Schedule A

1. The Interim Decision, *The Regional Municipality of Waterloo Police Services Board v. Donovan*, 2022 HRTO 1409, was released on November 25, 2022, and is the subject of this Request for Reconsideration.
2. Donovan has filed a Notice of Application for Judicial Review to protect her interests, should this Request for Reconsideration fail. A Notice of Application for Judicial Review must be filed within 30-days of the decision under review, as does this Request for Reconsideration.
3. Donovan believes that the Tribunal decision is in conflict with established case law surrounding timeliness of applications alleging a series of incidents, in accordance with Rules 26.5 (c).
4. Donovan also believes that the Tribunal has impeded her right to access to justice and breached her right to procedural fairness and this is a matter of general or public importance, in accordance with Rules 26.5 (c) & (d).

REASONS – TIMELINESS ISSUE

5. Beginning at paragraph 20 of the reasons, until paragraph 31, the Tribunal conducted an extensive analysis of the timeliness of Donovan's first allegation of contravention of settlement exclusively, without considering that the allegation was part of a series of incidents of contravention of settlement.

6. Donovan filed her application 2018-33503-S on July 27, 2018, against the respondents, The Regional Municipality of Waterloo Police Services Board ("Board") and Bryan Larkin ("Larkin").
7. On August 10, 2018, the Tribunal filed a Notice of Intent to Dismiss Donovan's application, 2018-33503-S, for timeliness since her application was filed seven (7) months after the December 17, 2017, breach.
8. On or about August 18, 2018, Donovan was made aware of a second alleged breach of the resignation agreement by the respondents.
9. The Tribunal does not dispute that Donovan has alleged two contraventions of settlement, in application 2018-33503-S, on the following two effective dates:
    a. December 17, 2017 – The Larkin affidavit; and
    b. August 18, 2018 – the WSIB appeal.
10. On August 20, 2018, Donovan first informed the Tribunal of the second alleged breach of the resignation agreement in an email requesting an extension to file her documents.
11. Donovan formally notified the Tribunal of the second allegation of contravention of settlement in February, 2019, when she filed her Form 10, Request for Order During Proceeding – Rule 19, to amend her application 2018-33503-S to include the second allegation of contravention of settlement.
12. Having been notified of a second contravention of settlement, therefore a series of incidents, it was unreasonable for the Tribunal to proceed with the August 10, 2018, Notice of Intent to Dismiss, which it did on September 8, 2022, and forms part of the decision under review. Donovan had raised this issue at both Case Management Conference Calls before the Tribunal.

13. The respondents believe Donovan's delay was incurred in good faith, and they submitted to the Tribunal that the Tribunal's adjudicating of both allegations in the series of incidents of contravention of settlement in application 2018-33503-S is the most fair, just and expeditious manner to resolve the dispute between the parties.
14. It is irrational to allow the second incident of contravention of settlement and disallow the first incident as being too late. When a series of incidents are alleged, the time to make an application to the Tribunal is six months from the last incident, and in this case there is no timeliness issue from the second incident as the application 2018-33503-S was filed in advance on July 27, 2018.
15. At paragraph 34 of the decision, the Tribunal found that the two alleged breaches of the settlement did not constitute a series of contraventions under s. 45.9(3) of the *Code* because they were "very different in nature." There was no evidence or precedence provided by the Tribunal to support this finding.
16. In *Baxter v. Queen's University*, 2017 HRTO 1528, the respondent made a request to dismiss the application either because it was not timely or because it had no reasonable prospect of success. The Tribunal dismissed the request for dismissal on the basis of timeliness in order to determine if there was a series of incidents.
17. There is no case law to suggest that an application for contravention of settlement will only be considered a series of incidents if the incidents of contravention of settlement are the same in nature.
18. Although it is not noted in the decision, Donovan is aware of cases where an application brought pursuant to Part I of the *Code*, (for harassment, discrimination or reprisal), is only considered to be a series of incidents if they are of the same nature. A frequently cited case

on this issue is *Visic v. Ontario Human Rights Commission*, 2008 CanLII 20993 (ON SCDC), (the use of contravention in this sense referring to contraventions of the *Code*, not a settlement):

a. "To be a 'continuing contravention', there must be a succession or repetition of separate acts of discrimination of the same character. There must be present acts of discrimination which could be considered as separate contraventions of the Act, and not merely one act of discrimination which may have continuing effects or consequences," para. 45.

19. Donovan brought an application pursuant to Part IV of the *Code*, not Part I, and had not alleged that the second incident of contravention of settlement was simply the continuing effects or consequences of the first contravention of settlement. Donovan alleged two distinct breaches that form a series of incidents.

20. There are no authorities requiring a series of contraventions of settlement, pursuant to Part IV of the *Code*, to be of the same nature in order to be considered a series. Based on internally coherent reasoning, any action that constitutes a contravention of a settlement is an incident for the purposes of section 45.9(1) of the *Code*.

21. It is patently unreasonable for the Tribunal to conclude that Donovan's two allegations of contravention of settlement do not constitute a series of incidents for the purposes of section 45.9(3) of the *Code*, as it does at paragraph 34 of the decision. There is no evidence to support this conclusion.

22. In *Robinson v. Ontario (Community Safety and Correctional Services)*, 2013 HRTO 287, the idea of conduct forming a series of incidents is contemplated. Starting at paragraph 33,

it is explained, that if the last conduct complained of could arguably support a finding of discrimination on its own, then it can be considered part of a series of incidents.

23. In allowing Donovan to amend her application 2018-33503-S to include the second allegation of contravention of settlement, which the Tribunal does at paragraph 17 of the decision, the Tribunal accepts that Donovan's second allegation of contravention of settlement stands on its own and should therefore form part of a series of incidents.

24. It is Donovan's position that, if each of the incidents in a series of incidents of contravention of settlement could support a finding of contravention of settlement, then they form a series for the purposes of section 45.9(3) of the *Code*.

25. Despite their earlier objection to the filing of Donovan's application 2018-33503-S, the respondents did not take issue with her delay in filing, as indicated in their August 5, 2022, submission to the Tribunal.

1. The statutory powers of decision concerning a contravention of settlement application are:

    i. Section 45.8 of the *Code*: Subject to section 45.7 of this Act, section 21.1 of the *SPPA* and the Tribunal rules, a decision of the Tribunal is final and not subject to appeal and shall not be altered or set aside in an application for judicial review or in any other proceeding unless the decision is patently unreasonable. 2006, c. 30, s. 5; 2009, c. 33, Sched. 2, s. 35(3).

    ii. Section 45.9(1) of the *Code*: If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, the settlement is binding on the parties. 2006, c. 30, s. 5.

    iii. Section 45.9(3) of the *Code*: a party who believes that another party has contravened the settlement may make an application to the Tribunal for an order

under subsection (8), (a) within six months after the contravention to which the application relates; or (b) if there was a series of contraventions, within six months after the last contravention in the series. 2006, c. 30, s. 5;

iv. Section 45.9(4) of the *Code*: A person may apply under subsection (3) after the expiry of the time limit under that subsection if the Tribunal is satisfied that the delay was incurred in good faith and no substantial prejudice will result to any person affected by the delay. 2006, c. 30, s. 5.

REASONS – PROCEDURAL FAIRNESS

26. Since the Board's application 2018-33237-S was first filed, Donovan has done everything within her power to attempt to have the application dismissed as she believes it has no reasonable prospect of success, was filed out of retaliation and is an attempt to restrict her constitutional right to freedom of expression.
27. In the decision under consideration, the Tribunal applied Rule 19A to application 2018-33503-S and not 2018-33237-S. It is a matter of general importance that the Tribunal apply its Rules equitably against all applicants.
28. The public interest is best served by determining at an early stage whether an application should be dismissed because it has no reasonable prospect of success. The Tribunal has not heard Donovan on multiple requests for dismissal of application 2018-33237-S and this has resulted in 4 and a half years of unnecessary legal work and expense, and mental anguish.

29. On July 10, 2018, Donovan responded to application 2018-33237-S and notified the Tribunal of the ongoing civil proceeding. She requested the application be dismissed on several grounds including:

    i. The Tribunal does not have jurisdiction over the matter; *Statutory Powers and Procedures Act*, R.S.O. 1990, c. S.22 ("*SPPA")* s. 4.6(1)(b);

    ii. The application is frivolous, vexatious and was commenced in bad faith by Donovan as a means of retaliation against the respondent for having filed the civil claim; *SPPA*, s. 4.6(1)(a);

    iii. The application is a flagrant abuse of process;

    i. The application is untimely; the *Code*, s. 45.9(3);

    ii. The application is a collateral attack on the respondent's fundamental freedoms, as guaranteed by the *The Constitution Act*, 1982, Part I, Canadian Charter of Rights and Freedoms, s. 2., and *Courts of Justice Act,* R.S.O. 1990, c. C.43, ("*CJA*") s.137.1(3).

30. On July 19, 2018, the Tribunal issued a letter acknowledging Donovan's July 10th submission, and stated that the respondents' application 2018-33237-S would be scheduled for a full day in-person hearing on the matters raised in the application. Donovan wrote to the Tribunal asking for clarification as to whether or not her request to dismiss the application would be heard, and the response was that she could raise those issues at the hearing.

31. On August 5, 2018, the Tribunal scheduled a hearing of application 2018-33237-S on its merits for February 22, 2019, which was later adjourned and not rescheduled.

32. On September 18, 2018, Donovan brought an application in Superior Court for dismissal of application 2018-33237-S pursuant to section 137.1 of the *CJA*, as she believed the application was a proceeding to limit freedom of expression on matters of public interest, court file: CV-18-605386.

33. On February 1, 2019, Justice Favreau (as she was then known, now Justice of Appeal of the Court of Appeal for Ontario), ruled that Superior Court did not have jurisdiction over the application:

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

34. At paragraph 52 of her reasons, Justice Favreau wrote:

    "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."

35. On February 6, 2019, the Tribunal issued a Case Assessment Direction ("CAD") which did not address the request to dismiss application 2018-33237-S contained in Donovan's response filed July 10, 2018.

36. On February 6, 2019, Donovan emailed the Tribunal outlining her concerns that the Tribunal was not respecting procedural fairness in these matters.

37. On May 7, 2019, Donovan filed a Notice of Constitutional Question with the Tribunal, copying the Attorney Generals of Ontario and Canada, whom both declined to intervene.

38. On July 4, 2019, Donovan sent the Tribunal an email with what she believed to be evidence that the Board had filed application 2018-33237-S in bad faith as a means of retaliation. The email contained legal invoices paid by the Board, obtained through the *Municipal*

Freedom of Information and Protection of Privacy Act, R.S.O. 1990, c. M.56, which showed a significant increase in their legal fees paid from May, 2018, onward, after her civil suit was filed. Donovan had also informed the Tribunal that all of the evidence contained in the Board's application had been printed and timestamped in June, 2018, after she filed her suit.

39. On September 30, 2019, the Tribunal issued an Interim Decision. The Tribunal addressed the Form 10, Request for Order During Proceedings – Rule 19, filed by the Respondents, yet still did not address Donovan's request to dismiss application 2018-33237-S.

    The Regional Municipality of Waterloo Police Services Board v. Donovan, 2019 HRTO 1326

40. On September 30, 2019, Donovan filed a formal complaint against the Tribunal Registrar and adjudicator to Social Justice Tribunals Ontario, as it was then known, now Tribunals Ontario.

41. On October 30, 2019, Donovan received a response to her complaint. Jonathan Batty, Associate Chair of the Tribunal, advised Donovan that she would have an opportunity to provide submissions at the preliminary hearing that would be scheduled. Donovan was also advised to raise her issues of procedural fairness directly with the adjudicator, which she had already done without success.

42. In their November 7, 2019, submission to the Tribunal, the respondent Board acknowledged that there is no general non-disclosure clause in the resignation agreement, yet they believe that the "inherent purpose" of the resignation agreement precluded Donovan from speaking about her experiences.

43. On April 15, 2020, Donovan filed a Form 10, Request for an Order During Proceedings – Rule 19, and requested that the matter be dealt with at an in-person hearing. Donovan assumed that the Tribunal had not acted on her request previously because she had not used the Form 10. Donovan requested application 2018-33237-S be dismissed in its entirety for the following reasons:

    i. It is frivolous, vexatious and was commenced in bad faith;

    ii. It is an abuse of process, the WRPSB has conducted these proceedings in a vexatious manner, contrary to common Rule A8.2;

    iii. There is no prospect of success, as there was no clause contained in the Resignation Agreement prohibiting Donovan from making oral or written statements about the Board and Larkin;

    iv. The matter is outside the jurisdiction of the Tribunal.

44. During a Case Management Conference Call on May 10, 2022, Donovan once again raised the issue of her unaddressed requests to dismiss application 2018-33237-S. The Tribunal wrote in the May 25, 2022, CAD that only those issues identified by the previous adjudicator would be addressed at the preliminary hearing that was to be scheduled.

45. Despite several attempts by Donovan, her requests to have the Board's application dismissed have not been heard by the Tribunal, yet the Tribunal proceeded to dismiss her application.

46. It is Donovan's position that she has provided the Tribunal adequate evidence to suggest bad faith and retaliation which warrants a preliminary examination, and by refusing Donovan's requests, the Tribunal has unnecessarily prolonged the Board's proceeding which has come at a great cost to Donovan and the public.

47. At the very least, Donovan believes that the Tribunal has had reason to believe there is no prospect for success of the respondent Board's application and that the Tribunal has not applied Rule 19A equally to both parties.

48. It is Donovan's position that it is a matter of general importance that the Tribunal apply its rules equally to all applicants, and dispose of applications in a fair, just and expeditious manner, if there is evidence that an application has no merit or was commenced in bad faith.

2. The Tribunal has several statutory powers of decision for early dismissal of an application, those statutes include:

    i. Section 40 of the *Code*: The Tribunal shall dispose of applications made under this Part by adopting the procedures and practices provided for in its rules or otherwise available to the Tribunal which, in its opinion, offer the best opportunity for a fair, just and expeditious resolution of the merits of the applications. 2006, c. 30, s. 5;

    ii. Section 42(1) *Code*: The provisions of the *SPPA* apply to a proceeding before the Tribunal unless they conflict with a provision of this Act, the regulations or the Tribunal rules. 2006, c. 30, s. 5;

    iii. Section 4.6(1) of the *SPPA*: Subject to subsections (5) and (6), a tribunal may dismiss a proceeding without a hearing if,

        a. the proceeding is frivolous, vexatious or is commenced in bad faith;

        b. the proceeding relates to matters that are outside the jurisdiction of the tribunal; or

        c. some aspect of the statutory requirements for bringing the proceeding has not been met;

iv. Tribunals Ontario Rules of Procedure, I) Social Justice Tribunals Ontario Common Rules, Rule A8.1: The Tribunal may make such orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.

v. Tribunals Ontario Rules of Procedure, II) Human Rights Tribunal of Ontario Specific Rules, Rule 13.1: The Tribunal may, on its own initiative or at the request of a Respondent, filed under Rule 19, dismiss part or all of an Application that is outside the jurisdiction of the Tribunal;

vi. Tribunals Ontario Rules of Procedure, II) Human Rights Tribunal of Ontario Specific Rules, Rule 19.1: A party may request that the Tribunal make an order at any time during a proceeding by oral submission in the course of the hearing or by written request;

vii. Tribunals Ontario Rules of Procedure, II) Human Rights Tribunal of Ontario Specific Rules, Rule 19.7: The Tribunal will determine whether a Request for Order will be heard in writing, in person, or electronically and, where necessary, will set a date for the hearing of the Request.

REMEDY/RELIEF

49. Donovan seeks to proceed with the series of two incidents of contraventions of settlement in application 2018-33503-S, as her application was not filed beyond the six month timeframe from the last incident; specifically:

a. December 17, 2017 – The Larkin affidavit; and

b. August 18, 2018 – the WSIB appeal.

50. Donovan seeks to have the Tribunal schedule a preliminary hearing on the question of whether application 2018-33237-S should be dismissed in whole or in part on the basis that there is no reasonable prospect that the application or part of the application will succeed. Along with this Request for Reconsideration, Donovan has filed a Form 26.