HRTO File No. 2018-33237-S / 2018-33503-S

Ontario Human Rights Tribunal

BETWEEN:

Kelly Lynn Donovan

Respondent / Applicant

- and –

Regional Municipality of Waterloo Police Services Board

Applicant / Respondent

SCHEDULE A

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1. For ease of reading, the Regional Municipality of Waterloo Police Services Board will be referred to throughout as the "Applicant." Kelly Donovan will be referred to throughout as the "Respondent," regardless of whether Human Rights Tribunal of Ontario ("HRTO") Application 2018-33237-S or 2018-33503-S is referenced.

OUTSTANDING ISSUES:

2. The following are outstanding issues with Application 2018-33237-S:
    a. The Respondent's form 19:
        i. Allegations that Application 2018-33237-S is an abuse of process;
        ii. Allegations that the Application is vexatious as it was filed out of retaliation for the Respondent having filed a claim in the Ontario Superior Court of Justice ("OSCJ");
        iii. The Respondent's allegation that Application 2018-33237-S violates her *Charter Rights*.
    b. The Applicant's form 10 to dismiss the Respondent's form 19.
3. The following are outstanding issues with Application 2018-33503-S:
    a. The HRTO's form 10 to dismiss the Application;
    b. The Respondent's form 10 to amend the Application;
    c. The Applicant's form 10 to dismiss the Respondent's request to amend the Application.
4. The following are outstanding issues in common with both Applications, 2018-33237-S and 2018-33503-S:

a. Allegations that by allowing the Applicant to proceed with their Application, and force the Respondent to fight a two-front war, the HRTO did not properly apply the doctrine of abuse of process to prevent a collateral attack.

b. Allegations that HRTO adjudicator Laurie Letheren violated the SJTO Code of Conduct;

c. Allegations that HRTO Registrar Georgios Fthenos violated the SJTO Code of Conduct; and

d. Allegations that HRTO Registrar Georgios Fthenos violated the SJTO Conflict of Interest policy.

TIMELINE

5. This is a timeline of all relevant events leading up to this hearing. Information provided previously by the Respondent is included in this package for ease of reference.
6. On May 8, 2018, the Respondent filed a Statement of Claim in OSCJ for breach of contract against the Applicant Board, (court file number CV-18-00001938-0000).
7. Attached at **Tab 1** is the Respondent's Statement of Claim.
8. On June 7, 2018, the Applicant filed a Notice of Motion to dismiss the Respondent's claim in part for lack of jurisdiction, and the Applicant alleged the HRTO had exclusive jurisdiction to hear alleged breaches of the resignation agreement. The Applicant did not file a counter-claim at OSCJ or a Statement of Defence.
9. Attached at **Tab 2** is the Applicant's Notice of Motion.
10. The Motion to dismiss the Respondent's OSCJ claim was scheduled for February 13, 2019.
11. On June 28, 2018, the Applicant filed their Contravention of Settlement application with the HRTO against the Respondent, (HRTO file number 2018-33237-S).

12. On July 10, 2018, the Respondent filed a Form 19 informing the HRTO that the Respondent had begun a civil proceeding for breach of contract against the Applicant in regards to the same contract, and jurisdiction had not yet been decided by Court, (OUTSTANDING ISSUES 2.a.i, 2.a.ii, 2.a.iii).
13. The Respondent requested the HRTO dismiss the Applicant's Application on the following grounds:
    a. As per Rule 13, the HRTO did not have jurisdiction over the matter;
    b. The Application was frivolous, vexatious and commenced in bad faith out of retaliation against the Respondent for having filed her Statement of Claim in OSCJ;
    c. The Application is a flagrant abuse of process;
    d. The Application is untimely; and
    e. The Application is a collateral attack[1] on the Respondent's fundamental freedoms as guaranteed by the *Canadian Charter of Rights and Freedoms*.
14. The Respondent's July 10, 2018, submission is at **Tab 3**.
15. The HRTO disclosed that it had received the Respondent's submission in its letter dated July 19, 2018, sent to the parties advising that a full-day hearing would be scheduled to hear the parties' submissions on the matters raised in the Application. The HRTO did not address the Respondent's allegations of attack on her fundamental rights as guaranteed by the *Canadian Charter of Rights and Freedoms*.
16. The HRTO letter dated July 19, 2018, is at **Tab 4**.
17. As the HRTO's letter of July 19, 2018, did not state that the Respondent's request to dismiss the Application in her Form 19 would be raised, the Respondent felt prejudiced

[1] *Power Tax Corporation v. Millar et al., 2013 ONSC 135,* see Respondent's Book of Authorities, **Tab A**.

because the HRTO was scheduling a date for the Applicant's allegations to be heard while the Respondent's allegations remained under the jurisdiction of Court. If Court decides that jurisdiction lies with the HRTO, the Respondent wanted a fair opportunity to present her allegations against the Applicant at the same time at the HRTO.

18. The Respondent was treated unfairly, and the HRTO did not respect the principles of procedural fairness, (OUTSTANDING ISSUES 4.a, 4.c, 4.d).
19. On July 27, 2018, under duress, the Respondent filed her own Contravention of Settlement Application, HRTO file number 2018-33503-S, which was almost verbatim of what the Respondent had filed at OSCJ.
20. Attached at **Tab 5** is the Respondent's July 27, 2018, submission.
21. The Respondent explained her late filing at paragraph 24 of Tab 5 due to her having filed the same allegations at OSCJ, which at the time, were still before the Courts, and jurisdiction had not yet been decided by an Honourable Justice of the OSCJ.
22. On July 30, 2018, the Applicant filed a request for an order to dismiss the Respondent's objections to the Applicant's Application, deem the Respondent to have accepted the allegations in the Applicant's Application, and direct that the hearing be restricted to the issue of the appropriate remedy, (OUTSTANDING ISSUES 2.b).
23. Attached at **Tab 6** is the July 30, 2018, submission of the Applicant.
24. On August 1, 2018, the Respondent requested an extension from the Applicant to file her Form 11 in response to the Applicant's form 10 to dismiss her form 19.
25. On August 2, 2018, the Applicant responded to the Respondent by email advising they would provide a 9-day extension to file her form 11.

26. On August 3, 2018, the HRTO sent the Respondent the Notice of Hearing for HRTO file number 2018-33237-S, scheduled for February 22, 2019.

27. Attached at **Tab 7** is the HRTO Notice of Hearing.

28. On August 10, 2018, (and despite the Respondent having addressed timeliness in her July 27, 2018, submission to the HRTO), the HRTO ***itself*** sent the Respondent a Notice of Intent to Dismiss her Application number 2018-33503-S because she filed her Application outside of the six-month limitation period. This letter is signed by George Fthenos, Registrar of the HRTO. Mr. Fthenos did not afford the Respondent discretion since the delay was incurred in good faith and no substantial prejudice would result to any person affected by the delay[2], (not to mention that breaches of the Resignation Agreement had not yet been determined to fall under the jurisdiction of the HRTO). August 10, 2018, was the day that the Applicant's response to the Respondent's Application was due, and it appears as if the HRTO and Applicant conspired to have the Respondent's Application dismissed so that the Applicant would not have to file their response. This letter was signed by Mr. Georgios Fthenos. (OUTSTANDING ISSUES 3.a.).

29. Attached at **Tab 8** is the August 10, 2018, letter from the HRTO.

30. On August 17, 2018, the Workplace Safety and Insurance Board ("WSIB") sent the Respondent a letter stating "the employer (the Applicant) has informed us in writing of their intention to appeal a decision(s) in this claim," regarding the Respondent's WSIB claim number 30505408.

31. Attached at **Tab 9** is the August 17, 2018, letter from WSIB.

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[2] *Ontario Human Rights Code, R.S.O. 1990, c. H.19*, subsection 45.9(4), see Respondent's Book of Authorities **Tab B**.

32. On August 20, 2018, the Respondent requested an extension to file responding documents to the two outstanding requests to dismiss her submissions to the HRTO due to her declining health as a result of the collateral attack filed by the Applicant, and the ongoing multitude of requests for documentation and deadlines.

33. Attached at **Tab 10** is the August 20, 2018, email to the HRTO from the Respondent.

34. On August 22, 2018, at 3:50 pm, the Applicant sent an email to the HRTO objecting to a further extension for the Respondent to file her form 11 in response to the Applicant's form 10. The Applicant disagreed that the Respondent's health prohibited her from preparing her paperwork in this proceeding for the following reasons:

    a. The Respondent was capable of preparing a form 18;

    b. The Respondent was conducting business (as the Applicant learned through the Respondent's business website); and

    c. The Respondent had not provided any supporting documentation to support her medical condition, (despite her current WSIB claim for PTSD treatment).

35. Attached at **Tab 11** is the August 22, 2018, 3:50 pm, email from the Applicant to the HRTO.

36. On August 22, 2018, at 5:29pm, the Applicant sent a second email to the HRTO objecting to an extension for the Respondent to file her form 11 in response to the form 10 that was filed by the HRTO themselves. The Applicant disagreed that the Respondent's health prohibited her from preparing her paperwork in this proceeding for the following reasons:

    a. The Respondent was capable of preparing her Application;

    b. The Respondent was conducting business (as the Applicant learned through the Respondent's business website); and

c. The Respondent had not provided any supporting documentation to support her medical condition, (despite her current WSIB claim for PTSD treatment).

37. Attached at **Tab 12** is the August 22, 2018, 5:29 p.m., email from the Applicant to the HRTO.

38. The Applicant's continued ignorance of the Respondent's medical condition, for which she was currently receiving treatment and the fact that the Applicant had created a duplicate proceeding caused the Respondent to feel harassed and stalked and she suffered a great deal of mental anguish and exponentially decreased the quality of her health.

39. The Applicant admitted to stalking the Respondent by monitoring her activities through her business web page, her personal and business social media accounts, and even her business activity in Toronto.

40. The collateral attack filed against the Respondent was an abuse of process, and the HRTO was allowing the Applicant to harass the Respondent using their collateral attack by requiring the Respondent to file mountainous documentation all with brief, discriminatory deadlines for an individual suffering from PTSD. (OUTSTANDING ISSUE 4.a, 4.c, 4.d).

41. On September 4, 2018, the HRTO granted the Respondent an extension until September 28, 2018, to file her form 11 in response to the Applicant's form 10.

42. Attached at **Tab 13** is the September 4, 2018, email from the HRTO.

43. On September 6, 2018, the Applicant sent the Respondent a 4-page letter regarding a recent Freedom of Information request the Respondent had made to the Waterloo Regional Police Service. The letter stated that a request for information, pursuant to the Municipal Freedom of Information and Protection of Privacy Act, was not the appropriate way for the Respondent to obtain documents and that the request was likely to be dismissed. The letter

stated that the Applicant wished to bring to the Respondent's attention the reasons why her request was likely to be dismissed. This letter was unnecessary and was another means of harassment and intimidation by the Applicant.

44. Attached at **Tab 14** is the September 6, 2018, letter from the Applicant.
45. On September 7, 2018, the HRTO granted the Respondent an extension until October 26, 2018, to file her form 11 in response to the form 10 issued by the HRTO itself.
46. Attached at **Tab 15** if the September 7, 2018, email from the HRTO.
47. On January 16, 2019, the Respondent amended her Statement of Claim at OSCJ to include a second alleged breach of the resignation agreement since the Applicant has submitted an appeal of her claim number 30505408 to the WSIB in January, 2018. This amendment was done on consent of the Applicant.
48. Attached at **Tab 16** is the amended Statement of Claim by the Respondent.
49. On January 25, 2019, despite their undertaking, and despite Justice Favreau not having released her Reasons for Judgment, the Applicant sent a letter to Mr. Fthenos about the "continuing failure of Ms. Donovan to comply with the Tribunal's filing directions." The purpose of this letter was to ask the HRTO to extend timelines for the Applicant to submit their documentation.
50. Attached at **Tab 17** is the January 25, 2019, letter sent by the Applicant to the HRTO.
51. On February 4, 2019, the Respondent sent an email to the HRTO to bring to Mr. Fthenos' attention that the Applicant had given an undertaking in court regarding the Respondent's submissions, and provided Mr. Fthenos with a copy of Justice Favreau's Reasons for Judgment. (OUTSTANDING ISSUE 4.a, 4.c, 4.d).
52. Attached at **Tab 18** is the February 4, 2019, email to the HRTO from the Respondent.

53. On February 6, 2019, Laurie Letheren, HRTO Adjudicator, served the parties with a Case Assessment Direction ("CAD").

54. In the CAD, Ms. Letheren acknowledges the Respondent's reply of July 10, 2018, yet did not give any consideration to the allegations of *Charter* violations made by the Respondent, the duplicity of proceedings and the retaliatory action by the Applicant in filing their Application after the Respondent began a breach of contract action in OSCJ and prior to Courts deciding proper jurisdiction of a breach of the Resignation Agreement. (OUTSTANDING ISSUE 4.a, 4.b).

55. Ms. Letheren directed the Respondent to advise the HRTO and the Applicants if she wished to pursue Application 2018-33503-S by February 8, 2019, (despite an Honourable Justice of the OSCJ deciding jurisdiction over her breach of contract scheduled for February 13, 2019).

56. Ms. Letheren made other directions to the Respondent and stated the Respondent's Application number 2018-33503-S would be dismissed if she did not comply.

57. Attached at **Tab 19** is the February 6, 2019, CAD signed by Laurie Letheren.

58. On February 6, 2019, the Respondent sent an email to the HRTO alleging Ms. Letheren had violated the Code of Conduct of the SJTO, reiterated that the Applicant had given an undertaking to Justice Favreau to provide adequate time for the Respondent to prepare material, and raised the issue of Mr. Fthenos participating in both the Applicant's and Respondent's HRTO proceedings is a violation of the SJTO Conflict of Interest Rules and Code of Conduct.

59. Attached at **Tab 20** is the February 6, 2019, email sent by the Respondent to the HRTO.

60. Attached at **Tab 21** is the SJTO Code of Conduct.

61. Attached at **Tab 22** is the SJTO Conflict of Interest Rules.

62. On February 12, 2019, the HRTO sent a Notice of Conference Call to the parties.

63. Attached at **Tab 23** is the Notice of Conference Call.

64. On February 13, 2019, the parties attended Superior Court of Justice in Brampton to argue the Motion to dismiss the Respondent's claim filed by the Applicant.

65. On February 15, 2019, the Applicant sent an email to the HRTO reminding them that the Respondent had not provided direction to the HRTO by the February 6, 2019, deadline as to whether or not she wanted to proceed with her HRTO Application number 2018-33503-S. This letter also reiterated the Applicant's position that the Respondent's application should be "dismissed for delay, breach of absolute privilege, etc." The letter is addressed to "Mr. George Fthenos." This letter was further harassment by the Applicant, as the Applicant knew the Respondent had a concurrent OSCJ proceeding, and requiring her to proceed with the same allegations at the HRTO prior to Court deciding jurisdiction was a violation of the Respondent's right to procedural fairness.

66. Attached at **Tab 24** is the February 15, 2019, email by the Applicant.

67. On February 19, 2019, the parties engaged in a teleconference call and it became obvious to the Respondent that the HRTO had intended to proceed regardless of the Respondent's proceeding occurring at the same time at OSCJ, and Courts not yet having published a decision on jurisdiction of claims for breaches of the Resignation Agreement. (OUTSTANDING ISSUE 4.a, 4.b).

68. During the teleconference call, HRTO Adjudicator Laurie Letheren alleged she did not know there was an ongoing Court case filed by the Respondent, she did not know what Code of Conduct applied to the HRTO and she did not know how the Respondent could

file a complaint of a Code of Conduct violation. Ms. Letheren reiterated that the Respondent had not met the timelines imposed by the HRTO for the Respondent to submit documentation. Allegations of Code of Conduct violations of Ms. Letheren are outlined, starting at paragraph 207.

69. During the teleconference call, the Applicant admitted to having given Justice Favreau an undertaking to provide the Respondent adequate time to prepare her materials for the HRTO proceedings, however, the Applicant still stated that for some documents, the Respondent had missed deadlines, and those documents did not apply to the undertaking given to Justice Favreau. This teleconference call was additional harassment and discrimination that the Respondent faced at the hands of both the HRTO and the Applicant.

70. On February 19, 2019, following the conference call and once again under duress, since Ms. Letheren made herself clear that regardless of an ongoing concurrent Court proceeding, the HRTO would proceed with imposing deadlines according to the HRTO Rules, the Respondent filed a Request to amend her Application number 2018-33503-S to include the second allegation of breach of contract, that had been included in her OSCJ claim, amended in January, 2019, (which fell within six months from the time the Respondent was made aware of the claim).

71. The Respondent, once again, explained in her submissions that she was within a 6-month window from the second breach when she amended her Court claim, and until Court decided that jurisdiction lay with the HRTO, it was improper and unfair that she be expected to meet the 6-month timeframe for an alleged contravention of settlement in a duplicate proceeding created by the Applicant. The Respondent has at all times respected

procedural fairness and the principles of natural justice, and did not file any submissions late out of bad faith.

72. Attached at **Tab 25** is the Respondent's February 19, 2019, request to amend her Application.

73. On February 20, 2019, Laurie Letheren, HRTO Adjudicator, issued an Interim Decision to process and hear both HRTO Applications together (2018-33237-S and 2018-33503-S), adjourn the February 22, 2019, hearing date, and ordered the Respondent to provide her submissions in response to the HRTO's objections to her Application, (outlined in paragraph 28), and her submissions to the Applicant's objections to her Application, (outlined in paragraph 22). (OUTSTANDING ISSUE 4.a, 4.b)

74. Ms. Letheren stated, "Should [the Respondent] not comply with this Order, the Tribunal shall dismiss Application 2018-33503-S and her position in response to Application 2018-33237-S shall be confined to what is stated in the Form 19 filed on July 10, 2018."

75. Attached at **Tab 26** is the Interim Decision dated February 20, 2019, signed by Laurie Letheren.

76. On February 21, 2019, Justice Doi released his Reasons for Judgment in favour of the Applicant to dismiss the Respondent's amended statement of claim.

77. Attached at **Tab 27** is Justice Doi's Reasons for Judgment dated February 21, 2019.

78. On March 5, 2019, the Applicant filed a request to dismiss the request to amend the Respondent's Application citing the request as being untimely, (reference paragraph 71), barred by *res judicata*, and has no reasonable prospect of success. This letter is addressed to Mr. Georgios Fthenos. (OUTSTANDING ISSUES 3.b, 4.a, 4.c, 4.d).

79. Attached at **Tab 28** is the Applicant's request to dismiss the Respondent's request to amend her Application.

80. The Applicant relies largely on the decision by Justice Doi as reasons to dismiss the Respondent's request to amend her Application and also objects to the Respondent's request for the production of documents by the Applicant.

81. On April 23, 2019, the Respondent perfected her appeal of Justice Doi's Order, (Ontario Court of Appeal file number C66718). The matter continues to be before the Court.

82. Despite the Respondent believing that the HRTO does not have jurisdiction to hear allegations of contravention of settlement pertaining to her Resignation Agreement, the repeated ignorance of the HRTO to consider the Applicant's Application vexatious or an abuse of process and forced the Respondent to participate in these proceedings and produce the mountainous submissions, as requested by the HRTO. (OUTSTANDING ISSUE 4.a).

THE RESPONDENT'S RESPONSE TO ALLEGATIONS MADE BY THE APPLICANT (2.a)

83. In the Applicant's Application, there are several allegations made that the Respondent violated the terms of the Resignation Agreement because she made "complaints" about the Applicant, stated that she faced "constructively dismissal," and violated the confidentiality provisions.

84. The Applicant alleges that the Respondent committed all of these violations by speaking publicly, putting information up on her personal social media accounts, business social media accounts, business webpage, and in her published book.

85. The Respondent asserts that she has exercised her freedom of expression on matters she believes are matters of public interest, as there is nothing preventing her from speaking publicly about her experiences working for the Applicant. The Resignation Agreement

does not contain a general non-disclosure clause preventing the Respondent from speaking about the Applicant.

86. It is absurd and abhorrent that the Applicant's need to continue to retaliate against the Respondent has led to such a vast waste of judicial resources and public funds on their assertions that the Respondent has violated terms of her Resignation Agreement.

The Applicant's Allegation of the Respondent "Complaining"

87. The Respondent notes that the Applicant is not clear in paragraphs 30 through 51 which terms of the Resignation Agreement are alleged to have been contravened by the Respondent, which makes it difficult for the Respondent to properly respond to the Applicant's allegations.

88. The Respondent can only assume that it is the release the Applicant is alleging was contravened, with the following wording:

    a. "I, KELLY DONOVAN, in consideration of the terms and conditions set out in the attached Resignation Agreement dated June 8, 2017, do hereby release and forever discharge THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD and the WATERLOO REGIONAL POLICE ASSOCIATION, its and their officers, agents, directors, commissioners, servants, employees, attorneys, related and affiliated entities, parent and subsidiary entities, predecessors, successors and assigns (the "Releasees") from any and all actions, causes of action, ***complaints***, applications, including, without limitation, Human Rights Tribunal of Ontario ("HRTO") Application No. 2016-24566-I filed on or about June 6, 2016, appeals, requests, covenants, contracts, claims, grievances…" ***[emphasis added]***

89. The Respondent agreed to "release and forever discharge" the Applicant, from "any and all… complaints." The Respondent fails to see how any of her conduct listed in paragraphs 30 through 51 has violated that term.

90. According to the Ministry of the Attorney General of Ontario's website, there is a basic guide to common legal terms. Although, "Complaint" is not defined, "Complainant" is, and it is defined as "A person who brings a legal complaint against another; may include the victim of an alleged criminal offence."

91. A brief analysis of the "complaint" processes for multiple agencies show that to "make a complaint" the following must be done:

    b. Law Society of Ontario – "Complete a Complaint Form;"

    c. Department of Justice Canada – "You will need to complete a complaint form to demonstrate that your complaint meets the basic criteria of the CVBR."

    d. Office of Consumer Affairs (OCA) – "Submit a complaint in writing, then your next step is to see if there is a complaint handling body that can help you."

    e. Canadian Human Rights Commission – "You will need to complete a complaint form."

    f. Canadian Judicial Council – "You may use this form to submit your complaint, or you may send us a letter or an email."

92. At no time after June 25, 2017, did the Respondent make a complaint to the Independent Police Review Director, pursuant to *Police Services Act, R.S.O. 1990, c. P.15*[3], subsection 58(1), for matters arising prior to June 25, 2017.

[3] *Police Services Act, R.S.O. 1990, c. P.15,* see Respondent's Book of Authorities, **Tab C**.

93. At no time after June 25, 2017, did the Respondent make a complaint to the Ontario Human Rights Tribunal, pursuant to the *Ontario Human Rights Code, R.S.O. 1990, c. H.19*[4], subsection 34(1), for matters arising prior to June 25, 2017.

94. The Respondent asserts that merely speaking publicly, publishing material to a social media account, printing a book, conducting interviews for television or personal internet accounts, and even presenting to the Standing Committee on Justice Policy does not constitute a "complaint."

95. The Respondent denies all allegations made in paragraphs 30 to 44, as speaking publicly or in print does not constitute a "public complaint" and is not a violation of the Resignation Agreement, the Respondent has merely exercised her fundamental freedom of free expression on matters of public interest.

96. The Respondent has not contravened this term of the Resignation Agreement.

The Applicant's Allegations that the Respondent Cannot Say She Was "Constructively Dismissed"

97. The Government of Canada policy on "Constructive Dismissal – 815-1-IPG-033" defines constructive dismissal at 4. b as:

> "The phrase "constructive dismissal" describes situations where the employer has not directly fired the employee. Rather the employer has failed to comply with the contract of employment in a major respect, unilaterally changes the terms of employment or expressed a settled intention to do either thus forcing the employee to quit. Constructive dismissal is sometimes called 'disguised dismissal' or 'quitting with cause' because it often occurs in situations where the employee is

[4] See Respondent's Book of Authorities, **Tab B**.

offered the alternative of leaving or of submitting to a unilateral and substantial alteration of a fundamental term or condition of his/her employment. Whether or not there has been a constructive dismissal is based on an objective view of the employer's conduct and not merely on the employee's perception of the situation."

98. Attached at **Tab 29** is the Government of Canada Constructive Dismissal – 815-1-IPG-033

99. In *Farber v. Royal Trust Co., [1997] 1 S.C.R. 846*[5], the Supreme Court of Canada ruled that an offer made to the employee by his employer amounted to constructive dismissal, since it is clear that is substantially altered the essential terms of the employment contract.

100. The Applicant admits to all of the harm done to the Respondent prior to the date of her voluntary resignation, (paragraphs 5 through 25 of their Application). The unilateral and substantial changes to the Respondent's employment contract were the following:

a. Directing the Respondent to not appear before the Board without the Chief's permission, (paragraph 11 of the Application);

b. Assigning the Respondent to administrative duties, and removing her from her current role as a Use of Force Instructor; and

c. Placing the Respondent under investigation for misconduct for simply exposing to the Board what she believed to be wrongdoing by members of the service.

101. The Respondent is correct in identifying the period of time from May, 2016, to June, 2017, as a period of constructive dismissal. The Respondent has not brought a proceeding against the Applicant for wrongful dismissal or constructive dismissal, and therefore is not in violation of any of the terms of the resignation agreement.

[5] *Farber v. Royal Trust Co., [1997] 1 S.C.R. 846,* see Respondent's Book of Authorities **Tab D**.

102. The Applicant alleges that when the Respondent addressed the Standing Committee on Justice Police at the Ontario Legislature that she was violating the Resignation Agreement. Nothing in the Respondent's oral presentation violated the agreement. The following statements are absolutely truthful and do not contravene any non-disclosure clause in the Resignation Agreement:

a. "During my time at Waterloo, I witnessed misfeasance during internal investigations of other police officers at the service; more specifically, unlawful arrests of members, corrupt investigations, and criminal allegations being overlooked." (Paragraph 45 of the Applicant's Application)

b. "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." (Paragraph 45 of the Applicant's Application)

c. "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." (Paragraph 45 of the Applicant's Application)

103. Another allegation by the Respondent, at paragraph 48 of their Application, states that in one of her LinkedIn articles (which is a private LinkedIn account owned and operated by the Respondent), the Respondent states "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." The Respondent is unsure what term of the Resignation Agreement the Applicant is alleging the Respondent has breached with this statement. As there is nothing preventing the Respondent from speaking about her experiences working for the Applicant, and the Applicant has not alleged defamation, slander or libel, the Respondent continues to be able to speak freely about her experience.

The Applicant's Allegations that the Respondent Violated the Confidentiality Clause

104. The Applicant continues to cite excerpts from the Respondent's business web page, LinkedIn account, blog, YouTube channel, even monitoring the Respondent's schedule through her business web page, all in an attempt to allege that by speaking the truth about her experiences working for the Applicant, she has somehow violated the Resignation Agreement, (paragraphs 48 through 51). The Applicants have provided no evidence that the Respondent has disclosed the confidential terms of the Resignation Agreement.

105. It is obvious, at paragraph 51, that the Applicant took the time to go through all of the Respondent's videos on her YouTube channel (which would take hours) as a 'fishing expedition' to try to find verbiage the Applicant could use against the Respondent. For example, the Respondent fails to see how her presenting at a public session hosted by Justice Michael Tulloch during his oversight review, wherein she does not even mention that she was a Waterloo Regional Police officer, has anything to do with a contravention of settlement. The Respondent was employed at the time she spoke at this public session, (paragraph 51.d of the Applicant's Application).

106. The Applicant spent significant time combing through all of the Respondent's material to collect as much data as possible to create their Application in an attempt to "gag" the Respondent, after the fact, since they permitted her to resign without a non-disclosure agreement, and most likely regret that decision now. The Respondent makes several assertions in her YouTube videos, and she believes them all to be true. If the Applicant believes that there is no impropriety within the police service, then the Applicant should have followed the proper channels to accuse the Respondent of defamation, that has not happened.

107. The Respondent fails to see how publication of the research the Respondent has conducted, and by sharing her experiences working for the Applicant, she is in any way violating the Resignation Agreement.

108. It is to be expected by the Respondent that the Applicant is unhappy that she has been very vocal about her experiences working for the Applicant, and is using her experience to open the eyes of lawmakers to how police officers are treated, but their unhappiness does not constitute a breach of the Resignation Agreement as it is written in its current form.

109. The Respondent is only barred from disclosing the terms and existence of the Resignation Agreement, or bringing any new action against the Applicant for matters arising prior to the date of her voluntary resignation. The Respondent reiterates that at no time has she engaged in any of these activities and the mere fact that she has been forced by the HRTO to defend this proceeding, wherein the sole intent is for the Respondent to now be restricted from making any further expressions relating to her employment with the Applicant.

110. At all times, when asked, the Respondent states she voluntarily resigned, and if asked she states the terms of her resignation are strictly confidential.

111. Unless the Applicant is now alleging that the Respondent has been disseminating false information about the Applicant, (which would require a defamation, libel or slander action in OSCJ), the Respondent is free to speak about her experiences working for the Applicant, as the Resignation Agreement is written.

112. The Respondent alleges that the Applicant only commenced their Application as an attempt to "gag" the Respondent, since she did not agree to a clause restricting her ability to exercise her freedom of expression when she resigned, and the Applicant is now unhappy with the level of exposure the Respondent has received on matters of public interest.

113. The Respondent refuses to accept that the Applicant did not prepare their Application out of retaliation following the filing of her Statement of Claim in OSCJ, as all of the included evidence in the Applicant's Application was printed in June, 2018.

114. Attached at **Tab 30** is an Affidavit by the Respondent, sworn September 12, 2018, which was filed at Ontario Superior Court in the Respondent's *Courts of Justice Act* section 137.1 Application number CV-18-00605386-0000.

115. If, on the other hand, the Applicant is alleging that the Respondent is violating paragraph 16 of the Resignation Agreement, (located at Tab **30.A**), the Respondent confirms that she has not disclosed the terms or existence of the Resignation Agreement, and only if asked has responded by saying that "all outstanding matters between the parties were settled to [our] mutual satisfaction, the terms of which settlement are strictly confidential."

116. The Respondent was adamant, upon resignation, that the Resignation Agreement not limit her freedom of expression.

117. At Tab **30.F**, it is evident in the communication between the Respondent and her counsel at the time, that she was refusing to resign if it meant she would be restricting from talking about her experiences working for the Applicant. The Respondent waives solicitor/client privilege in order to prove to the Tribunal that there was never a belief or intention that the Resignation Agreement restrict the Respondent from speaking publicly about her experiences working for the Applicant.

118. The Respondent reminds the Tribunal that under the parole evidence rule, only what is written in the Resignation Agreement is enforceable, not what the Applicant wishes had been included, or regrets not including.

119. It is concerning that the Applicant has spent so much energy and public funds to prepare this case against the Respondent for public statements she has made about the state of the internal affairs of the police service, without having made any allegation of defamation or libel against the Respondent, even when the Respondent was face-to-face with the Applicant in September, 2017, (after her resignation, and after the publication of her report in July, 2017).

Response to Applicant's Submissions

120. The Respondent does not disagree that the settlement is "binding on the parties."

121. The Applicant's submissions at paragraphs 53 to 54 are correct and will be relied upon by the Respondent in her Application against the Applicant. The Respondent disagrees that these paragraphs help the Applicant in their Application, seeing as how she has not violated any terms of the settlement, as it is written.

122. At paragraph 55, the Applicant states that the Resignation Agreement was to "fully resolve and settle" the HRTO Application the Respondent had filed in June, 2016, and the potential PSA charges against the Respondent; both of those matters have been resolved and settled, the Respondent does not dispute this. The Respondent asserts that merely making statements about the period of her employment for the Applicant (nothing specific to the allegations contained in the June, 2016, Application), does not constitute a violation of the term that her HRTO Application of June, 2016, was resolved. The Respondent has not reopened her June, 2016, Application, nor has she initiated a new proceeding against the Applicant for the same allegations contained in the June, 2016, Application. The Applicant is essentially stating that anything included in the Respondent's original June, 2016, HRTO Application, (even background information), cannot be repeated as oral expressions. Once again, as the Respondent is not restricted from talking about her experiences working for the Applicant, and the Respondent is not relying on the facts leading to her original June, 2016, HRTO Application in any new proceeding, the Respondent has not violated any terms of the Resignation Agreement.

123. The Respondent vehemently denies that by speaking publicly about the period of her employment leading up to the date of her voluntary resignation she is committing "blatant and continuing failure to abide by the terms of the settlement."

124. At paragraph 56, the Applicant once again uses the term "complaints" to mean anything said by the Respondent that is critical of the Applicant. The Respondent has not submitted a complaint to any legislated body accepting complaints, the Respondent has merely made expressions on matters of public interest. This entire paragraph and all of the

allegations pertaining to the use of the word "complaint" to substantiate the Applicant's Application must be struck as there is no prospect of success whatsoever.

125. At paragraph 57, the Applicant alleges that by speaking publicly about her employment, the Respondent is publicizing the contents or terms of all or any part of the Resignation Agreement. This statement makes no sense whatsoever. The Respondent does not publicize terms of the agreement, the Respondent does not deny publicizing information pertaining to the treatment she sustained while employed by the Applicant; these two are not the same. The Respondent has not publicized terms of the Resignation Agreement, (although, the Respondent provides clear examples of the Applicant publicizing terms of the agreement in her HRTO Application).

126. At paragraph 58, the Applicant alleges that since the Respondent 'freely and voluntarily" resigned, she somehow has an implied duty to not discuss matters pertaining to her employment, despite the absence of a non-disclosure clause in the agreement. When the Respondent has stated she was "constructively dismissed" she has always referenced the period prior to her resignation where the conditions of her employment were unilaterally altered by the Applicant without the consent of the Respondent. The Respondent has not filed an action against the Applicant for wrongful dismissal or constructive dismissal in a Court of law.

127. The Respondent confirms that none of the allegations made by the Applicant throughout their entire Application are actual contraventions of the Resignation Agreement. Had there been a clause restricting the Respondent from speaking about the Applicant, the Applicant may have a case – but, that is not the case, and any attempt to

restrict the Respondent's ability to exercise her fundamental right to freedom of expression should be prevented by the HRTO, as that is their duty.

128. Paragraphs 59 through 70 detail the Applicant's position on remedy. The Respondent submits that since no contravention of the settlement agreement has occurred, these paragraphs can be stricken as they are not applicable.

129. At paragraph 64, the Applicant states that the Respondent committed wrongdoing "compounded by bad faith and willfulness," as a means of obtaining increased damages. The Respondent states that this statement made by the Applicant is defamatory and libelous. The Respondent has not committed any wrongdoing, and to suggest that merely to obtain increased damages calls to question the motivation of the Applicant in this matter.

130. Also at paragraph 64, the Applicant alleges that the "breaches" go to the "heart" of the settlement. As already stated, and reference at **Tab 30.F**, the "heart" of the settlement was not to silence the Respondent, or prevent her from speaking about anything other than the existing and terms of the Resignation Agreement. The Applicant continues to make reckless allegations about the conduct of the Respondent without consideration for the evidence in this case.

131. Also at paragraph 64, the Applicant alleges that the Respondent's "actions are public and intended to bring the WRPSB into disrepute." The Applicant believes the Respondent's conduct evidence bad faith and ought to be "severely sanctioned." The Respondent is unsure if the Applicant is stating that that the Respondent's conduct has brought the reputation of the WRPSB into disrepute. If that is the case, the Respondent is unsure why the Applicant has not, at any time, brought an action against the Respondent for defamation, slander or libel. The Respondent reiterates, that there is no term of the

settlement requiring the Respondent to speak affably about or restricting the Respondent from saying anything in general, other than to keep the terms and existing of the Resignation Agreement in strict confidence, unless asked.

132. Again, at paragraph 66, the Applicant states that this case "demands 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." The statements made by the Applicant in paragraphs 64 and 66 are defamatory and intended only to cause the Respondent increased psychological stress. The Applicants are well-aware that the Respondent suffers from PTSD as a result of her employment with the Applicant, and yet they continue to make egregious allegations such as; "wrongdoing compounded by bad faith and willfulness," "her conduct is both intentional and repeated," "this conduct evidences bad faith and out to be severely sanctioned," and "highest level of damages."

133. This entire Application by the Applicant is an attempt to "gag" the Respondent, has absolutely no merit, and was only filed because the Applicants became upset after the Respondent filed her Statement of Claim at OSCJ, and they regretted allowing the Respondent to resign without a non-disclosure clause which would have prevented the Respondent from telling the truth about how she was treated by the Applicant and disclosing her research of systemic policing issues across the province.

RESPONDENT'S RESPONSE TO APPLICANT'S FORM 10 TO DISMISS THE RESPONDENT'S FORM 19 (2.b)

134. On July 30, 2018, the Applicant filed a 58-page document objecting to all of the issues raised in the Respondent's Form 19 submitted on July 10, 2018, and requesting that the HRTO deem the Respondent to have accepted the allegations in the Application, and

requested that the HRTO allow a hearing to deal only with the issue of appropriate remedy for the Applicant.

135. The Applicant's submission completely ignored the principles of procedural fairness by completely omitting the fact that the Respondent had filed a Statement of Claim against the Applicant prior to their submission of their Application, and was exercising her right to a fair hearing under that process in Court prior to being forced to properly respond to the allegations made by the Applicant.

136. Instead, the Applicant accused the Respondent of not denying any of the allegations raised by the Applicant and they should therefore ought to be deemed to be accepted by the Respondent. The Applicant was again forcing the Respondent to fight a two-front war, by stating that her adherence to procedural fairness, by waiting until jurisdiction had been decided on the issue of breach of contract on the Resignation Agreement, would prejudice her by having to accept the allegations made by the Applicant.

137. Proper conduct by the Applicant would have been to stay their proceeding until Justice Doi had made his decision regarding jurisdiction of the Respondent's claim. This was not the case, instead, the Applicant continued to use HRTO procedures to harass and intimidate her.

138. The Applicant makes a bald assertion at paragraph 16 of their submission that "the WRPSB had decided to file an enforcement application and commenced gathering relevant information to support the instant Application well in advance of the commencement of Ms. Donovan's civil action or even being aware of same." The Respondent alleges that this statement is entirely untrue and relies on the time stamp on the Applicant's supporting evidence, all within June, 2018.

139. The Applicant states that "the timing is immaterial" and the Respondent vehemently refutes that's statement. It is the timing of the Applicant's Application, (which fell 11 months after the first alleged contravention of settlement), that shows the Applicant had a due to report that breach within 6-months. It was a series of contraventions, to which the Applicant was only recently made aware. The Applicant was aware of an alleged contravention on July 17, 2017, which is evidence in their material at Tab 4 of an email from Adam Haga of Rogers Commnications. The Applicant made no attempt between July 17, 2017, and June 28, 2018, to notify the Respondent of an alleged contravention, or file their enforcement application. The Respondent continues to assert that the Applicant's Application was done in bad faith.

140. At paragraph 16.c, the Applicant states that they have no objection to the Respondent pursuing her allegations before the Tribunal should she wish to discontinue her Court action. The Respondent did not want to discontinue her court action, the Respondent wanted her right to procedural fairness respected, and have the Tribunal proceeding stayed until proper adjudication of jurisdiction.

141. At paragraph 17, the Applicant completely misunderstands the Charter violations alleged by the Respondent in her Form 19. The Respondent was not alleging that the Resignation Agreement was a violation of her Charter Rights. The Respondent has alleged that the enforcement application filed by the Applicant is an attempt to prevent her from exercising her fundamental right to free expression as guaranteed by the *Canadian Charter of Rights and Freedoms*.

142. On that note, the Respondent is filing a Notice of Constitutional Challenge pertaining to the Applicant's Application and the availability of *Courts of Justice Act*

section 137.1 to provide preliminary relief to those facing "gag" proceedings at the Tribunal level.

143. Attached at **Tab 31** is the Respondent's Notice of Constitutional Question, (to be served upon the Attorney Generals once a hearing date has been scheduled).

144. The Respondent is requesting disclosure of documents by the Applicant to prove or disprove wrongdoing on the part of the Applicant, and as such will ask the Tribunal to ignore litigation privilege, as this would be an exceptional case.[6]

RESPONDENT'S RESPONSE TO THE HRTO'S FORM 10 (3.a)

145. The Respondent advised Mr. Fthenos, HRTO Registrar, in her July 27, 2018, submission (Form 18), that the sole reason her Application had been filed late was due to the fact that she was respecting procedural fairness, and had filed a breach of contract in the OSCJ. An Honourable Justice of the OSCJ had not yet decided if jurisdiction for her Claim be with Court or the HRTO. The Respondent had not wanted to created duplicate proceedings, but was prejudiced when Mr. Fthenos advised he had scheduled a hearing for the merits of the case of the Applicant to be heard which would prejudice the Respondent.

146. As a result of Mr. Fthenos filing a form 10 against the Respondent to dismiss her claim, Mr. Fthenos has provided evidence that he is not acting fairly and have given preferential treatment to the Applicant, with whom Mr. Fthenos has had prior professional involvement by having instructed programs for senior police officers employed by the Applicant, and perhaps even members of the Applicant Board. Mr. Fthenos cannot deny

[6] *Lizotte v. Aviva, Compagnie D'Assurance du Canada, [2016] 2 R.C.S.*, see Respondent's Book of Authorities **Tab E**.

that there is at least an appearance of a conflict of interest and Mr. Fthenos' form 10 should therefore be dismissed for impropriety.

147. There was no indication to Mr. Fthenos that the Respondent had filed her Application late out of bad faith whatsoever. The Respondent provided evidence to Mr. Fthenos that her allegations were properly brought before the Court within the HRTO prescribed time frame, and that if Court declined jurisdiction, she should be given a fair opportunity to raise her allegations before the HRTO without the fear of the HRTO conspiring with the Applicant to have her allegations dismissed.

148. For reasons states, the Form 10 filed by the HRTO should be completely dismissed as frivolous and vexatious and an abuse of process. The Respondent was not afforded procedural fairness.

RESPONDENT'S RESPONSE TO THE APPLICANT'S FORM 10 TO DISMISS THE RESPONDENT'S REQUEST TO AMEND HER APPLICATION (3.c)

149. When it became evident to the Respondent, during the February 19, 2018, teleconference call that the Tribunal was not concerned with the parallel proceeding, the Respondent was forced to amend her HRTO Application so that she would not be prejudiced if Courts decided that jurisdiction falls with the HRTO. The Respondent amended her Application as soon as she knew she would not be afforded flexibility for procedural fairness and that deadlines would remain strict at the HRTO.

150. The Respondent was required to amend her Application with a second alleged contravention of settlement, since she had been made aware of a second contravention of settlement on August 17, 2018, by the Applicant since the filing of her Application in July, 2018.

151. The amendment of her Statement of Claim at OSCJ in January, 2019, was done on consent by the Applicant – and now the Applicant is objecting to the amendment.

152. Once again, the Respondent was being required to file duplicate material in both Court and at the HRTO because the HRTO was not affording the Respondent procedural fairness and the opportunity to wait for a decision on jurisdiction from the Honourable Court. The reasons for the late filing by the Respondent was that the proper procedures were being filed in the current venue of the proceeding – Court.

153. Attached at **Tab 32** is the signed consent to amend the Statement of Claim, (to include the same breach of contract that the Respondent had requested to add to her ongoing HRTO Application).

154. The Applicant once again accuses the Respondent of submitting her request to amend her Application outside of the 6-month limitation period, in a 60-page submission, abusing the process, and that her amended Application has no reasonable prospect of success. The Respondent states the delay was incurred in good faith, and the Respondent's claim was currently before the Courts and the Respondent cannot be expected to file parallel proceedings in order to have her case be heard.

155. The Applicant relies on the reasons for judgement by Justice Doi in their submission, however, the Respondent did not have the luxury of reading those reasons when she prepared her request to amend her Application. Paragraphs 15 and 16 of the Applicant's request should be dismissed as that information was not available to the Respondent when she prepared her materials, and since that decision is now under appear, that matter has not yet been discharged from carriage of the Courts.

156. The Respondent does not deny filing a freedom of information request at the police service. The Respondent fails to see why this issue has become evidence of contravention of settlement provided by the Applicant. The Applicant seeks to obtain the documentation through the HRTO as evidence of wrongdoing by the Applicant in this proceeding.

157. The Respondent's position is that disclosure of the documents requested by the Respondent may provide "evidence of the claimant party's abuse of process or similar blameworthy conduct," paragraph 41 of *Lizotte v. Aviva, Compagnie D'Assurance du Canada, [2016] 2 R.C.S.*[7] These documents are entirely relevant in determining whether or not the Applicant filed their HRTO Application out of retaliation for the Respondent having filed her Statement of Claim at OSCJ. The records the Respondent requested are the only records the Respondent believes exist to prove whether or not the Application had been prepared over a period of time, or whether it was compiled following May 9, 2018.

158. At paragraph 42 of the Applicant's submission, the Applicant brazenly accuses the Respondent of attempting to "re-litigate an issue that has already been decided by the Court," when the only reason there are now two parallel proceedings is due entirely to the actions of the Applicant. Had the Applicant afforded the Respondent procedural fairness from the very beginning in May, 2018, the Applicant would have filed a Counter-Claim in OSCJ, or waited until a decision was made by the OSCJ to proceed at the HRTO.

159. As the Respondent has appealed the decision of Justice Doi, the Respondent states there has been no final decision of a court of competent jurisdiction in the prior action.

160. To suggest, as the Applicant does at paragraph 45, that the Respondent's Application should be dismissed because another proceeding appropriately dealt with the

[7] See Respondent's Book of Authorities **Tab E**.

substance of the application is insulting. From the very beginning, the Respondent has been forced to fight a two-front war because the Applicant filed a collateral attack against the Respondent.

161. The Respondent denies that the Court proceeding was appropriately dealt with, as her appeal is pending. The Respondent has not been given a fair opportunity to bring her allegations to the HRTO since the Applicant filed their collateral attack in June, 2018.

162. With regard to the dismissal of a Claim for absolute privilege, here is what Justice Pollak in *Doe vs. Doe D, 2018 ONSC 18*[8], stated at paragraph 14:

a. "…and for the reasons given by the Court of Appeal in the Amato case, I find that this is an area of unsettled law because of the possible application of two conflicting privileges, which should not be decided on a Rule 21 motion."

163. In the Respondent's case before Justice Doi, the alleged breach of contract of Bryan Larkin could not have been solely protected by absolute privilege because Larkin also had a duty to respect settlement privilege.

164. As such, paragraphs 42 to 48 should be struck from the Applicant's submission.

165. Paragraphs 49 to 52 should also be struck as the contravention by the Applicant is a straight forward contravention. The Applicant agreed to not file any appeals against the Respondent, and then they did. Justice Doi erred in applying a statute meant to protect workers, to protect the rights of an employer, and allow the employer to violate a legal contract. This matter is also before the Ontario Court of Appeal and as such has not been disposed.

[8] *Doe vs. Doe D, 2018 ONSC 18*, see Respondent's Book of Authorities at **Tab F**.

166. The 60-page submission by the Applicant is frivolous, an abuse of process and is merely a further attempt to harass and discriminate against the Respondent, as the submission was lengthy and required the Respondent to meet yet another deadline for response and further alienation from the HRTO.

167. There is nothing in the Applicant's submission of March 5, 2019, that has enough merit to proceed to a hearing. As the Applicant had previously consented to amend the Statement of Claim in OSCJ, the Respondent requests that the amended Application at the HRTO reflect the same consented amendment without further objections by the Applicant.

AN HRTO PROCEEDING AS A STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION (SLAPP)

168. In May, 2016, there were two ways to report misconduct of a police officer working for the Applicant Board. Those were:

a. Filing a complaint with the Office of Independent Police Review Director ("OIPRD"); and

b. Filing a complaint to the police service directly.

169. The legislation governing the OIPRD, the *Police Services Act, R.S.O. 1990, c. P.15*[9], allows members of the public to make complaints about the conduct of a police officer, but prohibits a member of a police force from making a complaint, if that police force is the subject of the complaint, subsection 58(2).

170. The Applicant Board's internal policy on complaints only defined a "member of the public" to be a complainant, there was no mechanism for an officer to file an internal complaint of misconduct.

[9] See Respondent's Book of Authorities, **Tab C**.

171. Attached at **Tab 30.C** is the Procedure of the Waterloo Regional Police Service, Public Complaints and Chiefs Complaints.

172. In Ontario, employees are only protected against reprisal for reporting wrongdoing in the following three statutes:

a. *Public Service of Ontario Act, 2006, S.O. 2006, c. 35, Sched. A*, s. 139(1)[10];

b. *Public Servants Disclosure Protection Act (S.C. 2005, c. 46)*, s. 19.1(1)[11]; and

c. *Securities Act, R.S.O. 1990, c. S.5*, s. 121.5(1)[12].

173. In May, 2016, there was no protection for municipal police officers who reported internal wrongdoing in Ontario.

174. On May 4, 2016, the Respondent made an unprotected disclosure of wrongdoing to the Applicant Board by way of lawful delegation.

175. With no procedural mechanism in place for the Respondent to report the wrongdoing internally, the Respondent feared her concerns would be concealed unless she reported them to the oversight body.

176. The wrongdoing the Respondent reported to the board involved misconduct by officers working in the professional standards branch, domestic violence branch, and senior leadership, (this was admitted by the Applicant in CV-18-001938-0000).

177. The nature of the Respondent's disclosure is articulated very differently by both the Respondent and the Applicant.

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[10] *Public Service of Ontario Act, 2006, S.O. 2006, c. 35, Sched. A*, see Respondent's Book of Authorities **Tab G**.

[11] *Public Servants Disclosure Protection Act (S.C. 2005, c. 46)*, see Respondent's Book of Authorities **Tab H**.

[12] *Securities Act, R.S.O. 1990, c. S.5*, see Respondent's Book of Authorities, **Tab I**.

178. The Respondent considered her delegation to be a disclosure of wrongdoing of other police officers working for the Applicant.

179. The Applicant considered the Respondent's delegation to be a public criticism and reference to confidential information and wrongfully claims that the Respondent required the Bryan Larin's approval, as police chief, before making her delegation to the Applicant.

180. Following the Respondent's disclosure, she faced discipline, a unilateral change in her employment and was ordered by Bryan Larkin to cease communicating with members of the Applicant Board.

181. A series of complaints and investigations took place between May 9, 2016, and June 8, 2017, initiated by both the Respondent and the Applicant.

182. On June 8, 2017, the Respondent agreed to the terms of a resignation presented by the Applicant, to resign from her employment effective June 25, 2017.

183. In May, 2018, the Respondent filed a statement of claim against the Applicant for breach of contract that occurred in December, 2017.

184. In June, 2018, the Applicant filed a motion to dismiss the Respondent's claim, scheduled for February 13, 2019.

185. In July, 2018, the Applicant filed their contravention of settlement application against the Respondent at the HRTO.

186. On September 18, 2018, the Respondent filed an Application at OSCJ to dismiss the Applicant's HRTO Application, pursuant to the *Courts of Justice Act, R.S.O. 1990, c. C.43*[13] ("*CJA*"), on the grounds that the Application is a "gag proceeding" (court file number CV-18-00605386-0000).

[13] *Courts of Justice Act, R.S.O. 1990, c. C.43,* see Respondent's Book of Authorities at **Tab J**.

187. Attached at **Tab 33** is the Application to OSCJ.

188. On September 21, 2018, the Respondent amended the Application at OSCJ, (court file number CV-18-00605386-0000).

189. Attached at **Tab 34** is the amended Application at OSCJ.

190. From the time the Applicant's Application at the HRTO (and alleged "gag" proceeding) was filed in June, 2018, until the final disposition of the CJA application, the Respondent continued to be harassed by the Applicant and the HRTO for repeated and continuous requests for documentation and failures to meet strict guidelines.

191. The Respondent believes the intention of the CJA was to prevent this very type of conduct by litigants who choose to use litigation as a means of unduly limiting debate on matters of public interest.[14]

192. Following appearances by both the Respondent and the Applicant at OSCJ in Toronto on September 24, 2018, November 13, 2018, and January 10, 2019, it was decided by Justice Favreau that *CJA* section 137.1 does not apply to Tribunal matters at the HRTO.

193. Justice Favreau's Reasons for Judgment were released on February 1, 2019. Regarding the importance of venue chosen by the Applicant to bring their allegations of breach of contract, Justice Favreau had this to say at paragraph 50:

> "If the Board had brought an action in this Court to enforce the Resignation Agreement, there is no doubt that Ms. Donovan could bring a motion pursuant to section 137.1 of *the Courts of Justice Act* for an early determination of whether the Board's litigation is an illegitimate attempt to preclude her from speaking out on matters of public interest. As I indicated to the parties during the hearing of this motion,

[14] *1704604 Ontario Ltd. V. Pointes Protection Association, 2018 ONCA 685*, see Respondent's Book of Authorities, **Tab K**.

whether Ms. Donovan's public statements about her former employer and her experience as a police officer are a form of expression in the public interest are issues that go to the core of determining a motion brought under section 137.1(3) of the *Courts of Justice Act*. They are not properly characterized as preliminary jurisdictional matters, and I would not have dismissed Ms. Donovan's application on that basis."

194. Regarding jurisdiction of matters relating to violations of the resignation agreement, Justice Favreau had this to say at paragraph 51:

"The Board also argues that the Human Rights Tribunal has exclusive jurisdiction over issues related to the enforcement of the Resignation Agreement. A similar issue is being raised by the Board on the motion to be heard on February 13, 2019, in the context of Ms. Donovan's civil action. While it is not necessary for me to decide this issue in the context of this motion, I note that it is not clear to me that the Human Rights Tribunal has any jurisdiction over the Board's application, let alone exclusive jurisdiction."

195. At the January 10, 2019, court appearance, the Applicant also gave an undertaking to Justice Favreau to permit the Respondent adequate time to prepare her materials to present to the HRTO in both matters. At paragraph 56, Justice Favreau stated:

"Given this context, during the hearing of this motion, I sought assurances from the Board that it would not impede Ms. Donovan's ability to make substantive arguments before the Human Rights Tribunal despite the fact that she may have missed some deadlines. In response, the Board's counsel gave an undertaking in court not to take

the position before the Tribunal that Ms. Donovan is out of time to raise substantive arguments in response to the application."[15]

Notice of Constitutional Question

196. A Notice of Constitutional Question will be filed with the Attorney General of Ontario and the Attorney General of Canada once a hearing date has been set in this matter.

197. The Respondent requests consideration be given to amend the Courts of Justice Act to allow those facing a Strategic Lawsuit Against Public Participation (SLAPP suit) filed elsewhere to seek the same remedy of dismissal available to those facing civil lawsuits.

198. See **Tab 31** for a copy of the Respondent's Notice of Constitutional Question.

Participation of Georgios Fthenos in These Matters (4.a, 4.c, 4.d.)

199. As indicated in the 2016-2017 Social Justice Tribunals Ontario Annual Report, at page 11, the "SJTO welcomed Georgios Fthenos as the new registrar of the HRTO." "Georgios came to SJTO from the Ontario Police College where he was Chief Instructor and Senior Manager."

200. See **Tab 35** for the 2016-2017 Social Justice Tribunals Ontario Annual Report.

201. The Respondent makes allegations of Code of Conduct and Conflict of Interest violations by Mr. Georgioe Fthenos at paragraphs 15, 26, 28, 58, 146, 147, and 148.

202. Mr. Fthenos is the Registrar of the HRTO and is bound to comply with requirements to ensure that his private interests are not in conflict with his duties and responsibilities to Social Justice Tribunals Ontario ("SJTO").

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[15] *Donovan v. (Waterloo) Police Services Board, 2019 ONSC 818*, See the Respondent's Book of Authorities **Tab L**.

203. In accordance with the SJTO's Code of Conduct, Mr. Fthenos has a duty to comply with the principles of procedural fairness and natural justice and act impartially, (see **Tab 21**, Part 3, ¶ 3).

204. Mr. Fthenos has a duty to treat those who appear before him without discrimination or favouritism, (see **Tab 21**, Part 3, ¶ 4).

205. In accordance with the SJTO's Conflict of Interest Rules, Mr. Fthenos shall not behave in a manner that could create the appearance that preferential treatment is being given to a person or entity, (see **Tab 22**, Part I, ¶ 10).

206. Mr. Fthenos shall not process, adjudicate, or participate in processing or discussions of, any proceeding, in which Mr. Fthenos with whom he has had a close business or personal relationship or has had any prior involvement, (see **Tab 22**, Part III, ¶ 32).

The Conduct of Adjudicator (and Vice-Chair) Laurie Letheren (4.a, 4.b.)

207. The Respondent makes allegations of Code of Conduct and Conflict of Interest violations by Ms. Letheren at paragraphs 54, 55, 56, 58, 67, 68, 69, 70, 73, 74, and 149, in addition to those paragraphs listed below.

208. In accordance with the SJTO's Code of Conduct, Laurie Letheren has a duty to comply with the principles of procedural fairness and natural justice and act impartially, (see **Tab 21**, Part 3, ¶ 3).

209. During the teleconference call on February 19, 2019, with the parties, Ms. Letheren made statements such as; "You were directed to file these back in September and again in October." "These procedures, according to our rules, have to proceed alone, um, I wasn't aware until not that long ago that there was this other proceeding, so you certainly didn't

make the tribunal aware of that back in September…" As indicated in the Timeline above, the Respondent had made the HRTO aware of the issues since July, 2018.

210. When the Respondent told Ms. Letheren that she was incorrect, and that the Respondent had notified the HRTO as early as July 10th, (the earliest possible occasion), that there was a concurrent court proceeding, Ms. Letheren replied "We still have rules, and you were directed to file a response as to whether or not... Ah… The question you have to answer is why did you file this late? That's the question you have to answer, uh, because the Tribunal doesn't have jurisdiction because it was filed (unintelligible)."

211. When the Respondent advised Ms. Letheren she had a duty to respect procedural fairness, Ms. Letheren replied "I have a duty to apply my rules fairly to both parties."

212. According to Ms. Letheren, it is common for matters to proceed at two venues, and Ms. Letheren states on this recording that the Respondent had not provided the HRTO with reasons why Application 2018-33503-S was filed outside of the 6-month limitation period, (this is covered off at paragraph 21).

213. At one point in this conversation, Ms. Letheren says "I don't know what you're referring to when you say Code of Conduct."

214. When the Respondent asked Ms. Letheren; "Where is the place to address Code of Conduct violations, can you tell me that?" Ms. Letheren replied; "No, I can't direct you to that." "I'm not here to give you advice."

215. Ms. Letheren has a duty to treat those who appear before her without discrimination or favouritism, (see **Tab 21**, Part 3, ¶ 4).

216. In accordance with the SJTO's Conflict of Interest Rules, Ms. Letheren shall not behave in a manner that could create the appearance that preferential treatment is being given to a person or entity, (see **Tab 22**, Part I, ¶ 10).

CONCLUSION

217. Taking into account the conduct by both the Applicant, and members of the HRTO since the start of these proceedings, the Respondent cannot be guaranteed a fair procedure and natural justice if the proceedings are allowed to continue with the current Adjudicator and Registrar who did not recluse himself.

218. The conduct of the Applicant throughout this entire process has been tantamount to abuse, oppression and discrimination since the Applicant knows the Respondent has post-traumatic stress disorder, and the Applicant intentionally created a duplicate proceeding to deal with the same matter of breaches of the Resignation Agreement.

219. The duplicity of proceedings has caused the Respondent a great deal of mental anguish, additional stress, financial strain, time committed to prepare legal documents that has kept the Respondent from earning an income to support her children.

220. In addition to the remedies sought in the Respondent's application, the Respondent seeks remuneration from the HRTO for their failures to conduct themselves ethically and in consideration of the Respondent's medical condition known since the first application was launched. As Mr. Letheren could not advise the Respondent how to file a complaint of misconduct of members of the HRTO, those allegations have all been combined into this one document.

Court File No.: CV-18-00001938-0000

Ontario

SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Plaintiff

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD, and

BRYAN LARKIN

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 1 8B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and $1,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding

dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and $400 for costs and have the costs assessed by the court.

Date: 09 May 2018 Issued by: _____

Name: _____

Local Registrar

Address of Court Office:

7755 Hurontario Street

Brampton, Ontario

L6W 4T6

TO: WATERLOO REGIONAL POLICE SERVICES BOARD

200 Maple Grove Road

Cambridge, Ontario

N0B 1M0

AND TO: BRYAN LARKIN

378 Golf Course Road

Conestogo, Ontario

N0B 1N0

CLAIM

I. Relief Claimed

1. The plaintiff Kelly Lynn Donovan, claims against the defendants, jointly and severally, the following relief:

    a. Damages for breach of contract, in the amount of Two Hundred Thousand Dollars ($200,000.00);

    b. Punitive, exemplary and/or aggravated damages in the amount of Ten Thousand Dollars ($10,000.00);

    c. To be reinstated as a sworn member of the Waterloo Regional Police Service at full pay of a first-class constable with all the rights, privileges and prerogatives she formerly enjoyed, on terms mutually agreed upon by both the defendants and plaintiff.

    d. Pre-judgment and post-judgment interest in accordance with the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;

    e. Costs of this proceeding on a solicitor and his own client scale, together with applicable HST; and

    f. Such further and other relief as counsel may advise and this Honourable Court deems just.

II. Parties

2. The plaintiff, Kelly Lynn Donovan, is a former police officer who resides in the City of Brantford in the Province of Ontario. Prior to June 26, 2017, the Plaintiff

was employed by the defendant Waterloo Regional Police Services Board ("defendant board").

3. The defendant Bryan Larkin is chief of Waterloo Regional Police Service and is employed by the defendant board.

III. Facts

Class action lawsuit

4. On May 30, 2017, a class action lawsuit was filed against the defendants in the Ontario Superior Court of Justice in Brampton; Court File Number CV-17-2346-00, (furthermore referred to as "the class action lawsuit"). The plaintiff is not a party to the class action lawsuit. The class action lawsuit alleges systemic and institutional gender-based discrimination and harassment and seeks total damages of One Hundred and Sixty-Seven Million Dollars ($167,000,000.00).

Plaintiff's resignation

5. On June 8, 2017, the plaintiff and defendant board entered into a Resignation Agreement, written by counsel for the defendant board, containing the following clause:

   a. *"Except where disclosure is required by law, or where disclosure is to Donovan's immediate family members or to persons providing*

professional financial/legal advice (all of whom agree to be bound by this non-disclosure and confidentiality clause), the parties undertake and agree that they will 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. For added certainty, and without limiting the generality of the foregoing, the parties undertake and agree that they will not publicize, discuss, disclose or communicate in any way with 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 (and anyone subject to the terms of this non-disclosure and confidentiality clause) will indicate only that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential."

6. The Resignation Agreement was signed by the defendant Bryan Larkin on behalf of the defendant board.

Plaintiff's health

7. Prior to February, 2011, the plaintiff did not have any health issues. The plaintiff was healthy, educated and highly employable. She was hired by the defendant board on her first attempt in December, 2010.

8. Starting in February, 2017, the plaintiff could not attend work due to the severity

of her post-traumatic stress disorder (PTSD) symptoms. The plaintiff's medical condition was caused by her employment with the defendant board; both from a training accident and the moral injury she suffered in 2015 pertaining to alleged internal corrupt practices she had witnessed.

9. The plaintiff was frequently triggered by her ongoing human rights case and disciplinary proceeding. The plaintiff's symptoms briefly improved when she resigned from the police service in June, 2017.

IV. Overview

10. On December 21, 2017, defendant Bryan Larkin swore an affidavit in defense of the class action lawsuit and the document was submitted to record.

11. In the affidavit, the defendant Bryan Larkin states, at para. 13:

    a. *"Attached hereto and marked as "Exhibit F" to this my Affidavit, is an additional chart that I had requested the Human Resources Division of WRPS prepare, showing where the Human Rights Tribunal complaints that had been commenced by female employees in the last five years, and their status or resolution. Again, this chart has non-identifying information, with the exception of the Plaintiff, [name removed], who's Complaint is to the Human Rights Tribunal as it is still outstanding, and the status of which is referred to in detail below."*

12. The attachment to the defendant Bryan Larkin's affidavit is a chart titled "Police Officer Initiated Ontario Human Rights Complaints" and lists four female officers.

Those officers are identified in the following ways:

a. One female officer is named and the three remaining female officers are not.

b. Of the three-unnamed female officers, two are listed as "Constables" and one as "Sergeant."

13. Of the two-unnamed female "Constables" in the chart, one shows as having been resolved in the following manner:

    i. *"SETTLED: - monetary settlement, - withdrawal of OHRT application, - voluntary resignation."*

14. There is only one female officer showing on this chart as having "voluntarily" resigned.

15. The plaintiff is the only female constable who was employed by the defendant board over the past five years, had filed a human rights complaint and who voluntarily resigned.

16. The public disclosure made by defendant Bryan Larkin was not required by law, contained sufficient information for the plaintiff to be identified and violates the terms of the Resignation Agreement.

17. The actions of defendant Bryan Larkin have caused the plaintiff a great deal of stress, anxiety and re-lived trauma. From December, 2017, to March, 2018, the plaintiff's PTSD symptoms worsened.

18. Defendant Bryan Larkin is aware that the plaintiff was on medical leave from February, 2017, until her resignation in June, 2017.

19. The plaintiff therefore claims the relief as set out in paragraph 1 of the Statement

of Claim.

20. The defendants are jointly and severally liable for the damages caused to the plaintiff. Further, the defendant board is vicariously liable for the conduct, representations, omissions and/or negligence of the police service's employees, agents, servants and contractors, which includes the defendant Bryan Larkin.

FORM 4C

Courts of Justice Act

BACKSHEET

Kelly Lynn Donovan vs. Waterloo Regional Police Services Board et al.

Court file no. CV-13-00001938-0000

Ontario Superior Court of Justice

PROCEEDING COMMENCED AT Brampton

STATEMENT OF CLAIM

KELLY DONOVAN
11 Daniel Place
Brantford, Ontario
N3R1K6
Phone: 519-209-5721
Email: kelly@fit4duty.ca

RCP-E 4C (May 1, 2016)

Court File No. CV-18-00001938-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Plaintiff
(Responding Party)

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD
and BRYAN LARKIN

Defendants
(Moving Party)

NOTICE OF MOTION OF THE MOVING PARTY
(returnable February 13, 2019)

The Defendants will make a motion to a Judge, on Wednesday, February 13, 2019, at 10:00 am or as soon after that time as the motion can be heard, at 7755 Hurontario Street, Brampton, Ontario L6W 4T1.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- [ ] in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- [ ] in writing as an opposed motion under subrule 37.12.1(4);
- [x] orally.

THE MOTION IS FOR:

(a) An Order dismissing the Plaintiff's action pursuant to Rule 21.01(3)(a) of the *Rules of Civil Procedure* on the ground that this Honourable Court has no jurisdiction over the subject matter of the action;

(b) In the alternative, an Order striking out the Statement of Claim, without leave to amend, pursuant to Rule 21.01(1)(b) of the *Rules of Civil Procedure* for failing to disclose a reasonable cause of action against the Defendants;

(c) In the further alternative, an Order dismissing the Plaintiff's action pursuant to Rule 21.01(3)(d) of the *Rules of Civil Procedure* on the ground that the action is frivolous, vexatious and/or an abuse of the process of the Court;

(d) In the further alternative, an Order striking out the Statement of Claim as against the personally-named Defendant, without leave to amend, on the ground that it discloses no reasonable cause of action as against the personally-named Defendant and/or the claim is frivolous, vexatious and/or an abuse of the process of the Court and/or the Court has no jurisdiction over the subject matter of the action;

(e) In the further alternative, an Order extending the time limits to allow the Defendants to file a Statement of Defence;

(f) If necessary, an Order abridging or extending the time for service, filing and/or delivery of the Motion Record, the Factum, the Book of Authorities and/or a Motion Confirmation;

(g) An Order for costs of this motion, on a substantial indemnity basis, fixed and payable to the Defendants within 30 days, pursuant to Rule 57.03(1) of the *Rules of Civil Procedure*; and

(h) Such further and other relief as counsel may advise and/or this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Overview

(a) By Statement of Claim dated May 9, 2018, the Plaintiff, Kelly Lynn Donovan, commenced an action against the Defendants, the Waterloo Regional Police Services Board ("WRPSB") and Bryan Larkin, Chief of Police, for breach of contract.

(b) The Plaintiff was previously employed by the WRPSB and held the rank of Constable assigned to Administrative Command, Training Branch. The Plaintiff was represented by the Waterloo Regional Police Association ("WRPA") in respect of her employment with and resignation from the WRPSB.

(c) On or about June 3, 2016, the Plaintiff filed an Application with the Human Rights Tribunal of Ontario (the "Tribunal"), alleging that she was subject to discrimination on the basis of sex and marital status.

(d) On or about June 8, 2017, the Plaintiff, the WRPSB, and the WRPA successfully negotiated a Resignation Agreement to fully and finally resolve the Plaintiff's human rights Application. Mr. Larkin executed the Resignation Agreement on behalf of the WRPSB.

(e) Pursuant to the Resignation Agreement, the Plaintiff expressly confirmed that "she is freely and voluntarily resigning her employment with the [WRPSB] effective on or about June 25, 2017". The Plaintiff also acknowledged and agreed that her resignation decision was irrevocable.

(f) Furthermore, the Plaintiff and the WRPSB agreed to keep the terms of the Resignation Agreement in confidence.

(g) The Resignation Agreement also included a Full and Final Release, under which the Plaintiff agreed to release and forever discharge the WRPSB from "any and all actions, causes of action, complaints…claims…which aris[e] out of or in any way relat[e] to the matters giving rise to [her] HRTO Application". The Plaintiff also expressly agreed that the Release could be raised as a complete bar to "any complaint against 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 [her] HRTO Application".

(h) The Plaintiff claims, as pleaded in the Statement of Claim, that the Defendants breached the Resignation Agreement as Mr. Larkin swore an affidavit in defence of a class action lawsuit. Specifically, the Plaintiff

(m) The Plaintiff has failed to plead the necessary legal elements of the alleged breach of contract or to otherwise support the remedies claimed. The Plaintiff's allegations lack supporting facts and sufficient clarity to sustain a claim of liability or damages for breach of contract or otherwise.

(n) The Plaintiff's claim discloses no reasonable cause of action and should be struck out pursuant to Rule 21.01(1)(b) of the *Rules of Civil Procedure*.

In the alternative, the action is frivolous, vexatious and/or an abuse of the process of the Court

(o) The Plaintiff's claim is clearly unmeritorious and therefore ought to be struck out as frivolous, vexatious and/or an abuse of process.

The Claim against the personally-named Defendant should be struck

(p) Claims made against a personally-named Defendant must be based on causes of action for which the personally-named Defendant is ***personally*** responsible. It is insufficient to plead that an employee committed particular acts in the course of employment. At all times, the personally-named Defendant was acting in his capacity as Chief of Police. Accordingly, the claim against him personally discloses no reasonable cause of action and/or is frivolous, vexatious and an abuse of process. Alternatively, any claim against the personally-named Defendant should be resolved through the following processes and/or forums:

(i) the application and hearing process of the Tribunal under the provisions of the *Code*; and/or

(ii) the grievance and arbitration process under the collective agreement between the WRPSB and the WRPA.

(q) The Court has no jurisdiction over the subject matter of the action as against the personally-named Defendant.

The Defendants rely on:

(r) Rules 21.01(3)(a), 21.01(1)(b), 21.01(3)(d), and 57.03(1) of the *Rules of Civil Procedure*, RRO 1990, Reg 194;

(s) Section 45.9 of the *Code*; and

(t) Such further and other grounds as counsel for the Defendants may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) The Statement of Claim in this action issued May 9, 2018;

(b) The Resignation Agreement;

(c) The Affidavit of Bryan Larkin referred to in the Plaintiff's Statement of Claim; and

(d) Such further and other evidence as counsel for the Defendants may advise and this Honourable Court may permit.

June 7, 2018

Filion Wakely Thorup Angeletti LLP
333 Bay Street, Suite 2500
Toronto, Ontario M5H 2R2

Donald B. Jarvis LSUC#: 28483C
Carol S. Nielsen LSUC#: 40594A
Tel: 416-408-3221
Fax: 416.408.4814

Lawyers for the Defendants

TO: Kelly Donovan
11 Daniel Place
Brantford, Ontario N3R 1K6

Tel: 519-209-5721

KELLY LYNN DONOVAN
Plaintiff

and

WATERLOO REGIONAL POLICE SERVICES BOARD and BRYAN LARKIN
Defendants

Court File No: CV-18-00001938-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at BRAMPTON

NOTICE OF MOTION OF THE MOVING PARTY (RETURNABLE FEBRUARY 13, 2019)

Filion Wakely Thorup Angeletti LLP
333 Bay Street, Suite 2500
Toronto, Ontario M5H 2R2

Donald B. Jarvis LSUC#: 28483C
Carol S. Nielsen LSUC#: 40594A
Tel: 416-408-3221
Fax: 416.408.4814

Lawyers for the Defendants (Moving Party)

BETWEEN:

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD

Applicant

- and –

KELLY DONOVAN

Respondent

Appendix A

BACKGROUND

1. The respondent has commenced a civil proceeding that alleges the applicant breached the terms of the resignation agreement (the "contract") between the applicant and the respondent, (Ontario Superior Court of Justice, Court File No. CV-18-00001938-000, the "civil claim" filed on May 9, 2018);
2. Since resigning from employment with the applicant, the respondent has made attempts to earn an income to support her family and improve her mental and physical health.
3. Since resigning from employment with the applicant, the respondent has participated in debate to improve the level of accountability and transparency in policing legislation.
4. The respondent has been openly critical of police services across Ontario to shed light on issues that the respondent believes need to be addressed by oversight bodies and government.
5. The respondent has been volunteering her time to assist police services boards in Ontario.

REQUEST TO DISMISS:

6. The section 45.9 application (the "application") should be dismissed because:

a. the tribunal has not been granted jurisdiction over the same matter in the respondent's civil claim;
    i. *Statutory Powers and Procedures Act ("SPPA"), R.S.O. 1990, c. S.22*, subsection 4.6(1)(b).
b. the application is frivolous, vexatious and was commenced in bad faith by the applicant as a means of retaliation against the respondent for having filed the civil claim;
    i. *SPPA*, subsection 4.6(1)(a).
c. the application is a flagrant abuse of process;
d. the application is untimely;
    i. *Ontario Human Rights Code, R.S.O. 1990, c. H.19*, subsection 45.9(3).
e. the application is a collateral attack on the respondent's fundamental freedoms, as guaranteed by the *Canadian Charter of Rights and Freedoms*.
    i. *The Constitution Act, 1982*, Part I, Canadian Charter of Rights and Freedoms, s. 2.
    ii. *Courts of Justice Act, R.S.O. 1990, c. C.43*, subsection 137.1(3).

7. The respondent requests that the Tribunal's decision be delivered in person.

REASONS FOR REQUEST:

8. The respondent has already alleged that the applicant breached the same term of the same contract.
9. The applicant notified the respondent that it believed the matter was better suited at the Tribunal. The respondent received an email on May 29, 2018, from the applicant that a motion was being filed to evaluate jurisdiction of the respondent's civil claim. This motion is being heard February 13, 2019.
10. If the applicant's motion is successful, the respondent would then proceed with her allegation to the Tribunal.
11. The respondent believes the courts will have jurisdiction over the civil claim, the applicant argues the jurisdiction will belong with the tribunal. No jurisdiction order has been made by the courts.

12. It is premature and improper for the Tribunal to examine issues that are currently before the Ontario Superior Court of Justice.
13. It is an abuse of process for the applicant to bring this application to the Tribunal knowing that the respondent has already started a proceeding against the applicant on this matter.
14. The application was compiled and filed by the applicant after the civil claim was served by the respondent and was done in retaliation to harass the respondent and cause her to incur additional costs. The supporting documents in the applicant's submission were all printed in June, 2018, after the filing of the civil claim (as indicated in the footer).
15. The application is untimely. The issues in the application were brought to the applicant's attention in July, 2017, and the applicant remained aware of the respondent's conduct since that time.
16. There is no logical explanation as to why the applicant waited until June, 2018, to file allegations dating back to July, 2017, and then contain a series of allegations that the applicant alleges have been continuous. This delay was not incurred in good faith.
17. The application is an obvious retaliation against the respondent for filing the civil claim and to prevent the respondent from returning to the Tribunal to file her own form 18 in February, 2019, if the courts decide.
18. The applicant's form 18 is an assault on the respondent's fundamental right to free expression.
19. The remedies sought by the applicant are an attempt to deprive the respondent of her fundamental right to free expression.
20. The respondent must now seek legal counsel to defend this action brought by the applicant. This will take the respondent time in excess of the required timeline to properly respond to the applicant's form 18.

RESPONSE TO FORM 18:

21. It would be premature and inappropriate at this time for the respondent to respond to the specific allegations contained in the applicant's form 18.

Response to an Application for Contravention of Settlement – Rule 24
Form 19

A party to a settlement may respond to an Application for Contravention of Settlement by completing this Form 19.

Follow these steps to make your Response:

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 a Settlement **fourteen (14) days** after the Application for Contravention of Settlement was delivered to you.

Download forms from the Tribunal's web site 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. Contact Information

Please provide your contact information. Complete **a) Organization** or **b) Individual**.

a) Organization

Full Name of Organization: _____

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	Last (or Family) Name	Title

Street Number	Street Name	Apt/Suite

City/Town	Province	Postal Code	Email

Daytime Phone	Cell Phone	Fax	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.)

b) Individual

First (or Given) Name	Last (or Family) Name
Kelly	Donovan

Street Number	Street Name	Apt/Suite
11	Daniel Place	

City/Town	Province	Postal Code	Email
Brantford	Ontario	N3R1K6	kelly@fit4duty.ca

Daytime Phone	Cell Phone	Fax	TTY
5192095721			

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.)

2. Representative Contact Information

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

First (or Given) Name	Last (or Family) Name

Organization (if applicable)	LSUC No. (if applicable)

Street Number	Street Name	Apt/Suite

City/Town	Province	Postal Code	Email

Daytime Phone	Cell Phone	Fax	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. What is your response to each allegation of a contravention of the settlement? What is your response to the remedy requested?

See Appendix A

4. Declaration and Signature

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

Declaration:

To the best of my knowledge, the information in my Response is complete and accurate.

I understand that information about my Response can become public at a hearing, in a written decision, or in other ways determined by Tribunal policies.

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

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

Name: Kelly Donovan	
Signature:	Date: (dd/mm/yyyy) 10/07/2018

☑ Please check this box if you are filing your Response 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 Commission, the Tribunal must provide the Commission with copies of applications and responses filed with the Tribunal and may disclose other documents in its custody or control.

Ontario

Social Justice Tribunals Ontario

Providing fair and accessible dispute resolution

Human Rights Tribunal of Ontario
655 Bay Street, 14th Floor
Toronto ON M7A 2A3
Tel: 416 326-1312 or 1-866-598-0322
Fax: 416-326-2199 or 1-866-355-6099
E-mail: hrto.registrar@ontario.ca

Tribunaux de justice sociale Ontario

Pour une justice accessible etéquitable

Tribunal des droits de la personne de l'Ontario
655, rue Bay, 14e étage
Toronto ON M7A 2A3
Tél.: 416-326-1312ou 1-866-598-0322
Téléc.: 416-326-2199 ou 1-866-355-6099
Courriel: hrto.registrar@ontario.ca

HRTO FILE: **2018-33237-S**

July 19, 2018

Kelly Donovan
11 Daniel Place
Brantford, Ontario N3R 1K6
Via Mail and Email: kelly@fit4duty.ca

Filion Wakely Thorup Angeletti LLP
c/o Donald Jarvis
333 Bay St Suite 2500
Toronto, Ontario M5H 2R2
Via Mail and Email: djarvis@filion.on.ca

Waterloo Regional Police Association
c/o Caroline V. (Nini) Jones
155 Wellington St 35th Floor
Toronto, Ontario M5V 3H1
Via Mail and Email:
nini.jones@paliareroland.com

RE: The Regional Municipality of Waterloo Police Services Board v. Kelly Donovan

Subject: CONTRAVENTION OF SETTLEMENT - OPPORTUNITY TO PROVIDE ORAL SUBMISSIONS

The applicant filed an Application for Contravention of Settlement (Form 18) on June 28, 2018, under section 45.9(3) *of Part IV of the Human Rights Code, R.S.O. 1990, c. H.19, as amended (the "Code"),* alleging a breach of

settlement. The respondent filed a Response to Application for Contravention of Settlement (Form 19) on July 10, 2018.

The matter will be scheduled for a full day in-person hearing to hear the parties' submissions on the matters raised in this Application.

The parties will deliver and file all arguably relevant documents upon which they intend to rely, witness lists and detailed summation of their expected testimony, if any, no later than 30 days before the scheduled date of the hearing.

FILING DOCUMENTS

Documents filed with the HRTO as email attachments may not exceed 10 mb. See Rule 1.17(e).

A party must file a paper copy and an electronic copy or a second unbound paper copy of any bound document. See Rule 1.19.1.

All written communications must be addressed to the Registrar. Any document, including emails, must be copied to the other parties before being filed with the HRTO. The HRTO cannot accept any materials unless you confirm that they have been copied to the other parties.

The HRTO will send information to the address you have provided to us. If your contact information changes, you must advise the HRTO immediately.

Sincerely,

Georgios Fthenos
Registrar

Application for Contravention of Settlement – Rule 24
Form 18

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 HRTO may extend this time if the HRTO 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 HRTO.

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:	Kelly Donovan
Name of Each Respondent:	The Regional Municipality of Waterloo Police Services Board et al.

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

First (or Given) Name	Last (or Family) Name	Organization (if applicable)
Kelly	Donovan	

Street Number	Street Name	Apt/Suite
11	Daniel Place	

City/Town	Province	Postal Code	Email
Brantford	On	N3R1K6	kelly@fit4duty.ca

Daytime Phone	Cell Phone	Fax	TTY
5192095721			

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	Last (or Family) Name

Organization (if applicable)	LSUC No. (if applicable)

Street Number	Street Name	Apt/Suite

City/Town	Province	Postal Code	Email

Daytime Phone	Cell Phone	Fax	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
The Regional Municipality of Waterloo Police Services Board

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	Last (or Family) Name	Title
Virginia	Torrance	WRPS

Street Number	Street Name	Apt/Suite
200	Maple Grove Road	P.O.Box 3070

City/Town	Province	Postal Code	Email
Cambridge	On	N3H5M1	virginia.torrance@wrps.on.ca

Daytime Phone	Cell Phone	Fax	TTY
5196508552		5196508851	

b) Individual

First (or Given) Name	Last (or Family) Name
Bryan	Larkin

Street Number	Street Name	Apt/Suite
378	Golf Course Road	

City/Town	Province	Postal Code	Email
Conestogo	On	N0B1N0	bryan.larkin@wrps.on.ca

Daytime Phone	Cell Phone	Fax	TTY

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

21/12/2017 (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:	
Signature:	Date: (dd/mm/yyyy) 27/07/2018

☒ 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.

BETWEEN:

KELLY DONOVAN

Applicant

- and –

THE REGIONAL MUNICIPALITY OF WATERLOO POLICE SERVICES BOARD and

BRYAN LARKIN

Respondents

Schedule A

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I. Background

1. From December, 2010, until June 26, 2017, the applicant was a police constable with the organizational respondent.
2. In 2017, the applicant was diagnosed with post-traumatic stress disorder.
3. Since the applicant's resignation on June 26, 2017, the applicant has made several attempts to gain employment, she has applied to post-secondary institutions and has been trying to get her business of providing workplace solutions off the ground.
4. The applicant is an advocate for whistleblower protection in Canada and has volunteered her time to raise awareness of current deficiencies in legislation.
5. The applicant lives in Brantford, and is a single-mother to three children under the age of fourteen.
6. The individual respondent, Bryan Larkin, is chief of Waterloo Regional Police Service ("WRPS") and is employed by the organizational respondent.
7. As a police officer in the province of Ontario, the individual respondent has sworn an oath of office to uphold the Constitution of Canada.

II. Facts

Class action lawsuit

8. On May 30, 2017, a class action lawsuit was filed against the organizational respondent in the Ontario Superior Court of Justice in Brampton; Court File Number CV-17-2346-00, (furthermore referred to as "the class action lawsuit"). Neither the applicant nor her family members are parties to the class action lawsuit. The class action lawsuit alleges systemic

and institutional gender-based discrimination and harassment and seeks total damages of One Hundred and Sixty-Seven Million Dollars ($167,000,000.00).

Applicant's resignation

9. On June 8, 2017, the applicant and respondents entered into a Resignation agreement, written by counsel for the organizational respondent, containing the following clause:
    a. *"Except where disclosure is required by law, or where disclosure is to Donovan's immediate family members or to persons providing professional financial/legal advice (all of whom agree to be bound by this non-disclosure and confidentiality clause), the parties undertake and agree that they will 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. For added certainty, and without limiting the generality of the foregoing, the parties undertake and agree that they will not publicize, discuss, disclose or communicate in any way with 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 (and anyone subject to the terms of this non-disclosure and confidentiality clause) will indicate only that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential."*
10. The Resignation agreement was signed by the individual respondent on behalf of the organizational respondent.
11. The intent of the resignation agreement was to prevent the applicant from joining the class

action lawsuit.

III. Overview

12. On December 21, 2017, the individual respondent swore an affidavit in defense of the class action lawsuit and that document was submitted to record.
13. In the affidavit, the individual respondent states, at para. 13:
    a. *"Attached hereto and marked as "Exhibit F" to this my Affidavit, is an additional chart that I had requested the Human Resources Division of WRPS prepare, showing where the Human Rights Tribunal complaints that had been commenced by female employees in the last five years, and their status or resolution. Again, this chart has non-identifying information, with the exception of the Plaintiff, [name removed], who's Complaint is to the Human Rights Tribunal as it is still outstanding, and the status of which is referred to in detail below."*
14. The attachment to the individual respondent's affidavit is a chart titled "Police Officer Initiated Ontario Human Rights Complaints" and lists four female officers. Those officers are identified in the following ways:
    a. One female officer is named and the three remaining female officers are not.
    b. Of the three-unnamed female officers, two are listed as "Constables" and one as "Sergeant."
15. Of the two-unnamed female "Constables" in the chart, one shows as having been resolved in the following manner:
        i. *"SETTLED: - monetary settlement, - withdrawal of OHRT application, - voluntary resignation."*

14. There is only one female officer showing on this chart as having resigned.
15. The applicant is the only female constable who was employed by the organizational respondent over the past five years, had filed a human rights complaint and who voluntarily resigned.
16. The public disclosure made by the individual respondent was not required by law, contained sufficient information for the applicant to be identified and violates the terms of the Resignation agreement.
17. The applicant received notification from Mark Egers, Waterloo Regional Police Association President, in February, 2018, that a group grievance was being filed for all current members of WRPS whose privacy was breached when the individual respondent's affidavit was published online. The individual respondent ought to have known that his actions constituted a breach of the privacy of those named in his affidavit after the filing of this grievance.
18. The reckless actions of the individual respondent have caused the applicant a great deal of stress, anxiety, depression and re-lived moral trauma.
19. The individual respondent is aware that the applicant was on medical leave from February, 2017, until her resignation in June, 2017.
20. The respondents are jointly and severally liable for the damages caused to the applicant. Further, the organizational respondent is vicariously liable for the conduct, representations, omissions and/or negligence of the police service's employees, agents, servants and contractors, which includes the individual respondent.

IV. Timeliness & Retaliation

21. The applicant had chosen to proceed with an allegation of breach of contract in the Ontario Superior Court of Justice against the respondents as opposed to the Human Rights Tribunal due to the complexities of the employment relationship which led to her resignation.

22. The applicant filed a statement of claim in the Ontario Superior Court of Justice, court file number CV-18-00001938-0000 ("the statement of claim"), on May 9, 2018, which is within the six-month limitation period.

23. The organizational respondent brought a motion on June 7, 2018, to dismiss the statement of claim on several bases, including jurisdiction, and that motion is being heard on February 13, 2019.

24. The applicant did not file a Form 18 within the six-month period because she was waiting for the courts to make a ruling regarding jurisdiction. This ruling will not be made until after the February 13, 2019, date.

25. Despite the ongoing court proceeding against the organizational respondent, the organizational respondent filed HRTO File No. 2018-33237-S in bad faith against the applicant in June, 2018.

26. The applicant brings this application now as a result of a letter she received from the registrar on July 19, 2018, indicating there would be a full day in-person hearing scheduled to hear the parties' submissions on the matters raised in the application brought forward by the organizational respondent.

27. The applicant's position is that the application brought forward by the organizational respondent should be dismissed without a hearing, the reasons were set out in the applicant's Form 19 of HRTO File No. 2018-33237-S.

28. The filing of the section 45.9 application 2018-33237-S by the organizational respondent

is a significant insult to the dignity of the applicant and is an additional form of blatant discrimination and harassment against her.

29. The applicant has no other option but to file this application so that her original allegation of a breach of contract or contravention of settlement against the organizational respondent will be heard when the Tribunal hears the retaliatory allegations made by the organizational respondent.

30. It would severely prejudice the applicant if the Tribunal hears submissions which support only the organizational respondent's section 45.9 application done out of retaliation in June, 2018, and not the applicant's original allegation made in May, 2018, that the organizational respondent violated the terms of the resignation agreement.

V. Applicant's health

31. Prior to February, 2011, the applicant did not have any health issues. The applicant was healthy, educated and highly employable. She was hired by the organizational respondent on her first attempt in December, 2010.

32. Since February, 2017, the applicant has suffered from severe post-traumatic stress disorder ("PTSD") symptoms.

33. The applicant's symptoms briefly improved when she resigned from the police service in June, 2017.

34. The applicant's moral injury causes her to be triggered any time she witnesses an individual in a position of authority who has sworn an oath to uphold the law commit an act that the applicant perceives as unlawful or unethical.

35. The applicant's PTSD was severely triggered in early January, 2018, when she read the

affidavit of the individual respondent which was available on a public website.

36. The applicant's depression has worsened since January, 2018, and she has suffered periods of suicidal thoughts.

37. The applicant feels psychologically imprisoned by the actions both respondents have taken since December, 2017, to violate her privacy, recklessly and blatantly violate a legal agreement between the parties and attempt to vilify her and deprive her of her fundamental right to freedom of expression.

VI. Relief Claimed

38. The applicant, claims against the respondents, jointly and severally, the following relief:

    a. General damages, in the amount of twenty-thousand dollars ($20,000.00);

    b. Special damages for the living expenses of the applicant, since she has not been well enough to earn an income, for every month since January, 2018, when she was re-injured as a result of the reckless violation of the resignation agreement by the individual respondent and the retaliation by the organizational respondent;

    c. As a public interest remedy, the applicant seeks to be reinstated as a sworn member of the Waterloo Regional Police Service at full pay of a first-class constable with all the rights, privileges and prerogatives she formerly enjoyed, in the capacity of Integrity Commissioner reporting directly to the organizational respondent;

    d. Dismissal of HRTO File No. 2018-33237-S for reasons set-out in the applicant's Form 19 on file;

    e. Pre-judgment and post-judgment interest in accordance with the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended; and

f. Such further and other relief as counsel may advise and the Tribunal deems just.

Filion Wakely Thorup Angeletti LLP
management labour and employment law

L&E GLOBAL
an alliance of employers' counsel worldwide

Reply to Donald B. Jarvis
Toronto Office
tel 416.408.5516 | email djarvis@filion.on.ca

July 30, 2018

VIA EMAIL

Mr. Georgios Fthenos
Registrar
Human Rights Tribunal of Ontario
655 Bay Street, 14th Floor
Toronto, ON M7A 2A3

Dear Mr. Fthenos:

Re: The Regional Municipality of Waterloo Police Services Board and Kelly Donovan
Application for Contravention of Settlement – Rule 24 (Form 18)
HRTO File No. 2018-33237-S

We act as counsel for the Applicant, The Regional Municipality of Waterloo Police Services Board, in respect of the above-noted matter.

Please find enclosed the Applicant's Request for Order During Proceedings (Form 10), along with Schedule "A", and documents referred to therein. Also enclosed is our Statement of Delivery (Form 23).

Yours truly,

Donald B. Jarvis/ca

Encl.
cc Virginia Torrance, Waterloo Regional Police Services Board (via email)
Kelly Donovan (via email)
Nini Jones, counsel for Waterloo Regional Police Association (via email)

Social Justice Tribunals Ontario
Providing fair and accessible justice
Human Rights Tribunal of Ontario

Request for an Order During Proceedings – Rule 19
Form 10

At any time after an Application has been filed with the Tribunal, a party may make a Request for an Order during a proceeding by completing this Request for an Order During Proceedings (Form 10).

The Tribunal will determine whether a Request for an Order will be heard in writing, in person or electronically and, where necessary, will set a date for the hearing of the Request. This Request may be heard on the basis of Form 10 alone.

Follow these steps to make your request:

1. Fill out this Form 10.
2. All documents you are relying on must be included with this Form 10.
3. Deliver a copy of Form 10 to all parties and any person or organization who has an interest in this Request.
4. If this is a Request for an Order that a non-party provide a report, statement or oral or affidavit evidence in accordance with Rule 1.7 (q), this Form 10 must be delivered to the non-party in addition to the other parties in the proceeding.
5. Complete a Statement of Delivery (Form 23).
6. File Form 10 and Form 23 with the Tribunal.

Information for all parties and any person or organization who receives a copy of this Request

You may respond to this Request for an Order by completing a Response to a Request for an Order During Proceedings (Form 11).

Follow these steps to respond:

1. Fill out Form 11.
2. All documents you are relying on must be included with Form 11.
3. Deliver a copy of Form 11 to all parties and any other person or organization that has an interest in the Request.
4. Complete a Statement of Delivery (Form 23).
5. File Form 11 and Form 23 with the Tribunal.

You must file your Response to a Request for Order not later than **fourteen (14)** days after the Request for Order was delivered to you.

Download forms from the Tribunal's web site 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

Social Justice Tribunals Ontario
Providing fair and accessible justice
Human Rights Tribunal of Ontario

Request for an Order During Proceedings – Rule 19
Form 10

Application Information	
Tribunal File Number:	2018-33237-S
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	Last (or Family) Name	Organization (if applicable)
Virginia	Torrance	WRPS

Street Number	Street Name	Apt/Suite
200	Maple Grove Road, P.O. Box 3070	

City/Town	Province	Postal Code	Email
Cambridge	Ontario	N3H 5M1	virginia.torrance@wrps.on.ca

Daytime Phone	Cell Phone	Fax	TTY
519-650-8552		519-650-8551	

If you are filing this as the Representative (e.g. lawyer) of one of the parties please indicate:

Name of party you act for and are filing this on behalf of:	LSUC No. (if applicable)
Applicant	28483C

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 (or are filing on behalf of) the:

◉ Applicant ○ Respondent ○ Ontario Human Rights Commission

○ Other - describe: _____

2. Please check off what you are requesting:

- ☐ Request to consolidate or have applications heard together
- ☐ Request to add a party
- ☐ Request to amend Application or Response
- ☐ Request to defer Application
- ☐ Request extension of time
- ☐ Request to re-activate deferred Application
- ☐ Request for particulars
- ☐ Request for production of documents
- ☒ Other, please explain:

See Schedule "A"

3. Please describe the order requested in detail.

See Schedule "A"

4. What are the reasons for the Request, including any facts relied on and submissions in support of the Request?

See Schedule "A"

5. Do the other parties consent to your Request?

○ Yes ○ No ◉ Don't know

6. If you are requesting production of a Document(s), please explain if you have already requested the document and any response you have received. You must attach a copy of your written Request for the Document(s) and the Responding Party's Response, if any.

N/A

7. If you are relying on any documents in this Request, please list below and attach. You must include all the documents you are relying on.

See Schedule "A"

8. Please check off how you wish the tribunal to deal with the matter:

○ In writing ○ Conference call ◉ In person hearing ○ Don't know

9. Explain why you wish the Tribunal to deal with the request in the manner indicated above.

See Schedule "A"

10. Do the other parties agree with your choice for how the Tribunal should deal with your Request?

○ Yes ○ No ◉ Don't know

11. Signature

By signing my name, I declare that, to the best of my knowledge, the information that is found in this form is complete and accurate.

Name: Donald B. Jarvis	
Signature:	Date: (dd/mm/yyyy) 30/07/2018

☒ Please check this box if you are filing your Request 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 Commission, the Tribunal must provide the Commission with copies of applications and responses filed with the Tribunal and may disclose other documents in its custody or control.

Schedule "A"

1. The Regional Municipality of Waterloo Police Services Board ("WRPSB") requests an Order:

    a. dismissing the Respondent's objections;

    b. deeming the Respondent to have accepted the allegations in the Application; and

    c. directing that the hearing be restricted to the issue of the appropriate remedy.

2. The WRPSB request that these Orders be granted forthwith on the basis of these written submissions or, in the alternative, that a hearing be scheduled to deal with these issues on a preliminary basis.

I. Overview

3. The WRPSB filed an Application for Contravention of Settlement – Rule 24 (Form 18), on June 28, 2018. The WRPSB is seeking an order for enforcement of the Resignation Agreement in which the parties voluntarily settled Ms Donovan's application to the HRTO dated June 3, 2016, and having Tribunal File Number 2016-24566-I (the "Settlement").

4. The Respondent, Kelly Donovan, filed a Response dated July 10, 2018. Ms Donovan has not denied any of the substantive allegations in the Application nor has she requested additional time to do so. Instead, she has simply taken the position that the Application should be dismissed because the Tribunal does not have jurisdiction over the Application, the Application is in bad faith, an abuse of process, untimely and a collateral attack on her freedom of speech.

5. There is no merit to any of these allegations and they ought to be dismissed on a preliminary basis.

6. Absent any denial of the alleged contraventions of the Settlement, the allegations contained in the Application ought to be deemed to be accepted by Ms Donovan.

Accordingly, the WRPSB requests that the hearing be restricted to the issue of the appropriate remedy.

II. Ms Donovan's Objections Ought to be Dismissed

A. The Application is within the Tribunal's Jurisdiction

7. In essence, Ms Donovan is asserting that the WRPSB's Application should be dismissed because she had previously commenced a Court action alleging a completely separate and independent breach of the Settlement. For your convenience, a further copy of Ms Donovan's civil action is attached **(see Tab 1)**. As set out therein, Ms Donovan alleges that the confidentiality provisions of the Settlement were breached when Bryan Larkin, Chief of Police, swore an affidavit which provided that a human rights complaint by an unnamed female constable was settled with a monetary settlement and voluntary resignation. Ms Donovan asserts that this information was sufficient for her to be identified and, therefore, violates the Settlement. The WRPSB takes the positon that there is no merit to this allegation. However, quite apart from the merits of the allegation, the WRPSB is asserting that the Court has no jurisdiction over the dispute. Rather, the enforcement of a human rights settlement is a matter at the core of the Tribunal's jurisdiction.

8. A motion has been scheduled for February 13, 2019 to determine whether the Court ought to dismiss Ms Donovan's Application on the ground that the Court has no jurisdiction over the subject matter of the action and/or for failure to disclose a reasonable cause of action and/or on the ground that the action is frivolous, vexatious and an abuse of process. A copy of the Notice of Motion is attached to hereto **(see Tab 2).**

9. Section 45.9(1) of the *Human Rights Code* ("*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". Section 45.9(3) specifically provides for an application regarding a contravention to be made to the Tribunal:

> (3) If a settlement of an application made under section 34 or 35 is agreed to in writing and signed by the parties, a party who believes

> that another party has contravened the settlement may make an application to the Tribunal for an order under subsection (8)....

10. Section 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". Pursuant to these powers, the Tribunal has issued countless decisions dealing with settlement enforcement issues.

11. Section 46.1 of the *Code* expressly limits the jurisdiction of the Courts over matters relating to human rights:

> (1) If, in a civil proceeding in a court, the court finds that a party to the proceeding has infringed a right under Part I of another party to the proceeding, the court may make either of the following orders, or both:
>
> 1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.
>
> 2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.
>
> (2) Subsection (1) does not permit a person to commence an action based solely on an infringement of a right under Part I.

12. Section 46.1(2) specifically prohibits the commencement of an action based solely on an infringement of a right under Part I of the *Code*. Accordingly, an alleged violation of a human rights settlement cannot form the **sole** basis for a civil action before the Court. As Ms Donovan's civil action is solely based on an alleged violation of the human rights settlement, the WRPSB respectfully submits that there is no question that it arises outside of the Court's jurisdiction.

13. The Court recently confirmed the limits of its jurisdiction when it refused to certify the proposed class action against the WRPSB. Notably, Ms Donovan's civil action is based on an affidavit sworn in respect of this proposed class action which has now been dismissed as falling outside of the Court's jurisdiction **(see Tab 3).** The Court found,

inter alia, that all the alleged wrongs were, "at their core, sexual discrimination" such that there was "no independent actionable wrong to ground a court action" (at para. 56). The Court found that the claim did not disclose a viable cause of action and stated (at para. 57):

> The bottom line is that whether the Plaintiffs characterize their claims as systemic negligence, the tort of harassment or as a Charter breach, this action is one of workplace discrimination which may constitute a violation of both the *Human Rights Code* and the Collective Agreement, <u>but not the common law</u>.
>
> [emphasis added]

14. The fact that Ms Donovan has commenced a civil action alleging a violation of the settlement is not relevant to the disposition of the instant Application brought by the WRPSB. Ms Donovan's civil action is factually distinct from the instant Application. While both Ms Donovan's civil action and the instant Application seek to enforce the settlement of her earlier human rights application, there is no other factual similarity or overlap in the allegations. Ms Donovan alleges that the WRPSB violated the settlement through certain disclosures made in response to the proposed class action against the WRPSB that has now been ruled upon by Justice Baltman on July 13, 2018. The WRPSB's Application is based on Ms Donovan's persistent and repeated complaints and allegations against and about the WRPSB. In any event, the mere fact that a Statement of Claim was filed does not confer jurisdiction on the Court.

<u>*B. The Application is Not in Bad Faith or an Abuse of Process*</u>

15. There is similarly no merit to the suggestion that the Application is in bad faith or is an abuse of process. Indeed, Ms Donovan does not advance any support for this allegation other than to state that "it is an abuse of process ... to bring this application to the Tribunal knowing that the respondent has already started a proceeding against the applicant on this matter". Ms Donovan further suggests that the Application is "an obvious retaliation against the respondent for filing the civil claim and to prevent the respondent from returning to the Tribunal to file her own form 18".

16. The WRPSB does not deny that it knew of Ms Donovan's civil action at the time of filing the instant Application. **However, the WRPSB had decided to file an enforcement**

application and commenced gathering relevant information to support the instant Application well in advance of the commencement of Ms Donovan's civil action or even being aware of same. Respectfully, however, the timing is immaterial.

a. The allegations in each proceeding are entirely independent and distinct.

b. A litigant cannot engage in retaliation at law merely by exercising a statutory right. The *Code* clearly gives the WRPSB the right to enforce a settlement at any time.

c. Most importantly, there is no merit to the suggestion that the WRPSB is seeking to prevent Ms Donovan from pursuing her allegations before the Tribunal should the Court find that it does not have jurisdiction. **Indeed, the WRPSB has no objection to Ms Donovan pursuing her allegations before the Tribunal should she wish to discontinue her Court action in recognition that the Tribunal is the appropriate forum and the Court has no jurisdiction over the claim commenced, subject to the WRPSB reserving the right to raise any preliminary objections in the normal course.**

C. The Settlement does Not Violate the Charter

17. Ms Donovan appears to be asserting that the Settlement is not enforceable as it violates her freedom of speech. Should Ms Donovan wish to pursue this argument, a Notice of Constitutional Question must be filed. In any event, there is no reasonable prospect of this argument proceeding. In *Abdul-Rahman v. Ontario (Ministry of Natural Resources and Forestry)*, 2016 HRTO 1151, the Tribunal recently refused to set aside a settlement on the basis that it violated the applicant's freedom of speech stating:

> 33 Finally, the applicant argued that the settlement represented a violation of his freedom of speech. When I asked him, in the preliminary hearing, whether he was referring to the confidentiality clause in the settlement, he confirmed that he was. **It is common for settlements to contain confidentiality clauses such as the one included in the settlement in this case. Parties insert such clauses in settlements to ensure that the matters dealt with in the settlement are put to rest and that information about the settlement is not disseminated by either party. The Tribunal itself includes such clauses in settlements arrived at in its**

> **mediations. I see nothing unusual or inappropriate about the confidentiality clause in this case and the inclusion of such a clause is not a valid reason to set aside the settlement.**
> [emphasis added]

18. In *Antoncic v. Ontario (Ministry of Community Safety and Correctional Services)*, [2009] O.P.S.G.B.A. No. 1, the Ontario Public Service Grievance Board similarly dismissed the argument that confidentiality provisions in a settlement agreement violated the right to freedom of speech. The minutes of settlement in issue arose from the termination of an employee. The employee alleged that his employment termination was a reprisal for the fact that he had previously been involved in a relationship with another employee who subsequently became involved in a personal relationship with a third employee. The minutes of settlement included an agreement to keep the terms and conditions of the agreement confidential, an agreement to keep information learned during employment confidential, a non-disparagement clause, and a full and final release. Subsequent to signing the minutes of settlement, the employee commenced a civil action alleging that the two individuals involved in a relationship conspired to advance false allegations to discredit him and undermine his employment, which led to his termination. The employer took the positon that the settlement was an agreement that all disputes regarding the grievor's employment were settled and the lawsuit was an attempt to resurrect a dispute that was central to the grievance in contravention of the settlement. Accordingly, the employer sought a declaration that the grievor breached the minutes of settlement. The grievor argued, *inter alia*, that the confidentiality provisions and non-disparagement language would, if interpreted in favour of the employer, limit the grievor's right to free speech and prevent him from engaging in "political discourse". The Ontario Public Service Grievance Board found that the civil suit breached the settlement and stated "Simply put, continuing to litigate issues related to his previous employment with the Ministry is not compatible with the Minutes of Settlement the grievor signed." The Board further rejected the argument that the settlement was an improper limit on his freedom of speech.

D. The Application is Timely

19. 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 as "incurred

in good faith and no substantial prejudice will result to any person affected by the delay". In the present case, the WRPSB delayed filing 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.

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

III. The Allegations in the Application Ought to be Deemed to be Admitted

21. Having failed to respond to the merits of the Application in accordance with the Rules of the Tribunal and the Tribunal's direction, the WRPSB states that Ms Donovan ought to be deemed to have accepted the allegations in the Application. Rule 5.5 of the HRTO Rules of Procedure specifically dictates this outcome:

> 5.5. Where an Application is delivered to a Respondent who does not respond to the Application, the Tribunal may:
>
> a. deem the Respondent to have accepted all of the allegations in the Application;
>
> b. proceed to deal with the Application without further notice to the Respondent;
>
> c. deem the Respondent to have waived all rights with respect to further notice or participation in the proceeding;
>
> d. decide the matter based only on the material before the Tribunal.

22. In *Kearns v. 1327827 Ontario*, 2009 HRTO 457 (CanLII), the Tribunal set out the consequence for failing to file a Response and comply with the Tribunal's Rules and directions:

[11] The *Code* is an important public statute which enshrines our most basic and fundamental rights and freedoms. The enforcement procedures in the *Code* are equally important, since without an effective means of claiming a violation of a right, and seeking redress where a violation is found, those fundamental human rights would have little meaning.

[12] The procedures established by the Tribunal's Rules provide a mechanism to resolve disputes arising under the *Code* fairly and expeditiously. An individual who believes his or her rights have been infringed may bring an Application. That Application must be complete and set out the allegations which, in the applicant's view, constitute a violation of the *Code*. Before serving an Application on the person or organization named as a respondent, the Tribunal will review the Application to ensure that it is complete and that it appears to be within the jurisdiction of the *Code*.

[13] Once served with an Application, if the respondent wishes to participate and defend against the claim made by the applicant, the respondent has only to file a Response. The Tribunal provides a respondent with clear notice of what is required, and has prepared a Guide which assists a respondent in completing its Response. The Response also provides a respondent with an opportunity to indicate which facts or allegations in the Application are agreed to, and which are disputed.

[14] A respondent who refuses, or chooses not to file a Response should not be able to frustrate the objects of the *Code,* and the applicant's right to assert a claim and seek a timely determination of that claim. Section 40 of the *Code* requires the Tribunal to dispose of Applications in a way which will provide for "a fair, just and expeditious resolution of the merits of the application." Where no Response is filed, in order to fulfill this statutory mandate, the Tribunal will proceed to determine the Application in the absence of the respondent. In all but the rarest of cases, the Tribunal will deem the respondent to have waived its right to participate pursuant to Rule 5.5(c) and deem the respondent to have accepted all of the allegations set out in the Application pursuant to Rule 5.5(a).

[10] Based on the above sequence of events, I am satisfied that the respondents received notice of the Application, but are evading service of further correspondence from the Tribunal, and are refusing or choosing not to participate in this proceeding.

23. Absent any denial of the alleged contraventions of settlement, the WRPSB requests that any upcoming scheduled HRTO hearing deal only with the appropriate remedies to be granted to the WRPSB.

TAB 1

HRTO FILE NO. 2018-33237-S

Court File No.:
CV-18-0000928-0000

Ontario

SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Plaintiff

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD, and

BRYAN LARKIN

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service in this court office, **WITHIN TWENTY DAYS** after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 1 8B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFFS' CLAIM, and $1,000.00 for costs, within the time for serving and filing your statement of defence you may move to have this proceeding

dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiffs' claim and $400 for costs and have the costs assessed by the court.

Date: 09 May 2018 Issued by: _____

Name: _____

Local Registrar

Address of Court Office:

7755 Hurontario Street

Brampton, Ontario

L6W 4T6

TO: WATERLOO REGIONAL POLICE SERVICES BOARD

200 Maple Grove Road

Cambridge, Ontario

N0B 1M0

AND TO: BRYAN LARKIN

378 Golf Course Road

Conestogo, Ontario

N0B 1N0

CLAIM

I. Relief Claimed

1. The plaintiff Kelly Lynn Donovan, claims against the defendants, jointly and severally, the following relief:

    a. Damages for breach of contract, in the amount of Two Hundred Thousand Dollars ($200,000.00);

    b. Punitive, exemplary and/or aggravated damages in the amount of Ten Thousand Dollars ($10,000.00);

    c. To be reinstated as a sworn member of the Waterloo Regional Police Service at full pay of a first-class constable with all the rights, privileges and prerogatives she formerly enjoyed, on terms mutually agreed upon by both the defendants and plaintiff.

    d. Pre-judgment and post-judgment interest in accordance with the Courts of Justice Act, R.S.O. 1990, c. C.43, as amended;

    e. Costs of this proceeding on a solicitor and his own client scale, together with applicable HST; and

    f. Such further and other relief as counsel may advise and this Honourable Court deems just.

II. Parties

2. The plaintiff, Kelly Lynn Donovan, is a former police officer who resides in the City of Brantford in the Province of Ontario. Prior to June 26, 2017, the Plaintiff

was employed by the defendant Waterloo Regional Police Services Board ("defendant board").

3. The defendant Bryan Larkin is chief of Waterloo Regional Police Service and is employed by the defendant board.

III. Facts

Class action lawsuit

4. On May 30, 2017, a class action lawsuit was filed against the defendants in the Ontario Superior Court of Justice in Brampton; Court File Number CV-17-2346-00, (furthermore referred to as "the class action lawsuit"). The plaintiff is not a party to the class action lawsuit. The class action lawsuit alleges systemic and institutional gender-based discrimination and harassment and seeks total damages of One Hundred and Sixty-Seven Million Dollars ($167,000,000.00).

Plaintiff's resignation

5. On June 8, 2017, the plaintiff and defendant board entered into a Resignation Agreement, written by counsel for the defendant board, containing the following clause:

    a. *"Except where disclosure is required by law, or where disclosure is to Donovan's immediate family members or to persons providing*

professional financial/legal advice (all of whom agree to be bound by this non-disclosure and confidentiality clause), the parties undertake and agree that they will 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. For added certainty, and without limiting the generality of the foregoing, the parties undertake and agree that they will not publicize, discuss, disclose or communicate in any way with 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 (and anyone subject to the terms of this non-disclosure and confidentiality clause) will indicate only that all outstanding matters between the parties were settled to their mutual satisfaction, the terms of which settlement are strictly confidential."

6. The Resignation Agreement was signed by the defendant Bryan Larkin on behalf of the defendant board.

Plaintiff's health

7. Prior to February, 2011, the plaintiff did not have any health issues. The plaintiff was healthy, educated and highly employable. She was hired by the defendant board on her first attempt in December, 2010.
8. Starting in February, 2017, the plaintiff could not attend work due to the severity

of her post-traumatic stress disorder (PTSD) symptoms. The plaintiff's medical condition was caused by her employment with the defendant board; both from a training accident and the moral injury she suffered in 2015 pertaining to alleged internal corrupt practices she had witnessed.

9. The plaintiff was frequently triggered by her ongoing human rights case and disciplinary proceeding. The plaintiff's symptoms briefly improved when she resigned from the police service in June, 2017.

IV. Overview

10. On December 21, 2017, defendant Bryan Larkin swore an affidavit in defense of the class action lawsuit and the document was submitted to record.
11. In the affidavit, the defendant Bryan Larkin states, at para. 13:
    a. *"Attached hereto and marked as "Exhibit F" to this my Affidavit, is an additional chart that I had requested the Human Resources Division of WRPS prepare, showing where the Human Rights Tribunal complaints that had been commenced by female employees in the last five years, and their status or resolution. Again, this chart has non-identifying information, with the exception of the Plaintiff, [name removed], who's Complaint is to the Human Rights Tribunal as it is still outstanding, and the status of which is referred to in detail below."*
12. The attachment to the defendant Bryan Larkin's affidavit is a chart titled "Police Officer Initiated Ontario Human Rights Complaints" and lists four female officers.

Those officers are identified in the following ways:

a. One female officer is named and the three remaining female officers are not.

b. Of the three-unnamed female officers, two are listed as "Constables" and one as "Sergeant."

13. Of the two-unnamed female "Constables" in the chart, one shows as having been resolved in the following manner:

    i. "SETTLED: - monetary settlement, - withdrawal of OHRT application, - voluntary resignation."

14. There is only one female officer showing on this chart as having "voluntarily" resigned.

15. The plaintiff is the only female constable who was employed by the defendant board over the past five years, had filed a human rights complaint and who voluntarily resigned.

16. The public disclosure made by defendant Bryan Larkin was not required by law, contained sufficient information for the plaintiff to be identified and violates the terms of the Resignation Agreement.

17. The actions of defendant Bryan Larkin have caused the plaintiff a great deal of stress, anxiety and re-lived trauma. From December, 2017, to March, 2018, the plaintiff's PTSD symptoms worsened.

18. Defendant Bryan Larkin is aware that the plaintiff was on medical leave from February, 2017, until her resignation in June, 2017.

19. The plaintiff therefore claims the relief as set out in paragraph 1 of the Statement

of Claim.

20. The defendants are jointly and severally liable for the damages caused to the plaintiff. Further, the defendant board is vicariously liable for the conduct, representations, omissions and/or negligence of the police service's employees, agents, servants and contractors, which includes the defendant Bryan Larkin.

FORM 4C

Courts of Justice Act

BACKSHEET

Kelly Lynn Donovan vs. Waterloo Regional Police Services Board et al.

Court file no. CV-18-00001938-0000

Rec'd May 10/18
McMaster
Legal Services

Ontario Superior Court of Justice

PROCEEDING COMMENCED AT Brampton

STATEMENT OF CLAIM

KELLY DONOVAN
11 Daniel Place
Brantford, Ontario
N3R1K6
Phone: 519-209-5721
Email: kelly@fit4duty.ca

RCP-E 4C (May 1, 2016)

TAB 2

HRTO FILE NO. 2018-33237-S

Court File No. CV-18-00001938-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

KELLY LYNN DONOVAN

Plaintiff
(Responding Party)

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD
and BRYAN LARKIN

Defendants
(Moving Party)

NOTICE OF MOTION OF THE MOVING PARTY
(returnable February 13, 2019)

The Defendants will make a motion to a Judge, on Wednesday, February 13, 2019, at 10:00 am or as soon after that time as the motion can be heard, at 7755 Hurontario Street, Brampton, Ontario L6W 4T1.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- [ ] in writing under subrule 37.12.1(1) because it is on consent or unopposed or made without notice;
- [ ] in writing as an opposed motion under subrule 37.12.1(4);
- [x] orally.

THE MOTION IS FOR:

(a) An Order dismissing the Plaintiff's action pursuant to Rule 21.01(3)(a) of the *Rules of Civil Procedure* on the ground that this Honourable Court has no jurisdiction over the subject matter of the action;

(b) In the alternative, an Order striking out the Statement of Claim, without leave to amend, pursuant to Rule 21.01(1)(b) of the *Rules of Civil Procedure* for failing to disclose a reasonable cause of action against the Defendants;

(c) In the further alternative, an Order dismissing the Plaintiff's action pursuant to Rule 21.01(3)(d) of the *Rules of Civil Procedure* on the ground that the action is frivolous, vexatious and/or an abuse of the process of the Court;

(d) In the further alternative, an Order striking out the Statement of Claim as against the personally-named Defendant, without leave to amend, on the ground that it discloses no reasonable cause of action as against the personally-named Defendant and/or the claim is frivolous, vexatious and/or an abuse of the process of the Court and/or the Court has no jurisdiction over the subject matter of the action;

(e) In the further alternative, an Order extending the time limits to allow the Defendants to file a Statement of Defence;

(f) If necessary, an Order abridging or extending the time for service, filing and/or delivery of the Motion Record, the Factum, the Book of Authorities and/or a Motion Confirmation;

(g) An Order for costs of this motion, on a substantial indemnity basis, fixed and payable to the Defendants within 30 days, pursuant to Rule 57.03(1) of the *Rules of Civil Procedure*; and

(h) Such further and other relief as counsel may advise and/or this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Overview

(a) By Statement of Claim dated May 9, 2018, the Plaintiff, Kelly Lynn Donovan, commenced an action against the Defendants, the Waterloo Regional Police Services Board ("WRPSB") and Bryan Larkin, Chief of Police, for breach of contract.

(b) The Plaintiff was previously employed by the WRPSB and held the rank of Constable assigned to Administrative Command, Training Branch. The Plaintiff was represented by the Waterloo Regional Police Association ("WRPA") in respect of her employment with and resignation from the WRPSB.

(c) On or about June 3, 2016, the Plaintiff filed an Application with the Human Rights Tribunal of Ontario (the "Tribunal"), alleging that she was subject to discrimination on the basis of sex and marital status.

(d) On or about June 8, 2017, the Plaintiff, the WRPSB, and the WRPA successfully negotiated a Resignation Agreement to fully and finally resolve the Plaintiff's human rights Application. Mr. Larkin executed the Resignation Agreement on behalf of the WRPSB.

(e) Pursuant to the Resignation Agreement, the Plaintiff expressly confirmed that "she is freely and voluntarily resigning her employment with the [WRPSB] effective on or about June 25, 2017". The Plaintiff also acknowledged and agreed that her resignation decision was irrevocable.

(f) Furthermore, the Plaintiff and the WRPSB agreed to keep the terms of the Resignation Agreement in confidence.

(g) The Resignation Agreement also included a Full and Final Release, under which the Plaintiff agreed to release and forever discharge the WRPSB from "any and all actions, causes of action, complaints...claims...which aris[e] out of or in any way relat[e] to the matters giving rise to [her] HRTO Application". The Plaintiff also expressly agreed that the Release could be raised as a complete bar to "any complaint against 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 [her] HRTO Application".

(h) The Plaintiff claims, as pleaded in the Statement of Claim, that the Defendants breached the Resignation Agreement as Mr. Larkin swore an affidavit in defence of a class action lawsuit. Specifically, the Plaintiff

claims that the affidavit provided that an unnamed female officer had voluntarily resigned and withdrawn an Application before the Tribunal. The Plaintiff claims this disclosure contained sufficient information to identify her and, therefore, violated the confidentiality provisions of the Resignation Agreement.

The Court has no jurisdiction over the subject matter of the action

(i) The Resignation Agreement was made in settlement of the Plaintiff's human rights Application. Pursuant to the *Code*, the Tribunal has jurisdiction to determine whether a human rights complaint has been settled and to enforce the terms of any such settlement. As such, the determination of whether the Defendants violated the Resignation Agreement falls within the exclusive jurisdiction of the Tribunal.

(j) Alternatively, the grievance and arbitration process under the collective agreement between the WRPSB and the WRPA is the proper process and/or forum for the resolution of the Plaintiff's claims.

(k) The Court has no jurisdiction over the subject matter of the action.

In the alternative, the Statement of Claim should be struck in its entirety, without leave to amend, on the grounds that it discloses no reasonable cause of action

(l) The Plaintiff must, at minimum, plead the basic elements of a recognized cause of action pursuant to which an entitlement to damages is claimed.

(m) The Plaintiff has failed to plead the necessary legal elements of the alleged breach of contract or to otherwise support the remedies claimed. The Plaintiff's allegations lack supporting facts and sufficient clarity to sustain a claim of liability or damages for breach of contract or otherwise.

(n) The Plaintiff's claim discloses no reasonable cause of action and should be struck out pursuant to Rule 21.01(1)(b) of the *Rules of Civil Procedure*.

In the alternative, the action is frivolous, vexatious and/or an abuse of the process of the Court

(o) The Plaintiff's claim is clearly unmeritorious and therefore ought to be struck out as frivolous, vexatious and/or an abuse of process.

The Claim against the personally-named Defendant should be struck

(p) Claims made against a personally-named Defendant must be based on causes of action for which the personally-named Defendant is ***personally*** responsible. It is insufficient to plead that an employee committed particular acts in the course of employment. At all times, the personally-named Defendant was acting in his capacity as Chief of Police. Accordingly, the claim against him personally discloses no reasonable cause of action and/or is frivolous, vexatious and an abuse of process. Alternatively, any claim against the personally-named Defendant should be resolved through the following processes and/or forums:

(i) the application and hearing process of the Tribunal under the provisions of the *Code*; and/or

(ii) the grievance and arbitration process under the collective agreement between the WRPSB and the WRPA.

(q) The Court has no jurisdiction over the subject matter of the action as against the personally-named Defendant.

The Defendants rely on:

(r) Rules 21.01(3)(a), 21.01(1)(b), 21.01(3)(d), and 57.03(1) of the *Rules of Civil Procedure*, RRO 1990, Reg 194;

(s) Section 45.9 of the *Code*; and

(t) Such further and other grounds as counsel for the Defendants may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

(a) The Statement of Claim in this action issued May 9, 2018;

(b) The Resignation Agreement;

(c) The Affidavit of Bryan Larkin referred to in the Plaintiff's Statement of Claim; and

(d) Such further and other evidence as counsel for the Defendants may advise and this Honourable Court may permit.

June 7, 2018

Filion Wakely Thorup Angeletti LLP
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Donald B. Jarvis LSUC#: 28483C
Carol S. Nielsen LSUC#: 40594A
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Lawyers for the Defendants

TO: Kelly Donovan
11 Daniel Place
Brantford, Ontario N3R 1K6

Tel: 519-209-5721

KELLY LYNN DONOVAN
Plaintiff

and

WATERLOO REGIONAL POLICE SERVICES BOARD and BRYAN LARKIN
Defendants

Court File No: CV-18-00001938-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at BRAMPTON

NOTICE OF MOTION OF THE MOVING PARTY (RETURNABLE FEBRUARY 13, 2019)

Filion Wakely Thorup Angeletti LLP
333 Bay Street, Suite 2500
Toronto, Ontario M5H 2R2

Donald B. Jarvis LSUC#: 28483C
Carol S. Nielsen LSUC#: 40594A
Tel: 416-408-3221
Fax: 416.408.4814

Lawyers for the Defendants (Moving Party)

TAB 3

CITATION: Rivers v. Waterloo Regional Police Services Board, 2018 ONSC 4307
COURT FILE NO.: CV 17 2346
DATE: 20180713

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
ANGELINA RIVERS, SHARON ZEHR and BARRY ZEHR	R. Douglas Elliott, David Thompson, Matthew Moloci, Colleen Yamashita and Elena Mamay, for the Plaintiffs
Plaintiffs	
- and -	
WATERLOO REGIONAL POLICE SERVICES BOARD and WATERLOO REGIONAL POLICE ASSOCIATION	James H. Bennett, for the Waterloo Regional Police Services Board; Caroline (Nini) Jones and Jodi Martin for the Waterloo Regional Police Association
Defendants	
	HEARD: June 18, 19, 20 & 21, 2018

REASONS FOR JUDGMENT

BALTMAN J

Overview

[1] The Plaintiffs are former and current police officers with the Waterloo Regional Police Service ("Service"). They wish to certify this action as a class

action on behalf of all uniformed women who were or are members of the Service, claiming that both the Waterloo Regional Police Services Board ("Board") and the Waterloo Regional Police Association ("Association") are liable for systemic gender-based discrimination and sexual harassment by male members, senior officers and management of the Service.

[2] The proposed action also includes derivative claims under the *Family Law Act* by the male spouses of the Plaintiffs.

[3] An important first obstacle in this case is the Defendants' challenge to this Court's jurisdiction. Following the principles established by the Supreme Court of Canada in *Weber v. Ontario Hydro,* [1995] 2 S.C.R. 929, they argue that labour arbitrators and/or adjudicators at the Human Rights Tribunal of Ontario (HRTO) have exclusive jurisdiction over this dispute.

[4] In a previous court attendance, I determined that that the jurisdictional and certification motions should be heard together given that the factual matrix is important to the determination of the jurisdictional question and overlaps with some of the certification criteria.

[5] For the reasons that follow, I have determined, with some regret, that this court has no jurisdiction over this dispute. Moreover, even if it did, the certification motion must fail because it does not identify a viable cause of action.

The prevailing legislative regime and jurisprudence require that the disputed claims – which all essentially concern gender discrimination - be adjudicated either at the HRTO or before a labour arbitrator.

Factual allegations

[6] Broadly speaking, the Plaintiffs make three substantive claims against the Board:

1. Systemic gender-based discrimination and harassment committed by male members of the Service against the class members ("systemic gender discrimination");
2. Breach of class members' rights under s. 15 of the *Charter* to be free from gender-based discrimination ("breach of the *Charter*") ;
3. Liability through the tort of harassment for the outrageous conduct of its male members against the class members ("tort of harassment")

[7] The allegations against the Association include the following additional claims:

1. The Association failed to provide the class members with a work environment free of gender-based discrimination and sexual harassment;

2. The Association failed to ensure that complaints and grievances regarding discrimination were properly investigated and resolved under the Harassment and Discrimination Procedure and the Collective Agreement;
3. The Association discouraged or ignored complaints from female members about sexual harassment, and advised them that filing complaints or grievances would negatively affect their career prospects.

[8] There is a pending motion by the Plaintiffs to add additional plaintiffs, which is unopposed by the Defendants. For the purposes of the motions being addressed in this decision, I will assume that all of the pleaded facts in the proposed Amended Statement of Claim are true.

[9] There are currently 778 uniform officers in the Waterloo Police Service, of which 178 (23%) are female. Collectively, the female Plaintiffs allege a wide range of facts and circumstances in support of their claims of gender-based discrimination and sexual harassment, spanning from 1988 to the present. These include:

a) Certain male officers made offensive comments and/or unwanted sexual advances towards them;

b) Male officers spread false rumors about them suggesting they were interested in sexual relations with other officers;

c) Male officers wrongly disparaged their work to other officers and supervisors;

d) Certain male officers refused to provide them with back-up when they were dispatched to a dangerous situation;

e) When they reported their concerns to their superiors, they were isolated, disregarded, and warned of repercussions to their career;

f) Not only were the offending officers rarely and inadequately sanctioned, they were sometimes promoted.

[10] In their Statement of Claim, the Plaintiffs plead statutory causes of action under the *Human Rights Code*, the *Occupational Health and Safety Act,* and the *Employment Standards Act*, confirming that all their complaints and causes of action arise from their workplace and employment.

[11] The allegations against the Association include several lodged directly against its President, Mark Egers, who nonetheless remains in that position today.

The Available Fora for Allegations of Systemic Workplace Discrimination

[12] It is undisputed that there are several fora with the jurisdiction to address the Plaintiffs' allegations of systemic workplace discrimination and sexual harassment.

1. Grievance Procedure under the Collective Agreement

[13] Throughout the years in issue the representative Plaintiffs and all the putative class members were or are employees of the Board. Their employment is governed by the terms of Collective Agreements, which contain grievance procedures and ultimately provide for binding arbitration under Part VIII of the *Police Services Act* (*PSA*). These terms are mandatory: as stipulated by s. 48(1) of the *Ontario Labour Relations Act,* S.O. 1995, the Collective Agreements provide that all complaints "shall" be dealt with through the grievance procedures set out within.

[14] All officers up to the rank of Staff Sergeant are deemed to be members of the Association, which is the sole collective bargaining agent for such members under the terms of their Collective Agreements.

[15] The Collective Agreements expressly prohibit discrimination on the basis of sex, and by extension preclude sexual harassment. Complaints and grievances about discrimination or sex-based harassment by the Board, its

management or any members are arbitrable under the Collective Agreements and are clearly within the jurisdiction of a specialized labour arbitrator to adjudicate.

[16] The Collective Agreements and the *PSA* set out the procedure for filing a grievance against the Board. A member is to convey their complaints to their supervisor, in writing, within 21 days. If their supervisor cannot resolve the problem at this preliminary stage, then after 14 days the Member must send their grievance in writing to an Association representative who, if views the complaints as justified, must pass on to the Deputy Chief within 14 days. S/he will then investigate and issue a decision in writing; if the Association is dissatisfied with the decision, it may refer the matter to conciliation and/or arbitration under Part VIII of the *PSA*.

[17] If the matter remains unresolved, either party may seek arbitration under s. 124 of the *PSA*, the results of which are binding on the Association, the Employer, and the individual members.

2. Harassment and Discrimination Policy

[18] The Board has a Harassment and Discrimination Procedure as mandated by the *Occupational Health and Safety Act*. If any Member initiates a complaint

an investigation must be conducted. Should another Member be found at fault, they may be subject to disciplinary action.

[19] If a Member believes the Procedure has not been properly applied by the Board, they may ask the Association to file a grievance on their behalf. If the Member feels the Association did not represent them fairly in the pursuit of their complaint, they may file a duty of fair representation complaint.

3. Duty of Fair Representation (DFR) Complaints

[20] Under the Collective Agreement, the Association has a duty to fairly represent its members in all aspects of the employer-employee relationship. If a Member has a complaint about the adequacy or quality of the Association's representation, a Member may bring a DFR complaint.

[21] These claims are within the exclusive jurisdiction of a specialized labour tribunal under Part VIII of the *PSA*, and are determined by expert arbitrators with significant labour relations expertise. The arbitrators' decisions are subject to judicial review in the Divisional Court, pursuant to the *Judicial Review Procedure Act*.

4. Human Rights Tribunal of Ontario (HRTO)

[22] Members of the Service who believe they have experienced workplace discrimination or sexual harassment may also apply to the HRTO for an adjudication of their complaint. Where an applicant's rights are found to be infringed under the *Code*, the HRTO has the jurisdiction to award monetary compensation for injury to dignity, feelings, and self-respect ("*Code* damages"), as well as restitution and broad "public interest" remedies to promote compliance with the *Code*.

[23] Moreover, the HRTO can and does hear multi-party complaints alleging gender-based discrimination against identified groups: *OPSEU v. Liquor Control Board,* 2015 HRTO 766; *Association of Ontario Midwives v. Ontario (Ministry of Health and Long-Term Care*), 2014 HRTO 1370.

[24] Ms. Rivers currently has a complaint pending before the HRTO, which she agrees covers the same allegations as those set out in the Statement of Claim. She has adjourned the HRTO matter pending the result of this motion.

Issue #1: Does this court have jurisdiction over this dispute?

Legal Framework on Jurisdiction

[25] It is well established that a dispute between an employer and an employee that arises *in its essential character* from the interpretation, application or violation of a collective agreement is to be determined not in the courts but according to the arbitration provisions of the collective agreement: *Weber,* at paras. 55, 72. *Weber* draws on the earlier judgment of the Supreme Court of Canada in *St Anne-Nackawic Pulp & Paper Co. v. C.P.U.*, [1986] 1 S.C.R. 704, which emphasized the need for judicial deference to the collective bargaining relationship: para. 20.

[26] In assessing the true nature of the dispute, one must look not to how the wrong is characterized, but to the facts giving rise to the dispute. Otherwise "innovative pleaders" can "evade" the legislative intent by raising "new and imaginative causes of action": *Weber,* para 54.

[27] The exclusive jurisdiction model represents a critical policy choice. Labour arbitrators and labour boards are specialized administrative decision makers with exceptional expertise in adjudicating workplace disputes and interpreting collective agreements in the context of long term and ongoing relationships. As noted by Justice Cromwell writing for the Nova Scotia Court of

Appeal in *Cherubini Metal Works Ltd. v. Nova Scotia (Attorney General)*, 2007 NSCA 38, at para. 41:

> ...A significant objective of this comprehensive scheme is to minimize, if not eliminate entirely the involvement of the courts as first instance decision-makers with respect to workplace disputes...

[28] This type of exclusive power includes a corresponding obligation on the union of fair representation of all employees in the bargaining unit. The duty of fair representation is therefore encompassed within the bargaining relationship: *Canadian Merchant Service Guild v. Gagnon,* [1984] 1 S.C.R. 509, at p. 527.

[29] The comprehensive labour arbitration scheme is central to labour relations in all unionized sectors throughout Ontario, as "[i]t has the advantage of both accessibility and expertise, each of which increases the likelihood that a just result will be obtained with minimal disruption to the employer-employee relationship: *Parry Sound (Social Services) v. OPSEU,* [2003] 2 S.C.R. 157, at para. 51.

[30] Where the essential character of the dispute is covered by the collective agreement, it must also be determined whether an arbitrator is empowered by way of final resolution to provide an effective remedy for the alleged wrong. If so, precluding the plaintiff from the civil court causes no "real deprivation of ultimate remedy": *Weber,* at para. 62.

[31] Even if a successful grievance does not permit certain heads of damages, that does not mean the worker has been deprived of an adequate remedy. What matters is that the scheme provides a solution to the problem: *Vaughan v. R.,* 2005 SCC 11, para. 36; *A. (K.) v. City of Ottawa* (2006), 80 O.R. (3d) 161 (C.A.), para. 20; *Giorno v. Pappas* (1999), 42 O.R. (3d) 626 at pp. 630-631; *Piko v. Hudson's Bay Co.,* [1998] O.J. No. 4714 (C.A.), para. 22; *De Montigny v. Roy et al* 2018 ONSC 858, para. 43. Consequently, the fact that neither F.L.A. awards nor punitive damages are available from an arbitrator (or at the HRTO) does not allow for a court action to be substituted.

[32] Finally, conveniency is not a determining factor. The prospect of multiple proceedings or of potential conflicts amongst separate arbitration awards does not confer jurisdiction where it does not exist: *Bisaillon v. Concordia University* 2006 SCC 19, at para. 58.

Submissions and Analysis re Jurisdiction

[33] The Plaintiffs concede that both a labour arbitrator and the HRTO have jurisdiction to adjudicate their claims. They argue, however, that the Court has "residual, inherent jurisdiction" to adjudicate this matter. In particular, they submit that because there is no clear and explicit statutory language ousting the Court's jurisdiction, I may assume it.

[34] Moreover, they assert that in this case I *should* assume jurisdiction, for four reasons. First, the Plaintiffs maintain that the Association will not properly advance their grievances, because that would implicate all of its male members, who compose the large majority of the uniformed officers in Waterloo. Second, the HRTO will not effectively remedy the problem, as it cannot award FLA damages, punitive damages, or costs. Third, an action in the Superior Court, with its broad oversight powers, carries greater weight and "gravitas" than any alternative venues. Fourth, and perhaps most importantly, in a class action all the female officers can shelter anonymously behind the representative plaintiffs, and thereby avoid the ridicule and reprisals that the named Plaintiffs have already endured.

[35] However compelling the Plaintiffs' cause may be, I do not see any jurisdictional "gap" that would permit this matter to proceed in the Superior Court. The *PSA* sets out a mandatory conciliation and arbitration process, overseen by the Ontario Police Arbitration Commission. Under s. 123(1) of the *PSA,* arbitration is mandatory "if a difference arises *between the parties* concerning an agreement or an arbitrator's decision or award made under this Part, or if it is alleged that an agreement or award has been violated." [emphasis added]

[36] In *Renaud v. LaSalle (Town) Police Association,* [2006] O.J. No. 2842 our Court of Appeal determined that the word "party" should be interpreted

broadly in keeping with the legislature's intention that the *Act* together with the Collective Agreement "provide a complete and comprehensive scheme for police officers relating to their employment relationship": para. 7. In other words, the word "party" includes individual police officers who wish to challenge their Association's handling of a grievance. They too must follow the dispute resolution mechanism set out in the *PSA* and the Collective Agreement, and are precluded from coming to court. There is no statutory gap. See also *Abbott v. Collins* (2003), 64 O.R. (3d) 789 (C.A.), para. 33, and *Heasman v. Durham*, [2005] O.J. No. 5096 (C.A.), para. 14.

[37] Relying in part upon the Supreme Court's decision in *Regina Police Assn., Inc. v. Regina (City) Police Commissioners*, [2000] 1 S.C.R. 360, *Renaud* affirmed that courts do not have jurisdiction to deal with any aspects of the employment relationship between individual police officers and their Association or Board.

[38] A similar argument was addressed in *A.(K.)*, where the plaintiffs, two female transit workers, alleged sexual assault and harassment within the unionized workplace. In response to a Rule 21 motion, our Court of Appeal determined that because the claims arise from the administration – and alleged violation – of the collective agreement, the dispute fell exclusively within the jurisdiction of the arbitrator under the collective agreement. On behalf of the

court, Sharpe J.A. expressed "considerable sympathy" for the plaintiffs' desire to pursue their claims for sexual assault in the courts. At para. 24 he stated:

> ...The claims arise from allegations of criminal misconduct that affront the respondents' personal dignity and physical integrity, yet they are compelled to pursue them under the collective agreement's arbitration procedure, where they will not have personal carriage of the proceedings. However, *Weber* and its progeny deprive them of the right to prosecute their claim in the courts and we must give effect to the jurisprudence that is binding on this court.

[39] More recently, our Court of Appeal heard and rejected the same argument raised in *A.(K.)* and *Renaud*, again in a policing context. In *Cumming v. Peterborough Police Association,* 2013 ONCA 670 (C.A.), at para. 3, the Court stated that "an alleged breach of a police association's duty of fair representation falls within the exclusive jurisdiction of an arbitrator appointed pursuant to ss. 123 and 124 of the *PSA*..."

[40] In sum, consistent with *A.(K.)*, both *Renaud* and *Cumming* confirm that claims relating to an alleged breach of a police union's duty of fair representation fall within the exclusive jurisdiction of an arbitrator appointed under sections 123 and 124 of the *PSA*. The only narrow exceptions relate to disputes that cannot be said to arise from the employment relationship: see *Piko*, where Laskin J.A. determined that because the employer took its quarrel with Piko to the criminal courts, the dispute was no longer confined to the labour relations regime. As all the allegations in this case unquestionably spring from dynamics within the

workplace, and the employer has not sought to bring these disputes into the courts, they are entirely captured under the *PSA* and the Collective Agreement. The Court's jurisdiction has been expressly ousted.

[41] I recognize that recently, a large class action was successfully initiated – and resolved – against the RCMP by its female officers, also alleging systemic sexual discrimination. However, unlike the Plaintiffs here, those employees are not captured within a legislative framework and collective agreement that requires workplace disputes to be arbitrated.

Conclusion on Jurisdiction

[42] This Court lacks jurisdiction over the dispute between the parties.

[43] That conclusion, on its own, would terminate this proceeding. However, at the strong urging of the Plaintiffs (opposed by the Defendants), I will further consider whether there is otherwise any bar to the certification motion.

Issue #2 Do the Plaintiffs satisfy the criteria for certification?

Legal Framework on Certification

[44] Certification of a class is mandatory where the requirements in s. 5 of the *Class Proceedings Act, 1992* (the "*CPA*") are satisfied. They are as follows:

a) the pleadings or the notice of application disclose a cause of action;

b) there is an identifiable class of two or more persons that would be represented by the representative plaintiff;

c) the claims or defences of the class members raise common issues;

d) a class proceeding would be the preferable procedure for the resolution of the common issues; and

e) there is a representative plaintiff who would properly represent the interests of the class, has a workable plan to advance the proceeding on behalf of the class, and does not have any conflict of interest with other class members.

[45] Although the Plaintiffs seek to certify this action against both the Board and the Association, they claim damages solely against the Board. The Association, an alleged joint tortfeasor, was named as a necessary party.

[46] Both Defendants oppose certification on all five grounds, but their primary focus is on the first ground, namely whether the statement of claim discloses a viable cause of action.

Analysis of Cause of Action Requirement

[47] As noted above, the Statement of Claim contains three substantive claims against the Defendants: (1) systemic gender-based discrimination and

harassment by male members; (2) breach of equality rights under s. 15 of the *Charter*; and (3) the tort of harassment.

[48] During argument, Plaintiffs' counsel asserted that the "essential character" of the dispute is "systemic and institutional negligence". However the dispute is phrased, there is no question that all three causes of action, at their core, relate to gender-based discrimination and sexual harassment in the workplace. The issue is whether such claims amount to actionable causes.

[49] In addressing that question, the court must keep in mind that, as stipulated in *Pro-Sys Consultants Ltd. v. Microsoft Corp.*, 2013 SCC 57 at para. 63, there is a very low threshold to prove the existence of a cause of action. A claim will only be defeated if, assuming all pleaded facts to be true, it is plain and obvious that the plaintiff's claim cannot succeed. See also *Williams v. Canon Canada Inc*, [2011] O.J. No. 5049, at para. 176.

[50] The difficulty here is that s. 46.1(2) of the *Human Rights Code* prohibits the commencement of an action based solely on an infringement of a right under Part 1 of the *Code*, entitled "Freedom from Discrimination". Part 1 specifically provides that individuals have a right to employment without discrimination and to be free from sexual harassment in the workplace. It also prohibits reprisals to any complaints made in that regard.

[51] In *Seneca College v. Bhadauria,* [1981] 2 S.C.R. 181, the Supreme Court engaged in a comprehensive review of the statutory regime and held, at p. 195:

> For the foregoing reasons, I would hold that not only does the *Code* foreclose any civil action based directly upon a breach thereof but it also **excludes any common law action** based on an invocation of the public policy expressed in the *Code*. The *Code* itself has laid out the procedures for vindication of that public policy, procedures which the plaintiff respondent did not see fit to use. [emphasis added]

[52] While the plaintiff in *Bhadauria* alleged discrimination on the basis of race, the legal principle arising from the case clearly applies to allegations of sex-based discrimination and sexual harassment. In *Chapman v. 3M Canada Inc.,* [1997] O.J. No. 928, at paras. 4 & 7, the Ontario Court of Appeal concluded that civil claims of sexual harassment and discrimination are similarly precluded by the Supreme Court's holding in *Bhadauria*.

[53] In 2008, the Supreme Court reaffirmed that "a plaintiff is precluded from pursuing a common law remedy when human rights legislation contains a comprehensive enforcement scheme for violations of its substantive terms". Consequently, a breach of the *Code* cannot constitute an actionable wrong: *Honda v. Keays,* 2008 SCC 39, at paras. 63-64.

[54] This principle was recently restated in *Lorion v. 1163957799 Quebec Inc.,* 2015 ONSC 2417, at para. 24, where Smith J. struck out a civil claim for sexual harassment:

> Sexual harassment is not an independent tort recognized in Ontario and hence cannot support a cause of action. This Court's jurisdiction to deal with damages arising from sexual harassment is ousted by Ontario's *Human Rights Code*, R.S.O. 1990, C.H.19.

[55] In 2008, the *Code* was amended to allow a plaintiff to advance a breach of the *Code* as a cause of action solely in connection with another wrong; under s. 46.1, a plaintiff who has a civil claim properly before the court may "piggy-back" their *Code* claim so that the entire dispute can be adjudicated in one forum. Even then, the Court's remedial authority is limited.

[56] However, as all the alleged wrongs in this case claim, at their core, sexual discrimination, there is no independent actionable wrong to ground a court action. The plaintiffs have not pleaded any independent cause of action which would permit them to bring the *Code* claim before this court.

[57] The bottom line is that whether the Plaintiffs characterize their claims as systemic negligence, the tort of harassment, or a *Charter* breach, this action is

one of workplace discrimination which may constitute a violation of both the *Human Rights Code* and the Collective Agreement, but not the common law.

[58] As my determination on this issue is fatal to the certification motion, I need not address the remaining grounds.

Overall Conclusion and Final Remarks

[59] I have concluded that this Court lacks jurisdiction over the dispute between the parties. The jurisdiction motion is therefore allowed.

[60] I have further concluded that even if I had jurisdiction to hear this claim, it does not disclose a viable cause of action, and therefore could not be certified as a class action. Consequently, the certification motion is dismissed.

[61] The Defendants should not regard this result as a vindication of current practices. Like Sharpe J.A. in *A.(K.)*, I have considerable sympathy for the Plaintiffs' desire to have this litigated in court. Even on the limited and contradictory evidence before me, it is apparent that this case raises serious, triable issues relating to the workplace culture. The allegations are very troubling and will require close scrutiny should this matter proceed to another forum for adjudication.

[62] With these remarks in mind, I strongly urge the parties to resolve any issue of costs consensually. If absolutely necessary, I may be consulted.

Baltman J.

Released: July 13, 2018

CITATION: Rivers v. Waterloo Regional Police Services Board, 2018 ONSC 4307
COURT FILE NO.: CV 17 2346
DATE: 20180713

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

ANGELINA RIVERS, SHARON ZEHR and BARRY ZEHR

R. Douglas Elliott, David Thompson, Matthew Moloci, Colleen Yamashita and Elena Mamay, for the Plaintiffs

- and -

WATERLOO REGIONAL POLICE SERVICES BOARD and WATERLOO REGIONAL POLICE ASSOCIATION

James H. Bennett, for the Waterloo Regional Police Services Board; Caroline (Nini) Jones and Jodi Martin for the Waterloo Regional Police Association

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REASONS FOR JUDGMENT

BALTMAN J

Released: July 13, 2018

Ontario

Social Justice Tribunals Ontario
Providing fair and accessible justice
Human Rights Tribunal of Ontario

655 Bay Street, 14th Floor
Toronto ON M7A 2A3
Tel: 416 326-1312 or 1-866-598-0322
Fax: 416-326-2199 or 1-866-355-6099
E-mail: hrto.registrar@ontario.ca
Website: sjto.ca/hrto

Tribunaux de justice sociale Ontario
Pour une justice accessible et équitable
Tribunal des droits de la personne de l'Ontario

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Toronto ON M7A 2A3
Tél.: 416-326-1312 ou 1-866-598-0322
Téléc.: 416-326-2199 ou 1-866-355-6099
Courriel: hrto.registrar@ontario.ca
Site Web: tjso.ca/tdpo

NOTICE OF HEARING
CONTRAVENTION OF SETTLEMENT

HRTO FILE: **2018-33237-S**

August 3, 2018

Filion Wakely Thorup Angeletti LLP
c/o Donald Jarvis
333 Bay Street, Suite 2500
Toronto, Ontario M5H 2R2
Via Mail & Email: djarvis@filion.on.ca

Kelly Donovan
11 Daniel Place
Brantford, Ontario N3R 1K6
Via Mail & Email: kelly@fit4duty.ca

Waterloo Regional Police Association
c/o Caroline V. (Nini) Jones
155 Wellington St 35th Floor
Toronto, Ontario M5V 3H1
Via Mail & Email: nini.jones@paliareroland.com

Re: The Regional Municipality of Waterloo Police Services Board v. Kelly Donovan

A hearing before the Human Rights Tribunal of Ontario has been scheduled for:

Date: **February 22, 2019**

Time: **10:00 a.m. to 5:00 p.m., E.S.T.**

Location: **Mohawk Residence & Conference Centre, 245 Fennell Avenue West, Hamilton, Ontario, Meeting Room 1**

The hearing will deal with the issues identified in the Contravention of Settlement Application and in any Response to the Contravention of Settlement Application**,** and is being held under s. 45.9 of the *Human Rights Code*, R.S.O. 1990, c. H.19.

By no later than **January 25, 2019**, the parties shall serve on each other and file with the Tribunal:

- A list of all documents upon which they intend to rely for the hearing and a copy of each document on the list; and
- A list of any witnesses they intend to call to give evidence at the hearing, together with a brief statement of each witness' expected evidence.

IMPORTANT INFORMATION

Please read this entire notice right away. It explains what you must do before the hearing. It also explains what you must do within the next 14 days if you need to reschedule the hearing. The HRTO's disclosure rules (Rules 16 and 17 of the Rules of Procedure) do not apply to this hearing.

For more information or explanations of legal terms, see the HRTO's Rules of Procedure (Rule 24) available on the HRTO's website at sjto.ca/hrto or from the Registrar's Office.

RESCHEDULING AND ADJOURNMENTS

If you cannot attend the hearing on the date(s) scheduled, you must act within 14 days of the date of this Notice to request to reschedule. After that, a hearing will be adjourned or rescheduled only in exceptional circumstances, even if both parties agree to an adjournment. Retaining a new representative who is not available or prepared to proceed on the scheduled date is normally not considered an exceptional circumstance.

To reschedule the hearing you must take the following steps:

1. Contact the other party(ies) and create a list of 3-5 dates where everyone is available to participate in a rescheduled hearing. The 3-5 dates MUST fall within 8 weeks of the original hearing date.

NOTE – The HRTO does NOT schedule hearings on Mondays. The 3 -5 dates provided must fall on Tuesdays, Wednesdays, Thursdays and Fridays.

2. Provide these-agreed upon 3-5 dates to the HRTO by **August 17, 2018.**

   Note – Do not copy the HRTO on your discussions with other parties about date selection. This correspondence will not be retained as part of your case file. Please ONLY submit the final list of 3-5 agreed-upon dates for rescheduling the hearing.

3. If the other party(ies) refuses to provide dates and/or doesn't respond to you, provide a list of 3-5 dates within 8 weeks of the original hearing date, on which *you* are available to the HRTO by **August 17, 2018.**

4. Always copy the other party(ies) on all correspondence sent to the HRTO (or file a Statement of Delivery/Form 23 if correspondence is sent by fax or mail).

The HRTO will try to reschedule the hearing on one of the dates you provided, subject to the availability of the HRTO's venues and its adjudicators.

If the parties do not respond as directed or are unable to agree on alternate dates for rescheduling, in accordance with the HRTO's practice direction, the HRTO may select the date for the rescheduled hearing without the agreement of the parties.

Requests for rescheduling and adjournment will be dealt with in accordance with the Practice Direction on Scheduling located on the HRTO's website at www.sjto.gov.on.ca/hrto/rules-and-practice-directions/.

CONTACT INFORMATION

The HRTO will send information to the address you have provided to us. If your contact information changes, you must immediately advise the HRTO and the other parties. We may send you directions before the hearing that require you to take action, so be sure to check your e-mail and mail regularly. If an applicant fails to respond, the Application may be dismissed. If a respondent fails to respond, they may lose the ability to present a defence.

FAILURE TO ATTEND THE HEARING

If you do not attend the hearing after receiving proper notice, the HRTO may proceed in your absence (if you are a respondent or intervener) or dismiss the Application as abandoned (if you are the applicant).

FILING DOCUMENTS WITH THE HRTO

The HRTO's computer system requires that documents filed with the HRTO as email attachments must be less than 10 mb. in any one email. See Rule 1.17(c) of the HRTO's Rules of Procedure.
At least one paper copy and an electronic copy of each document must be provided to the HRTO. If the paper copy is bound and you do not provide an electronic copy, then you must provide a second unbound paper copy. See Rule 1.19.1.

All written communications must be addressed to the Registrar. Any document, including emails, **must** be copied to the other parties before being filed with the HRTO. The HRTO cannot accept any materials unless you confirm that they have been copied to the other parties. See Rules 1.12 and 1.20.

ACCOMMODATION

You, your representative and your witnesses are entitled to accommodation of any *Human Rights Code*-related needs. The SJTO/HRTO's Accessibility and Accommodation Policy is available at http://www.sjto.gov.on.ca/hrto/accessibility-and-accommodations/. Notify the Registrar as soon as possible if accommodation is required.

FRAGRANCE POLICY

As fragrances cause health problems for some individuals, the HRTO asks people not to use scented products such as perfumes, after-shave, creams or hair-care products when attending in-person hearings and mediations and coming to its offices..

FORMS, RULES, GUIDES, POLICIES AND PRACTICE DIRECTIONS

The HRTO's Forms, Rules of Procedure, Guides, Policies and Practice Directions are available on our website at sjto.ca/hrto. To request a copy of these documents, you can also contact the HRTO by e-mail (hrto.registrar@ontario.ca), by phone (toll–free at 1-866-598-0322 or in Toronto at 416-326-1312; TTY toll-free at 1-866-607-1240 or TTY Toronto 416-326-2027) or in person at 655 Bay Street, 14th Floor, Toronto, Ontario. These documents are available in a variety of accessible formats.

THE HUMAN RIGHTS LEGAL SUPPORT CENTRE

The Human Rights Legal Support Centre (HRLSC) is a separate organization that provides free legal assistance to people who believe they have experienced discrimination under the Ontario *Human Rights Code.*

If you are the applicant and do not already have a representative, you may want to contact the HRLSC to discuss your Application. Depending on the situation, they may provide advice or agree to represent you at the hearing.

You must contact the HRLSC quickly. The HRTO will not reschedule a hearing because a party has retained a new representative.

You can contact the HRLSC Monday, Tuesday, Wednesday and Friday from 9 am to 5 pm, Thursday from 2 pm to 6 pm at:

Tel:	416-597-4900
Toll Free:	1-866-625-5179
TTY:	416-314-6651
TTY Toll Free:	1-866-612-8627
Website:	www.hrlsc.on.ca

Social Justice Tribunals Ontario

Providing fair and accessible dispute resolution

Human Rights Tribunal of Ontario
655 Bay Street, 14th Floor
Toronto ON M7A 2A3
Tel: 416 326-1312 or 1-866-598-0322
Fax: 416-326-2199 or 1-866-355-6099
E-mail: hrto.registrar@ontario.ca
Website: www.hrto.ca

Tribunaux de justice sociale Ontario

Pour une justice accessible etéquitable

Tribunal des droits de la personne de l'Ontario
655, rue Bay, 14e étage
Toronto ON M7A 2A3
Tél.: 416-326-1312ou 1-866-598-0322
Téléc.: 416-326-2199 ou 1-866-355-6099
Courriel: hrto.registrar@ontario.ca
Site Web: www.hrto.ca

HRTO FILE: **2018-33503-S**

August 10, 2018

Kelly Donovan
11 Daniel Place
Brantford, Ontario N3R 1K6
Via mail and email:
kelly@fit4duty.ca

Re: Kelly Donovan v. The Regional Municipality of Waterloo Police Services Board, and Bryan Larkin

Subject: Notice of Intent to Dismiss

The Human Rights Tribunal of Ontario (HRTO) is in receipt of an Application for Contravention of Settlement, HRTO file number 2018-33503-S filed by Kelly Donovan on July 27, 2018.

The HRTO has reviewed the Application for Contravention of Settlement. It appears the Application for Contravention of Settlement is outside the HRTO's jurisdiction because:

- the Application for Contravention of Settlement was filed more than six months after the alleged contravention of settlement described in your Application for Contravention of Settlement and you do not appear to have cited facts that constitute "good faith" within the meaning of the HRTO's case law [s.45.9(4)]. See for example *Thomas v. Toronto Transit Commission*, 2009 HRTO 1582 (CanLII) and see for example *Diler v. Cambridge Memorial Hospital*, 2010 HRTO 1224 (CanLII) for a discussion of "good faith", and see for example Freitag v. Penetanguishene (Town), 2012 HRTO 1644 (CanLII) for a discussion of "good faith" within the context of Applications for Contravention of Settlement.

You may wish to review the provisions of the *Human Rights Code* noted above as well as the HRTO's Rules of Procedure and Guides to its processes, all available on the HRTO's website at www.sjto.on.ca/hrto, before responding to this Notice. HRTO decisions can be accessed free of charge on CanLII at www.canlii.org.

You **must** provide written submissions responding to the issues identified above. You **must** file your written submissions **on or before September 07, 2018**.

At this time, the respondents are not required to file a Response to Application for Contravention of Settlement (Form 19). The HRTO will communicate further directions to the respondents once the applicant's submissions have been reviewed.

The HRTO will consider your submissions and may decide whether to dismiss your Application for Contravention of Settlement, may decide to continue processing the Application for Contravention of Settlement or may provide further directions to the parties regarding this proceeding.

If you do not respond to this letter and file written submissions by the deadline, the HRTO will consider the failure to respond as an abandonment of your Application for Contravention of Settlement and dismiss the Application for Contravention of Settlement for that reason.

You may file your written submissions with the HRTO by email, fax or mail. Please clearly write your name and the HRTO file number, **2018-33503-S**, on all correspondence and any other documents you file with the HRTO.

The HRTO will send a copy of its decision, a registrar's letter or directions regarding the next steps in this proceeding to you. Unless you fail to respond to this letter by the deadline and your file is dismissed as abandoned, a copy of your Application for Contravention of Settlement, the HRTO's decision, letter or directions regarding next steps as well as copies of your submissions and any other correspondence between you and the HRTO will be sent to the respondent(s) and to any trade union or occupational or professional organization named in your Application for Contravention of Settlement.

Sincerely,

Georgios Fthenos
Registrar

cc.
The Regional Municipality of
Waterloo Police Services Board
c/o Virginia Torrance
200 Maple Grove Rd.,
PO Box 3070
Cambridge, Ontario N3H 5M1
Via mail and email:
virginia.torrance@wrps.on.ca

Bryan Larkin
378 Golf Course Rd
Conestogo, Ontario N0B 1N0
Via mail and email:
bryan.larkin@wrps.on.ca

wsib cspaat ONTARIO
Workplace Safety & Insurance Board
Commission de la sécurité professionnelle et de l'assurance contre les accidents du travail

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416-344-4684
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August 14, 2018

KELLY DONOVAN
11 DANIEL PL
BRANTFORD ON N3R 1K6
CANADA

Claim No.: 30505408
Worker Name: KELLY DONOVAN
Date of Injury/Illness: 16/Dec/2016
Injury/Illness: Psychological Trauma

Dear KELLY DONOVAN

This letter is to let you know the employer has informed us in writing of their intention to appeal a decision(s) in this claim. The next step in the objection process includes a review of the decision(s) by the decision-maker who will reconsider the decision and review any new information. If you choose to be involved at this level, contact the decision-maker directly. If the issue is not resolved, it may move on to the Appeals Services Division. You may participate in both these processes.

The enclosed Worker Participant Form notifies the WSIB if you intend to participate in the appeal process or not. **If you choose to participate, complete and return it to the WSIB within 30 days.**

As well as the participant form, I have enclosed a copy of your claim file and an Objection to Release of Health Care Information form. I have not sent your employer a copy of these documents. At this time please review the health care information. You can object to the release of specific health care information to the employer if you believe it is not relevant to the adjudication of your claim.

If you object to the release of any of the health care information, complete and return the enclosed Objection to Release of Health Care Information form by 04/Sep/2018 .
If I do not receive your reply by this date, I will send the entire file to the employer. **I will inform them that all of the health care information is confidential and may only be used in an objection to a Workplace Safety and Insurance Board decision.**

The employer or their representative may raise issues other than the one(s) listed below.

Issue(s) In Dispute	Date of Decision(s)
Initial Entitlement	12-Jul-2017

Protecting confidentiality is important to us. If you find any documents that do not belong to this claim, please contact us immediately by calling the telephone number above. If you have any questions, please call the telephone number provided above.

Yours sincerely,
Jane Raczywolski
Access Review Clerk
Central Registration & Document Management
Tel: 416-344-1000 or 1-800-387-0750

From: **Fit4Duty** Kelly@fit4duty.ca
Subject: HRTO File No. 2018-33237-S & 2018-33503-S
Date: August 20, 2018 at 10:11 AM
To: HRTO-Registrar hrto.registrar@ontario.ca
Cc: Christa Ambrose christaa@filion.on.ca, Donald B. Jarvis djarvis@filion.on.ca, nini.jones@paliareroland.com

Dear Mr. George Fthenos,

Mr. Don Jarvis had consented to an extension for me to file a completed Response to the Form 18 for 33237 until August 22nd.

My health is too poor for me to meet that deadline and I request an extension to complete my Response to 33237 as well as the Tribunal's Form 10 for 33503. I also request adequate time for an individual suffering from PTSD to respond to the WRPSB's Form 10 filed July 30, 2018. It seems no matter what paperwork I complete, I am bombarded with more requests to dismiss any and all of my material; these are triggers for me and has made me more ill.

As there has been another breach by WRPSB, I will also need to prepare additional documentation for 33503.

As our hearing date has been set for February, 2019, and I was not consulted on this date, however I suspect that WRPSB was, I am requesting an extension until October 26, 2018, to complete my Response to 33237, the Form 10 to dismiss the response I did submit, the HRTO's Form 10 on 33503 and any additional forms I may have missed.

This email is being sent from a place of mental illness that is the worse it has ever been in my life. Please excuse any tones that are perceived as anything other than respectful,

Kelly Donovan
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