

AMENDED THIS SEP 21 2018 PURSUANT TO  
MODIFIÉ CE "A" CONFORMÉMENT À  
 RULE/LA RÈGLE 26.02 ( )

THE ORDER OF \_\_\_\_\_  
L'ORDONNANCE DU \_\_\_\_\_  
DATED / FAIT LE \_\_\_\_\_

Court File No. CV-18-00605386-0000

  
REGISTRAR SUPERIOR COURT OF JUSTICE    GREFFIER COUR SUPÉRIEURE DE JUSTICE    **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](mailto:kelly@fit4duty.ca)