This submission is in reply to the submission of the Regional Municipality of Waterloo Police Services Board on December 11, 2025.

For the purposes of this submission:
Applicant: The Regional Municipality of Waterloo Police Services Board
Respondent: Kelly Donovan
Applications: 2018-33237-S & 2018-33503-S

Respondent's reply submissions are as follows:

CORRECTIONS:

1. The applicant is incorrect at paragraph 1 of their December 11, 2025, submission. The removal of the individual respondent, Bryan Larkin, is not an outstanding issue. There are no outstanding RFOP's filed by the applicant requesting such an order over the past 7 ½ years that application 2018-33237-S has survived.
2. To allow the applicant to request a new RFOP at this stage in the proceeding is procedurally unfair and would prejudice the respondent and cause undue delay, considering this proceeding has already survived for 7 ½ years. There is no excuse for failing to raise this issue at any point in time since the 2022 HRTO decision cited by the applicant.
3. Allowing the applicant to present a new issue at this stage in the proceeding is contrary to providing for the fair, just and expeditious resolution of these matters. Especially since the respondent's requests to dismiss the applicant's application have not been heard by the Tribunal.
4. The respondent once again urges the Tribunal to consider her prior submissions, which were all made in accordance with the Tribunal's rules, prior to allowing any new requests made by the applicant at the eleventh hour.
5. The application filed by the applicant, 2018-33237-S, has not faced any scrutiny, while the application filed by the respondent, 2018-33503-S, continues to be dissected by the Tribunal. This, in and of itself, would be an unfair application of the rules against the respondent while the applicant's application has survived for 7 ½ years.

LEGAL ISSUES:

6. The issue identified by the applicant at paragraph 4 of their December 11, 2025, submission can be easily managed. The same evidence referred to by the applicant was presented to labour Arbitrator Howard Snow on September 20, 2024, where the Regional Municipality of Waterloo Police Services Board also argued the same evidence was privileged under settlement privilege.
7. Arbitrator Snow ruled orally, (written ruling is attached), that the public interest favoured the admission of the evidence. The respondent believes the Tribunal will come to the same conclusion as Arbitrator Snow.
8. The applicant alleged in their November 7, 2019, reply submissions that "the inherent purpose of the Resignation Agreement itself" precluded the respondent from reviving allegations. The evidence claimed to be privileged, ("the evidence related to the negotiations leading up to the execution of the Agreement"), is the only evidence available to determine the inherent purpose of the agreement.
9. The respondent is prepared to argue admissibility of her evidence, as she did before Arbitrator Snow, at the outset of the hearing.

All of which is respectfully submitted by the applicant on December 12, 2025,

Kelly Donovan

From: **Howard Snow** snowarb@execulink.com
Subject: Confirmation of oral rulings - Duty of Fair Representation - Donovan & WRPA & WRPSB
Date: October 17, 2024 at 4:13 PM
To: Clifton Yiu cyiu@filion.on.ca, Kelly Donovan donovandih@gmail.com, Lauren Pearce lauren.pearce@jonespearce.com, Donald B. Jarvis djarvis@filion.on.ca, Kathleen Lipani Kathleen.Lipani@jonespearce.com, Leanne Frankcom lfrankcom@filion.on.ca

HS

The following is confirmation of my September 20, 2024, oral ruling on the admissibility of settlement communications leading to the resignation agreement between the Complainant and the Police Services Board. My ruling is applicable only to the admissibility of the communications in this duty of fair representation arbitration. For clarity, this ruling says nothing about the admissibility of these communications in any subsequent grievance arbitration (if there is one) or in a matter before the Human Rights Tribunal or in any other forum.

The parties agreed that settlement communications are normally privileged. The Employer sought to exclude the settlement communications. The Complainant and Union both sought to admit those communications. Many authorities were cited and relied upon by the parties.

There are exceptions to the privilege normally afforded to settlement discussions. One exception is when the public interest favours admission of the communications.

There are allegations of misrepresentation and fraud in these settlement discussions. The two primary parties - the Complaint and the Union - submitted that the communications were essential to resolving this duty of fair representation complaint The Complainant said the communications were essential to her proposed grievance. The Union asserted the communications were essential to their defence to the complaint of a violation of the duty of fair representation - the communications were essential for the Union to show they engaged in a good faith investigation of the Complainant's proposed grievance and fairly decided not to pursue her grievance.

I find there is a strong public interest in fairly resolving this duty of fair representation complaint. However, I am unlikely to be able to fairly resolve this complaint without the evidence of the settlement communications. I do not see how I can decide if the Union investigated the Complainant's concerns fairly without evidence of what those concerns were. Nor do I see how I can decide whether the Union's decision not to file a grievance here was arbitrary, discriminatory or in bad faith without evidence of what the Complainant sought to have the Union grieve and what the Union considered in reaching its decision. I therefore conclude that the communications are admissible on the basis that the public interest favours their admission.

****

The following is confirmation of my October 1, 2024, oral ruling on the Complainant's request to have a court reporter attend this arbitration, record the arbitration and possibly prepare a transcript.

The Union opposed the request and the Employer took no position.

The Union and Complainant agreed that the *Statutory Powers and Procedure Act* applies. Subsection 29 (1) of the *Act* is a general prohibition on recording the proceedings.

Subsection 29 (2) provides exceptions but I found none were applicable here. The Complainant did not seek the recording "for the sole purpose of supplementing" her notes and so that exception is not applicable.

The Complainant submitted a court reporter "is required for ... the making of a record" of the proceedings. There are likely thousands of labour arbitrations conducted in Ontario in any year - each has a record but very few have a court reporter or a transcript. I find a court reporter and/or a transcript are not "required for ... the making of a record".

Apart from that, there is a long history, and now a standard practice, not to have recordings and transcripts in labour arbitrations and I see no reason to depart from that approach. Speed, flexibility, efficiency and cost are key attributes of labour arbitrations. A court reporter and a transcript - even if voluntarily paid for by one party - seem to me to lessen the likelihood that this arbitration would be conducted in such an expeditious manner.

I rule against the Complainant's request for a court reporter.