



# HUMAN RIGHTS TRIBUNAL OF ONTARIO

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**B E T W E E N:**

**The Regional Municipality of Waterloo Police Services Board**

**Applicant**

**-and-**

**Kelly Donovan**

**Respondent**

**Kelly Donovan**

**Applicant**

**-and-**

**The Regional Municipality of Waterloo Police Services Board and Bryan Larkin**

**Respondents**

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## CASE ASSESSMENT DIRECTION

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**Adjudicator:** Laurie Letheren

**Date:** February 6, 2019

**File Number:** 2018-33237-S and 2018-33503-S

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[1] The Regional Municipality of Waterloo Police Services Board (“Board”) filed a Breach of Settlement Application against Kelly Donovan (“Donovan”) on June 28, 2018. This is Tribunal file number 2018-33237-S. The Board alleges that there are a number of instances when Donovan breached the terms of the Resignation Agreement and Release.

[2] Donovan filed a Response to that Application on July 10, 2018.

[3] Donovan filed a Breach of Settlement Application against the Board and Bryan Larkin (“Larkin”) on July 27, 2018 alleging breach of the Resignation Agreement in a document prepared as part of another court proceeding. This is Tribunal file number 2018-33503-S.

[4] The Board and Larkin filed their Response to Application 2018-33503-S. They raised the issue of whether that Application should be dismissed on the basis that the Tribunal may not have jurisdiction over that Application because it was filed more than six months after the last alleged breach of the Resignation Agreement.

[5] Donovan also filed an action in Superior Court for breach of the Resignation Agreement. The Board has brought a motion to dismiss that action. That motion is scheduled to be heard on February 13, 2019.

[6] On July 30, 2018, the Board filed a Request for Order During Proceedings (“Request”) that the Tribunal order that Donovan has accepted the allegations made in Application 2018-33237-S and the Tribunal move to determine remedy.

[7] According to the Tribunal’s Rules, Donovan was to file a Response to this Request by August 13, 2018.

[8] To date, Donovan has not filed a Response to this Request.

[9] On August 10, 2018 the Tribunal issued a Notice of Intent to Dismiss Application 2018-33503-S. The Notice raised the issue of the Tribunal's jurisdiction to hear the Application because it had been filed more than 6 months after the date of the last alleged incident of contravention of the settlement.

[10] Donovan was directed to provide her submissions on this issue on or before September 7, 2018. The Tribunal provided Donovan with an extension to October 26, 2018 to file those submissions. Donovan was warned that if she did not respond and file written submissions by the deadline, the HRTO will consider the failure to respond as an abandonment of Application 2018-33503-S and dismiss the Application for that reason.

[11] Donovan has not provided those submissions to date.

[12] On August 3, 2018 the Tribunal issued a Notice of Hearing of application 2018-33237-S. The Notice directed the parties to serve and file any documents that they wished to rely on at the hearing and witness statements of the witnesses they intended to call to give evidence at the hearing by no later than January 25, 2019. The hearing of Application 2018-33237-S is scheduled for February 22, 2019.

[13] On January 25, 2019, the Board wrote to the Tribunal. In this correspondence it is noted that Donovan had filed an application with Superior Court under section 137.1(3) of the Courts of Justice Act to dismiss Application 2018-33237-S.

[14] The Board requested that the Tribunal provide further direction on the timing for disclosure of documents. The Board also raised the issue of dismissal of Application 2018-33503-S or a consolidation of the two Applications.

[15] On February 4, 2019, Donovan wrote to the Tribunal and the Board attaching a decision of Madam Justice Favreau of the Superior Court. Favreau J dismissed Donovan's application to dismiss Application 2018-33237-S. Donovan highlighted

paragraph 56 of this decision and asked that she be given time to prepare her materials. In addition, it appeared from that correspondence that Donovan may have been requesting an adjournment of the February 22, 2019 hearing of Application 2018-33237-S.

[16] Upon a further review of all the materials, the Tribunal noted that the issue of delay may affect its jurisdiction over some or all of the allegations made in Application 2018-33237-S.

#### **DIRECTIONS TO THE DONOVAN**

[17] **By February 8, 2019**, Donovan must advise the Tribunal, the Board and Larkin whether she intends to pursue Application 2018-33503-S.

[18] If Donovan intends to pursue this Application, then **by February 15, 2019**, she must file her response to the Notice of Intent to Dismiss.

[19] If Donovan fails to comply with these directions, Application 2018-33503-S will be dismissed.

#### **DIRECTIONS TO DONOVAN, THE BOARD AND LARKIN**

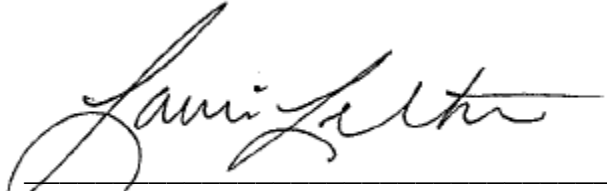
[20] If Donovan has indicated her intention to continue with Application 2018-33503-S, by February 8, 2019, then **on or before February 15, 2019 Donovan, the Board and Larkin** must provide their position on whether these two Applications should be consolidated.

[21] **By February 8, 2019**, Donovan, the Board, and Larkin shall provide their availability for a Case Management Call in the afternoon of February 15, 2019 or February 19, 2019 a.m. or p.m.

## NEXT STEPS

[22] The Tribunal will discuss next steps on these Applications during the Case Management Call or in writing should such a Case Management Call not be convened.

Dated at Toronto, this 6th day of February 2019.

A handwritten signature in cursive script, appearing to read "Laurie Letheren", written over a horizontal line.

Laurie Letheren  
Vice-chair