



You may make an *Application for Contravention of Settlement (Form 18)* to the Human Rights Tribunal of Ontario if:

- You were a party to a written settlement of an application made under section 34 or 35 of the *Human Rights Code*, **and**
- the settlement was signed by the parties, **and**
- you believe a party has contravened the settlement.

Or

- You were a party to a settlement of a complaint made under the old Part IV before June 30, 2008 or during the six (6) month period following June 30, 2008, **and**
- the settlement was agreed to in writing, signed by the parties and approved by the Commission, **and**
- you believe a party has contravened the settlement.

Deadline:

- You must make your application within six (6) months after the contravention to which the application relates, **or**
- if there was a series of contraventions, within six (6) months after the last contravention in the series.

The HRTTO may extend this time if the HRTTO is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay.

Follow these steps to make your application:

1. Fill out this Form 18.
2. Attach a copy of the settlement.
3. Deliver a copy of Form 18 to each party to the settlement.
4. Complete a *Statement of Delivery (Form 23)*.
5. File Form 18 and Form 23 with the HRTTO.



Information for all parties who receive a copy of this Application for Contravention of Settlement:

You may respond to this Application for Contravention of Settlement by completing a *Response to an Application for Contravention of Settlement (Form 19)*.

Follow these steps to respond:

1. Fill out Form 19.
2. Deliver a copy of Form 19 to each party to the settlement.
3. Complete a *Statement of Delivery (Form 23)*.
4. File Form 19 and Form 23 with the Tribunal.

You must file your Response to an Application for Contravention of Settlement **14 days** after the Application for Contravention of Settlement was delivered to you.

Download forms from the Forms & Filing section of the HRTO web site at www.sjto.ca/hrto. If you need a paper copy or accessible format, contact us:

Human Rights Tribunal of Ontario
655 Bay Street, 14th floor
Toronto, Ontario M7A 2A3

Phone: 416-326-1312 Toll-free: 1-866-598-0322
Fax: 416-326-2199 Toll-free: 1-866-355-6099
TTY: 416-326-2027 Toll-free: 1-866-607-1240
Email: hrto.registrar@ontario.ca



Application Information	
Tribunal File Number:	
Name of Applicant:	The Regional Municipality of Waterloo Police Services Board ("WRPSB")
Name of Each Respondent:	Kelly Donovan

1. Your Contact Information (person or organization making this request)

First (or Given) Name Virginia		Last (or Family) Name Torrance		Organization (if applicable) WRPS	
Street Number 200	Street Name Maple Grove Road			Apt/Suite P.O. Box 3070	
City/Town Cambridge		Province Ontario	Postal Code N3H 5M1	Email virginia.torrance@wrps.on.ca	
Daytime Phone 519-650-8552	Cell Phone		Fax 519-650-8551	TTY	

What is the best way to send information to you? Mail Email Fax
 (If you check email, you are consenting to the delivery of documents by email.)

Check off whether you are the:

- Applicant Respondent Ontario Human Rights Commission
 Other - describe: _____

2. Representative Contact Information

I authorize the organization and/or person named below to represent me.

First (or Given) Name Donald		Last (or Family) Name Jarvis			
Organization (if applicable) Filion Wakely Thorup Angeletti LLP				LSUC No. (if applicable) 28483C	
Street Number 333	Street Name Bay Street			Apt/Suite Suite 2500	
City/Town Toronto		Province ON	Postal Code M5H 2R2	Email djarvis@filion.on.ca	
Daytime Phone 416-408-5516	Cell Phone		Fax 416-408-4814	TTY	

What is the best way to send information to your representative? Mail Email Fax
 (If you check email, you are consenting to the delivery of documents by email.)



3. Contact Information for the Other Parties to the Settlement

Name and provide contact information for all of the other parties to the settlement. If the other party is an organization complete **a) Organization**. If the other party is an individual complete **b) Individual**.

a) Organization

Full Name of Organization
 Waterloo Regional Police Association

Name of the person within this organization who is authorized to negotiate and bind the organization with respect to this application:

First (or Given) Name Caroline V. (Nini)		Last (or Family) Name Jones		Title Solicitor	
Street Number 155	Street Name Wellington Street			Apt/Suite 35th Floor	
City/Town Toronto		Province ON	Postal Code M5V 3H1	Email nini.jones@paliareroland.com	
Daytime Phone 416.646.7433	Cell Phone		Fax 416.646.4301	TTY	

b) Individual

First (or Given) Name Kelly		Last (or Family) Name Donovan			
Street Number 11	Street Name Daniel Place			Apt/Suite	
City/Town Brantford		Province ON	Postal Code N3R 1K6	Email kelly@fit4duty.ca	
Daytime Phone 519-209-5721	Cell Phone		Fax	TTY	

4. What is the date of the last alleged contravention or breach of the settlement?

Ongoing. (dd/mm/yyyy)

5. If you are applying more than six months from the last alleged contravention, please explain why:

See Schedule "A".



6. What term of the settlement do you allege has been contravened or breached? Provide all the material facts you are relying upon to support your claim that the settlement has been contravened or breached.

See Schedule "A".

7. Explain what remedy you wish the HRTO to provide.

See Schedule "A".

8. Declaration and Signature

Instructions: Do not sign your application until you are sure that you understand what you are declaring here.

Declaration:

To the best of my knowledge, the information in my Application for Contravention of Settlement is complete and accurate.

I understand that information about my Application for Contravention of Settlement can become public at a hearing, in a written decision, or in other ways determined by HRTO policies.

I understand that the HRTO must provide a copy of my application to the Ontario Human Rights Commission on request.

I understand that the HRTO may be required to release information requested under the *Freedom of Information and Protection of Privacy Act* (FIPPA).

Name:

Donald B. Jarvis

Signature:

Date: (dd/mm/yyyy)

28/06/2018

Please check this box if you are filing your application electronically. This represents your signature. You must fill in the date, above.

Freedom of Information and Privacy

The tribunal may release information about an application in response to a request made under the *Freedom of Information and Protection of Privacy Act*. Information may also become public at a hearing, in a written decision, or in accordance with tribunal policies. At the request of the Ontario Human Rights Commission (OHRC), the tribunal must provide the OHRC with copies of applications and responses filed with the tribunal and may disclose other documents in its custody or control.

**SCHEDULE “A” TO FORM 18
(CONTRAVENTION OF SETTLEMENT)**

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Applicant

- and -

KELLY DONOVAN

Respondent

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	THE PARTIES.....	1
III.	BACKGROUND	1
	A. <i>The HRTO Application</i>	1
	B. <i>Settlement of the HRTO Application: The Resignation Agreement</i>	7
IV.	MS DONOVAN ENGAGED IN A CONTINUING SERIES OF VIOLATIONS OF THE RESIGNATION AGREEMENT	8
V.	SUBMISSIONS	19
VI.	CONCLUSION.....	24

I. INTRODUCTION

1. This is an application by the The Regional Municipality of Waterloo Police Services Board (hereinafter referred to as the “WRPSB” or the “Board”) for an order for enforcement of the Resignation Agreement in which the parties voluntarily settled the Applicant’s application to the HRTO dated June 3, 2016, and having Tribunal File Number 2016-24566-I (the “HRTO Application”).

II. THE PARTIES

2. The WRPSB is an agency created under the *Police Services Act*, RSO 1990, c P-15 (“PSA”) that is responsible for the provision of adequate and effective police services to The Regional Municipality of Waterloo (including the cities of Kitchener, Waterloo and Cambridge).
3. Kelly Donovan commenced employment with the WRPSB in or around 2010. She was, at all material times, represented by The Waterloo Regional Police Association in respect of her employment with the WRPSB.

III. BACKGROUND

A. *The HRTO Application*

4. On or about June 6, 2016, Ms Donovan filed the HRTO Application alleging that she was discriminated against on the basis of sex and marital status. A copy of the HRTO Application is attached at **Tab 1**.
5. The foundation for Ms Donovan’s claim of alleged discrimination was a series of events that began with Ms Donovan’s delegation (or presentation) to the WRPSB on or about May 4, 2016.
6. The WRPSB is a civilian board that oversees the Waterloo Regional Police Service (the “WRPS” or the “Service”). The WRPSB is tasked with ensuring that the community is policed effectively, and that any and all policing standards are complied with.
7. Ms Donovan’s delegation to the Board on or about May 4, 2016 was regarding Ms Donovan’s belief that the Service was investigating domestic violence inconsistently

where members of the Service were involved, either as alleged victims or as alleged perpetrators. Members of the public as well as the media were present during Ms Donovan's delegation. As set out in her HRTO Application, "I presented this delegation because I believed there were serious issues of inconsistency during internal investigations, authorized by Chief Bryan Larkin". Ms Donovan identified herself as a police officer; referred to confidential information contained in a Crown Brief; criticized the Service and members of the Service; and suggested that police officers of the Service may have suppressed evidence in a criminal investigation.

8. Ms Donovan's delegation was predominantly focused on the Service's investigation of allegations against Sergeant Bradley Finucan, though Ms Donovan also referred to the Service's investigation of a complaint she made on behalf of an unnamed friend relating to alleged criminal harassment by an unnamed officer of the WRPS, as well as the Service's criminal investigations of Constable Jeremy Snyder.
9. Ms Donovan's actions in making a delegation to the Board at its open and public meeting and with media present on May 4, 2016, without prior notice or approval from the WRPS Chief of Police (or an appropriate delegate in the chain of command), and the serious allegations made against other members of the Service (including the investigators of the Finucan matter that ended in a criminal guilty plea) and potentially accessing a protected Crown Brief in the Finucan matter may have constituted misconduct under the *PSA*. Further, because of the extremely serious nature of the allegations Ms Donovan had made regarding the Service's investigations of domestic violence, the WRPS determined that it would be appropriate to ask another police service to conduct an independent review of the Service's investigation of Sergeant Finucan.
10. Ms Donovan also made it clear, due to the fact that her time for making her deputations ran out, that she would be re-attending the next Board meeting in June to complete her delegation.
11. On or about May 11, 2014, Ms Donovan met with Inspector Doug Thiel and Acting Inspector John W. Goodman, Professional Standards. At that meeting, Inspector Thiel issued a Directive to Ms Donovan directing that:

- Ms Donovan not appear before the Board without the permission of the Chief of Police;
 - Ms Donovan notify the Board's secretary via email that she would be cancelling her appearance at the July 2016 Board meeting;
 - Ms Donovan cooperate with the external review process by participating in interviews and providing information in support of her allegations to investigators; and
 - Ms Donovan be assigned to administrative duties (unless she preferred to be transferred to Patrol duties), and would not participate in the direct training of any Service members during the external review and during any pending *PSA* investigation.
11. At the same meeting, Ms Donovan was also issued a formal Notice of Investigation by Acting Inspector Goodman advising that, subject to and following an external review of the substance of Ms Donovan's allegations, Ms Donovan's conduct on May 4, 2016 would be investigated to determine whether her actions breached the *PSA* and constituted discreditable conduct, neglects of duty, and/or breaches of confidence. In her HRTO Application, Ms Donovan characterized the *PSA* Investigation as "bullying" and intimidation in response to her delegation.
 12. Notably, despite Ms Donovan's meeting with Inspector Thiel and Acting Inspector Goodman during which she had been expressly directed not to appear before the Board, Ms Donovan subsequently sent an email to members of the Board advising that she had been served with a Directive and a Notice of Investigation. Ms Donovan also asserted that her actions were above reproach and that she had no personal interest in any of the matters she brought to the Board's attention. Ms Donovan was subsequently served with a second Notice of Investigation on May 31, 2016 in relation to her email to members of the Board. This notice indicated that an investigation would be conducted to determine whether Ms Donovan's actions constituted deceit and/or discreditable conduct under the *PSA*. Once again, the Notice of Investigation ordered Ms Donovan not to have any contact with members of the Board without the permission of the Chief of Police.
 13. On or about June 2, 2016, Ms Donovan filed an internal complaint alleging that she had been discriminated against and harassed contrary to the *Human Rights Code* and WRPS

policy by various members of the Service in connection with her delegation. These allegations were repeated in the HRTTO Application.

14. In response to Ms Donovan's delegation to the Board and subsequent discrimination and harassment complaints, the WRPS took the following steps:
 - (a) On or about May 25, 2016, Chief Larkin requested York Regional Police ("YRP") review the criminal investigation of Sergeant Finucan to ensure that the incident had been properly investigated. The YRP's external review was completed on or about August 12, 2016. The YRP investigator concluded that the Service had conducted a full, fair and transparent criminal investigation against Sergeant Finucan, and that the Service had reasonable grounds to arrest and charge Sergeant Finucan.
 - (b) On or about July 12, 2016, the Board retained Lauren Bernardi of Bernardi Human Resource Law LLP to conduct an independent, third party investigation into Ms Donovan's internal harassment and discrimination complaint.
15. On consent, by letter dated July 25, 2016, the HRTTO placed the HRTTO Application in abeyance pending the conclusion the internal investigation processes.
16. During the period of deferral, the WRPS took the following additional steps in response to Ms Donovan's delegation to the Board and subsequent internal discrimination and harassment complaint:
 - (a) On or about November 29, 2016, the Service commenced an internal review of the allegation Ms Donovan had made during her delegation to the Board in respect of the Service's investigation of a reported harassment incident relating to a friend of Ms Donovan and a member of the Service. In April 2015, Ms Donovan reported that her friend was being repeatedly contacted by a member of the Service with whom her friend had previously been in a romantic relationship. Ms Donovan's report was investigated at that time, though Ms Donovan's friend did not wish to make a complaint. In any event, an internal review of the April 2015 report was conducted by Investigator Sergeant Greg Fiss of the Domestic Violence Unit commencing on or about November 29, 2016. Investigator Fiss

found that the appropriate procedures had been followed by the Service in investigating the April 2015 report. This internal review was completed on or about January 16, 2017.

- (b) As a result of a law suit commenced by Constable Jeremy Snyder arising out of his acquittal following a criminal trial for sexual assault, the Board had already had a review done and received an independent report, subject to solicitor-client privilege and litigation privilege – the existence of which was well-known to Constable Snyder. In addition, Constable Snyder was actively involved in another criminal prosecution (this time for domestic assault, mischief and threats) that resulted in a withdrawal of charges and peace bond, but was still outstanding at the time of Ms Donovan's deputations to the Board. On January 10, 2017, Constable Snyder pleaded guilty to Discreditable Conduct under the *PSA* arising out of the underlying incidents of the criminal charges.
- (c) The independent, third-party investigation into Ms Donovan's internal harassment and discrimination complaint was concluded in October 2016. Ms Bernardi's report was issued on October 31, 2016, and was shared with counsel for Ms Donovan on or about November 27, 2016. Ms Bernardi found that there had been no discrimination based on sex, and that no members of the Service had engaged in any form of harassment. What is more, Ms Bernardi noted that it was reasonable in the circumstances for the Service to take the position that an investigation into Ms Donovan's conduct in making a delegation to the Board was warranted.

- 17. On or about December 14, 2016, Ms Donovan requested that her HRTO Application be reactivated.
- 18. The WRPSB opposed Ms Donovan's request to reactivate her Application, taking the position that the Application should continue to be deferred pending the conclusion of an ongoing investigation under the *PSA* and any disciplinary proceeding that may arise in the event that charges were laid against Ms Donovan under the *PSA*. Ms Donovan had made serious allegations against other members of the Service and may have improperly accessed and publicly shared details from a protected Crown Brief in the Finucan matter,

all of which needed to be investigated to determine whether such actions were neglects of duty, breaches of confidence, discreditable conduct and/or deceitful.

19. The Service had reasonable and demonstrable grounds to investigate Ms Donovan's conduct on and following May 4, 2016 and to determine whether charges under the *PSA* were necessary and appropriate. This investigation, by consent of Ms Donovan's counsel, was deferred pending the completion of the internal Harassment and Discrimination investigation and the final report regarding the independent review conducted by the YRP of the Finucan matter.
20. A *PSA* investigation is a statutorily mandated employment misconduct and discipline system. In this case, it was to cover the same facts and underlying allegations made by Ms Donovan in her HRTO Application under the *Code*. In addition, the determination of whether Ms Donovan had engaged in misconduct under the *PSA* would have borne directly upon the Tribunal's assessment of the actions of the Service and the outcome of the HRTO Application.
21. Furthermore, should the *PSA* allegations of misconduct have been considered of a serious nature or had Ms Donovan refused an informal resolution, the *PSA* mandated a hearing to take place that is subject to the *Statutory Powers and Procedures Act*. Such hearing is a public proceeding wherein all evidence filed, transcripts, and the decision itself are all public and may be filed in any subsequent proceeding.
22. The WRPSB, therefore, requested that the Tribunal defer the HRTO Application pending the conclusion of the *PSA* investigation and, in the event that charges were laid against Ms Donovan, any resulting disciplinary proceeding under the *PSA*.
23. By decision dated February 17, 2017, the HRTO found that the issues "while not co-extensive, significantly overlap such that all of the concerns with duplicative concurrent litigation are in play". Accordingly, the HRTO deferred the HRTO Application for 60 days or such shorter time period in which a decision was made as to whether or not more charges ought to be brought against Ms Donovan under the *PSA*.
24. However, the WRPSB was not able to reach a final decision regarding whether to bring charges against Ms Donovan within the 60 day period due to a necessary interview with

Ms Donovan being repeatedly rescheduled and delayed to accommodate Ms Donovan's medical condition(s).

25. In the result, the HRTO Application was deferred by HRTO letter dated May 5, 2017 for a further period of 60 days.

B. *Settlement of the HRTO Application: The Resignation Agreement*

26. During the period of deferral, the parties successfully negotiated a Resignation Agreement 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. 2016-245566-I (the “Application”); and (b) the Board’s investigation into whether Ms 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”)”.
27. Pursuant to the Resignation Agreement, Ms Donovan expressly confirmed that “she is freely and voluntarily resigning her employment with the Board effective on or about June 25, 2017” and that this resignation was “irrevocable”.
28. Not only did the parties expressly agree that Ms Donovan resigned but the parties agreed to strict confidentiality provisions pursuant to which the parties undertook to keep the terms of the Resignation Agreement in absolute and strict confidence. The Resignation Agreement provided that “[i]f asked, the parties ... will indicate only that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential”.
29. The Resignation Agreement also included a Full and Final Release pursuant to which Ms Donovan released and forever discharged “the Regional Municipality of Waterloo Police Services Board ...from any and all ...complaints...claims....which I have ever had...by reason of my employment with or the resignation of my employment with the Regional Municipality of Waterloo Police Services Board... or which arises out of or in any way relates to the matters giving rise to my HRTO Application”. Pursuant to the Full and Final Release, Ms Donovan further agreed that the Release could be raised as a complete bar to “any complaint against any of 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 HRT0 Application”.

IV. MS DONOVAN ENGAGED IN A CONTINUING SERIES OF VIOLATIONS OF THE RESIGNATION AGREEMENT

30. Notwithstanding that two of the clear terms of the Resignation Agreement were that Ms Donovan freely resigned and she was prohibited from any further “complaints” against the WRPSB, Ms Donovan has engaged in a continuing series of violations of the Resignation Agreement by (a) stating that she was constructively dismissed contrary to the agreement that she resigned, (b) complaining about the Service and repeating the allegations giving rise to her HRT0 Application, and (c) violating the confidentiality provisions.
31. Ms Donovan’s violations of the Resignation Agreement appear to be part of a scheme to advertise and generate business for Fit4Duty, a business established by Ms Donovan, to provide:
- (a) training to police services boards regarding such matters as human rights, systemic racism and ethical leadership;
 - (b) speaking engagements regarding Ms Donovan’s allegations, accountability, transparency, and ethics;
 - (c) engagement strategies;
 - (d) policy development and review services; and
 - (e) workplace investigations.

Excerpts from the Fit4Duty website are attached at **Tab 2**.

32. Put simply, notwithstanding that she fully and finally resolved her HRT0 Application and the allegations therein and notwithstanding the undertakings of confidentiality, Ms Donovan is seeking to profit from her allegations without regard to either the undertakings in the Resignation Agreement or the deleterious impact of her actions on the reputation of the WRPS.
33. The particulars of Ms Donovan’s ongoing series of violations of the Resignation Agreement commenced with the publication of a 93-page book entitled “*Report of*

Systemic Misfeasance in Ontario Policing and the Coordinated Suppression of Whistleblowers". A copy of the Book is attached at **Tab 3** and is sold for \$25 on the Fit4Duty website at <https://fit4duty.ca/book>.

34. The Book appears to be intended, at least in part, to generate business for Fit4Duty which is advertised in the Executive Summary as being available to "heighten your Ethical Standard". The Book advertises Ms Donovan as follows at page 3:

"Kelly Donovan is available for speaking engagements, training, policy development, and whistleblower programs for both government and corporations. For more information visit www.fit4duty.ca."

35. In effect, Ms Donovan's Book is a 93-page "complaint" against the WRPS and police services across the Province. Indeed, the Book repeats the allegations giving rise to the HRTO Application. For example, the Book provides at page 10:

"It wasn't until 2015, that I witnessed misconduct during multiple internal investigations at my own police service and I soon learned that the issue was systemic. I witnessed police officers sweep allegations under the rug, violate internal policy, if they were about a favourable officer and I saw good, hardworking officers be humiliated and non-criminal allegations be stretched into homicide scale criminal investigations for officers who were not favourable. I became determined to address the mishandling of internal investigations and deficiencies in police legislation. I began my journey by addressing my police services board with my issues, since I had learned that my service does not permit members to file internal complaints. I was subsequently disciplined, constructively dismissed, my issues were not adequately addressed and I began to research just how often police services silence whistleblowers. I attempted to have the OCPC investigate my service for changing internal policy to no avail. I attempted to have the OIRPD investigate officers who conducted a negligent investigative review to no avail. I complained to the Human Rights Tribunal for the reprisal action taken against me and the Tribunal refused to intervene. I went as far as asking the Office of the Ombudsman to examine the systemic issues and to date, no oversight body has chosen to exercise their legislated authority or investigate. From the time I reported the issues to my Board (May, 2016), to the date of my resignation in June, 2017, the service has been more interested in attacking my credibility than acknowledging that these problems exist and show a true desire to improve."

36. At pages 74 to 77 of her Book, Ms Donovan set out a more detailed complaint regarding her personal experiences, repeating the allegations underlying the HRTO Application, as follows:

“In 2015, Constable Kelly Donovan, a 6-year member of the Waterloo Regional Police Service (WRPS), witnessed misconduct by senior investigators at the WRPS by not following service procedure and failing to properly investigate criminal allegations against members of the WRPS. Donovan began to research avenues to address complaints of internal misconduct. Donovan learned that the WRPS procedure on Complaints had been changed in April, 2014, to no longer allow a member of the service to make a complaint through the chain of command. Donovan learned from Constable Jeremy Snyder that he had submitted an internal complaint following his acquittal from criminal charges in January, 2014, and had never received a response. Donovan learned that although the WRPS had prohibited members from making internal complaints there were no adequacy standards established by the Ministry requiring the WRPS to maintain such policy.

Donovan consulted with other officers during her off-duty time and determined that several issues existed at the service with the lack of identification of conflicts of interest during investigations, lack of policy on ethics and conflicts of interest, and overall inconsistency in the manner in which the service exercises discretion and investigates allegations against its officers. Donovan extensively researched current legislation and determined that the only manner to address concerns with the police service was through the police services board. Donovan was aware that the Board is legislatively responsible for the provision of adequate and effective police services in the municipality.

In May, 2016, Donovan addressed the WRPS Board by way of delegation regarding the inconsistencies in internal investigations. Throughout the ten minutes that Donovan was allowed to speak the Board remained in public session, it is at the Board’s discretion to enter into a closed session.

A week later, Donovan was served with a Notice of Investigation for six PSA allegations, and directed by the Chief of the WRPS to no longer address the Board at future meetings. That same day, the Cambridge Times published an article about Donovan’s delegation which stated that Chief Larkin assured the media “that the officer has a democratic right to vocalize her disapproval during the public session of the police board meeting.” Larkin also questioned Donovan’s decision to address the civilian board stating there are many mechanisms within the force and the union to call for change. Larkin added that investigations are done by “exemplary” and high-calibre members with input from the Crown Attorney’s office.

Donovan sent an email to Board members to notify them of the reprisal action taken against her and was served with a second Notice of Investigation for doing so, including allegations of two further offences under the PSA. At that time, Donovan was ordered by the Chief to not communicate with members of the Board.

Donovan filed workplace harassment and human rights complaints immediately.

Donovan also filed a complaint with the OCPC regarding the change of service procedure by the WRPS to prohibit a member from making an internal complaint and regarding the conduct of members of the Board to suppress her complaints addressed in her delegation.

The WRPS hired a lawyer to complete the workplace harassment investigation. According to Donovan, this investigation was biased and did not objectively investigate her allegations or even deny them. The investigator focused much of her final report on the personal life of Donovan as opposed to Donovan's allegations of workplace harassment. The lawyer even stated in her report that Donovan was not a reliable witness because she deflected the questions regarding her personal life and attempted to refocus the interview on her allegations of harassment.

The WRPS contracted the York Regional Police Service (YRP) to conduct an investigative review of one of the criminal investigations cited in Donovan's delegation to the Board. Donovan was interviewed by the senior investigator from YRP and provided an extensive list of false statements made in court documents by WRPS investigators and victim, who was also a police officer. Donovan provided the YRP investigator with a list of exculpatory evidences that were known to investigators and which they failed to report in favour of the defendant.

...

Donovan's Human Rights Tribunal of Ontario (HRTO) complaint had been deferred in July, 2016, upon consent. In December, 2016, (upon completion of her workplace harassment investigation and investigative review by York), Donovan applied to have the HRTO matter resume. The WRPS objected and requested another deferral in order to prosecute Donovan under the PSA. Donovan cited several violations of her Charter Rights in her objection to the request by WRPS, alleging that a deferral of her HRTO application is in essence permitting reprisal by the WRPS, further harassment and discrimination and denying her fundamental rights afforded to her by the Charter. In February, 2017, the HRTO delivered a decision to allow WRPS the continued deferral of Donovan's Human Rights complaint. The HRTO's decision did not address Donovan's allegations of violations of her Charter Rights or reprisal.

....

Failing the intervention by any independent agency into her matter, Donovan remained the subject of a PSA investigation. The misconduct reported by Donovan to the Board has never been objectively and impartially investigated.

Donovan did not receive any financial support from her Association and since May, 2016, had been forced to work in a toxic environment, doing nothing but administrative duties at a desk in a basement office at headquarters with no daylight. As of June, 2017, Donovan chose to resolve all matters between herself and the WRPSB in order to focus on starting her own business (Fit4Duty™) and

moving on with her life. This ordeal cost Donovan over \$10,000.00 in legal fees.”

37. In addition to her personal complaints and the public repetition of the allegations and factual underpinnings of her HRTO Application, Ms Donovan outlined in the Book various complaints about the treatment of others, including:
- (a) At page 11, Ms Donovan wrote that in her policing career she “saw very qualified, confident and intelligent women come and go because they refused to remain in the toxic environment, impenetrable to change; that is policing”.
 - (b) Commencing at page 36, Ms Donovan complained about the conduct of the Chief of the WRPS in respect of his release of a personal email sent by Constable Craig Markham.
 - (c) At pages 54-55, Ms Donovan set out complaints against the WRPS in respect of matters regarding Constable Jeremy Snyder and Sergeant Bradley Finucan.
 - (d) At pages 57-58, Ms Donovan complained about the treatment of Rajiv Sharma by the WRPS.
38. Ms Donovan’s Book generated media attention, including the following:
- (a) In an interview with 570 News, Ms Donovan is recorded as saying that the WRPS is attacking her credibility and failing to acknowledge the problems that exist. A copy the inquiry from 570 News is attached at **Tab 4**. A copy of the 570 News article dated July 17, 2017 is attached at **Tab 5**.
 - (b) A CBC report dated July 18, 2017 is attached at **Tab 6** and records Ms Donovan as alleging that she was subject to reprisals for raising issues with the WRPS regarding its handling of internal investigations.
39. Subsequent to the publication of her Book, Ms Donovan continued to make public complaints about the WRPS, repeating both the allegations giving rise to her HRTO Application and the Potential *PSA* Charges and alleging that she was constructively dismissed. These complaints and allegations have been made in various public speaking engagements, communications with government and the media, and through social media (including her website, her LinkedIn account, her twitter account, Facebook (at fit4dutyanda) and YouTube). The particulars of this ongoing series of contraventions of the Resignation Agreement include the following.
40. In or about June 2017, Ms Donovan established a twitter account (https://twitter.com/fit4duty_ethics?lang=en), which she has used as a forum to advertise

Fit4Duty and make complaints against the WRPS and other police services. For example, on April 25, 2018, Ms Donovan posted a tweet stating that she “exposed internal corruption” and that Chief was allowed to “silence” her and “take reprisal”. A copy of this tweet is attached at **Tab 7**.

41. In September 2017, Ms Donovan appeared before the WRPSB asking them to hire her to help train board members. In a CBC report regarding her presentation, Ms Donovan was reported as saying “officers who complain are treated unfairly and targeted by their superiors”. A copy of the CBC report is attached at **Tab 8**.
42. On or about November 14, 2017, Ms Donovan attended the Ryerson Forum on Police Oversight accountability and Public Consent at which she gave a video interview. During the interview, Ms Donovan stated that she addressed the Board about “corrupt practices”, “favoritism” and “abuse of power” which resulted in the Service taking “punitive action” against her and imposing discipline and she was “ultimately silenced”. A copy of the interview can be found on YouTube at <https://www.youtube.com/watch?v=PYEPmH4wV5U>.
43. On or about December 11, 2017, Ms Donovan presented to the Durham Regional Police Services Board regarding gender diversity and the services she provides through Fit4Duty. During her presentation, she alleged that when she raised allegations of “internal corruption” during her time as a police officer, she was “silenced and disciplined as a result”. Her presentation is available on YouTube at <https://www.youtube.com/watch?v=VPllMYKa5Ag>.
44. By letter dated January 8, 2018, Ms Donovan wrote to the Honorable Yasir Naqvi, the Attorney General, alleging that she has “personal knowledge of the issues at WRPS” and holding him responsible for ensuring that “this misfeasance does not continue, and that those committing these unethical and illegal acts are held accountable”. Attached to her letter is a detailed complaint against the WRPS repeating the allegations giving rise to her HRTO Application. A copy of Ms Donovan’s letter is attached to her submissions to the Standing Committee on Justice Policy in respect of Bill 175, An Act to implement measures with respect to policing, coroners and forensic laboratories and to enact, amend

or repeal certain other statutes and revoke a regulation (“Bill 175”), which are set out at **Tab 9**.

45. On February 22, 2018, Ms Donovan appeared before the Standing Committee on Justice Policy in respect of Bill 175. During her presentation, Ms Donovan made numerous allegations against the WRPS, repeated the allegations underlying the HRTO Application and alleged that she had been constructively dismissed. A copy of her submissions is attached at **Tab 9** and a copy of the transcripts are at **Tab 10** (commencing at page JP-667). The allegations in her oral presentation include:

“Ms. Kelly Donovan: Thank you. My name is Kelly Donovan and up until June 2017, I was a police officer with Waterloo Regional Police....

During my time at Waterloo, I witnessed misfeasance during internal investigations of other police officers at the service; more specifically, unlawful arrest of members, corrupt investigations and criminal allegations being overlooked.

Waterloo only allows members of the public to make a complaint of misconduct, and the OIPRD does not accept complaints from police officers. Therefore, I made a lawful delegation to my police services board to disclose the misconduct of several high ranking members of the service and, as a result, I was disciplined and silenced.

Chief Bryan Larkin ordered me to have no further contact with members of the board. I was relegated to administrative duties and I was put under investigation for eight Police Services Act charges. There was never a complaint from a member of the public; this was the result of a chief’s complaint. **Over the next 14 months, I was constructively dismissed. Chief Larkin used the Police Services Act to silence me so that I could no longer disclose to the board the unethical conduct happening within the service.**

Following my delegation to the board, another police service was contracted to conduct an impartial review of a recent internal criminal investigation. That review was negligent and biased, and is irrefutable evidence that when police investigate police, there is bias.

During my constructive dismissal, I wrote a 93-page report citing cases that show just how systemic misfeasance is in Ontario police services and how often police chiefs and ineffective oversight bodies are able to silence police whistleblowers. This report is contained in tab A of my submission. I made complaints to all of

the applicable police oversight bodies and none of them chose to enforce their legislated authorities.

....

The lack of consultation prior to the release of Bill 175 shows a continued reluctance by government to accept the gravity of internal corruption that exists within our police services.

I am living proof that internal corrupt practices are eliminating good, honest people from the profession. I was an exemplary police officer until Chief Larkin used internal discipline to constructively dismiss me. Nothing in Bill 175 would prevent what happened to me from happening again to another honest police officer. In fact, after I was diagnosed with post-traumatic stress disorder last February, I could have faced termination under part VII of schedule 1.”

[emphasis added]

46. On or about March 1, 2018, Ms Donovan again addressed the Standing Committee on Justice Policy about Bill 175. At this presentation, Ms Donovan presented on behalf of Angie Rivers and repeated various complaints and allegations against the WRPS. Without limitation, she alleged that she reported “internal corruption” and, as a result, the Chief “targeted” her, she faced *PSA* charges, and she was “constructively dismissed”. She later elaborated that she reported corruption to her Board and instead of listening they allowed the Service to come after her “punitively”. She further stated that the Human Rights Tribunal did not help her. A copy of the transcripts is attached at **Tab 11** (see pages JP-718 to JP-720).
47. On or about March 5, 2018, Ms Donovan sent an email to various members of the WRPS attaching a link to her YouTube channel and her presentation to the Standing Committee on Justice Policy regarding Bill 175. A copy of her email is attached at **Tab 12**.
48. On or about March 7, 2018, Ms Donovan published an article on her LinkedIn account entitled “Perception of Bias? Or, Blatant, Advertised Bias”. The same article was posted on the Fit4Duty blog on March 10, 2018 (a copy of the article is attached at **Tab 13**). In the Article, Ms Donovan complained of corruption at the WRPS and alleged that she was constructively dismissed. She wrote, *inter alia*:

“If you follow my material, you’ll know that in 2016 I reported to my police services board that corruption existed during internal investigations. As a result of that report, I faced constructive dismissal. In 2017, I resigned and published a research paper to bring those systemic issues to light....

...

Now, police chiefs can use internal discipline, criminal charges AND the officer's disability as a means to dismiss them. I know this; because it happened to me.”

49. In addition to the above, Ms Donovan has engaged in numerous speaking engagements across the country repeating her allegations of corruption, lack of integrity and constructive dismissal.
50. In addition to her linkedin and twitter accounts, Ms Donovan maintains a website “fit4duty.ca” and a blog (<https://fit4duty.ca/kelly-donovan>). She continues to use these to post complaints about the WRPSB, the particulars of which include.

- (a) On the “Her Story” section of the Fit4Duty website, Ms Donovan wrote:

“Fit4Duty Founder & President, Kelly Donovan, had been a police officer for 5 years when she witnessed corruption within her police service when conducting internal investigations. In May, 2016, Kelly addressed her Police Services Board since they are the oversight body responsible for the effective management of the police service.

The issues Kelly addressed were not objectively or impartially investigated and she became the subject of the very corrupt internal investigation process she had originally addressed.

Over the next 14 months, Kelly contacted every government agency responsible for police oversight to draw attention to the reprisal she was now facing and no agency was willing to intervene. Kelly was forced to resign from policing, after facing a protracted and corrupt discipline proceeding that would have lasting effects on her career. She released a report to the media detailing the corruption in policing, and later published her first book.”

- (b) On January 31, 2018, Ms Donovan posted a blog entry entitled #MeToo, but #NotYou” in which she alleged corruption and threats by the WRPS. She wrote:

“When I came forward with allegations of corruption during internal investigations, I was threatened with charges and taken out of my job.

...

Well, when I chose to go public with my Report in July, 2017, I did so because I had investigated just how often that is not the case. Our laws around transparency and disclosure by police services are so out of date and inadequate that police services have been able to use the Oath of Secrecy as a way to silence victims, silence witnesses, and allow total autonomy of leadership. What was once an Oath to protect members of the public from ever having their interactions with police exposed, has evolved into a breeding ground for internal corruption and selective suppression of information. No one can tell me I'm wrong; I have lived it. And the actions the Waterloo Regional Police Service took against me cannot be disputed.”

- (c) On February 4, 2018, Ms Donovan posted a blog entry entitled “Are all Whistleblower Programs created equal?” in which she implied that the WRPS suppresses complaints and punishes complainants.
- (d) On or about March 10, 2018, Ms Donovan posted the above mentioned blog entitled “Perceived Bias? or Blatant advertised Bias?”
- (e) On April 5, 2018, in a blog entry entitled “The \$1.27M "Bad Apple?"”, Ms Donovan accused the WRPS of misfeasance and wasting taxpayer funds and “ineffective management”. She also referred to policing as “one of the most toxic work environments”.
- (f) On May 11, 2018 in a blog entry entitled, “What Policing Culture is Doing to Good People” Ms Donovan alleged that the WRPS knowingly tolerated unprofessional and sexual interactions in the workplace:

“Luckily, I never had to deal with any physical advances when I was a "PW" (police woman - common nickname for female constables). But, to say that there wasn't locker room banter in the briefing room, commentary about women encountered the night before, discussions better left for the bar than a professional workplace... I'd be lying. Policemen have been very comfortable in their work environments, absent the need to act professionally or careful to not offend anyone. No one listening was going to do anything about it, and the women were "good sports" and "sucked it up." Some of them are having a very hard time adjusting to a new day where police are professionals and expected to act as such.”

51. Ms Donovan also has a YouTube Channel (Fit4Duty – the Ethical Standard) in which she regularly posts videos including allegations of impropriety by the WRPS and complaints of constructive dismissal, the particulars of which include:
- (a) On July 9, 2017, Ms Donovan published a video entitled “Fit4Duty Intro” in which Ms Donovan alleged that maintaining her integrity and following her internal morals and ethics cost her her career as a police officer.
 - (b) On November 24, 2017, Ms Donovan published a video entitled “Fit4Duty Founder Kelly Ms Donovan’s Story” in which she alleged that she was silenced, charged and lectured as a result of having raised issues of impropriety in the Service.
 - (c) On December 11, 2017, Ms Donovan published a video of her presentation to the Durham Regional Police Services Board in which she stated, *inter alia*, that she “tried to address internal corruption with my police services board and I was silenced and disciplined as a result”.
 - (d) On February 23, 2018, Ms Donovan published a video of herself speaking at the public consultation hosted by Justice Tulloch during the Independent Police Oversight Review in October 2016 as well as a video of her presentations to the Standing Committee on Justice Policy about Bill 175.
 - (e) On March 2 and 5, 2018, Ms Donovan published various videos including portions of her presentations to the Standing Committee on Justice Policy about Bill 175.
 - (f) On March 5, 2018, Ms Donovan also published a series of video clips collectively entitled “Why we need Whistleblower Programs for Police”, in which she stated, *inter alia*, that her allegations were not taken seriously and she became the subject of an investigation. She stated when she spoke up she was subject to discipline and removed from her position at the Service and she was “made an example of”.
 - (g) On May 19, 2018, Ms Donovan published a video entitled “About my Book”, in which she says 100s of officers across Ontario have “tried to do the right thing” and “been silenced by the system”.
 - (h) On June 21, 2018, Ms Donovan published a video entitled “Kelly Donovan at One Woman International Fearless Women’s Summit in St. John’s Newfoundland”, in which she says that internal investigations at WRPS were “corrupt” and “negligent”. The complaints in the video include the following. She said there were cases of evidence being withheld and allegations being “swept under the rug”. Ms Donovan described how she went to the Board to report “systemic corruption” and a “web of people who are willing to cover it up because they all want to see their next promotion”. She said that as a result she was told that the Chief did not want her to communicate with the Board any more, she was removed from her office and put in a basement, and she was put under

investigation for *PSA* charges. She said she was “vilified” and “constructively dismissed”. She also said that she has been going across Canada telling her story.

V. SUBMISSIONS

52. Section 45.9(1) of the *Code* provides that the settlement of an application under the *Code* that is agreed to in writing and signed by the parties is “binding on the parties”.
53. Not only are settlements legally binding, but adherence to settlements promotes essential *Code* values. The Tribunal has repeatedly recognized that a contravention of a settlement can undermine the administration of justice, discredit the human rights system, and create adverse incentives in respect of dispute resolution. In *Saunders v. Toronto Standard Condominium Corp.* No. 1571 2010 HRTO 2516, the Tribunal stated:

“Respect for terms of settlement is not only a legally binding, contractual obligation; it also promotes essential *Code* values. A contravention of settlement can undermine the administration of justice by discrediting the human rights system and generating wrong disincentives to negotiation. The uncertainty created by a contravention of settlement potentially undermines the substantive and procedural provisions of the *Code*. An award of monetary compensation can help reflect both the private and public importance of complying with settlement terms.”

See also *Ye v. Pestell Pet Products Inc.* 2014 HRTO 156.

54. In determining the meaning of contractual settlement provisions, the primary goal is to give effect to the parties’ intentions.
55. In the present case, the primary intention of the parties was clearly set out in the Resignation Agreement. This intention was to “fully resolve and settle” the HRTO Application and the Potential *PSA* Charges. Accordingly, the parties agreed that Ms Donovan would “withdraw and discontinue” the HRTO Application in paragraph 4, execute a Full and Final Release, and maintain confidentiality over the Resignation Agreement other than to indicate that “all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which are strictly confidential.” Despite this clear and fundamental purpose, Ms Donovan has persisted in publicly repeating the allegations giving rise to the HRTO Application. Rather than concluding the HRTO Application, Ms Donovan has simply shifted her allegations into the public domain. Ms

Donovan's actions are a blatant and continuing failure to abide by the terms of the settlement.

56. She has further violated the provisions of the Full and Final Release, which forms an integral part of the Resignation Agreement, by raising new "complaints" against the WRPSB and/or the WRPS. This is a clear violation of the Full and Final Release, pursuant to which Ms Donovan released and forever discharged "the Regional Municipality of Waterloo Police Services Board ...from any and all ...complaints...claims....which I have ever had...by reason of my employment with or the resignation of my employment with the Regional Municipality of Waterloo Police Services Board... or which arises out of or in any way relates to the matters giving rise to my HRTO Application". Pursuant to the Full and Final Release, Ms Donovan also expressly agreed that the Release could be raised as a complete bar to "any complaint against any of 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". As such, the Release specifically provides that it is a bar against all complaints against the Releasees or anyone connected with them. The Release covers but is not limited to those allegations giving rise to the HRTO Application.
57. In addition, Ms Donovan has violated the confidentiality undertakings in the Resignation Agreement. Specifically, paragraph 16 of the Resignation Agreement requires the parties to "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". Read in context, it is clear that the parties intended this confidentiality undertaking to apply broadly. The parties specifically included a clarity note confirming that the parties will not "publicize, discuss, disclose or communicate in any way without 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... will indicate only that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential". Ms Donovan has not restricted her comments to the agreed upon statement that her complaints were resolved to the parties' mutual satisfaction but has persistently and publicly repeated her allegations.

58. Finally, while the Resignation Agreement provides that “Ms Donovan hereby confirms that she is freely and voluntarily resigning her employment” and that this resignation is “irrevocable”, Ms Donovan has publicly stated that she was constructively dismissed. Publicly alleging constructive dismissal is incompatible with and directly contradicts her agreement that she freely and voluntarily resigned her employment.
59. Subsection 45.9(8) of the *Code* gives the Tribunal broad powers to remedy contraventions of such settlements. Specifically, the Tribunal may make “any order that it considers appropriate to remedy the contravention”.
60. The Tribunal has recognized that it has broad remedial authority to remedy any contravention of a settlement and that this power includes both common law remedies and “innovative remedial action”. In *Saunders v. Toronto Standard Condominium Corp.* No. 1571, 2010 HRT0 2516, the Tribunal stated at paragraph 39:

“Section 45.9(8) gives the broad power to make “any order that it considers appropriate to remedy the contravention.” There is no reason to limit the potential scope of this power. At minimum, it allows for consideration of any common law remedy, and may contemplate additional or innovative remedial action, subject to the circumstances of the case and the discretion and statutory authority of the Tribunal.”

61. To assist it in determining the appropriate remedy, the Tribunal has considered the following questions as set out in *Saunders v. Toronto Standard Condominium Corp.* No. 1571 2010 HRT0 2516:

For the purposes of this case, I find it appropriate to ask the following questions in order to determine the appropriate remedy:

- What is the nature of the breach – does it go to the heart of the MOS?
- Does anything need to be done to fulfil the terms of the MOS? If so, what?
- Were the applicant’s contractual expectations adversely affected?
- Did the applicant suffer any quantifiable harm or material loss as a result of the breach?

□ Did the applicant suffer any harm to dignity, feelings or self-respect as a result of the breach?

62. These factors all weigh in favour of significant remedies, including substantial damages, in this case.

63. The Tribunal has recognized that damages must recognize the cost, inconvenience and aggravation involved in enforcement of the settlement. In *Harvey v Newtek Automotive*, 2013 HRTO 677, the Tribunal stated:

“This Tribunal can exercise its discretion to award a reasonable amount of damages for breach of the settlement in the face of a blatant and continuing failure of a respondent to abide by the terms of a settlement, particularly in the absence of an explanation for that breach. The damages can amount to an award which recognizes that there is some cost, inconvenience and aggravation involved with the enforcement of the settlement. The award, however, should be made solely as against the party who has breached the settlement in a material respect and always in an amount that is appropriate under the circumstances.”

64. In the present case, however, the wrongdoing is compounded by bad faith and willfulness, factors which ought to increase the damages. Ms Donovan has persistently failed to abide by the most fundamental terms of the Resignation Agreement. Her conduct is both intentional and repeated. Her breaches go to “the heart” of the settlement. Moreover, her actions are public and intended to bring the WRPSB into disrepute with the objective of causing the WRPSB and other police service boards to retain the services of Ms Donovan as a consultant through her Fit4Duty business. This conduct evidences bad faith and ought to be severely sanctioned.

65. Further, as recognized by the Tribunal in *Saunders v. Toronto Standard Condominium Corp.* No. 1571, 2010 HRTO 2516, damages must be sufficiently high so as to not “trivialize the social importance of the *Code*”.

66. The WRPSB respectfully states that the circumstances of this case demand the highest level of damages to remedy the ongoing damage to its reputation in the context of intentional and repeated violations of the most fundamental nature.

67. Alternatively, the WRPSB states that the Tribunal ought to assess damages with reference to the revenue generated by Ms Donovan through her ongoing breaches of the Resignation Agreement which are being undertaken to generate work for her business.
68. In addition to significant damages, the WRPSB requests an order directing Ms Donovan to cease violating the terms of the Resignation Agreement, to redact allegations against the WRPSB from her Book and to remove from the public domain any other allegations she has made against the WRPSB. To the extent that allegations have been made by Ms Donovan and publicly posted by others, Ms Donovan ought to be directed to make best efforts to have those public allegations removed from the public domain.
69. Notably, section 45.9(4) of the *Code* permits a party to make a Contravention of Settlement Application more than six months after the alleged violation where the delay is as “incurred in good faith and no substantial prejudice will result to any person affected by the delay”. In the present case, the WRPSB has delayed the instant Application in the good faith hope that Ms Donovan would move on and cease making accusations and complaints. Unfortunately, her conduct is persistent and can no longer be tolerated. Her ongoing accusations are tantamount to slander and defamation. Indeed the triggering event is her filing of a Statement of Claim seeking to enforce the Resignation Agreement in response to the WRPSB’s good faith attempt to defend itself against a proposed class action. In support of its defence, the WRPSB referred to the Donovan case on a completely no-names basis. While the reference was consistent with the requirements of the Resignation Agreement, Ms Donovan objected by commencing a civil action. In effect, while Ms Donovan has completely disregarded the obligations of the Resignation Agreement, she is using the Agreement to try to limit the ability of the WRPS to defend itself in the proposed class action. A copy of the Statement of Claim is attached at **Tab 14**.
70. In any event, quite apart from the fact that any delay was incurred in good faith with no substantial prejudice to Ms Donovan, her actions form “a series of contraventions”. Section 45.9(3) of the *Code* expressly permits an application to enforce a settlement where there is a series of contraventions and the application is made to the Tribunal within six months of the last contravention in the series. As set out above, Ms Donovan

has engaged in a series of repeated violations of the Resignation Agreement, which conduct is both persistent and ongoing.

VI. CONCLUSION

71. The WRPSB and Ms Donovan concluded her HRT0 Application in good faith with a comprehensive Resignation Agreement. While the WRPSB has, at all times, honoured its obligations as set out in the Resignation Agreement, Ms Donovan has willfully and flagrantly disregarded her corresponding commitments.
72. Rather than accepting the Resignation Agreement as the agreed upon resolution of her HRT0 Application, Ms Donovan has publicly repeated the allegations giving rise to her HRT0 Application in order to promote her business and profit from her experiences. Her actions are willful, deliberate and in bad faith. Rather, than accepting the resolution of all issues, Ms Donovan has simply moved her allegations from the HRT0 to the public domain. These actions breach the fundamental purpose of the Resignation Agreement -- namely, to resolve the HRT0 Application. Her actions further violate her confidentiality obligations.
73. Not only has she repeated the allegations giving rise to her HRT0 Application but she has made complaints against the WRPSB of misfeasance, corruption and other improprieties. These complaints violate the clear undertaking the Full and Final Release to not make any complaints against the Releasees.
74. Her inappropriate actions are compounded by the fact that the WRPSB is bound by confidentiality provisions which limit its ability to defend against her accusations.
75. In addition to making complaints barred by the Resignation Agreement, Ms Donovan has persistently characterized her employment as having been constructively dismissed which characterization completely contradicts her agreement in the Resignation Agreement to freely and voluntarily resign.
76. The WRPSB respectfully states that the ongoing, persistent and willful nature of the violations of the Resignation Agreement demand a severe remedial response so as to not

trivialize the breaches and so as to uphold the principles of the *Code* and the goals of expeditious dispute resolution.

77. For all of the foregoing reasons, the WRPSB requests that the Tribunal:

- (a) declare that Ms Donovan has engaged in an ongoing series of contraventions of the Resignation Agreement;
- (b) direct Ms Donovan to cease and desist from any further violations of the Resignation Agreement;
- (c) direct Ms Donovan to redact allegations against the WRPSB from her Book and to remove from the public domain any other allegations she has made against the WRPSB contrary to the Resignation Agreement;
- (d) direct Ms Donovan to make best efforts to have those public allegations that are under the control of other parties removed from the public domain; and
- (e) order Ms Donovan to pay significant damages to remedy the ongoing damage to the WRPS's reputation in the context of intentional and repeated violations of the most fundamental nature. In the alternative, the WRPSB states that the Tribunal ought to assess damages with reference to the revenue generated by Ms Donovan through her ongoing breaches which are being undertaken to generate work for her business.

78. The WRPSB reserves the right to seek further remedial relief and to raise such other arguments as counsel may advise and the Tribunal permits.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.