

HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Applicant

- and -

KELLY DONOVAN

Respondent

APPLICANT'S CASE SUMMARY

Overview

1. This is a contravention of settlement application under [s. 45.9\(3\)](#) of the [Human Rights Code](#).
2. The application is in respect of the Respondent Ms. Donovan's breaches of the parties' June 8, 2017 Resignation Agreement. In particular, pursuant to the Agreement, Ms. Donovan confirmed that she was "freely and voluntarily resigning her employment with the Board". As well, Ms. Donovan agreed to the following:

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 ... the parties undertake that they will keep the terms

and existence of this Resignation Agreement in absolute 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 of 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.

Summary of the Applicant's Position

3. In spite of the clear and unambiguous terms of the Resignation Agreement, above, Ms. Donovan has made repeated public statements – not either required by law, as disclosure to her immediate family members, or to persons providing professional financial/legal advice – to the effect that she was “constructively dismissed” and/or otherwise improperly forced out of / eliminated from her employment, and referencing the Resignation Agreement and/or its terms. To the extent she has been “asked”, Ms. Donovan has made those statements instead of indicating only, as required by the Settlement Agreement, that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential.

4. In doing so, Ms. Donovan has repeatedly contravened the Resignation Agreement.

Extraneous Issues Raised by the Respondent

5. It is anticipated that Ms. Donovan will argue that events prior to the signing of the Resignation Agreement are relevant, to the interpretation of the Agreement or otherwise. They are not.

6. As this Tribunal has repeatedly recognized, a settlement is a contract and determinations under s. 45.9 of the *Code* are based on contractual principles: see for example *Maisonneuve v. Soullière*, [2018 HRTO 64](#), [para. 10](#).

7. In that regard, as the Court of Appeal for Ontario has held, “the parties’ intent and the meaning of their contract must be ascertained by looking at the actual words they used and the context in which they used them, but not by their subjective intention in using them: *Thunder Bay (City) v. Canadian National Railway Company*, [2018 ONCA 517](#), [para. 42](#), leave to appeal refused, [2019 CanLII 23877](#) (SCC).

8. Accordingly, what is relevant is the wording of the actual contract (in this case the Settlement Agreement signed by the parties on June 8, 2017), not any communications or events leading up to it, surrounding it, or after it.

9. In addition, beyond being irrelevant, any evidence of negotiations leading to the execution of the Resignation Agreement is inadmissible because it is subject to settlement privilege.

Conclusion

10. This sole issue on this application is narrow and straightforward: has Ms. Donovan contravened the June 8, 2017 Settlement Agreement by some or all of her public statements in question?

11. The Board’s position is that Ms. Donovan has repeatedly contravened the Settlement Agreement, and it is entitled to appropriate remedies accordingly.