvis's firm and to Bernardi all relating to the on-going matters specifically involving you. I thought this may be the law firm dealing with the class action, however, when one of their lawyers called me this evening out of the blue to ask me whether your matter had settled as they have "heard rumblings" it had, and I asked about this FOI, she had no clue. Seemed odd to me that she wouldn't and that she would call out of the blue like that.
>
> They have asked the requester whether they have the consent of the third parties involved (notwithstanding that the requestor identified you and the accounts by name) and without such they will likely not be confirming or denying the existence of the records to protect the identity of their employees. If the requestor provides them with the consent or indicates they want them to seek the third party consent then they would do so and deal with the request in the normal course.
>
> Please let me know your thoughts.
>
> Thanks
>
> Pamela Machado,
> Barrister & Solicitor
>
> Machado Law Professional Corporation
> 420 Main Street East, Suite 624
> Milton, Ontario
> L9T 8G3

From: **Machado Law** pamela@pmachadolaw.com
Subject: Re: Reply from WRPS
Date: May 8, 2017 at 7:34 PM
To: donovandih@gmail.com

PM

It means that as it relates to the settlement only that is what you would be required to say. This does not prevent you from speaking of your experience in policing at all. It only means that when people ask what happened to the HRTO matter or the PSA matter that is what you would say. Make sense?

I will advise that you are not consenting to the FOI nor do you have information about it.

I will ask about the other concern - stat etc.

Pamela Machado,
Barrister & Solicitor

Machado Law Professional Corporation
420 Main Street East, Suite 624
Milton, Ontario
L9T 8G3

Tel: (289) 383-2130
Fax: (289) 878-7311

pamela@pmachadolaw.com
www.pmachadolaw.com
Follow me on Twitter @PMachadoLaw

Please consider the environment before printing this e-mail

This communication is privileged and may contain confidential information intended only for the person(s) to whom it is addressed. Any disclosures,copying, other distribution of this communication or taking action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or distributing its contents to anyone.

> On May 8, 2017, at 7:29 PM, donovandih@gmail.com wrote:
>
> Hi Pamela,
>
> What exactly does that mean about the confidentiality clause? Does that mean I'm not able to discuss what happened to my career in policing? Are you able to spell it out to me in laymen's terms? As I said, I won't agree to never discuss details of my delegation etc.
>
> I appreciate your help.
>
> As for the FOI request, I do not have an outstanding FOI request and I have not been asked to give any kind of third party consent. My FOI request was fulfilled. As for the class action, I have not had any contact with anyone regarding that suit and as I said in my 'counter-offer' I would not participate if my terms were accepted by the wrps.

From: **Machado Law** pamela@pmachadolaw.com
Subject: Settlement
Date: May 9, 2017 at 5:40 PM
To: donovandih@gmail.com

PM

Hi Kelly.

Gary has confirmed instructions to agree to your request to have your resignation fall at the end of June. He has suggested June 25th, a Sunday for the purposes of the pay period so you can use your holiday and/or stat time effective June 9th as that is the date up to which you have been approved by Acclaim on sick – if you want to have that switch over earlier, they are fine with that because once we have an agreement, you will no longer have to deal with Acclaim from whatever date we set.

He has instructed Don Jarvis to prepare the final documents re: settlement, which will be subject to the mutual agreement on those documents. Don will reach out to me directly so that this can be discussed and finalized but if you need anything, let me know.

Please let me know if you have questions in the interim.

Pamela Machado
Barrister & Solicitor

Machado Law Professional Corporation
420 Main Street East, Suite 624
Milton, Ontario
L9T 8G3

Tel: (289) 383-2130
Fax: (289) 878-7311

pamela@pmachadolaw.com
www.pmachadolaw.com
Follow me on Twitter @PMachadoLaw

Please consider the environment before printing this e-mail

This communication is privileged and may contain confidential information intended only for the person(s) to whom it is addressed. Any disclosures,copying, other distribution of this communication or taking action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or distributing its contents to anyone.

From: **Machado Law** pamela@pmachadolaw.com
Subject: Please review
Date: May 12, 2017 at 6:13 PM
To: Kelly Donovan donovandih@gmail.com

PM

Hi Kelly,

Please review. I have highlighted and made comment in two areas. I want your feedback. It's airtight in terms of the Release, which may impact any class action. It is important you know this.

Please read and get back to me.

Thank you.

PDF

Resignation Agreement.pdf

Pamela Machado,
Barrister & Solicitor

Machado Law Professional Corporation
420 Main Street East, Suite 624
Milton, Ontario
L9T 8G3

Tel: (289) 383-2130
Fax: (289) 878-7311

pamela@pmachadolaw.com
www.pmachadolaw.com
Follow me on Twitter @PMachadoLaw

Please consider the environment before printing this e-mail

This communication is privileged and may contain confidential information intended only for the person(s) to whom it is addressed. Any disclosures,copying, other distribution of this communication or taking action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or distributing its contents to anyone.

From: **Kelly Donovan** donovandih@gmail.com
Subject: Agreement
Date: May 15, 2017 at 5:28 PM
To: Pamela Machado pamela@pmachadolaw.com

Hi Pamela,
I've been dissecting it more now…

When we communicated about the agreement by email you had said that the agreement "does not prevent you from speaking of your experience in policing at all."

But, I'm confused about paragraph 11 (which seems like I'm agreeing to not discuss anything) and on page 8 (which is page 2 of Appendix A), it states that I agree to keep confidential any information I obtained during my employment with the Regional Municipality of Waterloo (that's pretty broad…. Any information I obtained from 2010 to 2017?).

Can you please clarify?
Kelly

From: **Machado Law** pamela@pmachadolaw.com
Subject: Re: Agreement
Date: May 15, 2017 at 5:44 PM
To: Kelly Donovan donovandih@gmail.com

PM

Yes I agree it seems to hence we need to go over it in person. This is their offer. You'll see my comments include amending that paragraph.

We can discuss all of the angles Thursday.

Pamela Machado
Barrister & Solicitor

Machado Law Professional Corporation
420 Main Street East, Suite 624
Milton, Ontario
L9T 8G3

Tel: (289) 383-2130
Fax: (289) 878-7311

pamela@pmachadolaw.com
www.pmachadolaw.com
Follow me on Twitter @PMachadoLaw

Please consider the environment before printing this e-mail

This communication is privileged and may contain confidential information intended only for the person(s) to whom it is addressed. Any disclosures,copying, other distribution of this communication or taking action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or distributing its contents to anyone.

On May 15, 2017, at 5:28 PM, Kelly Donovan <donovandih@gmail.com> wrote:

> Hi Pamela,
> I've been dissecting it more now…
>
> When we communicated about the agreement by email you had said that the agreement "does not prevent you from speaking of your experience in policing at all."
>
> But, I'm confused about paragraph 11 (which seems like I'm agreeing to not discuss anything) and on page 8 (which is page 2 of Appendix A), it states that I agree to keep confidential any information I obtained during my employment with the Regional Municipality of Waterloo (that's pretty broad…. Any information I obtained from 2010 to 2017?).
>
> Can you please clarify?
> Kelly

From: **Machado Law** pamela@pmachadolaw.com
Subject: Re: Donovan
Date: May 18, 2017 at 1:37 PM
To: Gary Melanson Gary.Melanson@wrps.on.ca
Cc: DONALD JARVIS (djarvis@filion.on.ca) djarvis@filion.on.ca

PM

WITHOUT PREJUDICE:

I have now met with Kelly, and after review of the terms as suggested by you both, we have attached our final proposal for settlement. In good faith, the salary amount being requested is higher (one additional year) than initially discussed, in order to account for your requirement that she abandon her WSIB claim [your original paragraph 11(c)] with her resignation, which will act as a disadvantage to her given the loss she will sustain regarding the WSIB's support for mental health benefits etc. To be frank, if she remains employed, she would receive continued support from WSIB in addition to her wages, benefits etc. This amount will also account for any deductions she will sustain.

Kelly is still interested in severing this relationship, however, she wants to ensure she receives the coverage she and her family require.

The changes to the confidentiality clause do not relate to any intention on her part to launch any type of proceeding;

There are also mutual releases attached, as well as her undertaking that she will not bring any action against the Association. These should account for further consideration in my opinion.

Should these terms remain unsatisfactory, we will proceed to next steps in all related matters.

Thank you for your consideration.

Pamela Machado,
Barrister & Solicitor

Machado Law Professional Corporation
420 Main Street East, Suite 624
Milton, Ontario
L9T 8G3

Tel: (289) 383-2130
Fax: (289) 878-7311

pamela@pmachadolaw.com
www.pmachadolaw.com
Follow me on Twitter @PMachadoLaw

Please consider the environment before printing this e-mail

This communication is privileged and may contain confidential information intended only for the person(s) to whom it is addressed. Any disclosures,copying, other distribution of this communication or taking action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or distributing its contents to anyone.

> On May 8, 2017, at 1:00 PM, MELANSON, GARY <Gary.Melanson@wrps.on.ca> wrote:
>
> Pam,
>
> Further to our conversation today, I can advise that I have instructions to accept Kelly's counterproposal as set out below. It will

Further to our conversation today, I can advise that I have instructions to accept Kelly's counterproposal as set out below. It will obviously have to be put into writing into a settlement agreement that has a release and confirms the withdrawal of the Ontario Human Rights Tribunal matter, etc.

The only clarifications that we discussed were: (1) that the confidentiality clause should have the usual exception so that Kelly can consult legal counsel and/or financial advisors regarding the settlement terms; and (2) that it contains the standard term that should either party be asked about the terms of the settlement, it is agreed that both parties will respond with words to the effect of "all matters between the parties were settled to their mutual satisfaction – the terms of which are confidential". Can you confirm that the above is correct and acceptable?

Once we have that information, I will be asking Don Jarvis (I have copied him with this email) to do up the usual paper work required to paper the agreed upon settlement and the withdrawal of the Human Rights complaint.

As always and especially on this one, thank you for all your efforts and consideration,

gary

Gary V. Melanson,
Solicitor, Director of Legal Services and Risk Management
519-650-8532

Please note: This email may contain confidential and/or privileged information. This email or any part of it cannot be shown or distributed in any way (including being referenced in correspondence) to any person not employed by the Waterloo Regional Police Services ("WRPS") except where privilege has been explicitly waived in advance. If this email is sent by me to a person who is not a WRPS employee or contains matters only of fact, please disregard.

From: Machado Law [mailto:pamela@pmachadolaw.com]
Sent: Friday, May 05, 2017 4:52 PM
To: MELANSON, GARY
Subject: Re: Donovan

Thanks Gary.

To you also. Stay dry :)

Pamela Machado,
Barrister & Solicitor

Machado Law Professional Corporation
420 Main Street East, Suite 624
Milton, Ontario
L9T 8G3

Tel: (289) 383-2130
Fax: (289) 878-7311

pamela@pmachadolaw.com
www.pmachadolaw.com
Follow me on Twitter @PMachadoLaw

Please consider the environment before printing this e-mail

This communication is privileged and may contain confidential information intended only for the person(s) to whom it is addressed. Any disclosures,copying, other distribution of this communication or taking action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or distributing its contents to anyone.

On May 5, 2017, at 4:42 PM, MELANSON, GARY <GARY.MELANSON@wrps.on.ca> wrote:

Hi Pam,

I will seek instructions on Kelly's proposal and get back to you the first part of next week. I can say that I personal consider this a good and encouraging development and am hopeful we can work something out very quickly.

good and encouraging development and am hopeful we can work something out very quickly.

Have a good weekend and thank you,

gary

Gary V. Melanson,
Solicitor, Director of Legal Services and Risk Management
519-650-8532

Please note: This email may contain confidential and/or privileged information. This email or any part of it cannot be shown or distributed in any way (including being referenced in correspondence) to any person not employed by the Waterloo Regional Police Services ("WRPS") except where privilege has been explicitly waived in advance. If this email is sent by me to a person who is not a WRPS employee or contains matters only of fact, please disregard.

From: Machado Law [mailto:pamela@pmachadolaw.com]
Sent: Friday, May 05, 2017 1:25 PM
To: MELANSON, GARY
Subject: Donovan

Without Prejudice:

Hi Gary,

After speaking with Kelly, she proposes a severance to the relationship as between herself and the WRPS on the following terms:

- 1 year salary paid in one lump sum;
- No education or wellness funds required, however, legal fees in the amount of $10k to account for a portion of what she has incurred to date);
- No benefits beyond the signing of the offer required; (consider the above ask as a tradeoff - legal fees instead of the two funds and benefits);
- Confidentiality on the amount of the settlement only, not a general confidentiality clause;
- An agreement from her to withdraw the HRTO complaint and undertaking not to commence any further HRTO/OCPC/OIPRD complaints

Should these terms be unacceptable, she will stay the course, and submit to an interview when her doctors clear her to do so. She is, however, willing to move on based on the above.

I will wait to hear from you.

Thanks

Pamela Machado,
Barrister & Solicitor

Machado Law Professional Corporation
420 Main Street East, Suite 624
Milton, Ontario
L9T 8G3

Tel: (289) 383-2130
Fax: (289) 878-7311

pamela@pmachadolaw.com
www.pmachadolaw.com
Follow me on Twitter @PMachadoLaw

Please consider the environment before printing this e-mail

This communication is privileged and may contain confidential information intended only for the person(s) to whom it is addressed. Any disclosures,copying, other distribution of this communication or taking action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or distributing its contents to anyone.

RESIGNATION AGREE...ed.pdf

From: **Machado Law** pamela@pmachadolaw.com
Subject: Update
Date: June 2, 2017 at 4:28 PM
To: donovandih@gmail.com

PM

From Gary:

In the end, I believe I have a simple solution. I have been instructed to ask Don to remove the WSIB clause and our offer (with that change and your suggested revisions on the wording of the settlement documentation, subject to Don's input and sign off) will otherwise remain the same. That would seem to address the rationale for the change in the settlement amount.

I agree with you that if the resolution is not achieved by June 7th (or such date that you and Don extend), our offer will be removed from the table and we will simple move on with all the outstanding matters. I hope that is not the case and the removal of the key concern of your client will put this back on the track.

Anyway, I hope that the above helps.

Pamela Machado
Barrister & Solicitor

Machado Law Professional Corporation
420 Main Street East, Suite 624
Milton, Ontario
L9T 8G3

Tel: (289) 383-2130
Fax: (289) 878-7311

pamela@pmachadolaw.com
www.pmachadolaw.com
Follow me on Twitter @PMachadoLaw

Please consider the environment before printing this e-mail

This communication is privileged and may contain confidential information intended only for the person(s) to whom it is addressed. Any disclosures,copying, other distribution of this communication or taking action on its contents is strictly prohibited. If you have received this message in error, please notify us immediately and delete this message without reading, copying or distributing its contents to anyone.

FORM 4F

Courts of Justice Act

HRTO File No. 2018-33237-S

HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

KELLY LYNN DONOVAN

Respondent

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Applicant

NOTICE OF CONSTITUTIONAL QUESTION

April 30, 2019

Kelly Donovan

(Respondent)

The Respondent, Kelly Donovan, intends to question the constitutional validity of Section 137.1, and in particular Section 137.1(3), of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, hereafter known as "*CJA*" which allows the Court to dismiss a proceeding against the person if the person satisfies the judge that the proceeding arises from an expression made by the person that related to a matter of public interest. The Applicant seeks declarations that *CJA* s.137.1 is contrary to:

1) section 2 of the *Canadian Charter of Rights and Freedoms*; and
2) section 15 of the *Canadian Charter of Rights and Freedoms*.

The Applicant seeks a declaration that "proceeding" for the purposes of *CJA* s.137.1 encompass all legal proceedings, whether in civil court or before an administrative tribunal, if the proceeding is defined as a "gag proceeding."

Furthermore, the Applicant seeks a declaration that by protecting people who face a civil lawsuit for expressions made on matters of public interest, and not protecting people who face a different kind of lawsuit for expressions made on matters of public interest, *CJA* s. 137.1 is contrary to section 15 of the *Canadian Charter of Rights and Freedoms* and is inoperative.

The question is to be argued on a date and time to be fixed by the Registrar, at 655 Bay Street, 14th Floor, Toronto, Ontario, M7A 2A3.

Table of Contents

Material facts giving rise to the constitutional question: ..... **- 3 -**

Legal basis for the constitutional question: ..... **- 5 -**

November, 2015, Enactments ..... **- 7 -**

Is section 137.1 of the Courts of Justice Act unconstitutional? ..... **- 8 -**

Case Law Analysis ..... **- 9 -**

1704604 Ontario Ltd. V. Pointes Protection Association, 2018 ONCA 685 ..... - 9 -

El-Helou v Courts Administration Service, 2011 CanLII 93945 (CA PSDPT) ..... - 12 -

Law Society of Upper Canada v. Kivisto, 2017 ONLSTH 157 ..... - 13 -

Taylor v. The Crown in Right of Ontario (Ministry of Community Safety and Correctional Services), 2018 CanLII 7166 (ON PSGB) ..... - 13 -

Donovan v. (Waterloo) Police Services Board, 2019 ONSC 818 ..... - 14 -

Conclusion ..... **- 16 -**

Material facts giving rise to the constitutional question:

1. The Applicant was a police officer, and worked for the Respondent from December, 2010, to June, 2017.
2. On June 8, 2017, the parties entered into a contract to end the Applicant's employment effective June 25, 2017, provided to the court at Tab A of Application Record of the Applicant, Volume I.
3. The resignation agreement did not contain a general non-disclosure clause, as the Applicant was adamant that she would not resign from her employment if she was restricted from talking about her experiences working for the Respondent.
4. The Applicant provided evidence in the Application Record in this matter, and waived solicitor client privilege to show that she had instructed her counsel she would not agree to a silencing clause upon resignation.

5. The resignation agreement contained a confidentiality provision that the terms and existence of the agreement were to be kept confidential and only if asked would the parties state that the matters were settled and the terms of which are strictly confidential.
6. Since resigning, the Applicant has made several public statements, and cited evidence to illustrate, the need for more accountability and transparency in policing, in addition to protection for police whistleblowers who report internal corruption, based on her personal experiences working for the Respondent.
7. The Applicant believes that all of her expressions are regarding matters of public interest and she consistently receives accolades from members of the public to echo her belief.
8. From July, 2017, until June, 2018, the Respondent did not serve the Applicant with any documentation to suggest that the Respondent had any concerns whatsoever with the Applicant's advocacy efforts, even when the Applicant spoke publicly at a board meeting in September, 2017.
9. In January, 2018, the Respondent allowed the details of the Applicant's resignation agreement to be publicly disclosed by police chief Bryan Larkin and appealed the Applicant's claim for benefits with the Workplace Safety and Insurance Board ("WSIB").
10. On May 9, 2018, the Applicant filed a statement of claim in Ontario Superior Court, (court file number CV-18-00001938-0000), against the Respondent for breach of contract.
11. On June 7, 2018, the Respondent filed a motion to dismiss the Applicant's action, citing (among other things) that exclusive jurisdiction for breach of the resignation agreement lies with the Human Rights Tribunal of Ontario ("HRTO").
12. The motion to dismiss was scheduled to be heard in Brampton court on February 13, 2019.

13. On June 28, 2018, the Respondent brought an HRTO section 45.9, a contravention of settlement, application against the Applicant, provided to the court at Tab 4 of the Application Record of the Applicant, Volume III.

14. The s. 45.9 application alleges that every public statement made by the Applicant from July 17, 2017, until June, 2018, about the Respondent has been a violation of the resignation agreement, and the application seeks significant damages from the Applicant and for her to cease speaking about the Respondent in public and retract all allegations made about the Respondent from the public realm.

15. The Applicant believes that the s. 45.9 application filed by the Respondent at the HRTO is for all intents and purposes a "gag proceeding."

16. On September 18, 2018, the Applicant brought a *Courts of Justice Act* section 137.1 application before the Ontario Superior Court of Justice to have the proceeding at the HRTO dismissed for limiting public debate on matters of public interest, provided to the court at Tabs 1 and 2 of the Application Record of the Applicant, Volume I.

17. On January 10, 2019, the Honourable Madam Justice Favreau heard arguments from the parties regarding jurisdiction of the application.

18. On February 1, 2019, Justice Favreau issued her decision that *CJA* s. 137.1 does not apply to proceedings before the HRTO.

Legal basis for the constitutional question:

19. Prior to 2013, Ontario did not have an anti-SLAPP law, ("SLAPP" standing for Strategic Lawsuit Against Public Participation).

20. The first American state to adopt anti-SLAPP legislation was Washington in 1989, when the "Brenda Hill Bill" became law, recognizing the dangerous effect of SLAPP lawsuits on free expression.

21. Legislation to protect public participation in debate on matters of public interest was first introduced in Ontario by the Honourable John Gerretsen in 2013.

22. Bill 52, Protection of Public Participation Act, was first introduced, (in its current form), on December 1, 2014. The bill received Royal Assent on November 3, 2015.

23. At first reading, December 1, 2014, Honourable Madeleine Meilleur stated:

    a. "As members will recall, the proposed Protection of Public Participation Act seeks to balance the protection of public participation and freedom of expression and the protection of reputation and economic interests." Ontario, Legislative Assembly, Official Report of Debates (Hansard), 41st Parl., 1st Sess., No. 41A (10 December, 2014), (Hon. Madeleine Meilleur).

24. Bill 52 was debated on the following dates:

    a. December 10, 2014;

    b. March 5, 2015;

    c. March 23, 2015; and

    d. October 27, 2015.

25. At second reading, on December 10, 2014, Hon. Meilleur stated:

    a. "As I mentioned a moment ago, going to court can be expensive and time-consuming for everyone, but this is of particular concern when one party has much greater resources than the other. In a strategic suit, that party chooses to exploit the imbalance by taking a weaker opponent to court with a frivolous

claim. Sometimes, these cases have little or no merit. Most are dropped before the lawsuit goes to trial, sometimes just weeks later. Meanwhile, the damage is done. Financially and emotionally drained, the target of a strategic suit is effectively silenced." Ontario, Legislative Assembly, Official Report of Debates (Hansard), 41st Parl., 1st Sess., No. 41A (10 December, 2014), (Hon. Madeleine Meilleur).

November, 2015, Enactments

26. Subsections 137.1(1) and 137.1(2) of the *CJA* state:

PREVENTION OF PROCEEDINGS THAT LIMIT FREEDOM OF EXPRESSION ON MATTERS OF PUBLIC INTEREST (GAG PROCEEDINGS)

Dismissal of proceeding that limits debate
Purposes

137.1 (1) The purposes of this section and sections 137.2 to 137.5 are,

(a) to encourage individuals to express themselves on matters of public interest;

(b) to promote broad participation in debates on matters of public interest;

(c) to discourage the use of litigation as a means of unduly limiting expression on matters of public interest; and

(d) to reduce the risk that participation by the public in debates on matters of public interest will be hampered by fear of legal action. 2015, c. 23, s. 3.

27. The *CJA* provides the following definition in subsection 137.1(2):

Definition, "expression"

(2) In this section,

"expression" means any communication, regardless of whether it is made verbally or non-verbally, whether it is made publicly or privately, and whether or not it is directed at a person or entity. 2015, c. 23, s. 3.

28. Although this section does not provide a definition for the term "proceeding," Part VII, Court Proceedings, subsection 95(1), states:

"This Part applies to civil proceedings in courts of Ontario."

29. Part VII of the *CJA* does not exclusively address proceedings brought before courts, as is evident in subsection 109(6), which applies to proceedings both before boards and tribunals and reads:

"This section applies to proceedings before boards and tribunals as well as to court proceedings."

30. The term "gag proceeding" is not specifically defined in the *CJA*.

Is section 137.1 of the *Courts of Justice Act* unconstitutional?

31. It is the Applicant's position that since *CJA* subsection 109(6), referenced above in paragraph 29, speaks to "proceedings" in both boards and tribunals, as well as in court, when questioning the constitutional applicability of an Act, it would be unconstitutional to not provide the same explicit applicability to *CJA* s. 137.1 for board and tribunal proceedings when freedom of expression on matters of public interest is threatened.

32. The same relief for members of the public facing a "gag proceeding" in section 137.1(3) of the *CJA* is not provided to those facing a "gag proceeding" filed anywhere other than in civil court, is incompatible with our current system of quasi-judicial administrative tribunals, and

contradictory to modern access practices in government institutions of the free and democratic world.

33. The constitutionality of section 137.1 of the *CJA* appears to have never been tested in any court or tribunal in Canada.

34. Subsection 2(b) of the *Canadian Charter of Rights and Freedoms* guarantees freedom of expression, including freedom of the press and other media of communication.

35. Section 15 of the *Canadian Charter of Rights and Freedoms* guarantees equality before and under law and equal protection and benefit of law.

36. All persons, even those whose expression is the subject of a lawsuit brought against them at a quasi-judicial administrative tribunal, deserve the same right to freely express themselves on matters of public interest.

37. Excluding persons facing "gag proceedings" at administrative tribunals from the relief available in *CJA* s. 137.1(3) is not providing equal protection and benefit of law, and is contrary to s. 15(1) of the *Canadian Charter of Rights and Freedoms*.

Case Law Analysis

1704604 Ontario Ltd. V. Pointes Protection Association, 2018 ONCA 685

38. The Ontario Court of Appeal set out a substantive analysis of *CJA* s. 137.1 in *1704604 Ontario Ltd. V. Pointes Protection Association*, 2018 ONCA 685.

39. At para. 1, Honourable Justice Doherty states:

> "Freedom of expression is a constitutionally-protected right in Canada. The free and open expression of divergent, competing, and strong viewpoints on matters of public interest is essential to personal liberty, self-fulfillment, the search for the truth, and the maintenance of a vibrant democracy."

40. At para. 2, Honourable Justice Doherty states:

> "From time to time, those who are the target of criticism resort to litigation, not to vindicate any genuine wrong done to them, but to silence, intimidate, and punish those who have spoken out. Litigation can be a potent weapon in the hands of the rich and powerful. The financial and personal costs associated with defending a lawsuit, particularly one brought by a deeppocketed plaintiff determined to maximize the costs incurred in defending the litigation, can deter even the most committed and outspoken critic."

41. At para. 28, the origins of our current anti-SLAPP laws are explained as follows:

> The pertinent history of Ontario's AntiSLAPP legislation begins with the 2010 Report of the AntiSLAPP Advisory Panel to the Attorney General. Many the Panel's recommendations ultimately found their way into the legislation.
>
> [29] In the Report, the Panel recognized the need to protect and foster a broad spectrum of expression relating to matters of public interest. The Panel proposed a pretrial procedure designed to quickly and inexpensively identify and dismiss those unmeritorious claims that unduly entrenched on an individual's right to freedom of expression on matters of public interest. The Panel observed, at para. 18 of its Report:
>
> The legislation should therefore state that the purpose of the statute is to expand the democratic benefits of broad participation in public affairs and to reduce the risk that such participation will be unduly hampered by fear of legal action. It would seek to accomplish these purposes by encouraging the responsible exercise of free expression

by members of the public on matters of public interest and by discouraging litigation and related legal conduct that interferes unduly with such expression.

42. At para. 33, comments are cited of the Attorney General at the time the proposed legislation received second reading, to clarify the purpose and intent of the legislation as:

> [TRANSLATION:] The purpose of the Bill is to protect freedom of expression…. It aims to achieve a significant balance, to the benefit of all parties to a dispute…. Balance is a constant theme: the need to strike a balance that will end abusive litigation while allowing legitimate actions.
>
> …
>
> [The Bill] does not create a socalled "licence to slander". Instead, the Bill aims to protect expression on matters of public interest. What the Bill would do is let a court review lawsuits brought against such expression at an early stage. It would then be up to the court to decide whether the expression at issue is likely to cause serious harm. If so, the court may allow the lawsuit to continue in the normal course of litigation. I strongly believe that the law must defend reputation, but not at any cost and not in every case. I do not believe that a mere technical case without actual harm – should be allowed to suppress the kind of democratic expression that is crucial for our democracy: Ontario, Legislative Assembly, Official Report of Debates (Hansard), 41st Parl., 1st Sess., No. 41A (10 December 2014), at pp. 197172 (Hon. Madeleine Meilleur). [Emphasis added.]

***El-Helou v Courts Administration Service, 2011 CanLII 93945* (CA PSDPT)**

43. In an Application to the Public Servants Disclosure Protection Tribunal, the Public Sector Integrity Commissioner of Canada referred to the ability of public service employees to protect the public by disclosing wrongdoing, at para. 34, as:

> "With respect to public criticisms of the employer, the duty of fidelity does not impose an absolute "gag rule" against an employee making any public statements that might be critical of his employer. An employee need not, in every circumstance, follow Cervantes' advice, "A closed mouth gathers no flies." The duty of fidelity does not mean that the Daniel Ellsbergs and Karen Silkwoods of the world must remain silent when they discover wrongdoing occurring at their place of employment. Neither the public nor the employer's long-term best interests are served if these employees, from fear of losing their jobs, are so intimidated that they do not bring information about wrongdoing at their place of employment to the attention of those who can correct such wrongdoing."

44. With regard to a public servant's protection by the Charter and common law, para. 40 states:

> "It also specified that the "whistleblowing" defence, which arises from *Fraser*, applies to issues of public interest."

45. At para. 50, the Public Sector Integrity Commissioner of Canada argued:

> "…the Act must be interpreted through a consideration of its preamble and its reference to freedom of expression, which is an important Charter value and which is also recognized as an important freedom in jurisprudence generally."

46. The very title of Bill 52, clearly depicts its reference to freedom of expression:

"An Act to amend the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedure Act **in order to protect expression on matters of public interest**." **[emphasis added]**

47. The amendments to the Courts of Justice Act, the Libel and Slander Act and the Statutory Powers Procedures Act achieved the intention of Bill 52. Unfortunately, failing to provide similar relief to protect expression on matters of public interest in other statutes such as the *Human Rights Code, R.S.O. 1990, c. H.19*, has meant that in some cases, our government is not protecting expression on matters of public interest.

Law Society of Upper Canada v. Kivisto, 2017 ONLSTH 157

48. Mr. John E. Callaghan, (for the panel), determined, when considering whether Mr. Kivisto's conduct was considered vexatious by bringing multiple legal proceedings, at para. 31, that 'the term "proceeding" is not restrictive in the sense of being limited only to the institution of a lawsuit.'

***Taylor v. The Crown in Right of Ontario (Ministry of Community Safety and Correctional Services), 2018 CanLII 7166* (ON PSGB)**

49. Reva Devins, Vice-Chair of the Public Service Grievance Board, cited the HRTO, at para. 16, from an earlier decision wherein the HRTO had concluded that the common-law principle of absolute privilege applied to statements made in court and in legal pleadings. Para. 16 states:

"Furthermore, although typically used in defamation cases, the doctrine is not limited to that kind of lawsuit. The HRTO ultimately concluded that it also applied in the context of human rights proceedings and that a letter written by counsel in the course of

representing their client was covered by absolute privilege and could not form the basis for an application under the Human Rights Code."

Donovan v. (Waterloo) Police Services Board, 2019 ONSC 818

50. The Honourable Justice Favreau cited *1704604 Ontario Ltd. v. Pointes Protection Association, 2018 ONCA 685*, at para. 26 which states:

> The purpose of s. 137.1 is crystal clear. Expression on matters of public interest is to be encouraged. Litigation of doubtful merit that unduly discourages and seeks to restrict free and open expression on matters of public interest should not be allowed to proceed beyond a preliminary stage. Plaintiffs who commence a claim alleging to have been wronged by a defendant's expression on a matter of public interest must be prepared from the commencement of the lawsuit to address the merits of the claim and demonstrate that the public interest in vindicating that claim outweighs the public interest in protecting the defendant's freedom of expression.

51. With regard to the application of CJA s. 137.1(3), Justice Favreau had this to say at para. 50:

> In its arguments, the Board suggested that its application to the Human Rights Tribunal would not be caught by section 137.1(3) because it is simply trying to enforce the Resignation Agreement. In my view, this argument is disingenuous. Section 137.1(3) does not limit the causes of action susceptible to its application. It may turn out that the Resignation Agreement provides a justification for the Board's attempt to interfere with Ms. Donovan's public expression, but the fact that the underlying proceeding is about the enforcement of an agreement does not oust this Court's jurisdiction to deal with the issue. In this respect, I note that the decision in 1704604 Ontario Ltd. v. Pointes Protection Association, in which the Court of Appeal addressed the purpose of section 137.1 and the

> powers of a court under that provision, dealt with facts very similar to those in this case. In that case, the plaintiff brought an action on the basis that statements made by the one of the defendants in a proceeding before the Ontario Municipal Board contravened a settlement agreement. The Court of Appeal found that section 137.1 applied to the litigation and dismissed the action. In doing so, the Court emphasized, at para. 120, that the issues to be decided pursuant to section 137.1 included the scope of the agreement and whether it foreclosed the evidence given by the defendants before the Ontario Municipal Board. The issue raised by the Board's application here is almost identical, and is whether the Resignation Agreement precludes Ms. Donovan from making public statements about her experience with the Board. If the Board had brought an action in this Court to enforce the Resignation Agreement, there is no doubt that Ms. Donovan could bring a motion pursuant to section 137.1 of the Courts of Justice Act for an early determination of whether the Board's litigation is an illegitimate attempt to preclude her from speaking out on matters of public interest. As I indicated to the parties during the hearing of this motion, whether Ms. Donovan's public statements about her former employer and her experience as a police officer are a form of expression in the public interest are issues that go to the core of determining a motion brought under section 137.1(3) of the Courts of Justice Act. They are not properly characterized as preliminary jurisdictional matters, and I would not have dismissed Ms. Donovan's application on that basis.

52. Regarding the Respondent's choice of venue to litigate the Applicant, and the applicability of *CJA* s. 137.1, Justice Favreau had this to say, at para. 52:

Finally, the Board argues that, even if this Court has jurisdiction over Ms. Donovan's application, it should decline to exercise its jurisdiction because the matter is already before the Human Rights Tribunal. If this Court did have jurisdiction, for example if the Board had brought a civil action and a parallel application to the Human Rights Tribunal as contemplated by section 137.4 of the Courts of Justice Act, I do not see that this is a case in which it would be appropriate to decline jurisdiction. Section 137.1 of the Courts of Justice Act is meant to provide a rapid and effective mechanism for defendants facing litigation that attacks their freedom to express themselves on matters of public interest. There is no such mechanism available to Ms. Donovan before the Human Rights Tribunal. Section 137.4 clearly provides that, where there are proceedings before the Court and before a tribunal, the tribunal proceedings can be stayed pending the resolution of a motion under section 137.1(3). Therefore, in the face of a choice of forum, the legislature has signaled that the Court is clearly preferable.

Conclusion

52. The Applicant relies on these grounds, and such further and other grounds as counsel may advise and this Honourable Court may permit.

53. The remedy sought by the Respondent, pursuant to subsection 24(1) of the *Charter*, is a dismissal of the Application brought against the Respondent by the Applicant for the reasons stated herein, that the proceeding is a proceeding limiting debate on matters of public interest.

April 30, 2019

Kelly Lynn Donovan
Applicant, self-represented

11 Daniel Place,
Brantford, Ontario
Tel: 519-209-5721
Email: kelly@fit4duty.ca

TO The Attorney General of Ontario
Constitutional Law Branch
4th floor
720 Bay Street
Toronto, Ontario M5G 2K1
Fax: (416) 326-4015

The Attorney General of Canada
Justice Building
234 Wellington Street
Ottawa, Ontario K1A 0H8
Fax: (613) 954-1920

Ms. Linda Lamoureux
Executive Chair, Tribunals Ontario
Social Justice Division

Donald Jarvis, counsel for Respondent
Filion Wakely Thorup Angeletti LLP
Bay Adelaide Centre
333 Bay Street, Suite 2500, Box 44
Toronto, Ontario
M5H 2R2
Tel: 416-408-5516
Fax: 416-408-4814
Email: DJarvis@filion.on.ca

Court File No.: CV18-00001938-0000

Ontario

SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Plaintiff

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD, and

BRYAN LARKIN

Defendants

CONSENT

1. The parties, by their respective lawyers, consent to the plaintiff amending its statement of claim pursuant to Rule 26.02(b) in accordance with the attached amended statement of claim.
2. No party affected by this order is under a disability.

Date: 8 JAN. 2019

Filion Wakely Thorup Angeletti LLP
Per: Donald Jarvis
Counsel for the Defendants

Date: Jan. 16, 2019.

Kelly Lynn Donovan

Court File No. CV-18-00605386-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Applicant

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Respondent

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on _____, at _____, at ~~361~~ 393 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the

applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date September 18, 2018 Issued by .....

Local registrar (m Brenton)

~~361~~ 393 University Avenue

Toronto, Ontario

SUPERIOR COURT OF JUSTICE
393 UNIVERSITY AVE.
10TH FLOOR
TORONTO, ONTARIO
M5G 1E6

COUR SUPÉRIEURE DE JUSTICE
393 AVE. UNIVERSITY
10E ÉTAGE
TORONTO, ONTARIO
M5G 1E6

TO: Donald Jarvis, counsel for Respondent
Filion Wakely Thorup Angeletti LLP
Bay Adelaide Centre
333 Bay Street, Suite 2500, Box 44
Toronto, Ontario
M5H 2R2
Email: DJarvis@filion.on.ca

APPLICATION

1. The applicant makes application for: A dismissal of the gag proceeding commenced by the Respondent, costs and damages.

2. The grounds for the application are: The proceeding commenced by the Respondent at the Human Rights Tribunal of Ontario ("HRTO") File Number 2018-33237-S is a means of unduly limiting expression by the Applicant on matters of public interest, contrary to section 137.1 of the *Courts of Justice Act, R.S.O. 1990, c. C.43.*

3. The following documentary evidence will be used at the hearing of the application:

HRTO File Number 2018-33237-S Form 18 filed by the Respondent

Affidavit of Kelly Lynn Donovan, sworn September 12, 2018

September 18, 2018

Kelly Lynn Donovan, self-represented
11 Daniel Place
Brantford, Ontario
N3R 1K6
Tel.: 519-209-5721
Email: kelly@fit4duty.ca

Form 4C
Courts of Justice Act
backsheet

KELLY LYNN DONOVAN – and-
Applicant

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD
Respondent

Court File No. CV-18-00605386-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

NOTICE OF APPLICATION

Kelly Lynn Donovan
11 Daniel Place
Brantford, Ontario
N3R1K6
Tel. 519-209-5721
Email: kelly@fit4duty.ca

AMENDED THIS SEP 2 1 2018 PURSUANT TO
MODIFIÉ CE CONFORMÉMENT À
☑ RULE/LA RÈGLE 26.02 ("A")

☐ THE ORDER OF
L'ORDONNANCE DU
DATED / FAIT LE

Conrad Diamante

REGISTRAR GREFFIER
SUPERIOR COURT OF JUSTICE COUR SUPÉRIEURE DE JUSTICE

Court File No. CV-18-00605386-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Applicant

and

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Respondent

AMENDED

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing on _____, at _____, at 393 University Avenue, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the Rules of Civil Procedure, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date "Sept. 18/18" Issued by "M. Brenton"

Local registrar

393 University Avenue

Toronto, Ontario

TO: Donald Jarvis, counsel for Respondent
Filion Wakely Thorup Angeletti LLP
Bay Adelaide Centre
333 Bay Street, Suite 2500, Box 44
Toronto, Ontario
M5H 2R2
Email: DJarvis@filion.on.ca

APPLICATION

1. The applicant makes application for: ~~A dismissal of the gag proceeding commenced by the Respondent, costs and damages.~~

   a. An order, pursuant to s. 137.1(3) of the *Courts of Justice Act, R.S.O. 1990, c. C.43* ("*CJA*"), to dismiss the proceeding brought against the Applicant at the Human

Rights Tribunal of Ontario ("HRTO") in Toronto, Ontario, HRTO File No. 2018-33237-S, in its entirety, on the ground that it is a proceeding that limits freedom of expression on matters of public interest.

b. The costs of this Application, and of the proceeding, on a substantial indemnity basis, fixed and payable by the Respondent to the Applicant within 30 days, pursuant to Rule 57.03(1) of the Rules of Civil Procedure.

c. Such further general and punitive damages as this Honourable Court may deem just in the circumstances.

~~2.~~ The grounds for the application are: ~~The proceeding commenced by the Respondent at the Human Rights Tribunal of Ontario ("HRTO") File Number 2018-33237-S is a means of unduly limiting expression by the Applicant on matters of public interest, contrary to section 137.1 of the *Courts of Justice Act, R.S.O. 1990, c. C.43*.~~

I. Facts

3. In May, 2017, the Applicant negotiated her resignation from her employment with the Respondent with the help of her counsel, Ms. Pamela Machado.

4. On June 8, 2017, both the Applicant and the Respondent had signed the resignation agreement that restricted the Applicant from filing a new proceeding or new complaint against the Respondent, but did not include a non-disclosure clause. The Applicant agreed to not discuss the terms or existence of the resignation agreement unless asked and both parties signed mutual releases.

5. Since resigning, the Applicant has spoken publicly about the need for better legislation in Canadian policing and protection of police whistleblowers from reprisal. The Applicant speaks of her experiences prior to the date of her resignation, but does not deny that she voluntarily resigned from her employment.

6. The expressions made by the Applicant all relate to matters of public interest.
7. The Applicant uses her experience to educate professionals on the need for whistleblower protection and has even addressed the standing committee on justice policy at the Ontario Legislature on two separate occasions.
8. On June 28, 2018, the Respondent brought an action against the Applicant in the form of a section 45.9 application under the *Ontario Human Rights Code, R.S.O. 1990, c. H.19* ("the *Code*"), file number 2018-33237-S, furthermore referred to as the "proceeding."
9. The proceeding alleges the Applicant has repeatedly breached the terms of her resignation agreement, relying on the assumption that any expression made by the Applicant has been a "complaint."
10. The Applicant has not made any new complaints against the Respondent since the date of her resignation.
11. The proceeding brought against the Applicant violates the *CJA* "Prevention of Proceedings that Limit Freedom of Expression on Matters of Public Interest (Gag Proceedings)."
12. The proceeding is untimely and an effort by the Respondent to use litigation to limit expression on matters of public interest.
13. The Respondent is using the proceeding to limit the Applicant's freedom of expression by requesting an order by the Human Rights Tribunal for the following:
    a. Direct the Applicant to cease and desist from making any further expressions;
    b. Remove her book from the public domain;
    c. Have public allegations that are under the control of the Applicant removed from the public domain; and

d. Order the Applicant to pay significant damages to remedy the ongoing damage to the reputation of the Respondent.

II. Law

14. Subsection 42(1) of the *Code* reads "The provisions of the *Statutory Powers Procedures Act, R.S.O. 1990, CHAPTER S.22* ("*SPPA*"), apply to a proceeding before the Tribunal unless they conflict with a provision of this Act, the regulations or the Tribunal rules."

15. According to the *SPPA*, "proceeding" means a proceeding to which the *SPPA* applies, subsection 1(1).

16. The *CJA* prevents proceedings that limit freedom of expression on matters of public interest, section 137.1.

    ~~a.~~ In accordance with subsection 137.4(1) of the *CJA*, this applies to proceedings before a tribunal, within the meaning of the *SPPA*, and a copy of this Notice of Application will be filed with the Human Rights Tribunal of Ontario.

III. The following documentary evidence will be used at the hearing of the application:

a. HRTO File Number 2018-33237-S Form 18 filed by the Respondent

b. Affidavit of Kelly Lynn Donovan, sworn September 12, 2018

c. Such further and other material as the moving party may advise and this Honourable Court permit.

September 21, 2018

Kelly Lynn Donovan, self-represented
11 Daniel Place
Brantford, Ontario
N3R 1K6
Tel.: 519-209-5721
Email: kelly@fit4duty.ca

Form 4C
Courts of Justice Act
backsheet

KELLY LYNN DONOVAN – and-
Applicant

REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD
Respondent

Court File No. CV-18-00605386-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT TORONTO

AMENDED **NOTICE OF APPLICATION**

Kelly Lynn Donovan
11 Daniel Place
Brantford, Ontario
N3R1K6
Tel. 519-209-5721
Email: kelly@fit4duty.ca

Tribunals Ontario
Social Justice Division

Social Justice Tribunals Ontario
2016 – 2017 Annual Report
(April 1, 2016 – March 31, 2017)

Table of Contents

Message from the Executive Chair

Message from the Executive Lead

Social Justice Tribunals Ontario (SJTO)
- Legislative Authority
- Mandate, Mission and Values
- SJTO Operational Highlights
- Caseload Statistics
- Accessibility and Diversity at SJTO
- Human Resources
- Financials

Child and Family Services Review Board (CFSRB)
- What We Do
- Legislative Authority
- Operational Highlights
- Statistics
- Service Standards

Criminal Injuries Compensation Board (CICB)
- What We Do
- Legislative Authority
- Operational Highlights
- Statistics
- Service Standards

Custody Review Board (CRB)
- What We Do
- Legislative Authority
- Statistics
- Service Standards

Human Rights Tribunal of Ontario (HRTO)
- What We Do
- Legislative Authority
- Operational Highlights
- Statistics
- Service Standards

Landlord and Tenant Board (LTB)
- What We Do
- Legislative Authority
- Operational Highlights
- Statistics
- Service Standards

Social Benefits Tribunal (SBT)
- What We Do
- Legislative Authority
- Operational Highlights
- Statistics
- Service Standards

Ontario Special Educations Tribunal (OSET)
- What We Do
- Legislative Authority
- Statistics

Appendix I: Social Justice Tribunals Ontario (SJTO) Members as of March 31, 2017
- SJTO Executive Chair and Alternate
- Child and Family Services Review Board and Custody Review Board
- Criminal Injuries Compensation Board
- Human Rights Tribunal of Ontario
- Landlord and Tenant Board
- Ontario Special Educations Tribunal
- Social Benefits Tribunal

Message from the Executive Chair

The Social Justice Tribunals Ontario tagline is "Fair and Accessible Justice".

Beyond barrier-free buildings and plain language information, we generally think of "accessible justice" as being timely and cost efficient. These are important objectives. "Justice delayed is justice denied," is a well-known adage, and justice that is too expensive is of little use to most people.

For those reasons we apply a lot of energy and expertise to designing systems that are physically and functionally accessible, timely, and cost effective.

We are constantly refining our processes – improving our intake and our scheduling, offering hearings by phone and video and - in the future - by web. We always try to ensure decisions are released in a timely manner, although with 100,000 cases a year, this can be a real challenge. We keep constant tabs on the volume of cases and the time it takes to resolve them. We report our statistics, and are upfront when we fall short on our standards.

But as hard as we work to improve our systems, we should resist getting too attached to them, because justice is much more than systems, as important as they may be. Justice is about outcomes – fair, meaningful, practical and understandable. Fair outcomes must be true to the values that inform the law. When justice no longer resonates for people in this way, its role within our society is diminished.

This is why at Social Justice Tribunals Ontario (SJTO), we think beyond systems. We think about the individuals whose lives are touched by the statutes we administer, about the experience of people who come to the tribunals, and the impact of our decisions.

How do we do this? By recognizing that each case involves real people and that each case is unique. We need to be responsive to these realities, and also to the changing social context in which we operate.

We need to be innovative. We need to be responsive.

How do we ensure we are responsive and innovative? We recognize that we need to be willing to step outside the system altogether and challenge the status quo. We need listen to those we serve and the organizations that support them, including people with disabilities and mental health issues, people who have been marginalized by poverty, race or religion, and Indigenous communities.

These are some of the ways SJTO has been working with our community partners this year:

- In response to the release of the Truth and Reconciliation Commission's report and its Calls to Action, SJTO launched its Indigenous Insights initiative. We are looking at how we provide services for Indigenous users and considering how Indigenous principles and practices can improve access to justice for everyone. As a first step, SJTO is reaching out to Indigenous communities to build awareness of SJTO's work and find ways to improve. We will also use the lessons we learn to develop professional education programs and resources that will build our capacity to deliver services to the community.

- The Landlord and Tenant Board partnered with Community Legal Education Ontario on the "Housing Law" (for tenants) section of the Steps to Justice website. Steps to Justice users get answers to frequently-asked questions, links to contact information for organizations who might be able to help, and information about possible next steps to help solve their problem. SJTO plans to continue to help expand and improve Steps to Justice. First, by helping to develop information for landlords and then by developing material for social benefits.

- SJTO was part of the planning committee for The Action Group on Access to Justice (TAG) event: Technology, Inclusion and Access to Justice - Broadening the Conversation, held in October. Because

of the concern that technology could, in some cases, actually increase the digital divide, the discussion focused on how to innovate in a barrier-free way and use technology to address needs that go beyond the "user experience".

- The Criminal Injuries Compensation Board held its first practice advisory committee meeting, which brings together stakeholders from victim advocacy organizations, police services, community support programs, legal clinics and other government organizations and agencies to provide feedback on CICB procedures, processes, directives and guidelines. The Social Benefits Tribunal, Human Rights Tribunal of Ontario and Landlord and Tenant Board also have practice advisory committees that fulfil a similar function.

Calling certainties into question is scary. But to be a truly responsive justice organization, we need to listen, and then we need to be prepared to change based on what we heard. As executive chair of SJTO, that is a commitment I am willing to make.

Michael Gottheil, Executive Chair
Social Justice Tribunals Ontario

sjto.ca

Return to Table of Contents

Message from the Executive Lead

I am pleased to have this opportunity to take a look back at this year and share some of our accomplishments. We have a great deal to be proud of as we continue to innovate and improve service.

This fall, we moved 220 staff and members from six Toronto locations to 25 Grosvenor Street. With the tribunals under one roof, we are sharing knowledge, expertise, space and equipment. Our leadership team is meeting more regularly, both formally and informally, to learn from each other and share ideas about how to do things better.

The time and effort involved with planning and executing such a large scale move was significant, but innovation and change at Social Justice Tribunals Ontario (SJTO) continues.

In June, the Landlord and Tenant Board started actively offering email communication to people with an open application at all 8 of its offices. Email gives people a convenient way to contact the tribunal and can also be easier to use for people with hearing or speech problems and some learning disabilities. I am pleased to be able to say that all SJTO tribunals are now accepting email for some types of inquiries.

In September, the Social Benefits Tribunal started holding paperless hearings. All 35 tribunal members learned to work with the electronic files and are conducting hearings with just their laptops and no paper files.

In December, the Human Rights Tribunal of Ontario and Criminal Injuries Compensation Board joined the other SJTO tribunals on an automated call system. Among the benefits of the new system - callers can connect directly with someone who is familiar with their case and the managers can see how many callers are waiting so they can add or remove agents.

The Child and Family Services Review Board launched a scheduling pilot where parties discuss their availability by teleconference. The idea is to reduce the time spent finding a suitable date for settlement facilitation.

The Landlord and Tenant Board e-File tool allows users to file one of four common applications online, anytime from anywhere. The number of e-filed applications increased by 10% over last year and 72% of the e-filers scheduled their application for a hearing date online.

Also this year, the Criminal Injuries Compensation Board adopted a new case management system and improved its case processing timelines by more than 20% as a result.

Many other achievements are highlighted in the pages that follow – achievements that strengthen relationships with our users, make it easier to access the tribunals, speed up case processing, and strengthen alternate dispute resolution. These accomplishments cement SJTO's position as a leader in Canada's administrative justice community.

The year ahead is exciting. We are in the process of finalizing the design of public spaces and hearing rooms at 25 Grosvenor Street. We are looking forward to having a modern, accessible hearing centre located in the same building where many of our staff and members work.

We will also continue to find ways to improve the service we provide to the parties to the nearly 100,000 applications and appeals we receive each year. With our tribunals touching the lives of so many Ontarians, it is both a privilege and a responsibility to do everything we can to provide fair, accessible justice.

Ellen Wexler, Executive Lead
Social Justice Tribunals Ontario

sjto.ca

Return to Table of Contents

Social Justice Tribunals Ontario

Social Justice Tribunals Ontario (SJTO) is a group of eight adjudicative tribunals that play an important role in the administration of justice in Ontario. Each year our tribunals receive and resolve nearly 100,000 cases - providing fair, accessible dispute resolution to thousands of Ontarians.

The tribunals of the SJTO are: Child and Family Services Review Board, Criminal Injuries Compensation Board, Custody Review Board, Human Rights Tribunal of Ontario, Landlord and Tenant Board, Ontario Special Education (English) Tribunal, Ontario Special Education (French) Tribunal and Social Benefits Tribunal.

The kinds of disputes we address at our tribunals are extremely varied. We resolve disputes between landlords and tenants, hear appeals from people seeking social assistance and complaints from those who feel the service they received from children's aid societies has been unfair. We deal with applications about human rights and the rights of children and families relating to education. We assess and award compensation for victims of violent crime.

Legislative Authority

Social Justice Tribunals Ontario was created in 2011 under the *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (ATAGAA). ATAGAA lets the government group adjudicative tribunals into an organization called a cluster, when "the matters that the tribunals deal with are such that they can operate more effectively and efficiently as part of a cluster than alone". Each tribunal within SJTO continues to exercise the powers given to it under law.

The *Statutory Powers Procedures Act* provides a general framework for the conduct of hearings before Ontario's administrative tribunals.

Mandate, Mission and Values

Mandate

The mandate of Social Justice Tribunals Ontario (SJTO) is to resolve applications and appeals brought under statutes relating to child and family services oversight, youth justice, human rights, residential tenancies, victims' compensation, disability support and other social assistance, and special education.

Mission

SJTO and its tribunals will:

- provide fair, effective, timely and accessible dispute resolution
- promote consistency in the application of the legislation and its processes while remaining responsive to differing cases, party needs and to an evolving understanding of the law
- maintain the highest standards of professionalism, integrity and quality of work
- be leaders in the administrative justice community

Values

Our values set the foundation for our rules and policies, how those rules and policies are applied, and how we deliver service to the public. The values are:

Accessibility

- We will strive for full and informed participation of parties in the process, whether or not they have legal representation.
- We are committed to diversity and inclusiveness.
- We will provide dispute resolution processes that are proportionate and appropriate to the issues in dispute.

Fairness and Independence

- SJTO and its tribunals must be, and be seen to be, impartial and independent in their decision making functions.
- Our decisions will be based on the evidence and the applicable law, and will be supported by clear, concise and coherent reasons.

Timeliness

- We are committed to providing timely dispute resolution services and issuing decisions within a reasonable timeframe after a hearing.

Transparency

- Our processes, procedures and policies will be clear, understandable and consistently applied.

Professionalism and Public Service

- Members and staff will exhibit the highest standards of public service, integrity and professionalism.
- We will be responsive to stakeholder needs by engaging in meaningful outreach and consultation.

SJTO Operational Highlights

SJTO constantly works to make our tribunals more accessible, to strengthen the expertise of our adjudicators and to be leaders in the justice community. Here are some of the operational highlights from 2016-17.

Caseload Statistics (April 1, 2016 - March 31, 2017)

	Applications/Appeals Received	Applications/Appeals Resolved
Landlord and Tenant Board	81,432	78,783
Social Benefits Tribunal	10,403	12,831
Criminal Injuries Compensation Board	3,884	3,433
Human Rights Tribunal of Ontario	3,585	2,880
Child and Family Services Review Board	356	363
Custody Review Board	98	92
Ontario Special Education Tribunals (English and French)	2	1
Total	**99,760**	**98,383**

Website – sjto.ca

The SJTO portal had an estimated 770,954 users and 3,609,344 page views in 2016-17. By comparison, the portal had 563,571 users and 2,646,144 page views in 2015 -16. These numbers exclude users in the Ontario government. Overall, traffic to the portal increased by about 37%, of which 8.7% is accounted for by the addition of the Criminal Injuries Compensation Board (CICB) to the portal in April 2016. The remaining 28.3% percent is due to other factors such as: more communications from SJTO that direct people to the site; links on printed materials; and links from other sites and SJTO appearing in more search engine results, likely because of more relevant content and a longer history on the web.

Tribunal site on the sjto.ca portal	Number of users in 2016-17, excluding Ontario government*	Number of users in 2015-16, excluding Ontario government
All sjto.ca	770,954	563,571
Landlord and Tenant Board (LTB) English	623,186	467,869
Human Rights Tribunal Ontario (HRTO) English	78,607	65,601
Criminal Injuries Compensation Board (CICB) English	47,053	N/A
Social Benefits Tribunal (SBT) English	15,744	16,086
Child and Family Services Review Board (CFSRB) English	8,993	8,723
Ontario Special Education Tribunal (OSET) English	2,954	3,726
Custody Review Board (CRB) English	1,587	1,870

* Estimated.

About 74.7% of page views were to pages on the LTB site, 8.6% were to pages on the HRTO site, and 4% were to pages on the CICB site. The remaining 12.7% were divided between the rest of the tribunals and SJTO's corporate pages.

The percentage of desktop and tablet users dropped this year while mobile users increased by 4%. 67.2% of users were on desktop or laptop, while 27.3% were on mobile and the remaining 5.5% used tablets.

Email Communication Expanding

SJTO continued to expand the use of email as a way for people to communicate with our tribunals:

- The HRTO, the OSETs, the CFSRB and the CICB use email to answer inquiries and communicate with parties
- The LTB uses email to answer case-specific inquiries
- The SBT uses email to correspond with legal clinics and social assistance offices

SJTO Data Inventory Published

The SJTO data inventory was published on sjto.ca in September. The inventory lists all SJTO datasets and identifies whether each dataset is open, under review or restricted under Ontario's Open Data Directive. Ontario's Open Data Directive requires every provincial agency to publish a list of datasets they create, collect or manage. The goal of the directive is to improve transparency and accountability.

Leading Online Accessibility

We continued to convert our PDFs (excluding forms) to HTML format on the web. HTML offers easy navigation for people using screen readers and uses less data than a PDF download, which is important for the 27% of

SJTO web visitors on mobile devices. HTML documents can be saved to a computer the same as any other file format. More than 65% of the 340 PDF documents on the SJTO web portal are now in HTML format.

The currency, accuracy, and consistency of the converted documents was improved during the project by correcting errors, removing outdated references, standardizing formatting and adding or updating links.

All new documents, like practice directions and brochures, are also being created in HTML format.

Co-location of SJTO's Downtown Toronto Offices

In the fall of 2016, 220 people from six Toronto locations moved to 25 Grosvenor Street. The move included staff and members from all SJTO tribunals. Business services staff including legal services, human resources, and business planning, were also part of the move.

The move has reduced the space occupied by SJTO by about 12,000 square feet. Leasing costs are not part of SJTO's budget, however, the move will also save the Ministry of the Attorney General more than $1million dollars in leasing costs each year.

Co-location of SJTO's downtown Toronto offices has been planned since SJTO was formed in 2011. Staff and members from different tribunals have more opportunities to share information and experiences now that they are in closer proximity. Another benefit of being in a single location is that tribunal staff and members have more immediate access to business services staff. In fact, a post-occupancy survey among people who moved to 25 Grosvenor, respondents most often cited "access to colleagues" as what they liked most.

In phase 2, hearing rooms, service counters, other public spaces, and the LTB's Toronto South office will relocate to the renovated facility. In the past year, designs for phase 2 were completed and contractors competed for the work. The new space should be ready to use in spring 2018.

Flexible Work Arrangements

Many SJTO employees were offered flexible work arrangements for the first time this year. These included compressed work week, where employees worked longer hours in exchange for time off, and flexible working hours, where employees had the opportunity to shift their working hours for an earlier or later start time.

The goals of flexible work arrangements are to:

- increase the organization's ability to attract and retain high performing employees
- help employees to reconcile work demands with family responsibilities (e.g. child or elder care)
- increase employee engagement
- reduce absenteeism

Professional Development for Members

SJTO has a professional development program for adjudicators and mediators that is unique in Canada. The program has three distinct components: skill development (e.g. decision-writing), training in procedures, legislation and case law, and social and cultural context training which sheds light on the perspectives of our users and the challenges they face.

"The Professional Development Institute", a conference for SJTO's 200 adjudicators and mediators, was held for the fifth time in June 2016. This was the first year that the PDI was conducted through teleconference and videoconference. This year's event included:

- A presentation and conversation on Fostering Trans Inclusive Environments by The 519 – Space for Change.
- A presentation on Indigenous populations and issues, which included the history of treaties and an overview of the Truth and Reconciliation Commission, its impact, and significance. Attendees used their new awareness and knowledge to explore scenarios encountered by the tribunals. This training is a component of SJTO's Indigenous Insights initiative.

- Tribunal-specific content. HRTO focused on expert evidence, LTB looked at amendments to the *Residential Tenancies Act*, and SBT members received training on electronic files.

Fifty-three new members joined SJTO this year. They received foundational training that included modules on administrative law principles, natural justice and procedural fairness, statutory interpretation, freedom of information and privacy, ethical obligations and independence of adjudicators, human rights, and areas of law within the mandate of the tribunal.

Other professional development initiatives included training modules for all members in human rights, decision writing, electronic cases, evidence, credibility assessment, and an intensive session on Indigenous perspectives in dispute resolution. Many HRTO members watched the webcast of the Law Society of Upper Canada's Human Rights Summit.

The SJTO professional development program also incorporates courses from the Society of Ontario Adjudicators and Regulators, the Council of Canadian Administrative Tribunals, the Ontario Bar Association and the Canadian Institute for the Administration of Justice.

Staff and Manager Training

As part of SJTO's Indigenous Insights initiative, managers received training that raised their awareness of Indigenous communities and included a discussion on how to be more responsive to the needs of Indigenous people who appear before our tribunals.

Managers also participated in other training that included a workshop on how to approach challenging conversations.

Sixty-four staff and managers received plain language and accessible documents training. The sessions showed participants how to use plain language on the phone and in correspondence and how to create documents that can be read by people using a screen reader.

LTB customer service officers received training on the *Residential Tenancies Act* and handling calls from the public.

French Language Training for Bilingual Staff and Members

Bilingual adjudicators and staff of SJTO, Environment and Land Tribunals Ontario, and Safety, Licensing Appeals and Standards Tribunals Ontario gathered for three days of French language training in Toronto on March 6, 7 and 8, 2017. The training included mock bilingual hearings; presentations on recent jurisprudence, and shared tools and resources on legal terminology, diversity and inclusion, and mental health for bilingual professionals.

Public Accountability Documents Review

The *Adjudicative Tribunals Accountability, Governance and Appointments Act, 2009* (ATAGAA) requires adjudicative tribunals to publish public accountability documents and review them every three years after their initial publication. In 2016-17, SJTO reviewed and updated its documents and submitted them to the Attorney General for approval, with the exception of the ethics plan, which was approved by the Conflict of Interest Commissioner. The public accountability documents include:

- A mandate and mission statement
- A consultation policy
- A service standard policy and complaints process
- An ethics plan
- A member accountability framework including job description and code of conduct

New Faces, New Roles

- **Krystyna Drywa** joined SJTO as Manager, Access to Justice to oversee initiatives in the operational plan and lead professional development. Krystyna came from the University of Toronto, where she

managed programs which helped law students gain professional experience while helping unrepresented parties.

- SJTO welcomed **Georgios Fthenos** as the new registrar of the HRTO and **Sara van der Vliet** as the acting registrar of the LTB. Georgios came to SJTO from the Ontario Police College where he was Chief Instructor and Senior Manager. Sara is on a secondment from the Health Boards Secretariat, where she was Chief Operating Officer and Registrar.

- **Tom McDermott**, formerly senior manager of corporate services at the Safety, Licensing Appeals and Standards Tribunals Ontario, took on the role of acting Director of Operations.

- Effective February 22, 2017, **Jennifer Scott** was appointed Associate Chair, Child and Family Services Review Board and Custody Review Board. Jennifer is also leading SJTO's Child and Youth Division. Jennifer replaced outgoing chair Suzanne Gilbert, whose appointment expired on February 19, 2017.

- Effective April 20, 2016 **Maria Tassou** was appointed Associate Chair of the Criminal Injuries Compensation Board (CICB). Maria had been acting as the Chair/Associate Chair of the CICB since May 2014.

Accessibility and Diversity at SJTO

Access to justice, diversity and inclusion are core values of SJTO. We are committed to an inclusive work environment that reflects Ontario's diversity and to designing barrier-free policies, processes and services.

Commitments to accessibility and inclusion are found in SJTO's mission and values, our Code of Conduct and our business plan and a multi-year accessibility, accommodation and diversity plan.

Accessibility

In 2016-17, SJTO improved access by:

- conducting plain language training with staff and management. The sessions taught how to avoid jargon and use everyday words when communicating with the public both on the phone and in writing.

- holding more telephone and video hearings at the SBT and CICB. These hearings can benefit people with mobility issues and some forms of mental illness by offering the hearing in a safe and familiar environment that is closer to home.

- offering e-filing at the LTB. The LTB conducted an e-File survey over three weeks in May 2016. Among the respondents who used the tool, 89 % said they found it user-friendly.

- offering e-mail communication for more people at more tribunals. Using email can be easier than the phone for people with hearing or speech problems and some learning disabilities. This year, the LTB starting offering email to anyone with an open file (expanded from 2 offices in 2015-16 to all 8 offices in 2016-17). The SBT began offering email to all Ontario legal clinics and social assistance offices. HRTO, OSET and CFSRB have offered email communication to applicants since their inception.

- launching the CICB website on the SJTO portal, sjto.ca. The new site is written in simpler language, is more accessible to users with disabilities and easier to navigate on mobile devices.

- continuing to convert static (non-forms) PDFs to accessible HTML format on sjto.ca. Creating all new documents in accessible HTML format.

Diversity

In 2016-17, SJTO supported diversity by:

- including workshops on Indigenous and LGBTQ perspectives and people with mental health challenges in the annual professional development event for members.
- marking Orange Shirt Day (in September) to commemorate former students of Indian Residential Schools and Day of Pink (in April) to raise awareness of the negative impacts of bullying, homophobia and transphobia.
- sharing job postings for members among ethnic bar associations and other equity seeking groups.
- hiring two students from the Law in Action Within Schools (LAWS) program, aimed at high school students who, because of socioeconomic, cultural, racial, family or personal circumstance, face challenges in engaging successfully with school and accessing post-secondary education.
- presenting to First Nation social service administrators at the fall assembly of the Ontario Native Welfare Administrators' Association (ONWAA). At the assembly, Access to Justice Manager, Krystyna Drywa told the group that SJTO wants to hear from Indigenous groups in Ontario about how the tribunals can be more responsive to their needs.

Human Resources

SJTO has:

- 365.15 staff
- 93 full-time members (adjudicators)
- 94 part-time members (adjudicators)

Some members are appointed to more than one tribunal.

Financials

Expenditures (See below for category definitions)	2016-17 SJTO*	2015-16 SJTO*	2014-15 CICB	2014-15 SJTO
Salaries and Wages	33,307,169	33,985,717	3,175,301	29,588,414
Employee Benefits	4,949,435	4,760,630	502,853	3,977,159
Transportation & Communications	2,484,008	2,312,631	437,314	2,114,840
Services	6,352,053	7,000,840	756,875	7,461,634
Part-time Members Per Diem	2,985,663	3,127,691	1,440,603	1,868,324
Supplies & Equipment	471,045	680,299	39,771	572,683
Total	**$50,549,373**	**$51,867,808**	**$6,352,717**	**$45,583,054**

* The Criminal Injuries Compensation Board (CICB) joined Social Justice Tribunals Ontario on April 1, 2015. 2015-16 and 2016-17 include expenditures for CICB while 2014-15 does not.

Awards for Victims of Violent Crime	2016-17*	2015-16	2014-15
Criminal Injuries Compensation Board Awards for Victims of Violent Crime	$32,666,822	$27,304,999	$24,156,468

* The caseload for the CICB increased by 5% in 2016-17 resulting in an increase in transfer payments.

Note: In 2016-17, CICB deposited $303,284 in the consolidated revenue fund for monies recovered by applicants through civil actions, pursuant to s.26(5.1) of the CVCA.

Revenue	2016-17*	2015-16	2014-15**
Landlord and Tenant Board application filing fees (Deposited in the Consolidated Revenue Fund)	$12,345,606	$11,634,727	$11,800,405

* The LTB application fees increased on January 16, 2017.

** Financial information for 2014-15 has been updated from the previous annual report to reflect final.

sjto.ca

Return to Table of Contents

Child and Family Services Review Board

What We Do

The Child and Family Services Review Board (CFSRB) conducts reviews and hearings on a number of matters that affect children, youth and families in Ontario.

Legislative Authority

Under the *Child and Family Services Act*, the CFSRB can review:

- A children's aid society's decision to remove a foster child (Crown ward) from a foster home where the child has lived continuously for two or more years (section 61)
- Certain complaints related to services provided by children's aid societies (sections 68 and 68.1)

- Residential placements of children in care (section 36)
- Emergency admission of a child to a secure treatment program (section 124)
- Decisions to refuse an adoption of a particular child, to impose a term or condition on an adoption, or to remove a child from an adoption placement (sections 141, 142.3 and 144)

Under the *Education Act*, the CFSRB can hear appeals about the expulsion of students by school boards.

Under the *Intercountry Adoption Act*, the CFSRB can review:

- A Director's refusal to approve a person as eligible to adopt from outside of Canada
- Conditions attached to Director's approval to adopt from outside Canada

Operational Highlights

Support for Social Justice Tribunals Ontario's Child and Youth Division

The CFSRB continues to support the work of the Child and Youth Division (CYD) under the leadership of the board's new associate chair. The CYD was created by the SJTO to ensure access to justice for children and youth who come to its tribunals. In March 2017, work began to lay the framework for a pilot project that will be launched in June 2017. In the pilot, applications involving children and youth from the Human Rights Tribunal of Ontario will be streamed to the CYD for processing and adjudication.

Scheduling Pilot

In July 2016, the CFRSB started piloting a change to its process for scheduling Applications Regarding a Complaint about Services Sought or Received from a Children's Aid Society

In the pilot, select children's aid societies are being invited to a teleconference with applicants to discuss their availability for pre-hearing settlement facilitation. The goal is to reduce the time spent finding a suitable date for settlement facilitation. In the coming year, the board will evaluate the effectiveness of the project and decide whether to expand it to include all Ontario children's aid societies.

New Call System

The CFSRB's reception line has moved to an automated call system. Callers can still reach a receptionist, but they now also receive information about the work of the board, and the option to be transferred directly to a case processing officer if the caller has an active case.

Statistics

This year, the overall number of applications increased by 11% but the number of applications to review of a refusal of an adoption (s.144) and to appeal a school board expulsion decision (s.311.7) increased by more than 88%.

Table 1: Caseload

Application Type	2016-17	2015-16	2014-15
Section 61 of the *CFSA* - Removal of a Crown Ward	6	8	23
Section 68 of the *CFSA* - Complaints Against a Children's Aid Society	257	251	231
Section 144 of the *CFSA* - Refusal of Application to Adopt or Refusal to Approve a Proposed Adoption Placement	17	9	18
Section 311.7 of the *Education Act* - School Board	32	17	13

Expulsion Appeals			
Section 124 of the *CFSA* - Review of Emergency Secure Treatment Admission (ESTA)	36	31	37
Section 36 of the *CFSA* - Review of Residential Placement (ARRP)	8	6	7
Section 5 & 6 of the *Intercountry Adoption Act* - Intercountry Adoption Applications (Refusal to Adopt Outside of Canada)	0	0	0
Total	**356**	**322**	**329**

Table 2: Applications completed by resolution type: Section 61 of the *Child and Family Services Act* - Removal of a Crown Ward

	2016-17	2015-16	2014-15
Applications Received	6	8	23
Applications Completed	5	13	22
– abandoned	0	1	2
– withdrawn	2	3	6
– dismissed/ineligible	1	2	8
– resolved at mediation	1	7	1
– resolved at hearing (decision released)	0	0	5
– other	1	0	0
Active applications at year-end	1	0	5

Table 3: Applications completed by resolution type: Section 68 of the *Child and Family Services Act* - Complaints against a Children's Aid Society

	2016-17	2015-16	2014-15
Applications Received	257	251	231
Applications Completed	270	196	267
– abandoned	26	14	34
– withdrawn	33	13	33
– dismissed/ineligible	35	19	22
– resolved at settlement facilitation	129	123	141

– resolved at hearing (decision released)	32	22	24
– other	15	5	13
Active applications at year-end	90	103	48

Table 4: Applications completed by resolution type: Section 144 of the *Child and Family Services Act* - Refusal of Application to Adopt or Removal of an Adoption Placement

	2016-17	2015-16	2014-15
Applications Received	17	9	18
Applications Completed	15	10	14
– abandoned	0	1	1
– withdrawn	3	1	9
– dismissed/ineligible	2	1	2
– resolved at mediation	3	4	0
– resolved at hearing (decision released)	6	3	2
– other	1	0	0
Active applications at year-end	7	5	6

Table 5: Applications completed by resolution type: Section 36 of the *Child and Family Services Act* - Application for Residential Review Placement

	2016-17	2015-16	2014-15
Applications Received	8	6	7
Applications Completed	9	3	6
– abandoned	0	0	0
– withdrawn	6	2	0
– dismissed/ineligible	0	0	4
– resolved at mediation	1	0	1
– resolved at hearing (decision released)	2	1	0
– other	0	0	1
Active applications at year-end	3	4	1

Table 6: Applications completed by resolution type: Section 124 of the *Child and Family Services Act* - Review of Emergency Secure Treatment Admission

	2016-17	2015-16	2014-15
Applications Received	36	31	37
Applications Completed	36	32	36
– abandoned	0	0	0
– withdrawn	28	24	25
– dismissed/ineligible	0	0	1
– resolved at mediation	0	0	0
– resolved at hearing (decision released)	8	8	10
– other	0	0	0
Active applications at year-end	0	0	1

Table 7: Appeals completed by resolution type: Section 311.7 of the *Education Act* - School Board Expulsion Appeals

	2016-17	2015-16	2014-15
Appeals Received	32	17	13
Applications Completed	28	15	14
– abandoned	1	0	0
– withdrawn	8	3	7
– dismissed/ineligible	0	3	0
– resolved at mediation	13	7	6
– resolved at hearing (decision released)	3	2	1
– other	3	0	0
Active applications at year-end	8	4	2

Table 8: Applications completed by resolution type: Section 5 & 6 of the *Intercountry Adoption Act* - Refusal to Adopt Outside of Canada

	2016-17	2015-16	2014-15
Applications Received	0	0	0

Service Standards

SJTO aims to meet our service standards 100% of the time. However, this is not always possible and our commitment is to fulfil these standards at least 80% of the time.

	2016-17		2015-16		2014-15	
Hearing Standard	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**
CFSA Section 124 hearings will be scheduled within four calendar days of receipt of the application	3 days	100%	3 days	100%	3 days	100%
CFSA Section 68 pre-hearing conferences will be scheduled within 40 calendar days after the application is deemed eligible	46 days	74%	42 days	65%	33 days	85%
CFSA Section 68 hearings will be scheduled within 60 calendar days after the application is deemed eligible	84 days	17%	74 days	45%	53 days	82%
CFSA Section 36 hearings will be scheduled within 20 calendar days of receipt of the application	9 days	100%	6 days	100%	9 days	100%
CFSA Section 61 and Section 144 hearings will be scheduled within 20 calendar days after the application has been deemed eligible	11 days	100%	10 days	100%	14 days	100%

Appeals of school board expulsion hearings will be scheduled within 30 calendar days of receipt of the notice of appeal	6 days	100%	23 days	100%	22 days	100%

	2016-17		2015-16		2014-15	
Decisions Standard	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**
Appeals of school board expulsion orders will be issued within 10 calendar days after the hearing has been completed	8 days	100%	15 days	50%	No decisions released	No decisions released
Appeals of school board expulsion decisions will be issued within 30 calendar days after the hearing has been completed	10 days	100%	22 days	100%	No decisions released	No decisions released
CFSA Section 68 applications: Decisions or orders will be issued within 30 calendar days of the completion of the hearing	26 days	75%	18 days	89%	25 days	90%
All other *CFSA* applications: Orders will be issued within 10 calendar days after the hearing has been completed	7 days	100%	5 days	100%	23 days	72%

Custody Review Board

What We do

The Custody Review Board (CRB) hears applications and makes recommendations on the placement of young people in custody or detention about:

- the placement where the young person is being held or is being transferred to
- the provincial director's denial of a young person's temporary release or reintegration leave
- the young person's transfer from a place of open custody to a place of secure custody

Legislative Authority

The CRB operates under the jurisdiction of the *Child and Family Services Act* and the *Youth Criminal Justice Act.*

Statistics

Table 1: Caseload

	2016-17	2015-16	2014-15
Applications received	98	93	84
Applications completed	92	90	86
Active cases at year-end	9	3	0
Case processing time (days)	19	16	20

Table 2: Applications Completed by Method of Resolution

Resolution Type	2016-17	2015-16	2014-15
Withdrawn	21	13	12
Closed because the youth was moved or released (No jurisdiction)	27	26	22
Resolved by recommendations	43	45	50
Other	1	6	2
Total	**92**	**90**	**86**

Table 3: Inquiries Held

In an inquiry, a CRB member calls or meets with the people involved to reach their decision.

	2016-17	2015-16	2014-15

Inquiries held	90	91	82

Service Standards

SJTO aims to meet its service standards 100% of the time. However, this is not always possible, and our commitment is to fulfil these standards at least 80% of the time.

	2016-17		2015-16		2014-15	
Standard	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**
Review will begin by a telephone call within 24 hours of the receipt of the application	1 day	100%	1 day	100%	< 1 day	100%
Where the board intends to hold a hearing it will advise the young person within 10 calendar days of the receipt of the application	No hearings held	No hearings held	No hearings held	No hearings held	No hearings held	No hearings held
Recommendations will be issued within 30 calendar days of receipt of the application	20 days	88%	18 days	100%	17 days	98%

Criminal Injuries Compensation Board

What We Do

The Criminal Injuries Compensation Board (CICB) assesses financial compensation for victims of violent crime committed in Ontario and for the family members of deceased victims.

The CICB can compensate victims for pain and suffering, loss of income, treatment expenses, funeral expenses and other costs that result from being a victim of the crime.

The CICB is committed to the principles of the *Victims' Bill of Rights*, 1995, which states that all victims should be treated with courtesy, compassion and respect for their personal dignity and privacy.

Legislative Authority

The CICB is established under the *Compensation for Victims of Crime Act*.

Operational Highlights

A New Case Management System

In October 2016 the CICB launched its new case management system. The previous case management system was 20 years old and ran on obsolete software and hardware.

Requirements gathering for the new system started in late 2015 and continued into 2016. From March - October 2016, the CICB was deeply involved in user acceptance testing, staff and member training, user manual development, streamlining and eliminating processes, and report development.

The reporting capabilities of the new case management system allow the CICB to access and analyze real-time statistics. By frequently reviewing productivity, work volume, and timeline statistics, the CICB can adjust its processes to be more efficient.

Updates to Forms and Guides

In December 2016, the CICB published updated application forms and guides. The new applications and guides:

- allow for applications to be faxed or emailed
- remove the requirement for claimants to provide original documentation (copies allowed)
- reflect legislative changes

Inaugural Practice Advisory Committee Meeting

The CICB's first Practice Advisory Committee (PAC) meeting was held in April 2016. The PAC brings together stakeholders from victim advocacy organizations, police services, community support programs, legal clinics and other government organizations and agencies. The PAC provides valuable feedback on CICB procedures and helps the CICB develop processes, directives and guidelines that serve victims better.

Statistics

In October 2016, the CICB launched a new case management system. The board's processing timelines initially slowed, as staff adjusted to the new system: the number of cases processed declined by 65% in the first two months after the launch. However, in Q4 (Jan 1- March 31), the CICB increased its case processing by 22% over the same period in the previous year.

To prepare for the launch of the new case management system, the CICB identified cases which had been abandoned, which resulted in an increase in the number of dismissals.

A change in legislation in 2016 removed the requirement to apply to the CICB within 2 years for victims of domestic and sexual violence. The CICB saw a dramatic drop in the number of requests to extend time as a result.

The distribution of applications by region stayed fairly consistent with a slight shift between the Toronto and Western regions. Similar to previous years, the distribution of claims submitted by female victims versus male victims hovered just below 60% and 40%. People from 35 to 64 years old continue to represent the largest group of applicants to the CICB.

The number of written hearings decreased slightly over the previous year to 3% of the CICB's caseload. The overall number of hearings decreased by 6% compared to the previous year. This decrease is primarily a result of the decrease in productivity during the launch of the case management system.

The amount awarded in compensation decreased slightly by 4% which is in line with the decrease in hearings. With $24.7 million in awards, "pain and suffering" continues to be the largest compensation category.

Table 1: Caseload*

	2016-17	2015-16	2014-15
Applications received	3884	3706	3310
Cases closed	3433	3511	4024
Active cases at year-end	4784	4266	3986
Case processing time (days)	383	326	326

Table 2: Applications Completed by Method of Resolution

Resolution Type	2016-17	2015-16	2014-15
Extension Denied*	13	80	69
Other**	115	50	43
Refused to accept, closed administratively	152	57	31
Dismissed on a preliminary basis	712	363	586

Resolved at hearing	2723	2898	3102

* Changes to legislation reduced the requirement for extension reviews.

** Falls outside jurisdiction, duplicate, applicant died.

Table 3: Applications by Region

Region	2016-17	% of Total	2015-16	% of Total	2014-15	% of Total
Toronto	833	21%	729	20%	688	21%
North	518	13%	492	13%	363	11%
East	696	18%	675	18%	579	17%
Central East	553	14%	572	15%	494	15%
West	623	16%	549	15%	695	21%
Central West	661	17%	689	19%	491	15%
Total	**3884**		**3706**		**3310**	

Table 4: Applications by Gender

Gender	2016-17	% of Total	2015-16	% of Total	2014-15	% of Total
Male	1564	40%	1519	41%	1344	41%
Female	2309	59%	2153	58%	1966	59%
Not Specified	11	1%	34	1%	0	0%
Total	**3884**		**3706**		**3310**	

Table 5: Applications by Age

Age	2016-17	% of Total	2015-16	% of Total	2014-15	% of Total
0 - 17 years	435	11%	415	11%	324	10%
18 - 34 years	1485	38%	1371	37%	1265	38%
35 - 64 years	1800	46%	1792	48%	1617	49%
65+ years	121	3%	128	3%	104	3%
Unknown	43	1%				
Total	**3884**		**3706**		**3310**	

Table 6: Types of Hearing

	2016-17	2015-16	2014-15
Oral	1870	1939	2184
Written	853	959	918
Total	**2723**	**2898**	**3102**

Table 7: Compensation Paid by Benefit Type

Type of Benefit Award ($000s)	2016-17	2015-16	2014-15
Pain and suffering	$24,737.60	$23,620.50	$26,040.40
Loss of wages	$389.10	$422.60	$409.30
Medical expenses	$449.20	$630.20	$945.30
Funeral expenses	$227.40	$380.20	$236.70
Legal expenses associated with application	$75.30	$68.50	$96.20
Other pecuniary loss	$118.20	$192.70	$143.30
Other	$0.60	$1,822.30	$1,234.90
Total	**$25,997.40**	**$27,137.00**	**$29,106.10**

Service Standards

SJTO aims to meet its service standards 100% of the time. However, this is not always possible, and our commitment is to fulfil these standards at least 80% of the time.

	2016-17		2015-16		2014-15	
Standard	Average number of days (whether standard has been met or not)	% of time service standard is met	Average number of days (whether standard has been met or not)	% of time service standard is met	Average number of days (whether standard has been met or not)	% of time service standard is met
Applications will be scheduled for a hearing within 11 months (330 days).	350 days	61%	309 days	67%	N/A	N/A
Written decisions will be released within 60	48 days	84%	44 days	89%	N/A	N/A

days of the hearing. When an award is granted, the payment will be included with the decision.						
Oral decisions will be issued at the conclusion of the hearing. When an award is granted, the payment will be released within 30 days.	32 days	85%	26 days	89%	N/A	N/A

sjto.ca/cicb

Return to Table of Contents

Human Rights Tribunal of Ontario

What We Do

The Human Rights Tribunal of Ontario (HRTO) resolves claims of discrimination and harassment brought under the *Human Rights Code* in a fair, just and timely way. The HRTO first offers parties the opportunity to settle the dispute through mediation. If the parties do not agree to mediation, or mediation does not resolve the application, the HRTO holds a hearing.

Legislative Authority

The HRTO is established under the *Human Rights Code*.

Operational Highlights

Rule Changes

Two changes to the HRTO's Rules of Procedure took effect on May 10, 2016. The first change was to Rule 9.3. Applicants now have 21 days to file a reply to a response while previously they only had 14 days. The second change was to Rule 8.2. Respondents no longer need to file a full response to request deferral of an application when the issues in dispute are the subject of an ongoing grievance or arbitration proceeding. Instead, they can provide a copy of the grievance and tell the tribunal why they think the application should be deferred.

New Call System

The HRTO's reception line has moved to an automated call system. Callers can still reach a receptionist, but they now also receive information about what the HRTO does and have the choice to connect directly with the Human Rights Legal Support Centre or be transferred directly to a case processing officer if they have an active case.

Education and Outreach

The HRTO, along with the Ontario Human Rights Commission and the Human Rights Legal Support Centre, hosted a delegation from the Ugandan Equal Opportunities Commission (EOC) in January. The HRTO shared information about its administrative and adjudicative practices. The visit was part of the EOC's project to strengthen its ability to implement its mandate, which is to eliminate discrimination and inequalities in Uganda.

Statistics

The HRTO continues to see an increase in the number of applications received. There was a 3% increase from 2014-15 to 2015-16 and an almost 7% increase from fiscal 2015-16 to 2016-17.

Table 1: Caseload

	2016-17	2015-16	2014-15
Applications received	3,585	3,357	3,259
Cases reactivated	22	18	28
Cases closed	2,880	3,234	3,179
Active cases at year-end*	4,696	3,242	3,101
Case processing time (days)**	333	326	338

* Active cases at year-end includes cases that are "deferred" or put on hold until another proceeding outside the HRTO has dealt with the issue. There were 493 deferred cases in 2016-2017 and 467 in 2015-16

** The average time from when the application was accepted to when the file was closed.

Table 2: Decisions Issued by Type

Type of Decision	2016-17	2015-16	2014-15
Final decision on the merits	87	113	110
— Discrimination found	30	39	43
— Discrimination not found	57	74	67
Interim decisions (address procedural issues)	771	817	797

Reconsideration	163	149	159
Breach of settlement	26	23	21

In 2016-17, the HRTO issued 1,394 Case Assessment Directions, which helped the parties prepare for the hearing.

Table 3: Applications by applicant's postal code

Postal Code	2016-17	2015-16	2014-15
Eastern (K)	13%	11%	12%
Central (L)	35%	36%	38%
Toronto (M)	26%	26%	25%
Western (N)	17%	18%	17%
Northern (P)	6%	6%	5%
Other	3%	3%	3%

Table 4: Percentage of applications by social areas under the *Code*

Some applications allege discrimination in more than one social area, so the totals exceed 100%.

Social Area	2016-17	2015-16	2014-15
Employment	69%	70%	74%
Goods, Services and Facilities	27%	25%	22%
Housing	8%	6%	7%
Contracts	2%	1%	2%
Membership in a Vocational Association	1%	1%	1%
No Social Area	1%	2%	2%

Table 5: Percentage of applications by ground under the *Code*

Many applications claim more than one ground, so the totals exceed 100%.

Ground	2016-17	2015-16	2014-15
Disability	55%	55%	56%
Reprisal	23%	23%	26%
Race	21%	20%	20%
Colour	16%	16%	14%

Age	12%	13%	14%
Ethnic Origin	15%	14%	15%
Place of Origin	12%	14%	12%
Family Status	10%	11%	12%
Ancestry	10%	9%	10%
Sex, Pregnancy & Sexual Harassment	17%	20%	21%
Sexual Solicitation or Advances	4%	6%	5%
Sexual Orientation	4%	4%	4%
Gender Identity	5%	4%	4%
Gender Expression	3%	3%	2%
Creed	6%	5%	6%
Marital Status	5%	6%	6%
Association	4%	4%	5%
Citizenship	4%	6%	4%
Record of Offences	2%	3%	3%
Receipt of Public Assistance	1%	2%	1%
No grounds	2%	6%	6%

Table 6: Mediations Held

	2016-17	2015-16	2014-15
Mediations held	1,376	1,584	1,459
Settled at mediation	58%	58%	59%

Table 7: Representation at Mediation

	2016-17	2015-16	2014-15
Applicant representation			
• Lawyer / paralegal	35%	36%	32%
• Human Rights Legal Support Centre	27%	22%	30%
• Other	2%	2%	3%
• Self-represented	33%	40%	35%
• No Show	3%	2%	5%

Respondent representation			
• Lawyer / paralegal	88%	85%	86%
• Other	1%	1%	1%
• Self-represented	10%	13%	13%
• No show	1%	1%	2%

Table 8: Representation at Hearing

	2016-17	2015-16	2014-15
Applicant representation			
• Lawyer / paralegal	32%	28%	28%
• Human Rights Legal Support Centre	9%	7%	12%
• Other	4%	5%	4%
• Self-represented	50%	53%	48%
• No Show	5%	7%	8%
Respondent representation			
• Lawyer / paralegal	89%	86%	86%
• Other	3%	3%	2%
• Self-represented	6%	9%	9%
• No show	2%	2%	3%

Service Standards

SJTO aims to meet its service standards 100% of the time. However, this is not always possible, and our commitment is to fulfil these standards at least 80% of the time.

	2016-17		2015-16		2014-15	
Hearings and Mediations	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**
The first mediation date offered to parties will be scheduled to take place within 150 calendar days from the date the parties agree to mediation.	109 days	92%	90 days	97%	129 days	83%
The first hearing date	134 days	34%	161 days	59%	170 days	62%

offered to parties will be scheduled to take place within 180 calendar days from the date the application is ready to proceed to hearing.						

	2016-17		2015-16		2014-15	
Decisions	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**
Decisions for hearings which take 3 days or less will be issued within 90 calendar days.	81 days	68%	86 days	76%	68 days	82%
Decisions for hearings which take longer than 3 days, will be issued within 180 calendar days.	312 days	17%	300 days	36%	230 days	39%

What We Do

The Landlord and Tenant Board (LTB) was established on January 31, 2007 to:

- resolve disputes between landlords and tenants
- resolves eviction applications from non-profit housing co-operatives
- provide information to landlords and tenants about their rights and responsibilities under the *Residential Tenancies Act* (RTA)
- provides information about LTB's practices and procedures

Legislative Authority

The LTB is established under the *Residential Tenancies Act* (RTA).

Operational Highlights

Case Management Hearings – A New Approach to Applications for Rent Increase above the Guideline

In March 2017, the LTB began to hold case management hearings for applications filed by landlords who want to raise rent above the guideline because they have made capital expenditures (renovations, repairs, replacements or additions). The case management hearing provides both sides the opportunity to discuss, and possibly agree on, a fair rent increase.

During a case management hearing, a dispute resolution officer tries to help the two sides reach an agreement. If an agreement is reached, the dispute resolution officer records the terms of the agreement in an order called a consent order. If the application is not settled at the case management hearing, it is scheduled for a full hearing with an adjudicator on another day.

The dispute resolution officers follow a standard case management hearing structure, offering a consistent and transparent approach to resolving above guideline increase applications. Landlords and tenants receive information on how to prepare for the case management hearing together with their notice of hearing.

Emailing Notice of Hearing Packages to Bulk Filers

In March 2017, bulk filers (people filing more than three applications at a time) started receiving their notice of hearing packages by email instead of regular mail. Bulk filers now receive their notices of hearing more quickly than they did before.

The change was made after consultations and testing with stakeholders. Bulk filers also have the option to pick up the hearing packages at the LTB office.

At the same time, the LTB introduced the Bulk Application Information Sheet. On the sheet, applicants provide information about the applications in the bulk filing, who should receive the packages, and whether they will pick up the Notice of Hearing packages or want them emailed.

Changes to Application Fees

LTB application fees for most applications increased on January 16, 2017 by about 10%. Fees were also introduced for two tenant applications which were previously free, bringing all tenant applications to $50. Tenant application fees had not increased since the LTB was established in 1998. Landlord application fees were last increased in 2009.

At the same time as the fee increase, the LTB introduced a 10% discount for applications filed through LTB e-File. After the discount was introduced, the number of e-filed applications increased by 65%.

People who have a low income can request that the application filing fees be waived. The income threshold for fee waivers was increased by 10% to offset the fee increase.

New Notice for Victims of Sexual and Domestic Violence to End Tenancy Early

In September, the *Residential Tenancies Act* changed to allow tenants who are victims of sexual and domestic violence to end their tenancy in 28 days if they believe they or a child living with them may be harmed or injured if they don't leave the unit.

As a result of the legislative change, the LTB, in consultation with its Practice Advisory Committee, created a new Tenant's Notice to End my Tenancy Because of Fear of Sexual or Domestic Violence and Abuse (N15), a new Tenant's Statement about Sexual or Domestic Violence and Abuse.

Full-day Hearing Blocks

In the summer of 2016, the LTB began scheduling full day hearing blocks in Scarborough (in the Toronto East office), Whitby and LTB Central office in Mississauga. Before the change, hearings were scheduled in half day hearing blocks at these locations.

Full day hearing blocks increase the likelihood that all scheduled cases will be heard on the day, and not adjourned due to lack of time. For example, parties who want to speak to tenant duty counsel or try mediation will still have enough time for a hearing on the same day.

The change in scheduling will be monitored to make sure it results in more timely dispute resolution.

The Toronto South and Toronto North offices moved to full day hearings in 2015.

Changes to how the LTB Handles Requests to Review an Order

In July 2016, the LTB made the following changes to how it handles requests to review an order.

Preliminary reviews – All preliminary reviews of a Request to Review an Order are now conducted by a vice chair or other senior LTB member. Previously, any member could conduct this review.

Review hearings – If there is a review hearing, the member who did the preliminary review decides which member will conduct the review hearing within these parameters:

- Requests to review that claim a party was not reasonably able to participate can be heard by any member, including the member who issued the original order.
- Requests to review that ask the LTB to consider new evidence will usually be assigned to the same member who issued the original order.
- Requests to review that allege a serious error will be heard by the vice chair or senior member.

Previously, the member who made the order could not be assigned to conduct the hearing. The rules now also clarify that although the LTB can initiate a review without receiving a request from one of the parties (rule 29.4), a party cannot request that the LTB exercise this power. A party must request a review using rule 29.1.

Accepting Application-specific Inquiries by Email

In June 2016, all LTB offices started accepting emails from parties about their case. For example, parties can email documents for their application file or respond to LTB requests for dates they are not available, so the LTB can schedule a hearing. Each LTB office has its own email address. LTB staff received 23, 844 emails through those accounts from June 1, 2016 – March 31, 2017.

For many people, email is more convenient than going to an office or waiting to speak to someone on the phone. It also gives people a way to contact the LTB outside of business hours.

The LTB only responds to application-specific inquiries by email. People with general questions about the LTB application and hearing process or the rights and responsibilities of landlords and tenants, should visit the website or call the LTB.

Case Management Hearings Pilot Update

From September 2014 to April 2015, the LTB did a pilot project which required parties to participate in case management hearings (CMHs) for Applications about Tenant Rights (T2) and Tenant Applications about Maintenance (T6) at its Toronto South and Southern offices. The case management hearing provided both sides the opportunity to discuss, and possibly agree on, a solution that wasn't imposed by the adjudicator.

This year, the LTB evaluated the settlement rates and adjournment (rescheduling) rates of cases which went to a CMH. The results showed that more than two thirds of the cases were not resolved at the CMH and required a full merits hearing. At one office, the adjournment rate of CMH cases was higher than the rate for merits hearings. After reviewing the results of the pilot and consulting with stakeholders, the LTB decided to suspend the pilot (in that form) on January 23, 2017.

The LTB is now using the pilot experience to identify the types of applications that are best suited to the CMH process, including those for Above Guideline Increase Applications, which were introduced in March 2017.

LTB e-File

Launched in July 2015, LTB e-File allows landlords and tenants across Ontario to file the most common LTB applications online, anytime from anywhere.

During the 2016-17 fiscal year, the LTB received 20,971 applications online.

- 74.7% (15,674) were L1 applications
- 15.0% (3,153) were L2 applications
- 7.5% (1,573) were T2 applications
- 2.7% (357) were T6 applications

32.2% of the 64,951 L1, L2, T2 and T6 applications filed with the LTB during the year were filed using e-File. This is a nearly 10% increase over last year. In part, the increase can be attributed to the 10% discount for e-filed applications introduced in January 2017.

- 31.7% of all L1 applications (49,488)
- 31.6% of all L2 applications (9,982)
- 41.3% of all T2 applications (3,807)
- 21.3% of all T6 applications (1,674)

72.1% of e-File applications were scheduled for a hearing date online: 77.1% of landlord applications and 28.2% of tenant applications. This is an increase of 3% over last year.

23.19% (4864) of e-File applications were filed outside of business hours, a 4% increase over last year.

Paper applications can still be mailed, faxed or dropped off at one of the eight LTB offices or personally delivered to more than 60 ServiceOntario locations across the province.

LTB e-File Survey

Conducted over three weeks in May 2016, the LTB e-File survey received responses from 112 people, 63 of whom said they used the tool. Of those, 89 % said they found it user-friendly. The most common suggestions for improvement were:

1. More scheduling options
2. The ability to combine applications
3. The ability to e-file additional application types

The LTB will consider these suggestions when it upgrades the LTB e-File tool.

Statistics

In 2016-17, the LTB received 81,432 applications. This total includes landlord, tenant and co-op applications. This is an increase of 1.52% or 1,218 applications compared to 2015-16.

The ratio of landlord to tenant applications has remained relatively constant since 1998 when the resolution of landlord-tenant disputes was transferred from the provincial court system to the LTB. This past year was no exception, with roughly 90% of applications filed by landlords and 10% filed by tenants.

Applications for termination of tenancy and eviction continue to represent the bulk of the LTB's workload. Of the total applications received by the LTB, approximately 61% were to terminate a tenancy because of non-payment of rent.

Table 1: Call Centre

	2016-17	2015-16	2014-15
Calls handled	261,154	299,143	286,869
Average time per call	05:19	04:45	05:10
Average wait time in the queue	09:46	05:06	06:46

Table 2: All Applications Received, Resolved and Open at Year End

	2016-17	2015-16	2014-15
Applications Received*	81,432	80,214	79,740
Applications Resolved	78,783	78,175	77,148
Open at year-end**	13,899	11,946	10,286

* The 2015-16 and 2016-17 totals include non-profit co-operative housing eviction applications.

** In a small number of cases, "resolved" applications are re-opened in the case management system (e.g. when the LTB grants a request for review of an order). As a result, a single application can result in more than one resolution. Therefore, the number of applications open at the end of the fiscal year does not necessarily equal the number from the previous year plus "applications received", less the "applications resolved".

It has come to light that at least 25% of applications that are listed as "open at year-end" in the case management system are in fact resolved. Staff are working to update the status of these applications.

Table 3: Landlord/Tenant Applications by Method of Resolution

Resolution Type	2016-17	2015-16	2014-15
Abandoned[1]	3,168	2,673	2,668
Resolved by Mediation[2]	10,735	11,541	11,926
Resolved at Hearing[3]	49,901	48,533	48,107
Resolved without Hearing[4]	3,997	4,397	4,402
Review Denied	903	729	675
Withdrawn	8,264	7,487	7,369
Other[5]	1,815	2,413	2,001
Total	**78,783**	**77,773**	**77,148**

[1] ordered by hearing abandoned

[2] mediated; ordered by hearing mediated

[3] ordered by hearing contested or uncontested; ordered by review

[4] ordered ex parte; ordered by section 206 agreement

[5] discontinued; order voided; ordered amended; amendment denied

Table 4: Co-op Eviction Applications by Method of Resolution

Resolution Type	2016-17	2015-16	June 1, 2014 - March 31, 2015
No Hearing[1]	133	91	22
Case Management Hearing Only	288	236	110
Merit Hearing Only	25	10	10
Both Case Management Hearing and Merit Hearing	79	65	16
Total	**525**	**402**	**158**

[1] Application withdrawn/discontinued; parties settled the issues on their own

Table 5: Landlord and Tenant Applications Received by Region

Head Office*	Central	East	North	South	South west	Toronto East	Toronto North	Toronto South	Total
8,774	8,244	3,952	11,680	14,132	11,002	11,609	11,222	8,774	**81,432**

[*] When the system is unable to match the postal code to a region in an e-Filed application, it is assigned to "Head Office".

Table 6: Co-op Applications Received by Region

Central	East	North	South	South west	Toronto East	Toronto North	Toronto South	Total
51	43	22	62	124	136	64	80	**582**

Table 7: Landlord Applications Received by Type

Case Type	Application Description	2016-17	2015-16	2014-15
A1	Determine Whether the Act Applies	104 (0.1%)	67 (0.1%)	55 (0.1%)
A2	Sublet or Assignment	264 (0.3%)	234 (0.3%)	263 (0.4%)
A3	Combined Application (usually includes an L1)	4,067 (5.6%)	4,050 (5.7%)	3,986 (5.6%)
A4	Vary Rent Reduction Amount	134 (0.2%)	76 (0.1%)	135 (0.2%)
L1	Terminate & Evict for Non-Payment of Rent	49,489 (67.6%)	48,940 (68.4%)	49,991 (70.0%)
L2	Terminate for Other Reasons & Evict	9,987 (13.6%)	8,876 (12.4%)	7,983 (11.2%)
L3	Termination - Tenant Gave Notice or Agreed	1,439 (2.0%)	1,338 (1.9%)	1,208 (1.7%)
L4	Terminate the Tenancy - Failed Settlement	5,478 (7.5%)	5,559 (7.8%)	5,632 (7.9%)
L5	Rent Increase Above the Guideline	575 (0.8%)	433 (0.6%)	548 (0.8%)
L6	Review of Provincial Work Order	3 (0.0%)	15 (0.0%)	8 (0.0%)
L7	Transfer Tenant to Care Home	1 (0.0%)	6 (0.0%)	0 (0.0%)
L8	Tenant Changed Locks	37 (0.0%)	28 (0.0%)	31 (0.0%)
L9	Application to Collect Rent	1,628 (2.2%)	1,892 (2.6%)	1,735 (2.4%)
	Total	**73,188**	**71,514**	**71,575**

Table 8: Tenant Applications Received by Type

Case Type	Application Description	2016-17	2015-16	2014-15
A1	Determine Whether the Act Applies	49 (0.6%)	64 (0.8%)	59 (0.7%)
A2	Sublet or Assignment	55 (0.7%)	68 (0.8%)	55 (0.7%)
A3	Combined Application	1,634 (19.8%)	1,586 (19.3%)	1,921 (24.1%)
A4	Vary Rent Reduction Amount	0 (0.0%)	0 (0.0%)	0 (0.0%)

T1	Rent Rebate (e.g. illegal rent)	732 (8.9%)	663 (8.1%)	716 (9.0%)
T2	Tenant Rights	3,807 (46.1%)	3,922 (47.7%)	3,441 (43.2%)
T3	Rent Reduction	68 (0.8%)	67 (0.8%)	69 (0.9%)
T4	Failed Rent Increase Above Guideline	6 (0.0%)	0 (0.0%)	1 (0.0%)
T5	Bad Faith Notice of Termination	211 (2.6%)	174 (2.1%)	170 (2.1%)
T6	Maintenance	1,675 (20.3%)	1,661 (20.2%)	1,516 (19.1%)
T7	Suite Meters	7 (0.0%)	23 (0.3%)	9 (0.0%)
	Total	**8,244**	**8,228**	**7,957**

Table 9: Co-op Applications Received by Type

Case Type	Application Description	2016-17	2015-16	June 1, 2014 - March 31, 2015
C1	Application to End the Occupancy and Evict the Member based on Non-payment of Regular Monthly Housing Charges and to Collect the Housing Charges that the Co-op Member Owes	274 (47%)	252 (53.3%)	132 (63.4%)
C1/2	Combined C1 and C2 applications	102 (17.5%)	74 (15.6%)	32 (15.3%)
C2	Application to End the Occupancy of the Member Unit and Evict the Member	93 (16%)	73 (15.4%)	23 (11%)
C3	Application to End the Occupancy and Evict the Member - Based on the Member's Consent or Notice	3 (0.01%)	5 (1%)	7 (3.4%)
C4	Application to End the Occupancy of the Member Unit and Evict the Member Because the Member Failed to Meet Conditions of a Settlement/Order	110 (18.9%)	68 (14.4%)	14 (7%)
	Total	**525**	**472**	**208**

Service Standards

SJTO aims to meet its service standards 100% of the time. However, this is not always possible, and our commitment is to fulfil these standards at least 80% of the time.

	2016-17		2015-16		2014-15	
Standard	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**	**Average number of days (whether standard has been met or not)**	**% of time service standard is met**
Applications will be scheduled for a hearing within 25 business days	26.6 days	52%	23.3 days	69%	21 days	78%
Decisions for LTB applications will be issued within 5 business days at the conclusion of the final hearing	5.2 days	78%	4.6 days	83%	3.6 days	89%

Social Benefits Tribunal

What We Do

The Social Benefits Tribunal (SBT) hears appeals from people who have either been refused social assistance or who receive social assistance but disagree with a decision that affects:

- their eligibility for assistance
- the amount of assistance they receive
- the benefits they receive

Because of the sensitive personal information involved in these cases, the legislation requires that all hearings must be held in private.

Legislative Authority

The SBT is established under Part IV of the *Ontario Works Act*, 1997. Appeals are heard under that act and the *Ontario Disability Support Program Act*, 1997.

Operational Highlights

Consent Orders for Disability Appeals

The SBT is moving to allow parties to resolve disability appeals through consent orders on the hearing day.

A consent order is an agreement between the parties which settles the appeal. If the parties can reach an agreement, a full hearing is no longer required, and the parties don't need to wait for the member to issue a decision. The terms of a consent order can be enforced by the court.

In January 2017, stakeholders were invited to comment on a proposed new form, rules and procedures that would allow for consent orders. The SBT is working with its Practice Advisory Committee (PAC) to implement the new process.

SBT Reaches out to Indigenous Social Service Administrators

The SBT made three presentations to First Nation social service administrators of the Ontario Native Welfare Administrators' Association (ONWAA) in the past year. ONWAA members administer Ontario Works and other social programs on Ontario reserves and can be the respondent in SBT cases. The presentations provided an in-depth overview of the SBT appeal process.

At the presentations, the SBT also told the groups that Social Justice Tribunals Ontario wants to hear from Indigenous groups in Ontario about how the tribunals can be more responsive to their needs.

These meetings were part of the SJTO Indigenous Insights Initiative.

Updated Forms: Appeal and Application for Reconsideration

In October 2016, SBT posted updated versions of its Appeal (Form 1) and Application for Reconsideration.

The new forms are easier to use and easier to understand. They are also accessible for people using screen readers. Both forms can be completed on computer or printed and filled out by hand.

Electronic Files in the Hearing Room

As of January 1, 2016, the SBT began processing new appeals electronically. The SBT held its first hearings using electronic hearing briefs in September 2016.

To train the members in using electronic hearing briefs, the SBT held three, half day sessions. Members learned:

- about the new processes (e.g. how they will receive the electronic hearing briefs, where to access them, who to contact if there's a problem)
- how to use the electronic hearing brief (e.g. commenting, cut and paste, searching)
- how to use their laptops effectively (e.g. using a second monitor, toggling between multiple documents)

The electronic hearing briefs have many benefits. If an adjudicator is unavailable, another one can access the file from the shared drive at any time, preventing costly adjournments. They can also navigate quickly between tabs in the briefs, highlighting important text, making notes or writing questions on the electronic file as they go along. Another benefit is that adjudicators can copy text (a passage from a medical report, for example) from an electronic file to paste into their decision instead of having to retype it.

About 80 percent of hearings were held with electronic files in 2016-17. The percentage will continue to rise as paper applications received before the switch to electronic files in January 2016 are dealt with.

Email Communication Expands

After a successful email pilot project in 2015-16, email communication with SBT continued to expand this year.

More than 250 people from legal clinics and Ontario Works (OW) and Ontario Disability Support Program (ODSP) offices used email to submit inquiries and small documents to the SBT in 2016-17.

Since the SBT has changed from paper to electronic files, receiving documents by email makes it easier to add documents to the electronic file.

Offering email makes the tribunal more accessible and supports the OPS Green initiative.

Early Resolution Opportunity Program

The SBT continues to improve the Early Resolution Opportunity program (ERO). The ERO is held by phone with the two parties and a SBT Appeal Resolution Officer, who helps the parties look for opportunities to resolve the appeal without a hearing. Parties benefit from the ERO because they can have a chance to resolve the appeal as early as one month after the appeal is filed, instead of waiting several months for a hearing. The parties also have ownership of the resolution, instead of holding a hearing where a member makes the decision.

This year, the SBT held 2,075 ERO sessions, a 37% increase over last year. The settlement rate was 38%, an improvement over last year's rate of 34%.

Early Resolution Opportunities for Medical Review Appeals

A pilot to test EROs for medical review appeals was launched in November 2015 in partnership with the Disability Adjudication Unit and 4 legal clinics.

Between November 2015 and February 2017, 6 more legal clinics and their clients joined the pilot, bringing the total number of clinics participating to 10.

Because of the success of the program, a year-long, two-phase, province-wide expansion began in March 2017 and will run to February 2018.

Phase 1 (March – August 2017) includes clinics in Toronto, Peel, Niagara and the North. Phase 2 (September 2017 – February 2018) will include the rest of the province.

Over the course of the pilot, 85% of the cases have been resolved (meaning that the appellant is found to still have a disability) without the need to hold a hearing. Cases in the program are resolved as early as 2-3 months after the appeal is received, as opposed to 7 months for cases that go to a hearing.

Statistics

The SBT received 10,403 appeals, a decrease of 915 from last year. More appeals were completed than received, so the number of pending cases decreased by more than 2,400. The average time to complete a case decreased from 299 days to 290 days. Due to an improvement in scheduling practices, the SBT was able to schedule hearings within 30 days of receiving the appeal more than 80% of the time.

Table 1: Caseload

	2016-17	2015-16	2014-15
Appeals Received	10,403	11,318	14,025
Completed	12,831	13,038	14,606
Pending at end of fiscal year	7,169	9,597	11,317
Case processing time (days)	290	299	318

Table 2: Appeals Completed by Method of Resolution

Resolution Type	2016-17	2015-16	2014-15
Abandoned	291 (2%)	257 (2%)	331 (2%)
Withdrawn*	4,380 (34%)	4,185 (32%)	4,034 (28%)
Reconsideration denied	203 (2%)	253 (2%)	283 (2%)
Resolved at hearing**	7,636 (60%)	8,087 (62%)	9,629 (66%)
Other	321 (2%)	256 (2%)	329 (2%)
Total	**12,831**	**13,038**	**14,606**

* *Withdrawn* cases can include those closed due to a successful mediation session. (called an "early resolution opportunity" at the tribunal)

** *Resolved at hearing* includes decisions released following a reconsideration hearing.

Table 3: Appeals by Program

	2016-17	2015-16	2014-15
ODSP	9,704 (93%)	10,668 (94%)	13,207 (94%)
OW	699 (7%)	650 (6%)	818 (6%)
Total	**10,403**	**11,318**	**14,025**

Table 4: ODSP Appeals by Category

ODSP	2016-17	2015-16	2014-15
Refusal	8,392 (86%)	9,114 (85%)	11,716 (89%)
Cancellation & Suspension	640 (7%)	914 (9%)	828 (6%)
Amount & Reduction	566 (6%)	528 (5%)	559 (4%)
Other	106 (1%)	112 (1%)	104 (1%)
Total	**9,704**	**10,668**	**13,207**

Table 5: OW Appeals by Category

OW	2016-17	2015-16	2014-15
Refusal	183 (26%)	191 (29%)	178 (22%)
Cancellation & Suspension	218 (31%)	175 (27%)	293 (36%)
Amount & Reduction	274 (39%)	248 (38%)	320 (39%)
Other	24 (4%)	36 (6%)	27 (3%)
Total	**699**	**650**	**818**

Table 6: Tribunal Decisions by Outcome

ODSP	2016-17	2015-16	2014-15
Granted	4,450 (61%)	4,208 (54%)	5,090 (55%)
Denied	1,721 (23%)	2,152 (28%)	2,533 (27%)
Denied in absentia*	865 (12%)	999 (13%)	1,178 (13%)
Other**	295 (4%)	389 (5%)	437 (5%)
Total	**7,331**	**7,748**	**9,238**

OW	2016-17	2015-16	2014-15
Granted	79 (26%)	70 (21%)	69 (18%)
Denied	90 (30%)	140 (41%)	119 (30%)
Denied in absentia*	99 (32%)	80 (24%)	151 (39%)
Other**	37 (12%)	49 (14%)	52 (13%)
Total	**305**	**339**	**391**

* Cases denied in absentia: Appellant was not present for the hearing.

** Other decisions include: consent order, no appeal before the tribunal, appeal out of time, no jurisdiction, matter resolved or withdrawn, or cases referred back to the Director or Administrator to reconsider its original decision in accordance with the directions given by the tribunal.

Service Standards

SJTO aims to meet its service standards 100% of the time. However, this is not always possible, and our commitment is to fulfil these standards at least 80% of the time.

	2016-17	2015-16	2014-15

Standard	Average number of days (whether standard has been met or not)	% of time service standard is met	Average number of days (whether standard has been met or not)	% of time service standard is met	Average number of days (whether standard has been met or not)	% of time service standard is met
Appeals will be scheduled with a notice of hearing sent out no later than 30 calendar days after receipt of the appeal.	24 days		33 days		42 days	
and		82%		7%		19%
The hearing date will be set no more than 180 calendar days after the date of the Notice of Hearing.	172 days		241 days		224 days	
Decisions will be issued within 30 calendar days after the completion of the hearing.	33 days	66%	33 days	58%	33 days	58%

Ontario Special Education Tribunals

What We Do

The two Ontario Special Education Tribunals (OSETs) hear appeals by parents and guardians who are not satisfied with the school board's identification or placement of a child with exceptional learning needs.

The OSET- English hears appeals from decisions made by English Public and Catholic School Boards. The OSET - French hears appeals from decisions made by French Public and Catholic School Boards.

The OSETs hear appeals only after parents have completed all possible appeals at the school board level under the *Education Act*.

Legislative Authority

The Education Act and its regulations address the identification or placement of students with exceptional learning needs.

Statistics

The English OSET received two appeals in 2016-17. One was settled through mediation. The other was filed in late December and is scheduled for a hearing on June 15, 2017. The French OSET (TEDO) received no appeals.

Return to Table of Contents

Appendix I: Social Justice Tribunals Ontario Members as of March 31, 2017

The Executive Chair and the Alternate Executive Chair are members of each of the SJTO tribunals. Members with an asterisk (*) are appointed to more than one SJTO tribunal.

SJTO Executive Chair and Alternate

Name	First Appointed	Term Ends
Michael Gottheil, Executive Chair	March 2011	March 2021
Beverly Moore, Alternate Executive Chair	September 2015	September 2018

Child and Family Services Review Board and Custody Review Board

Name	First Appointed	Term Ends
Jennifer A. Scott*, Associate Chair	February 2017	February 2019
Patrick Doran*	May 2017	May 2017
Paula Eyler	November 2016	November 2018
Judy Finlay	January 2011	January 2021
Gail Gonda	May 2007	May 2018
David Hamilton	October 2016	October 2018
Andrea Himel	November 2010	November 2020
Theresa Hughes	October 2016	October 2018
Heather Susan Hunter	May 2008	May 2018
Katherine Laird	October 2016	October 2018
Alina Lazor	May 2008	May 2018
Wesley Marsden	October 2016	October 2018
Eva Nichols*	February 2013	August 2019

T. Michele O'Connor	November 2010	November 2020
Marisha Roman	August 2016	August 2018
Jayashree Sengupta*, Vice-Chair	July 2014	November 2018
John (Johannes) F. Spekkens*	November 2010	November 2020
Bernard Stein	October 2016	October 2018
Wendell E. White	March 1999	September 2017
Mary Wong	May 2007	May 2017

Criminal Injuries Compensation Board

Name	First Appointed	Term Ends
Maria Tassou, Associate Chair	June 2007	April 2018
M Saleem Akhtar	September 2009	September 2019
Pamela Arnott	February 2017	February 2019
Lisa Barazzutti	October 2010	October 2017
Evelyn Baxter	January 2017	January 2019
Louise Charette	January 2017	January 2019
Roderick Flynn*	June 2007	June 2017
Keith Forde	October 2010	October 2017
James Graham	March 2017	March 2019
Jo-Anne Hughes	October 2008	October 2018
Christie Jefferson, Vice-Chair	June 2010	February 2019
Wendy King	October 2010	October 2017
Kirsten Kurzuk	December 2008	December 2018
Maija Laitinen*	January 2017	January 2019
Anne-Marie Langan	November 2016	November 2018
Susan Lee	April 2011	April 2021
Janet MacEachen	September 2009	September 2019
Jay Meunier	September 2009	September 2019

Virginia Morra	June 2007	June 2017
Veda Rangan	September 2009	September 2019
Kabir Ravindra	June 2007	June 2017
Joanne St. Lewis	January 2017	January 2019
Linda Spears	June 2007	June 2017
John (Johannes) F. Spekkens*	November 2010	November 2020
Dawn Wickett*	June 2007	June 2017

Human Rights Tribunal of Ontario

Name	First Appointed	Term Ends
Yola Grant, Associate Chair	April 2014	April 2019
Naomi Overend, Acting Associate Chair	September 2008	September 2018
Sarah Atkinson	January 2015	January 2020
Eban Bayefsky, Vice-Chair	March 2017	March 2019
Kim Bernardt	January 2015	January 2020
Bruce Best, Vice-Chair	September 2015	September 2017
Kenneth Bhattacharjee, Vice-Chair	September 2008	September 2018
Josée Bouchard, Vice-Chair	January 2016	January 2018
Suzanne Bouclin	March 2016	March 2018
Keith Brennenstuhl*, Vice-Chair	September 2007	September 2017
Kevin Cleghorn*	January 2011	January 2021
Esi Codjoe, Vice-Chair	March 2017	March 2019
Brian Cook, Vice-Chair	September 2008	September 2018
Andrew Diamond	August 2008	August 2018
Maureen Doyle*, Vice-Chair	August 2008	February 2021
Helen Eaton	February 2017	February 2019
Michelle Flaherty*	October 2008	June 2018
Aida Gatfield	January 2013	January 2018

Ruth Goba	February 2017	February 2019
Maurice Green	January 2013	January 2018
Mark Handelman	August 2008	August 2018
Beverly Harris	December 2012	December 2017
Mark Hart, Vice-Chair	September 2007	September 2017
Dale Hewat	September 2008	September 2018
Judith Hinchman	August 2008	August 2018
Julie Jai	January 2015	January 2020
Jacek Janczur, Vice-Chair	March 2017	March 2019
Colin Johnston	January 2015	January 2020
Judith Keene	November 2008	August 2018
John Kelly	February 2017	February 2019
Dawn Kershaw*, Vice-Chair	October 2012	May 2018
Jennifer Khurana*, Vice-Chair	September 2015	December 2017
Michael Lerner	January 2011	January 2021
Laurie Letheren, Vice-Chair	February 2015	February 2020
Kathleen Martin	June 2006	September 2017
Yasmeena Mohamed, Vice-Chair	January 2011	March 2019
David Muir, Vice-Chair	August 2008	August 2018
Eva Nichols*	February 2013	August 2019
Jo-Anne Pickel, Vice-Chair	October 2012	October 2017
Sheri Price	September 2008	September 2018
Daniel Randazzo	December 2012	December 2017
Devika Ratnayake	February 2017	February 2019
Leslie Reaume, Vice-Chair	June 2007	June 2020
Alison Renton, Vice-Chair	October 2008	October 2018
Valerie Richer	March 2017	February 2019
Frederika Rotter	February 2017	February 2019

Douglas Sanderson, Vice-Chair	January 2011	January 2021
Janice Sandomirsky	August 2008	August 2018
Jennifer A. Scott*, Vice-Chair	July 2006	September 2017
Jayashree (Jay) Sengupta*, Vice-Chair	September 2008	September 2018
Brian Sheehan	August 2008	August 2018
Lorne Slotnick	September 2008	September 2018
Mary Truemner, Vice-Chair	September 2008	September 2018
Helen Walsh	February 2017	February 2019
Jennifer Webster	February 2017	February 2019
Eric Whist	September 2008	September 2018
Ailsa Wiggins	August 2008	August 2018
Brenda Young	February 2017	February 2018

Landlord and Tenant Board

Name	First Appointed	Term Ends
Kim E. Bugby, Associate Chair	September 2004	March 2018
Elizabeth Beckett*	February 2001	April 2017
Keith Brennenstuhl*	December 2012	September 2017
Aleksandar Brkic	March 2015	March 2020
William Burke	October 2005	July 2017
Avril Cardoso	May 2016	May 2018
Ruth Carey, Vice-Chair	December 2006	August 2017
Sylvie Charron*, Vice-Chair	October 2012	October 2017
Harry Cho	October 2012	October 2018
Emily Crocco	January 2015	January 2020
Cristina De Leon-Culp	September 2015	September 2017
Lisa Del Vecchio	January 2015	January 2020
Thomas F. Fagan*	June 2013	June 2018

Nathan Ferguson	December 2016	December 2018
Roderick Flynn*	July 2016	July 2018
Petar Guzina	November 2009	November 2019
Laura Hartslief	June 2016	May 2018
Nancy Henderson, Vice-Chair	March 2017	March 2019
Sean Henry	August 2015	August 2017
Louise Horton	June 2009	June 2019
Neil Kaufman	July 2016	July 2018
Renée Lang	January 2015	January 2020
Solange Losier	September 2015	September 2017
Melanie Love	June 2016	June 2018
Kevin Lundy	October 2012	October 2019
Sandra Macchione	February 2011	July 2018
Lorraine Mathers	August 2016	August 2018
Carol Anne McDermott*	August 2012	June 2017
James (Jim) McMaster	October 2005	November 2019
Lynn Mitchell	April 2016	April 2018
Debbie Mosaheb	February 2011	February 2021
Gerald Naud*	October 2004	October 2017
John Patrick Nolan	November 2006	May 2019
Bonnie Pelletier	May 2016	May 2018
Jean-Paul Pilon	August 2006	February 2019
Philippe Rabot	June 2016	May 2018
Gobinder Singh Randhawa	July 2014	July 2019
Margaret Reynolds*	October 2016	October 2018
Roger Rodrigues	January 2015	January 2020
Tiisetso Russell	May 2016	May 2018
Egya Ndayinanse Sangmuah, Vice-Chair	January 2007	August 2019

Guy William Savoie, Vice-Chair	May 2001	April 2017
Anna Solomon	May 2016	May 2018
Michael Soo	July 2007	July 2020
Lisa M. Stevens	November 2009	November 2019
Mariam Elizabeth Usprich, Vice-Chair	March 2006	August 2017
Jonelle Van Delft, Vice-Chair	November 2004	June 2020
Karen Wallace, Vice-Chair	December 2006	February 2019
Sylvia Nancy Watson	June 2009	June 2019
Dale Whitmore	July 2016	July 2018
Shelby Whittick	May 2016	May 2018
L. Kurt Wildman	May 2016	May 2018
Ma'anit Zemel	April 2016	April 2018

Ontario Special Education Tribunals

English Tribunal Members

Name	First Appointed	Term Ends
Ross Caradonna	May 2008	May 2018
Maureen Doyle*	August 2013	February 2021
Eva Nichols*	January 2005	August 2019
Jayashree (Jay) Sengupta*	August 2012	September 2018

French Tribunal Members

Name	First Appointed	Term Ends
Maureen Doyle*	August 2013	February 2021
Michelle Flaherty*	August 2013	June 2018

Social Benefits Tribunal

Name	First Appointed	Term Ends
Beverly Moore*, Associate Chair	October 2006	September 2018

Pamela Ahlfeld, Vice-Chair	October 2015	October 2017
Elizabeth Beckett*	August 2012	April 2017
Nathaniel Boivin	February 2017	February 2019
Shannon Braun	July 2016	July 2018
Terry Brouillet	June 2013	June 2018
Vicenzina (Enza) Buffa	July 2015	July 2017
Jean Buie	October 2013	October 2018
William Burke*	July 2015	July 2017
Sylvie Charron*, Vice-Chair	December 2009	October 2017
Lisa DiCesare	June 2015	June 2017
Patrick Doran*	June 1998	May 2017
Thomas F. Fagan*	June 2013	June 2018
Nancy Ferguson	August 2015	August 2017
Richard Ferris	July 2015	July 2017
Lisa Freedman	August 2013	August 2018
Romona Gananathan	September 2013	September 2018
Kelly Gaon	August 2008	June 2018
John Helis	July 2016	July 2018
Cheryl Henshaw	November 2014	November 2019
Brenna Homeniuk	December 2016	December 2018
Audrey Hummelen, Vice-Chair	June 2007	October 2017
Solape Ilori	October 2015	October 2017
Kanji Jain	October 2015	October 2017
Dawn Kershaw*	June 2006	May 2018
Jennifer Khurana*	July 2013	July 2018
Cyndi Kunkel	October 2015	October 2017
Maija Laitinen*	January 2017	January 2019
Georges Larivière	June 2015	June 2017

Greg Larsen	February 2017	February 2019
Tara Letwiniuk	May 2016	May 2018
Janice MacGuigan	May 2008	May 2018
Sherry MacIsaac	May 2013	May 2018
Mark Mascarenhas	October 2015	October 2017
Allan Matte	February 2014	February 2019
Carol Anne McDermott*	June 2007	June 2017
William Murray	June 2008	November 2017
Josephine Racioppo	September 2013	June 2017
Margaret Reynolds*	April 2006	April 2018
Jana Rozehnal	August 2015	August 2017
Jonelle Van Delft*, Vice-Chair	February 2015	June 2020
Dawn Wickett*	July 2016	July 2018
Marie-Claude Yaacov	May 2016	May 2018